

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 14 OF 2017

BETWEEN : **STATE**

AND : **LEVENI WAQA**

Counsel : *Ms. L. Latu with Mr. A. Kumar for the State*
Ms. A. Bilivalu for the Accused

Hearing on : *12th – 13th of October 2020*

Summing up on : *15th of October 2020*

SUMMING UP

Lady and gentlemen assessors;

1. It is now my duty to sum up the case to you. Your opinion is much important to me and I will be considering your opinion to a great extent in preparation of my judgment. In a short while, I will direct you on the law that applies in this case. You must accept my directions on law and apply those directions when you evaluate the evidence in this case in order to determine whether the accused is guilty or not guilty. You should ignore any opinion of mine on the facts of this case unless it coincides with your own reasoning. You are the assessors of facts.

2. As the representatives of the society, your duty here is sacred. Your role is to assist this legal system to serve justice. In doing so, you are guided by two equally important principals of prudence. To wit;

i) If a person has committed an offence, he should be meted out with an adequate punishment.

In other words, if you are sure that the accused has committed the alleged offence, then it is your duty to find him guilty. If an offender goes scot-free, he'll be ridiculing this legal system. It is your duty to not to let that happen.

ii) An innocent person should never be punished.

There is a saying that it is better to let 10 offenders go free than to punish one innocent person. That is, unless you are very sure that the accused has committed the alleged offence, you should not find him guilty.

If any of the said principles are violated, it would amount to a failure of the system, thus you have failed in your duty to the society. Having reminded you of your duty let me proceed.

3. Evidence in this case is what the witnesses said from the witness box inside this court room and the admissions made. As I have stated to you in my opening address, your opinion should be based only on them. If you have heard, read or otherwise come to know anything about this case outside this court room, you must disregard that information.

4. A few things you heard inside this court room are not evidence. This summing up is not evidence. The arguments, questions and comments by the Counsel for the prosecution or for the defense are not evidence. A suggestion made by a counsel during the examination of a witness is not evidence unless the witness accepted

that suggestion. The arguments and comments made by counsel in their addresses are not evidence. You may take into account those questions, suggestions, arguments and comments when you evaluate the evidence only to the extent you would consider them appropriate.

5. You must not let any external factor influence your judgment. You must not speculate about what evidence there might have been. You must approach the available evidence with detachment and objectivity and should not be guided by emotion. You should put aside all feelings of sympathy for or prejudice against, the accused or anyone else. Your emotions should not influence your decision.
6. You and you alone must decide what evidence you accept and what evidence you do not accept. You have seen the witnesses give evidence before this court, their behavior when they testified and how they responded during cross-examination. Applying your day to day life experiences and your common sense as representatives of the society, consider the evidence of each witness and decide how much of it you believe. You may believe none, a part or all of any witness' evidence.
7. When you assess the testimony of a witness, you should bear in mind that a witness may find this court environment stressful and distracting. Witnesses have the same weaknesses that we all may have with regard to remembering facts and also the difficulties in relating those facts they remember in this environment. Sometimes a witness may have other concerns when giving evidence. A witness may be worried that the evidence would incriminate him or reveal a safely guarded secret. Or else he/she might honestly forget things or make mistakes regarding what he/she remembers.
8. In assessing the credibility of a particular witness, it may be relevant to consider whether there are inconsistencies in his/her evidence. That is, whether the

witness has not maintained the same position and has given different versions with regard to the same issue. You may also find inconsistencies between the evidence given by different witnesses. This is how you should deal with inconsistencies. You should first decide whether that inconsistency is significant. That is, whether that inconsistency is fundamental to the issue you are considering. If it isn't then you can disregard that inconsistency. If it is, then you should consider whether there is any acceptable explanation for it. If there is an acceptable explanation for the inconsistency, you may conclude that the underlying reliability of the account is unaffected. You may perhaps think it obvious that the passage of time will affect the accuracy of memory. Memory is fallible and you should not expect a witness to have a photographic memory or every detail to be the same from one account to the next.

9. However, if there is no acceptable explanation for the inconsistency which you consider significant, it may lead you to question the reliability of the evidence given by the witness in question. To what extent such inconsistencies in the evidence given by a witness influence your judgment on the reliability of the account given by the witness is a matter for you to decide.
10. Therefore, if there is an inconsistency that is significant, it might lead you to conclude that the witness is generally not to be relied upon; or, that only a part of the witness' evidence is inaccurate; or you may accept the reason the witness provide for the inconsistency and consider him/her to be reliable as a witness.
11. You may also consider the ability and the opportunity a witness had, to see, hear or perceive in any other way what the witness said in evidence. You may ask yourself whether the evidence of a witness seem reliable when compared with other evidence you accept.

12. Based on the evidence you decide to accept, you may decide that certain facts are proved. You may also draw inferences based on those facts you consider as directly proved. You should decide what happened in this case, taking into account those proved facts and reasonable inferences. However, when you draw an inference you should bear in mind that, that inference is the only reasonable inference to draw from the proved facts. If there more than one reasonable inference to draw, against the accused, as well in his favor, based on the same set of proved facts, then you should draw the most favorable inference to the accused.
13. As a matter of law you should remember that the burden of proof always rests on the prosecution. An accused is presumed to be innocent until proven guilty. This means that it is the prosecution who should prove that an accused is guilty and the accused is not required to prove that he is innocent. The prosecution should prove the guilt of an accused beyond a reasonable doubt, for you to find him guilty. That is, you must be sure of the accused person's guilt.
14. In order to prove that an accused is guilty, the prosecution should prove all the elements of the offence against the accused beyond reasonable doubt. If you have a reasonable doubt on whether the prosecution has proved a particular element of the offence against the accused, then you must give the benefit of that doubt to the accused and find the accused not guilty. A reasonable doubt is not a mere or an imaginary doubt but a doubt based on reason. I will explain you the elements of the offences in detail in a short while.
15. You are not required to decide on every point the Counsels in this case have raised. You should only deal with the offences the accused is charged with and matters that will enable you to decide whether or not the charges are proved against the accused.

16. You will not be asked to give reasons for your opinion. In forming your opinion, it is always desirable that you reach a unanimous opinion. But it is not a must.
17. Let us look at the Information. The Director of Public Prosecutions has charged the accused with one count of sexual assault and 4 counts of rape.

COUNT 1

Statement of Offence

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

Particulars of Offence

Leveni Waqa, on the 31st of May 2014 at Ba, in the Western Division, unlawfully and indecently assaulted Marica Ranadi.

COUNT 2

Statement of Offence

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

Particulars of Offence

Leveni Waqa, on the 06th June, 2014 at Ba, in the Western Division, had carnal knowledge of Marica Ranadi, without her consent.

COUNT 3

Statement of Offence

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

Particulars of Offence

Leveni Waqa, on the 14th day of August 2014 at Ba, in the Western Division, had carnal knowledge of Marica Ranadi, without her consent.

COUNT 4

(Representative Count)

Statement of Offence

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

Particulars of Offence

Leveni Waqa, between the 01st day of July 2015 and the 7th day of September 2015 at Ba, in the Western Division, had carnal knowledge of Marica Ranadi, without her consent.

COUNT 5

Statement of Offence

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

Particulars of Offence

Leveni Waqa, on the 01st day of November 2015 at Ba, in the Western Division, had carnal knowledge of Marica Ranadi, without her consent.

18. Out of the above 5 counts, the 4th is a representative count. Representative count means that the prosecution alleges that during the given period the accused has done more than one incident of the alleged kind. Therefore in addition to the other elements, at least one of the alleged offences of the kind has to be proven to have committed during the alleged period in order for you to opine the accused to be guilty of the said representative count.
19. The alleged first count is of Sexual Assault. Section 210 of the Crimes Act states that;
 210. 1) *A person commits an indictable offence (which is triable summarily) if he or she—*
 - (a) *unlawfully and indecently assaults another person;*
20. Therefore the elements of the offence of Sexual Assault are that;

- [a]. The accused,
- [b]. Unlawfully and Indecently
- [c]. Assaulted the Complainant.

21. For the Accused to be guilty of Sexual Assault, he should have unlawfully and indecently assaulted the victim. The word “unlawfully” simply means without lawful excuse. An act is an indecent act if right-minded persons would consider the act indecent. Assault can be defined as an application of unlawful force on another’s body.

You should ask yourselves:

- a) Whether you consider the force which was used could have been sexual because of its nature; and
- b) If the answer is yes, whether, in view of the circumstances and/or the purpose in relation to the force used, that use of force is in fact sexual in nature.

22. You should be satisfied beyond reasonable doubt that the prosecution has proved all the elements of sexual Assault as explained above, before you find the accused guilty of sexual assault. If, you have a reasonable doubt with regard to any of those elements concerning the offence of sexual assault, then you must find the accused not guilty.

23. Now I will deal with the essential elements of the offence of Rape alleged in the 2nd to the 5th counts. Section 207(1) of the Crimes Act reads as;

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

Section 207 (2) (a) of the Crimes Act reads as;

- (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;

24. Accordingly, in this case, to prove the offence of Rape as for the alleged count the prosecution must prove the following elements beyond a reasonable doubt.

- (i) The accused;
- (ii) penetrated the vagina of Marica Ranadi with his penis,
- (iii) Without the consent of Marica Ranadi; and
- (iv) Either the accused;

knew or believed that Marica Ranadi was not consenting; or
was reckless as to whether or not she was consenting.

25. The first element is concerned with the identity of the person who committed the offence. The prosecution should prove beyond any reasonable doubt that the accused and no one else committed the offence.

26. The second element is penetration of the Marica Ranadi's vagina with the accused's penis. The law states, the slightest penetration is sufficient to satisfy this element of penetration. This element is complete on penetration to any extent and it is not necessary to have evidence of full penetration.

27. To prove the third element of the offence of rape, the prosecution should prove that the accused penetrated the vagina of the complainant, without the complainant's consent.

28. You should bear in mind that consent means, consent freely and voluntarily given by a person with the necessary mental capacity to give consent and the fact, that there was no physical resistance alone, shall not constitute consent. A person's consent to an act is not freely and voluntarily given if it is obtained under the following circumstances;

- i) by force; or
- ii) by threat or intimidation; or
- iii) by fear of bodily harm; or
- iv) by exercise of authority.....etc.

29. Apart from proving that the complainant did not consent for the accused to penetrate her vagina with the accused's penis, the prosecution should also prove that, either the accused knew or believed that the complainant was not consenting; or the accused was reckless as to whether or not the complainant was consenting. This is the fourth element of the offence of rape.
30. It is not difficult to understand what is meant by the words "the accused knew or believed". But you may wonder as to how you could determine whether the accused was reckless. If the accused was aware of the risk that the complainant may not be consenting for him to penetrate her vagina and having regard to those circumstances known to him it was unjustifiable for him to take the risk and penetrate the complainant's vagina with his penis, you may find that the accused was reckless as to whether or not the complainant was consenting. Simply put, you have to see whether the accused did not care whether the complainant was consenting or not.
31. Please remember that no witness can look into an accused's mind and describe what it was at the time of the alleged incident. Therefore, it is not possible to have direct evidence regarding an accused's state of mind. Knowledge or intention of an accused can only be inferred based upon relevant proven facts and circumstances.
32. If you find a reasonable doubt in respect of any of the elements above, you shall find the accused not guilty of the relevant count of Rape.

33. The following were recorded, prior to the commencement of the trial as the admitted facts by the prosecution and the defense.

Admitted Facts

1. That the Complainant is Marica Ranadi.
 2. That the Defendant is Leveni Waqa.
 3. That the Defendant was in a de-facto relationship with the Complainant's mother, Seruwaia Rosi.
 4. That sometimes in 2014, the Complainant left her maternal grandmother in Naiborebore, searching for her biological father, the Defendant, when her mother remarried.
 5. That the Complainant finally met the Defendant in Ba with her paternal grandparents in May 2014.
 6. That when the Complainant met the Defendant, he was living with his de-facto partner, Salote and their daughter Ivamere.
 7. That in 2015, the Defendant left her de-facto partner, Salote and got into a new relationship with one Lusiana and married her.
 8. That on the 01st of November 2015, the Complainant, with the Defendant and her step mother Lusiana, went to church in Yalalevu, Ba.
 9. That the Defendant was first arrested and cautioned interview in the English language on the 13th of November 2015 by WDC 3864 Sainimere Pauline.
 10. That the Defendant was taken in for his second caution interview in the English language on the 4th of January 2017 by the same officer WDC 3864 Sainimere Pauline.
34. During the trial the following were recorded as additional admitted facts.

Additional Admitted Facts

1. On the 01st of November, 2015 at about 9.30 pm Temalesi Soro left home, Magodro Street, Yalalevu, Ba and took a walk with her friend Ana to the nearby Billard shop and stayed for almost 1 ½ hours.
 2. When Temalesi and Ana were returning home that night, they came towards the junction of Magodro Street, and walked towards a rain tree beside the tramline, from there they could see two people coming out of Vuda Street and walking towards Tavua Street.
 3. At first Temalesi Soro, never bothered to look at the two people walking towards Tavua Street and when she looked again, she saw the Defendant walking and following him was the Complainant.
 4. The Complainant and the Defendant went through Tavua Street and came towards Magodro Street.
 5. Temalesi Soro and Ana continued towards Magodro Street until they reached home and sat at the gate entrance.
 6. Whilst sitting at the gate entrance, the Complainant arrived, Temalesi enquired where she returned from, the Complainant replied that she came back with the Defendant to drop the cassava bag and the Defendant was coming later.
35. The above Admitted Facts and the Additional Admitted Facts should be considered as already proved. You must accept them without any further proof. If there is any inconsistency between them and the other evidence, you should consider the above to be correct.

Summary of Evidence

36. The PW1, Marica Ranadi is the sole witness as to the alleged incidents. The law requires no corroboration. Therefore you can act on the evidence of a sole witness. However, my direction is that if you are to rely on a sole witnesses'

evidence you must be extremely cautious of the credibility and the dependability of such evidence. Her evidence is that;

- i) She was born on the 21st of December 1998, in Naimasimasi, and when her mother remarried, went with her maternal grandmother to Naiborebore in Tailevu. She was there until she was 14 years old.
- ii) Her mother is Seruwai Rosi and father is Leveni Waqa. They were not married.
- iii) Since her mother got remarried and her grandmothers' leg got amputated, there was no one to look her after and she started to search for her father in 2014. She came to Nausori and met her cousin and he has taken her to her fathers' village, Vunuku, Rewa. At there, she learnt that her father now resides at Ba and after about two weeks there, she was taken to Ba by her paternal grandparents.
- iv) They took her to their house in Yalelevu in Ba and her father was staying with his wife Na Lote and their daughter Iva at Vatulaulau in Ba.
- v) On the 31st of May 2014, her father, the accused has come and taken her to his house in Vatulaulau. In the night of that day while she was asleep in the living room, her father has come to her and touched her breast and gone down touching her body inclusive of the private part of hers, underneath her clothes. She has never thought that her biological father would do such things to her and was trembling with fear and panic stricken.
- vi) The house had only a single bedroom and Na Lote and Iva were sleeping in that room. Having touched her, he has told her to not to tell that to anyone. She has not told of this incident to anyone as her dad has told her so.
- vii) On the 06th of June 2014, at about 7.00pm, she was at Yalelevu with her grandparents. Then the accused has come and asked their permission to take her to his house. Her grandfather refused it and dad and the

grandfather have fought. Ultimately her grandfather has released her and she was taken by her dad to his house at Vatulaulau. On the way while two of them were walking, once on the tramline, the accused has asked her to turn into the sugarcane field beside the tramline. Once in the sugarcane field, he has asked her to take off her pants for them to have sexual intercourse. She was frightened and told him that she can't because he is her father, he has replied that he wanted her and having removed her panty, had sexual intercourse with her by inserting his penis into her vagina. After the said incident too, the accused has threatened her to not to tell anyone.

- viii) When she went to Vatulaulau with the accused, Na Lote was there but she has not told anything to her because her father told her to not to tell anybody.
- ix) On the 14th of August too she was at Yalalevu. Her father has come and sought to take her to Vatulaulau. Her grandfather has refused and the two had fought again. Having fought with her grandfather, her father has taken her to his house and on the way, he having removed her panty had sexual intercourse with her on the tramline.
- x) During the period between the 01st of July and 07th of September 2015, her father used to take her to the tramline/sugarcane field and had sexual intercourse with her on many occasions. By then she was with her grandparents at Savusavu and Na Lote has left the accused and he has got married to Na Lusi.
- xi) On the 01st of November 2015, after the church service, the accused has asked her to come with him to take some cassava to a pastor. He has taken her to an empty house and has had sexual intercourse with her there. After when they came out of the empty house, they have met Temalesi, Ana and Pauliasi by the road.
- xii) The witness identifies the accused, Leveni Waqa as her biological father. She has reported the matter because she has not liked what her father

was doing to her. On the 03rd of November 2015, the pastors wife, Na Rai has asked her of the rumors spreading by then and she has told her everything and gone and reported the matter to the police. After reporting the matter, she admits drafting a letter due to persuasion by her grandfather. That letter was drafted by her grandfather and she was asked to copy it into the paper, which stated that she made a false complaint to the police. The said letter is marked and produced as PE1, and annexed was the English translation of it. The witness confirms that what she complained of and gave evidence of, is true and correct and the said letter was drafted due to the pressure casted upon her by her grandparents.

37. In answering the cross examination posed on behalf of the accused, the witness states;
- i) On the 31st of May 2014, when allegedly Accused touched her, she was asleep. She knew it was her father who touched her as she opened her eyes he was there touching her breasts and he signaled her to shut up and not to say anything. She states that she is sure that it was not a dream but happened in real.
 - ii) At the time of the said incident, Na Lote was sleeping in the adjoining bedroom and the bedroom door opens to the living room. There was light inside the house that night.
 - iii) The only person she related the incidents was Na Rai and that was after she inquiring of those from her. She has told the whole truth to Na Rai. She admits that she was embarrassed by the questions asked by Na Rai.
 - iv) The 2nd alleged incident happened on the 06th of June 2014, at about 8.00pm. When it is queried that why didn't she inform the alleged incident to her grandfather, who fought with the accused to not to let her go with the father, as he cared that much for her, the witness states that since her father asked her to not to tell anyone, she didn't tell.

- v) The defence suggests that she did not inform the alleged incidents to any one until she was asked, because they never happened and the witness denies the said suggestion.
- vi) She admits stating to the police that the accused had sexual intercourse with her till he brought Na Lusi home. In evidence she states that even thereafter, he came to her and had sex with her, leaving Na Lusi home. It should be noted that there remains an inconsistency, which you may consider and give an appropriate weight.
- vii) Na Rai neither forced her to report the matter to the police nor coach her what to state to the police. Though Na Rai accompanied her to the police, she was outside when she gave her statement to the police. She admits that she did not like her father staying with Na Lote without allowing her to be with him and she was jealous of it. However, she denies that she didn't like Na Lusi and states that she did not hate it and in fact she liked him bringing Na Lusi home.

38. The next witness the PW2 called by the prosecution was Ms. Raijieli Nailavi, the wife of the pastor, to whom the PW1 has relayed the incidents. She is mentioned to by the PW1 as Na Rai. Her evidence was that;

- i) In 2015, she was residing at Magodro Street in Yalalevu, Ba. On the 03rd of November 2015, she was at home with her family and some of the Church members. They were cleaning the Church and the premises.
- ii) She knows the PW1, Marica as she comes to the Church and she was there on that day, with the other Church members. By that time there were rumors going around and she has called Marica and asked her. At first she has denied that there was anything going on, but after a while Marica has started crying and told her everything.
- iii) Marica has told her that her dad was harassing her, sucking her breasts, asks her to suck his penis and used to have sex with her.

- iv) Having heard Marica, she has asked her what she intends to do and Marica has told that we will inform the police. She did not provoke Marica to report the matter to the police. She did not tell Marica to what to tell to the police.
- v) Marica whom she referred to is the daughter of Leveni Waqa.

39. In answering the cross examination by the learned defence counsel, on behalf of the accused, the witness stated that;

- i) Marica was there at her house on the 03rd of November 2015.
- ii) She was told of rumors and based on them and her observations of the appearance of Marica, she has decided to ask Marica.
- iii) Marica did not come to her and open up voluntarily. Only when asked and also after denying initially, Marica has opened up and told her everything.
- iv) She has been there with Marica at the police station when Marica gave her statement to the police. It should be noted this is inconsistent with the evidence of the Marica. You may consider the relevancy and the appropriate weight to be given to this inconsistency.

40. With leading the evidence of PW1 and PW2, the prosecution closed their case. The Court being satisfied that there is sufficient evidence adduced by the prosecution covering the elements of the alleged offences, decided to call for defense, acting under the virtue of section 231(2), of the Criminal Procedure Act, explaining and giving his due rights to the accused.

41. The accused having understood his rights elected to remain silent and to call one witness on his behalf. However, later the Court was informed by the defence that they will not be calling any witnesses. The accused has a right awarded by the constitution to remain silent. Therefore, you should not draw any adverse inference of it against the accused.

42. That was a summary of the evidence given by the witnesses. Please remember that I have only referred to the evidence which I consider important to explain the case and the applicable legal principles to you. If I did not refer to certain evidence which you consider important, you should still consider that evidence and give it such weight you may think appropriate. As I have already explained, which evidence you would accept and which evidence you would not accept is a matter for you and you alone to decide.
43. It is my duty to give a special direction to you in respect of the counts 2 and 3. It should be noted that by the time of the committal of the alleged 2nd and 3rd counts the complainant was over 13 years but below the age of 16 years. In any event first you should decide whether all the elements were proved by the prosecution and also whether you have any doubt in respect of any of the elements. If you have any doubt of proof on any element as for my directions given before you should find the accused not guilty of the said counts. However, if your reasonable doubt is only in respect of the absence of consent of the complainant, the knowledge of the accused of it or the recklessness in regards to those offences, then you should consider the lesser offence of Defilement set out in section 215 of the crimes Act, instead.
44. The main elements of the offence of Defilement of Young Person between 13 and 16 years of age as for section 215 of the Crimes Act are that:
- i. The accused,
 - ii. Unlawfully,
 - iii. Penetrated into the vagina of the complainant, and
 - iv. The complainant is a person of the age between 13 and 16 years of age.
45. If you have any reasonable doubt as to the existence of any of the elements set out above, you should find the accused not guilty of the offence of Defilement as well.

46. Remember that you should first decide on the credibility and reliability of the witnesses who gave evidence in this case and accordingly decide what facts are proved and what reasonable inferences you can draw from those proven facts. Then you should consider whether the elements of the offence has been proved beyond a reasonable doubt. You should take into account my directions where relevant, in deciding whether the prosecution has proved all the elements.
47. The Accused has indicated his stance through the cross examination and it was that he did not commit any of the alleged acts and he was framed by the complainant due to jealousy of him remarrying. Even in case you do not accept the accused's stance as true, you should not consider it in-order to strengthen the prosecution case. The accused need not prove that he is innocent. A person may lie as sometimes as it is easier than telling the truth. Therefore even you decide to not to accept the accused's stance, you should not use it to overlook the weaknesses of the prosecution case if any.
48. With the submission of the accused's stance, one of the three situations given below would arise;
- (i) You may accept his stance and, if so, your opinion must be that the accused is 'not guilty'.
 - (ii) Without necessarily accepting his stance you may think, 'well what he says could be true'. If that is so, it means that there is a doubt in your mind and if you can reason it out in your mind, and call it a reasonable doubt, again your opinion must be 'not guilty'.
 - (iii) The third possibility is that you reject his stance. But, that itself does not make the accused guilty. Then the situation would then be that you should consider whether the prosecution has proved all the elements beyond a reasonable doubt. If the prosecution has proved all the necessary

elements of the offence and also you reject the accused's stance only, you should find the accused guilty of the alleged count.

49. Any re-directions? *none*

50. Ladies and Gentleman Assessors, that is my summing up. Now you may retire and deliberate together and may form your individual opinion on the charges against the accused. When you have reached your separate opinion, you will come back to court and you will be asked to state your opinion.

51. Your opinion should be;

Whether the accused is guilty or not guilty of the alleged count of Sexual Assault? And;

Whether the accused is guilty or not guilty of the each alleged 2nd to 5th count of Rape?

In case you find the accused not guilty of the 2nd and 3rd counts only because you were not satisfied of the absence of consent of the complainant or the accused's knowledge of it or recklessness, is the accused guilty or not of the lesser offence of Defilement?



Chamath S. Morais

JUDGE

Solicitors for the State

:

Office of the Director of Public Prosecutions.

Solicitors for the Accused

:

Legal Aid Commission, Lautoka.