

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 271 OF 2016S

STATE

Vs

SAINIANA MARAMA DROSE

Counsels : Ms. S. Tivao and Ms. S. Lodhia for State
Ms. N. Mishra and Mr. S. Ali for Accused
Hearings : 8 and 9 November, 2017
Summing Up : 10 November, 2017
Judgement : 13 November, 2017

JUDGMENT

1. On 13 November 2017, the accused faced the following information:

FIRST COUNT

REPRESENTATIVE COUNT

Statement of Offence

RAPE: *Contrary to Section 207 (1) and (2) of the Crime Act of 2009*

Particulars of Offence

SAINIANA MARAMA DROSE between 1st day of January 2016 and 5th day of July 2016, at Nasinu in the Central Division, penetrated the vagina of **M. L. D.** with her tongue without her consent.

SECOND COUNT
REPRESENTATIVE COUNT

Statement of Offence

SEXUAL ASSAULT: *Contrary to section 210 (1) (a) and 3 (b) of the Crimes Act of 2009.*

Particulars of Offence

SAINIANA MARAMA DROSE *between the 1st day of January 2016 and 5th day of July 2016, at Nasinu in the Central Division, unlawfully and indecently assaulted M. L. D.*

2. After delivering my Summing Up to the assessors, they retired to deliberate. Twenty five minutes later, they returned with a mixed opinion. Assessor No. 1 and 3 found the accused guilty as charged on count no. 1, while Assessor No. 2 found her not guilty as charged. On count no. 2, all three assessors found the accused guilty as charged.
3. On count no. 1, it was obvious that Assessor No. 1 and 3 accepted the prosecution's version of events, that is, they accepted the complainant's evidence. Assessor No. 2 did not accept the prosecution's version of events, and thus appear not to accept the complainant's version of events.
4. On count no. 2, all the assessors accepted the prosecution's version of events, that is, they accepted the complainant's evidence and version of events. It also meant that they rejected the accused's sworn denials.
5. I have reviewed the evidence called in the trial and I have directed myself in accordance with the summing up I gave the assessors on 10 November 2017.
6. The assessor's opinion was not perverse. It was open to them to reach such conclusion on the evidence. Assessors are there to assist the trial judge come to a decision on whether or not the accused was guilty as charged.
7. On my assessment of the witnesses' credibility, I find the complainant to be a credible witness, and I accept her evidence, and version of events. In my view, she was forthright and was not shaken in cross-examination. There was no reason for her to report her mother to the police, unless what she was alleging was true. In my view, she was telling the truth. Thus, I accept her evidence and reject the accused's sworn denials, on both counts.

8. I therefore accept Assessor No. 1 and 3's opinions on Count No. 1 and I do not accept Assessor No. 2's opinion. On count no. 2, I accept all assessors' opinion.
9. Given the above, I find the accused guilty as charged on both counts, and I convict her accordingly on those counts.




Salesi Temo
JUDGE

Solicitor for the State : **Office of the Director of Public Prosecution, Suva.**
Solicitor for the Accused : **Legal Aid Commission, Suva.**