

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO. HAC 196 OF 2018**

**BETWEEN** : **STATE**

**AND** : **ETIKA LAQAI**

*Counsel* : *Ms. L. Latu for the State*  
*Ms. V. Diroiroy for the Accused*

*Hearing on* : *23<sup>rd</sup> & 24<sup>th</sup> of November 2020*

*Summing up on* : *26<sup>th</sup> of November 2020*

*Judgment on* : *10<sup>th</sup> of December 2020*

**JUDGMENT**

1. The accused, Etika Laqai is charged with a count of Rape, alleged as detailed below to have committed on Vaseva Raluve whom he has met for the first time on the Christmas day in 2017.
2. The details of the offence that he was charged by the Director of Public Prosecutions are as follows;

**COUNT**

***Statement of Offence***

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

### ***Particulars of Offence***

Etika Laqai, on the 26<sup>th</sup> day of December 2017 at Nadi, in the Western Division, had carnal knowledge of Vaseva Raluve, without her consent.

3. The accused pleaded not guilty to the charge and the ensuing trial lasted two days. The complainant Vaseva Raluve gave evidence for the prosecution while the accused gave evidence, on his behalf.
4. At the conclusion of the evidence and after the directions given in the summing up, the three assessors unanimously found the accused not guilty to the alleged count of Rape.
5. I direct myself in accordance with the law and the evidence led in this case, inclusive of which I have discussed in my summing up to the assessors.
6. The sole witness to substantiate on the alleged incidents is the PW1, Vaseva Raluve. I am mindful that the law requires no corroboration. Therefore it can be acted on the evidence of a sole witness. However, if we are to rely on a sole witnesses' evidence we must be extremely cautious of the credibility and the dependability of such evidence.

### **Analysis**

7. It is admitted by the Accused that he had sexual intercourse with the complainant on the alleged day. Therefore, the only question is whether it was done with her consent or not.
8. As far as consent of the PW1 is concerned it is her word against the word of the accused's. However, the consistency of the version of events by the PW1 was minimal. Her evidence is strongly challenged on many vital issues. Under the given circumstances, it would be highly improbable that a girl being dragged through a Village for more than 100 feet, holding from her wrist passing many houses, against her consent, without she making any attempt to free herself or to raise an alarm.

9. The medical evidence established that there was an injury in her cervix, the innermost part of her vagina. The accused admits of having had sexual intercourse with her that night. The medical evidence will not indicate whether the injury was caused by forceful sexual intercourse or consensual sexual intercourse.
10. The version of events relied upon by the defence creates a huge doubt in the already weak prosecution case. Therefore the prosecution fails to establish the absence of consent by the complainant and thereby fails to prove the guilt of the accused beyond reasonable doubt.
11. In my view, the prosecution has failed to prove their case beyond reasonable doubt and assessors were correct in finding the accused 'not guilty'. Therefore, I agree and concur with the unanimous opinion of the assessors. I confirm the opinion of the assessors and find the accused not guilty of the alleged count of rape.
12. In result, I acquit the accused of the alleged count of Rape.
13. This is the Judgment of the Court.



*Chamath S. Morais*

**Chamath S. Morais**  
**JUDGE**

*Solicitors for the State* : *Office of the Director of Public Prosecutions*  
*Solicitors for the Accused* : *Legal Aid Commission, Lautoka*