

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

**Criminal Case No. HAC 6 of 2014**

**STATE**

vs.

**ERONI CEVAMACA**

**Counsels** : Mr. T. Qalinauci with Ms. S. Naibe for the State  
: Mr. J. Singh for the Accused

**Dates of Hearing** : 6, 7, December, 2016

**Closing Speeches** : 8 December, 2016

**Date of Summing Up** : 13 December, 2016

**Date of Judgment** : 15 December, 2016

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**JUDGMENT**

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1. The Director of Public Prosecutions charged the accused by filing the following information:

**COUNT ONE**

*Statement of Offence*

**RAPE**: Contrary to Section 207 (1) of (2) (a) of the Crimes Decree, 2009.

*Particulars of Offence*

**ERONI CEVAMACA**, on the 11<sup>th</sup> day of January 2014, at Lautoka in the Western Division, inserted his penis into the vagina of LITIA LEWAIRAVU, without her consent.

2. The three assessors had returned with a unanimous opinion that the accused was not guilty on the count of rape.
3. I adjourned to consider my judgment. I direct myself in accordance with my summing up and the evidence adduced at trial.
4. The Prosecution called two witnesses and the defence called two witnesses.
5. In the early hours of the morning of 11<sup>th</sup> January, 2014 the complainant and her friends met the accused and his friends outside the Zone Nightclub. According to both the prosecution witnesses it was for them to go and have drinks at the house of the accused. In a 7-seater van all went to the house where the accused was renting. The accused went into his bedroom whilst the complainant, her friend Jone and a friend of the accused were in the sitting room waiting for drinks but none were brought. After a while Jone stood up and went outside, the complainant went to the washroom and upon her return from the washroom she met the accused standing on the doorway of his bedroom. The complainant told the court that the accused asked her to have sexual intercourse with him but she refused.

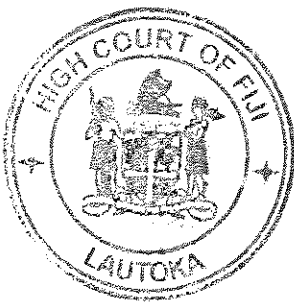
6. The accused pulled her hand and at the same time Jone came and pulled her other hand. The complainant started screaming, while Jone was pulling her hand the accused punched Jone's hand and as a result Jone's watch fell after which Jone ran outside. Thereafter the complainant was pulled inside the bedroom and pushed on the bed the complainant screamed but the accused covered her mouth and at this time punched her right thigh three times.
7. On the bed the complainant was struggling with the accused and in her words the accused was all over her. The accused was forcing himself on her and at the same time swearing. The complainant was wearing leggings and a top the accused only removed one side of her leggings and then inserted his penis into her vagina and had sexual intercourse with her without her consent.
8. Jone Namakadre who was in the house of the accused at the time informed the court that the accused came quietly from his bedroom and pulled the complainant's leg. The complainant grabbed Jone and started screaming. According to Jone the complainant was trying to defend herself by getting hold of the door frame. The accused pulled the complainant inside the bedroom, closed the door and locked it. Jone tried opening the door but was not successful so he went to the elderly man sleeping in the house so that he could help Jone get the complainant out of the room. The elderly man did not assist so Jone again went and pulled the handle of the door when he heard the complainant continue screaming inside the bedroom.
9. The accused on the other hand denied raping the complainant he told the court that outside the Zone Nightclub he recognized the complainant by face as his neighbour living a few blocks away from his house. During his conversation with the complainant he invited her to his house to have

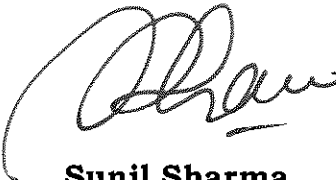
sex with him and that the complainant agreed. At his house the accused asked the complainant to go to the bedroom. The complainant stood up and he escorted her to the bedroom.

10. In the bedroom both took off their clothes waist downwards and they had sexual intercourse. The accused did not see any resistance or reluctance on the part of the complainant and that she had consented to having sex with him, he did not drag her into the bedroom or use any violence on her.
11. During the trial both the prosecution witnesses were referred to their police statements given to the Police on the day of the alleged incident with the evidence they gave in court. Both the witnesses agreed that there was a difference between the version they had told the Police when everything was fresh in their mind and the version they had told the court.
12. I take into consideration that passage of time can affect one's accuracy of memory and I note that the alleged incident happened some two years ago. I would have been surprised if there weren't any inconsistencies and the witnesses would have told the court everything in accordance with what they told the Police in their police statements. I find that the inconsistencies were not significant which had adversely affected the reliability and credibility of the complainant and the other prosecution witness in respect of what had happened at the house of the accused.
13. I find that the complainant had told the truth in the court and I accept the evidence of the complainant as reliable and truthful. She was forthright in her evidence and was able to withstand cross examination. Her demeanour is consistent with her honesty.

14. I find that the accused did not tell the truth which has led me to doubt he had sexual intercourse with the complainant with her consent as stated by him. I do not accept that he invited the complainant to come to his house with the view to having sexual intercourse with her and that she had agreed. I am surprised that the accused who knows the complainant by face only would have approached the complainant and asked her for sex when he had just met her. Thereafter he took everyone to his house, if the intention was to have sex with the complainant then why take everyone home?
15. I have no doubts in my mind that the complainant told the truth in court. I also note that the complainant had promptly reported the matter to the Police and that the accused had not raised any motive on the part of the complainant to implicate him.
16. Dr. Nabaro who had examined the complainant on the day of the alleged incident was unable to conclusively state if rape had occurred as per his findings. I note that the Doctor had seen blood on his examination gloves upon vaginal examination, the Doctor informed the court that it could have been through penetrative injuries or the patient could be menstruating at the time. The Doctor did not state that the complainant was menstruating when he examined her hence I am inclined to accept that the blood seen by the Doctor was as a result of force used.
17. For the reasons given I reject the unanimous opinion of the assessors. I accept the evidence given by the prosecution witnesses as credible and reliable over the evidence of the accused.
18. I am satisfied beyond reasonable doubt that on 11<sup>th</sup> January, 2014 the accused had inserted his penis into the vagina of the complainant without her consent.

19. I also accept that the accused knew or believed the complainant was not consenting or didn't care if she was not consenting at the time in regards to the count of rape with which the accused is charged.
20. In view of the above, I find the accused guilty as charged and I convict him for the offence of rape.
21. This is the Judgment of the Court.



  
**Sunil Sharma**  
**Judge**

**At Lautoka**

15 December, 2016

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**M/S. S. S. Law for the Accused.**