

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 058 OF 2016LAB

STATE

V

ETUWINI KAMEKAME

Counselors : Mr. R. Kumar for State
Ms. C. Choy for Accused

Hearings : 22 and 23 November, 2017

Summing Up : 23 November, 2017

Judgment : 23 November, 2017

JUDGMENT

1. The assessors had returned with a mixed opinion. On counts no. 2 and 3, which are the rape counts, the assessors had unanimously found the accused not guilty as charged. On the other counts, i.e. counts no. 4, 5, and 6, the assessors had found the accused guilty as charged.
2. Obviously, on counts 2 and 3, the three assessors had not accepted the prosecution's version of events. In other words, they had not accepted his wife's (PW1) evidence on her allegations.

3. On the other counts, i.e. counts no. 4, 5 and 6, the three assessors had accepted the prosecution's version of events. In other words, they accepted complainant no. 2 (PW3) and complainant no. 3's (PW2) evidence and version of events.
4. I have reviewed the evidence and I have directed myself on the summing up I gave the assessors today.
5. Assessors are there to assist the trial judge come to a decision on the guilt or otherwise of the accused. They represent the public's view and perception of the case. Their views should not be taken lightly.
6. On my assessment of the evidence, I accept the three assessor's opinions. I accept the evidence of complainant no. 2 (PW3) and complainant no. 3 (PW2) and accept their version of events.
7. As for complainant no. 1 (PW1), although there was no need for corroborative evidence, she was not taken for a medical examination and no medical report was tendered as evidence of her complaint. Thus, from my point of view, there was no medical report to even state she was taken for a medical examination at Savusavu Hospital. Thus there was a reasonable doubt on her complaint and the benefit of that doubt must go to the accused.
8. Given the above, I accept the three assessors' opinions and find the accused Not Guilty as charged on counts no. 2 and 3, and Guilty as Charged on counts no. 4, 5 and 6.
9. I acquit the accused on counts no. 2 and 3. I convict him on counts no. 4, 5 and 6.
10. Assessors thanked and released.


Salesi Temo
JUDGE



Solicitor for the State : Office of the Director of Public Prosecution, Labasa
Solicitor for the Accused : Office of the Legal Aid Commission, Labasa