

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**Criminal Case No.: HAC 232 of 2017**

**STATE**

**V**

**OVAOVA ROKOTAKALA**

**Counsel** : Ms. S. Naibe for the State.  
: Ms. V. Diroiroi for the Accused.

**Dates of Hearing** : 19, 20 and 21 August, 2020  
**Closing Speeches** : 24 August, 2020  
**Date of Summing Up** : 24 August, 2020  
**Date of Judgment** : 25 August, 2020

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**JUDGMENT**

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*(The name of the complainant is suppressed she will be referred to as "RT").*

1. The Director of Public Prosecution charged the accused by filing the following information:

**FIRST COUNT**

***Statement of Offence***

**INDECENT ASSAULT:** Contrary to section 212 (1) of the Crimes Act 2009.

*Particulars of Offence*

**OVAOVA ROKOTAKALA** between the 1<sup>st</sup> day of January, 2016 and 31<sup>st</sup> day of December 2016, at Lautoka in the Western Division, unlawfully and indecently assaulted “RT” by forcefully kissing her on the lips.

**SECOND COUNT**

*Statement of Offence*

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

*Particulars of Offence*

**OVAOVA ROKOTAKALA** on the 7<sup>th</sup> of October, 2017, at Lautoka in the Western Division penetrated the vagina of “RT” with his finger without her consent.

2. The three assessors had returned with a unanimous opinion that the accused was not guilty of one count of indecent assault and one count of rape as charged.
3. I adjourned overnight to consider my judgment. I direct myself in accordance with my summing up and the evidence adduced at trial.
4. The prosecution called two witnesses whereas the accused exercised his right to remain silent but called one witness.
5. The complainant informed the court in 2016 she had gone to visit her sister Latileta at Vio Island to spend her weekend. During the night her sister and brother in law went to drink grog since she was alone at home she went to the house of her sister in law after midnight.

6. At the house of her sister in law the complainant was lying down in the sitting room without a blanket, at this time she did not know that the accused was in the bedroom. When she was lying down the accused called the complainant to come in the bedroom since the blankets were there. The complainant and the accused are cousins.
7. The complainant went into the bedroom and lay down on the bed with her back turned towards the accused after a while the accused who was lying on the bed turned towards the complainant, hugged and kissed her. The complainant pushed the accused away and told him that she cannot kiss him since he was a married man. However, the accused kept on kissing her suddenly the complainant's sister came inside the bedroom and asked the complainant whether she was coming over to her home or staying there. The complainant left with her sister.
8. According to the complainant she had pushed the accused away when he was kissing her because he was a married man and she did not like what the accused was doing to her immediately after, the complainant told her sister Latileta about what the accused had done to her.
9. On 7<sup>th</sup> October, 2017 in the evening the complainant was drinking at the Ashiki nightclub when she saw the accused drinking as well. The accused kissed the complainant in the nightclub. . After a while the accused asked the complainant to go with him to pick something both went in the car towards Nadovu Park.
10. At Nadovu Park the accused stopped the vehicle and pushed the car seat down on which the complainant was sitting. He then came on top of the complainant and started kissing her, fondling her breast and then forcefully put his finger inside her vagina. The complainant was scared the window of the car was up the complainant was kicking the steering wheel to sound the horn.

11. The complainant felt pain when the accused forcefully poked his finger inside her vagina. As this was happening, the complainant consented for the accused to kiss her upper body and also gave him her phone number in order to get out of the situation and told him that she will meet him again.
12. The accused then released the complainant and dropped her to where her friends were waiting. Next day the complainant told her sister Latileta about what the accused had done to her.
13. In respect of the first incident in 2016 the complainant also stated that when the accused was kissing her she was also kissing him for about 3 minutes.
14. The complainant enjoyed kissing the accused but her only concern was that the accused was a married man. She also knew that the accused being married and she being a student they could not be in a relationship, but she was attracted to the accused.
15. Next day the complainant, her sister and brother in law with the accused had breakfast together at her sister's house and there was no talks about what had happened the previous night.
16. On 7<sup>th</sup> October the complainant was happy to see the accused at the Ashiki nightclub and both kissed each other before leaving the night club. The complainant told her friends she was going with the accused. They again kissed each other when they sat in the car.
17. At Nadovu Park the accused laid on top of her since the complainant was sitting in the passenger's seat the accused had reclined the seat to allow her to lie down, the accused kissed her neck, chest and breast. At this time, the complainant's one leg was beside the car window and the other leg was next to the steering wheel. The complainant also agreed that the accused was

foundling her vagina with his finger and in the heat of the moment she did not offer any resistance.

18. The complainant had no reason to be afraid of the accused that night in the car, however, she was only scared of being involved with a married man. According to the complainant the accused did not force himself on her at the Nadovu Park and also the accused had not forcefully kissed her in 2016 at Vio Island.
19. The only reason why the complainant alleged the accused had indecently assaulted and raped her was to save herself and her reputation in her family and the community.
20. The complainant agreed she did not tell the police during the time of giving her police statement that her sister Latileta had asked her to tell Karalaini that she was having an affair with the accused. The complainant agreed this was not a case of indecent assault and rape as she had alleged.
21. The final prosecution witness Latileta Lewavuluma the elder sister of the complainant informed the court that in the year 2016 the complainant had come to visit her at Vio Island. At around 10pm the witness with her husband went to drink grog after 1 am the witness whilst returning from the grog session went to the house of her sister in law where the complainant was.
22. Upon reaching the house the witness saw the complainant standing at the door she called the complainant to accompany her home, on the way the complainant told the witness that the accused had touched her breast and her vagina. When the witness heard this she felt pity on the complainant and she wanted to report the matter.
23. In respect of the October incident the witness was told by the complainant that instead of dropping the complainant at her home the accused took her

to the Nadovu Park where he harassed her by touching her breast and he used his hand on her vagina. The complainant was sad when she relayed the information.

24. The witness also agreed that she had met Karalaini in the presence of the complainant, during discussions Karalaini had asked the complainant if she had been having an affair with her husband. The complainant admitted having an affair with the accused. Moreover, the witness also knew that the complainant was having a secret affair with the accused.
25. On the other hand, the defence says the accused did not do anything to the complainant forcefully. The complainant had consented on both the occasions. In respect of the first incident the complainant on her own accord had gone into the bedroom where the accused was sleeping and had slept beside him. The accused had kissed the complainant and she had responded by kissing him.
26. The complainant consented to the kissing which was a normal reaction of a person who was having a secret relationship with a married cousin. The complainant did not tell the complete truth to Latileta when she did not say that she had consented for the accused to kiss her. The defence also says if the accused had forced the complainant during the first alleged incident she would not have gone with the accused after kissing him at the nightclub and in the car on the way to Nadovu Park.
27. In respect of the second alleged incident the defence says the complainant had accompanied the accused to Nadovu Park and both had engaged in kissing each other and then during the heat of the moment the accused penetrated his finger in the complainant's vagina with her consent. The complainant had described in detail how she was positioned in the car with her legs spread in such a manner which allowed the accused to do what he did.

28. The complainant cried indecent assault and rape to protect herself, her reputation from her family and the community because she was a student and the accused was a married man and most importantly both were cousins. The complainant had admitted in the presence of her sister Latileta and the wife of the accused that she was having an affair with the accused.
29. The conduct of the complainant does not suggest that she had not consented, the allegations are not probable in the circumstances of this case.
30. After carefully considering the evidence adduced by the prosecution and the defence this court is unable to accept the evidence of the complainant as truthful and reliable. It was obvious to me that the complainant had implicated the accused for her selfish reasons. She had an affair with the accused and during the two alleged incidents she had actively participated with the accused but when it came to “crunch time” she cried indecent assault and rape.
31. I accept the defence contention that the complainant had consented to what the accused had done to her. There is no iota of doubt that the complainant did not tell the complete truth in her evidence in chief. Her demeanour was not consistent with her honesty.
32. In cross examination the complainant was discredited to the extent that no reliance can be placed on her evidence in respect of the two allegations. I accept the complainant had told the wife of the accused in the presence of her elder sister that she was having an affair with the accused. This version was also supported by Latileta (sister of the complainant) who knew about the affair between the complainant and the accused.
33. The defence witness Karalaini Nabora was also believable when she said the complainant admitted having an affair with her husband. Although

there were some inconsistencies between the evidence of Karalaini and her police statement in my view the inconsistencies do not adversely affect the evidence of Karalaini. The complainant admitted having an affair with the accused so the consistencies did not affect the evidence of this witness.

34. On the totality of the evidence the complainant's version is not probable and therefore it is unsafe to find the accused guilty upon such discredited evidence.
35. There are many doubts in this case, this court is not satisfied beyond reasonable doubt that between 1<sup>st</sup> day of January, 2016 and 31<sup>st</sup> December, 2016 the accused had unlawfully and indecently assaulted "RT" by forcefully kissing her on her lips.
36. This court is also not satisfied beyond reasonable doubt that on the 7<sup>th</sup> October, 2017 the accused had penetrated the vagina of "RT" with his finger without her consent.
37. For the above reasons, I accept the unanimous opinion of the assessors that the accused is not guilty of both the offences as charged.
38. The accused is acquitted forthwith, this is the judgment of the court.



**Sunil Sharma**  
Judge



**At Lautoka**  
25 August, 2020

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Office of the Legal Aid Commission for the Accused.**