

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 017 OF 2017LAB

STATE

VS

VILIAME RATUBUKETE

Counsels : Ms. A. Vavadakua for State  
Ms. S. Devi and Ms. R. Boseiwaqa for Accused

Hearings : 22 and 23 November, 2018

Summing Up : 26 November, 2018

Judgment : 27 November, 2018

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## JUDGMENT

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1. On 22 November 2018, in the presence of your counsels, you pleaded not guilty to the following counts, in the following information:

### COUNT 1

[REPRESENTATIVE COUNT]

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (a) of the Crimes Act 2009.

### Particulars of Offence

**VILIAME RATUBUKETE**, between the 1<sup>st</sup> day of July 2016 and the 30<sup>th</sup> day of September 2016, in Vanua Levu, in the Northern Division, penetrated the vagina of **A.B.**, with his penis, without her consent.

### COUNT 2

#### Statement of Offence

**RAPE:** Contrary to section 207 (1) and (2) (a) of the Crimes Act 2009.

### Particulars of Offence

**VILIAME RATUBUKETE**, between the 1<sup>st</sup> day of February 2017 and the 28<sup>th</sup> day of February 2017, in Vanua Levu, in the Northern Division, penetrated the vagina of **A.B.**, with his penis, without her consent.

2. The case then proceeded to trial for 3 days before myself and three assessors. I delivered my summing up to the assessors yesterday. They unanimously found you not guilty on the above two counts of rape. However, they unanimously found you guilty as charged on the lesser alternative offence of defilement, that is, they were of the opinion that you defiled the complainant, at the times indicated in count no. 1 and 2.
3. I have reviewed the evidence called in the trial, and I had directed myself in accordance with the summing up I gave the assessors yesterday.
4. Assessors are there to assist the trial judge come to a decision on whether or not the accused was guilty as charged. The assessors' opinions are not binding on the trial judge, but he must consider them when making his decision.

5. In this case, the only evidence against the accused was the complainant's verbal evidence given in court. In fact, the State's case against the accused stands or falls on whether or not the complainant's evidence was credible.
6. On count no. 1, the complainant alleged that you raped her, between 1 July and 30 September 2016, at Vanua Levu in the Northern Division, sometime at 3am in the morning. She said, she didn't see your face at the time, but she was sure it was you. She said, it was dark in the house, and as a result, she could not see you. In terms of the R v Turnbull test outlined in paragraph 32 of my summing up, the complainant's identification of you, as mentioned above, was weak in term of quality. In a sense, she appeared to be guessing when she identified you. Because of the above, it was not unreasonable for the assessors to return an opinion of not guilty on count no. 1 against you. On this issue, I agree with the assessors and accept their opinion on count no. 1.
7. So, the complainant's identification evidence against you on count no. 1 was weak, and thus incapable of connecting you to the crime. It follows that the same evidence cannot be used against you, to find you guilty of the lesser alternative charge of defilement. There was nothing to connect you to the lesser alternative offence of defilement, on the dated alleged in count no. 1. Thus, I do not accept the three assessors' unanimous guilty opinion on the lesser charge of defilement against you.
8. On count no. 2, the complainant's evidence against you were inconsistent. At first, she said, you forcefully had sex with her, without her consent and you knew she was not consenting to the above, in February 2017. She said, she saw your face and it was during daylight, before your family had breakfast. She said, her mother was preparing breakfast at the time. She identified you in court as the person she saw committing the crime of rape, at the time. However, when cross-examined by the defence, she said the alleged incident occurred at 3am in the morning, and it was dark at the time. This answer was inconsistent with the answer she gave during examination-in-chief. The prosecution did not clarify this matter during re-examination. The net result of the complainant's evidence against you on count no. 2 was one of inconsistency, leading to loss of credibility. It was therefore not surprising that the three assessors found you not guilty as charged on count no. 2.

- 9. For the same reasons, the above inconsistent evidence cannot be used to find you guilty of the lesser alternative offence of defilement, on the facts as alleged in count no. 2. The complainant's evidence on count no. 2 was fundamentally not credible, and thus cannot be used to ground a conviction on the lesser alternative offence of defilement. On this point, I do not accept the assessors' unanimous guilty opinion on the lesser alternative charge of defilement against you.
- 10. Because of the above, I accept the assessors' unanimous not guilty opinion of rape against you. I also do not accept the assessors' unanimous guilty opinion of you on the lesser alternative charge of defilement.
- 11. I therefore find the accused not guilty as charged on count no. 1 and 2, that is, the rape charges. I also find the accused not guilty as charged on the lesser alternative charge of defilement. I accordingly acquit the accused on the rape charges in count no. 1 and 2. I also acquit him on the two lesser alternative charge of defilement.
- 12. The accused is free to go home.



  
**Salesi Temo**  
**JUDGE**

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