

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 043 OF 2013LAB

STATE

VS

RAHUL RITESH CHAND

**Counsels : Mr. S. Vodokisolomone for State
Mr. A. Sen for Accused**

Hearings : 2 and 3 December, 2014

Summing Up : 4 December, 2014

Judgment : 4 December, 2014

JUDGMENT

1. The three assessors have returned with a unanimous not guilty verdict against the accused, on a charge of raping the complainant, on 17.6.13.

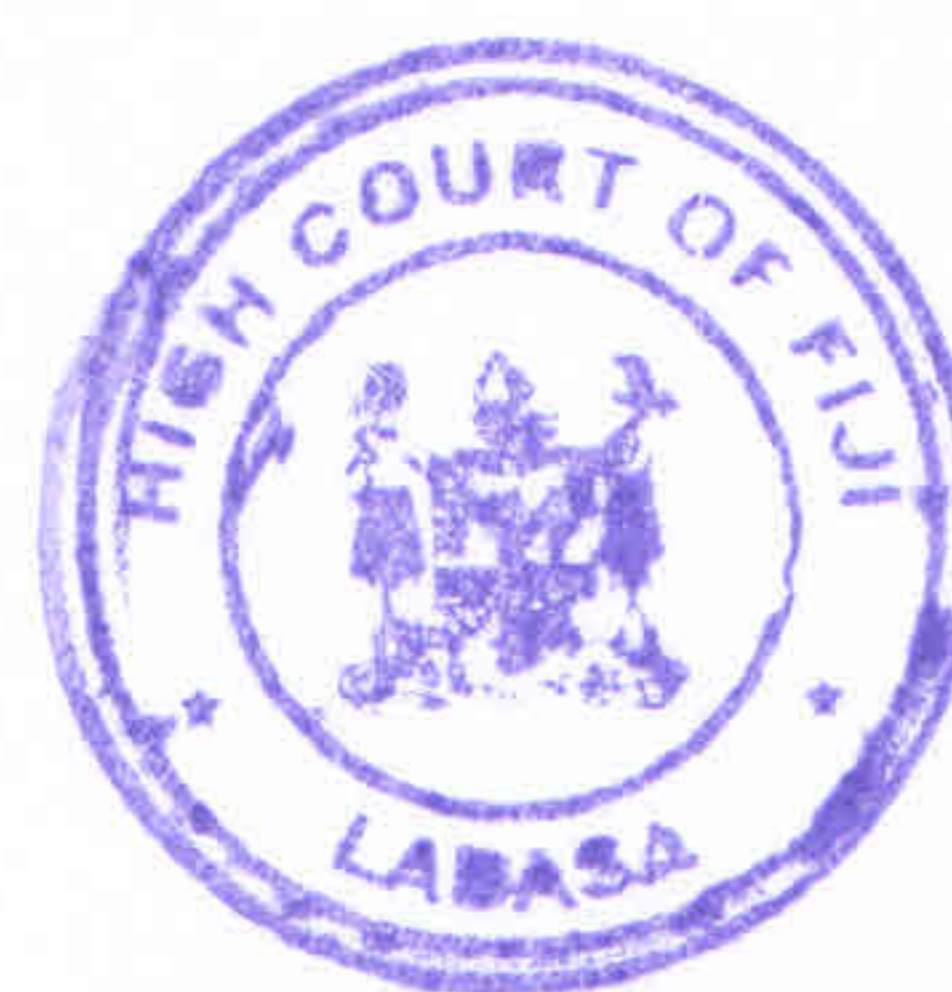
2. Obviously, the three assessors have rejected the prosecution's version of events. They have found that the prosecution had not proven the accused's guilt beyond a reasonable doubt.
3. I have reviewed the evidence called in the trial and I have directed myself in accordance with the summing up I gave the assessors today.
4. The decision of the three assessors was not perverse. It was open to them to reach such a decision on the evidence
5. Assessors are there to assist the trial judge come to a conclusion on the guilt or otherwise of the accused. The final responsibility on the decision of whether or not the accused is guilty or not, is that of the trial judge and the trial judge alone.
6. Assessors have no right to pronounce the guilt or otherwise of the accused in a criminal trial. That function belongs to the trial judge only. The trial judge is the final judge of fact, as stated by the Court of Appeal in Sakiusa Rokonakete v The State.
7. I find, on the evidence that the complainant is a credible witness. I accept her evidence that she was raped on 17.6.13. I accept her evidence that the accused unlawfully inserted his penis into her vagina on 17.6.13. I find, on the evidence that, she did not consent. I find, on the evidence that the accused knew she was not consenting to sex with him at the material time. I accept her evidence on her complaint of rape against the accused. To me, she was a credible witness and from my point of view, she was speaking the truth.
8. I find the accused not to be a credible witness and I reject his denial on the 2nd and 3rd elements of rape.
9. Given the above, I do not accept the three assessors' opinion that the accused is not guilty as charged.

10. I find the accused guilty as charged and I convict him accordingly.

11. Assessors thanked and released.



Salesi Temo
JUDGE



Solicitor for the State : **Office of the Director of Public Prosecution, Labasa.**
Solicitor for the Accused : **Maqbool & Company, Solicitors, Labasa**