

**IN THE HIGH COURT OF FIJI**  
**AT LABASA**  
**CRIMINAL JURISDICTION**

**Criminal Case No: HAC 69 of 2013**

**BETWEEN:**

**THE STATE**

**AND:**

**BONTEATU TIOTEBA**

**Counsel:** Mr. F. Lacanaivalu for State  
Mr. R. Tagivakatini for Accused

**Date of Hearing:** 11-12 December 2014

**Date of Judgment:** 15 December 2014

**JUDGMENT**

- [1] The Accused, Bonteatu Tioteba is charged with two counts of rape. Both alleged incidents occurred on Rabi Island. The first count alleges penile penetration of the complainant's mouth without her consent. The second count alleges penile penetration of the complainant's vagina without her consent. On count 1, two assessors have expressed opinions that the Accused is guilty, while one assessor has expressed opinion that the Accused is not guilty. On count 2, the assessors have expressed unanimous opinion that the Accused is guilty.
- [2] The prosecution led evidence from the complainant, her adoptive father, Tamba Raiati and Dr Temo who medically examined her. It is an agreed fact that the Accused is the biological father of the complainant. However, the complainant was raised up by her adoptive parents after her biological mother passed away at child birth. The complainant grew up knowing that the Accused was her biological father and occasionally visited and stayed with him. On 10 September 2013, the complainant

went to visit and stay with the Accused and his family. She was 17 years old at the time. The Accused resided with his de-facto wife, Kae and daughter, Kaboiti. Kaboiti is the complainant's elder sister.

[3] The first incident was allegedly committed in the afternoon of 13 September 2013. The complainant said she was asleep in the Accused's bedroom when he entered the room and penetrated her mouth with his penis. She said when she opened her eyes he had pulled his penis out of her mouth and was pressing her mouth and neck with his hands. When he left, she did not complain to anyone. She said she cannot recall the exact time, but the alleged incident happened around 2 or 3 pm.

[4] The second alleged incident happened on 15 September 2013 at 1 am in the living room when the complainant was asleep beside Kaboiti and her nephew. The complainant said the Accused pulled down her underwear and penetrated her vagina with his penis by pressing her neck and mouth with his hands. After penetrating her, he returned to his bedroom. The complainant said she did not consent to the sexual acts. In the morning, she remained in the house with Kaboiti while the Accused and his de-facto wife attended a church service. When the Accused returned home after the church service, he asked the complainant and Kaboiti to deliver food to the complainant's adoptive parents and return home early. After delivering food, instead of returning home, the complainant went and visited a male friend. When the girls arrived home late, the Accused was angry at them. He slapped Kaboiti. When the complainant saw Kaboiti being slapped, she ran away and returned to her adoptive parents' house. When she arrived at her home, her adoptive father asked her why she had returned home. The complainant then started crying and upon further prodding by her adoptive father, she told him that the Accused sexually assaulted her. On 16 September 2013, the complainant was medically examined. Medical examination found her hymen was not intact and there were abrasions on the opening and vaginal wall.

[5] The Accused gave evidence. He said in the afternoon of 13 September 2013, he was at home with his wife. He said when he returned home after diving at around 12 noon, the complainant was not at home. On that afternoon, the complainant returned home around 3 pm with her sister Kaboiti. Regarding the second alleged incident, the Accused said when the complainant returned home with her male friend and Kaboiti

at 1 am on 15 September 2013, he told the girls that their male friend cannot stay overnight. He said he slept in his bedroom while his de-facto wife, grandson, Kaboiti and the complainant slept in the living room. He said both incidents as alleged by the complainant never happened. Kae and Kaboiti gave evidence supporting the Accused's version of facts.

- [6] I bear in mind that the burden of proof is on the prosecution to prove the Accused's guilt beyond a reasonable doubt. Even though the Accused has given evidence, he bears no burden to prove anything.
- [7] The real issue is the credibility of the complainant. If I were to accept her evidence as true, then the Accused is guilty of the alleged offences. In assessing her credibility, the complaint evidence is of no probative value. The complaint was prodded out of her by her adoptive father. The medical evidence does not implicate the Accused to the alleged offences. When the complainant gave evidence, she did not express any emotions. She expressed herself clearly and she struck me as a bold and confident witness.
- [8] After the first alleged incident, she remained in the Accused's house, and the following night she accompanied her elder sister to drink kava with her male friend. The second alleged incident occurred when her elder sister was sleeping next to her. In the morning of the second alleged incident, the complainant remained in the Accused's house with her elder sister, while the Accused and his de-facto wife attended a church service. In the afternoon, the complainant went and delivered food to her adoptive parents and then visited her male friend. After visiting her male friend, she returned to the Accused's house and she only ran away when she saw the Accused slapping her elder sister for returning home late.
- [9] I find the complainant's evidence that she was forcefully raped not plausible for two main reasons. Firstly, she remained in the Accused's house after the alleged rapes, and went on with her normal business doing house chores, delivering food to her adoptive parents and drinking kava with her sister and male friends. Secondly, the complainant had a normal and good relationship with her elder sister, Kaboiti, yet, she gave no reasons for not complaining to her when there was opportunity to complain. I find the Accused's evidence that the alleged rapes never occurred more plausible. The

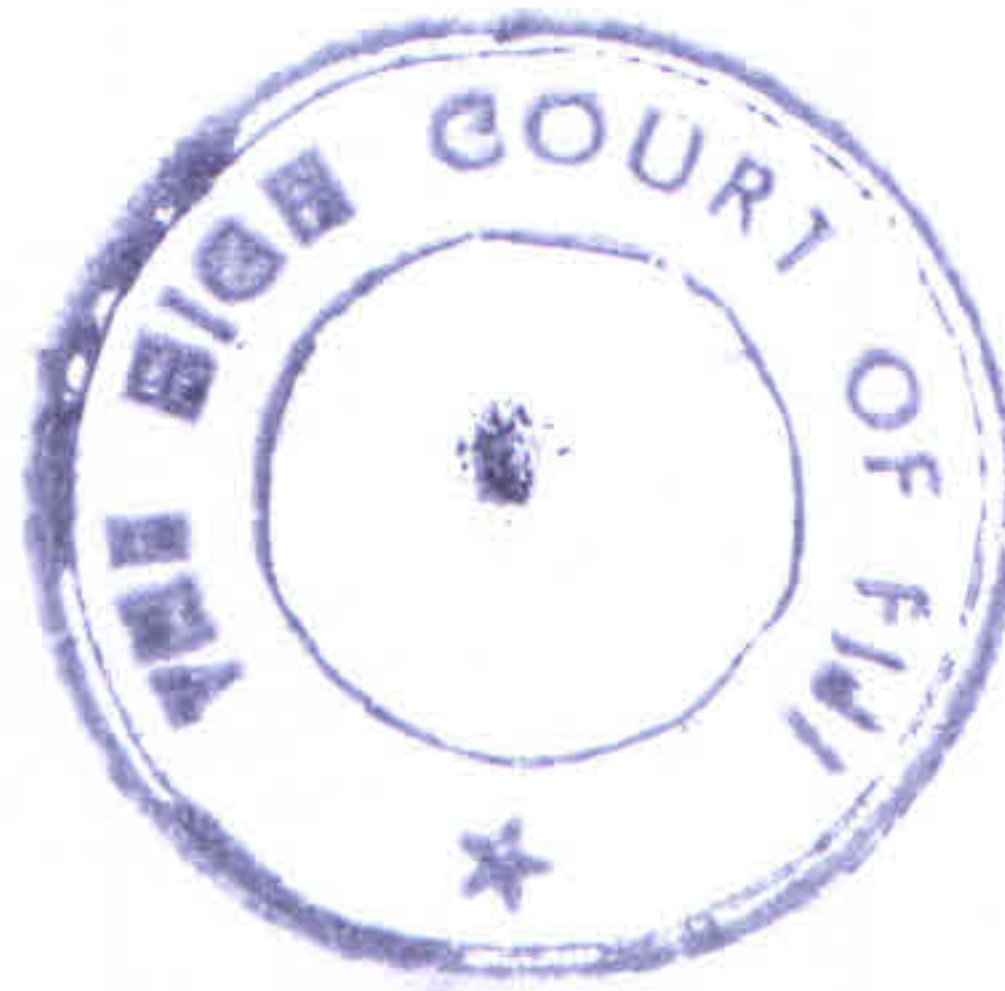
defence version of the facts has created doubt in my mind as to the guilt of the Accused. The doubt is reasonable and the benefit has to be given to the Accused.

[10] For these reasons, I find the Accused is not guilty on both counts of rape. He is acquitted on both charges.



Daniel Goundar

**JUDGE**



At Labasa

15 December 2014

**Solicitors:**

Office of the Director of Public Prosecutions for State

Office of the Director of Legal Aid Commission for Accused