

IN THE HIGH COURT OF FIJI  
AT LAUTOKA  
[CRIMINAL JURISDICTION]

High Court Criminal Case No. HAC 182 of 2015

BETWEEN : STATE

AND : VILIAME NATABE

Counsel : Mr Niudamu for the State  
Ms Vulimainadave for the Accused

Dates of Hearing : 01 & 02 April 2019

Closing Speeches : 03 April 2019

Date of Summing up: 04 April 2019

Date of Judgement : 10 April 2019

JUDGEMENT

1. The Accused is indicted for two counts of rape. The statements of offences and the particulars of offences are as follows;

**First Count**

*Statement of Offence*

Rape: Contrary to Section 207 (1) and (2) (b) of the Crimes Act 44 of 2009.

*Particulars of Offence*

Viliame Natabe on the 4<sup>th</sup> day of November 2015, at Nadi in the Western Division, penetrated the anus of Neori Tuvita with his finger, without his consent.

**Second Count**

*Statement of Offence*

Rape: Contrary to Section 207 (1) and (2) (a) of the Crimes Act 44 of 2009.

*Particulars of Offence*

Viliame Natabe on the 4<sup>th</sup> of November 2015, at Nadi in the Western Division, penetrated the anus of Neori Tuvita with his penis, without his consent.

2. The Information was filed by the State on the 08 January 2016 and the plea was taken on 16 February 2016. The Accused pleaded not guilty to both counts and the trial was conducted on 01 and 02 April 2019. On 04 April 2019 after the summing up the assessors returned with a unanimous opinion. They found the Accused not guilty to both counts of rape.
3. The assessors were given directions on the elements of each offence that need to be proved by the prosecution. They were directed on the degree of proof, the issues of penetration and consent, how to assess credibility of a witness and other general considerations.
4. Having directed myself in accordance with the summing up, I concur with the opinions of the assessors. I will now give the reasons for my judgement.

5. Section 207 of the Crimes Act defines the offence of rape as follows;

207. – (1) Any person who rapes another person commits an indictable offence.

Penalty – Imprisonment for life.

(2) A person rapes another person if –

(a) the person has carnal knowledge with or of the other person without the other person's consent; or

(b) the person penetrates the vulva, vagina or anus of the other person to any extent with a thing or a part of the person's body that is not a penis without the other person's consent; or

(c) the person penetrates the mouth of the other person to any extent with the person's penis without the other person's consent.

(3) for this section, a child under the age of 13 years is incapable of giving consent.

6. In the first count the Accused is charged for rape contrary to section 207(1) and (2)(b) of the Crimes Act as he is alleged to have committed the offence using a finger.

7. According to the second offence the Accused is charged for rape contrary to section 207(1) and (2)(a) of the Crimes Act. It is alleged that the Accused penetrated the anus of the complainant with his penis. Subsection (2)(a) speaks of having carnal knowledge without consent and as per the definition in section 206(5) carnal knowledge includes sodomy.

8. I have carefully considered the evidence adduced by the prosecution.
9. The identity of the Accused was not in dispute and I am satisfied that the prosecution proved the identity of the Accused beyond reasonable doubt.
10. In respect of the first count the complainant said that the Accused spread his legs and inserted the index finger of the Accused in his anus. However, the prosecution did not adduce clear evidence on the issue of consent.
11. As far as the second count is concerned the complainant testified that the Accused inserted his penis into the complainant's anus. Yet the prosecution did not adduce sufficient evidence regarding the issue of consent.
12. The prosecution must prove beyond reasonable doubt that the said acts were committed without the consent of the complainant and the Accused knew or believed that the complainant was not consenting, or the Accused was reckless as to whether or not he was consenting. In view of the complainant's evidence a reasonable doubt is created on the issue of consent.
13. I have observed the demeanour of the prosecution witnesses. I am of the view that the complainant's evidence was not consistent. His answers were not clear and forthright. His evidence was not credible and reliable. I am not inclined to accept his evidence. The second prosecution witness too did not give convincing evidence. His evidence did not strengthen the evidence of the complainant.
14. The position of the defence was that the allegations are false, and it was the complainant who tried to take advantage of the Accused.
15. Having reviewed the evidence thoroughly I decide that the prosecution failed to prove the two counts against the Accused beyond reasonable doubt.

16. Therefore, I am of the view that the opinions of the assessors are not perverse. Their opinions are justifiable, and I agree with the unanimous opinions of the assessors.

17. I find the Accused not guilty to the first and the second counts. Accordingly, the Accused is acquitted of each count.



**Rangajeeva Wimalasena**  
**Acting Judge**

**Solicitors**

Solicitors for the State: Office of the Director of Public Prosecutions

Solicitors for the Accused: Legal Aid Commission