

IN THE HIGH COURT OF FIJI  
CRIMINAL JURISDICTION  
AT LAUTOKA

CRIMINAL CASE: HAC 51 OF 2017

BETWEEN : STATE

AND : ETUATE VILIMONI SAUKURU

Counsel : Ms. P. Lata for State  
Ms. Bilivalu with Ms. Reddy for the Accused

Date of Hearing : 11<sup>th</sup> and 12<sup>th</sup> of June, 2019

Date of Closing Submissions : 12<sup>th</sup> of June, 2019

Date of Summing Up : 13<sup>th</sup> of June, 2019

Date of Judgment : 13<sup>th</sup> of June, 2019

J U D G M E N T

1. The accused is being charged with one count of Indecently Annoying a Person, contrary to Section 213 (1) (b) of the Crimes Act and one count of Rape, contrary to Section 207 (1) (2) (b) of the Crimes Act. The particulars of the offence are that;

*Count One*  
*Statement of Offence*

INDECENTLY ANNOYING A PERSON: *Contrary to section 213 [1]*  
*[b] of the Crimes Act, 2009.*

### *Particulars of Offence*

*ETUATE VILIMONI SAUKURU on the 21<sup>st</sup> of March 2015, at Nadi in the Western Division, with intent to insult the modesty of SAINIMILI SALASE, intruded into the privacy of SAINIMILI SALASE, and offended her modesty by poking her buttocks.*

### *Count Three Statement of Offence*

**RAPE:** *Contrary to section 207 [1] and [2], [b] of the Crimes Act, 2009.*

### *Particulars of Offence*

*ETUATE VILIMONI SAUKURU on the 21<sup>st</sup> of March 2015, at Nadi in the Western Division, penetrated the vagina of SAINIMILI SALASE, with his finger, without her consent.*

2. The hearing commenced on the 11th of June 2019 and concluded on the same day. The prosecution presented the evidence of two witnesses including the complainant. The accused exercised his right to remain silent, hence no evidence was adduced for the defence. The learned counsel for the prosecution and the defence then made their respective closing addresses. Subsequently, I made my summing up.
3. The three assessors, in their opinions unanimously found the accused guilty to both counts as charged.
4. Having carefully taken into consideration the evidence presented during the hearing, the respective closing addresses of the parties, the summing up and the opinion of the assessors, I now proceed to pronounce my judgment as follows.

5. According to the evidence presented by the prosecution, the accused had poked the back side of the complainant with a stick while she was sleeping in the room. He had done that in order to call the complainant to come and have a shower with him, which the complainant refused. The complainant then went to sleep again. When she woke up, she had gone to the toilet to relieve herself. While she was stepping out of the toilet, the accused came and pushed her into the toilet and forcefully inserted his fingers into her vagina. The learned counsel for the defence suggested to the complainant that the accused never inserted his fingers into her vagina as claimed. The complainant refused the said suggestion of the defence.
  
6. The defence contended that the allegation made by the complainant is not probable according to the circumstances that the complainant explained in her evidence. The learned counsel for the defence argued in her closing address if the complainant was wearing a boxer type undergarment, there is no possibility for the accused to insert his fingers into the vagina of the complainant and had blood on his fingers. The complainant was not sure whether she was wearing her undergarment but certain that she was wearing a sulu-vakatoga when she went to the toilet. The complainant said that it really inserted into her vagina and was hard. The accused was tough and masculine. Having taken into consideration the evidence given by the complainant, I am satisfied that the version explained by the complainant is probable according to the circumstances prevailed at the time of this incident took place.
  
7. The complainant explained that she immediately reacted to the accused when he pushed her into the toilet. She then tried to release herself while shouting the name of her friend. Senigiagia heard it and came to the door of the sitting room, which is facing to the toilet. The complainant further explained the reason for not taking any steps after the accused poked her backside with a stick. She has told her aunty about this incident, but she had not reacted to it in a manner that the complainant expected. The aunty is a police officer.

The complainant then went and reported the matter four days after the incident. I do not find the delay in reporting to the police has adversely discredited the evidence given by the complainant.

8. In view of these reasons, I accept the evidence of the complainant as reliable, credible and truthful evidence. Therefore, I do not find any cogent reasons to disagree with the unanimous opinion of guilty given by the three assessors.
9. In conclusion, I find the prosecution has proven beyond reasonable doubt that the accused guilty to both counts as charged. Hence, I find the accused guilty to the offence of Indecently Annoying a Person, contrary to Section 213 (1) (b) of the Crimes Act and the offence of Rape, contrary to Section 207 (1) (2) (b) of the Crimes Act and convict him to the same accordingly.



A handwritten signature in black ink, appearing to read "R. D. R. Thushara Rajasinghe".

**R. D. R. Thushara Rajasinghe**

**Judge**

**At Lautoka**

**13<sup>th</sup> June, 2019**

**Solicitors** : Office of Director of Public Prosecution  
Office of the Legal Aid Commission