

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

**CRIMINAL CASE NO: HAC 385/2012**

**BETWEEN:** THE STATE

**AND:** SEMI KOROITUKANA

**COUNSEL:** Ms S Kant for the State  
Ms N Nawasaitoga for the Accused

**Dates of Trial:** 09-10/12/2014

**Date of Summing Up:** 11/12/2014

**Judgment:** 12/12/2014

[Name of the victim is suppressed. She will be referred to E.K]

**JUDGMENT**

[01] The Director of Public Prosecution had preferred the following charge against the above named accused.

**FIRST COUNT**

**Statement of Offence**

**RAPE:** Contrary to Section 207(1) and (2) (a) of the Crimes Decree No.44 of 2009.

### Particulars of Offence

**SEMI KOROITUKANA** on the 16<sup>th</sup> day of October, 2012, at Nakavika Village, Namosi, in the Central Division, had carnal knowledge of **E.K** without her consent.

- [02] After trial on the charge, the assessors had returned with mixed opinions. The 1<sup>st</sup> assessor returned with guilty verdict while 2<sup>nd</sup> and 3<sup>rd</sup> assessors returned with not guilty verdict.
- [03] The victim in her evidence said that on the day of the incident she spent the night at the accused's house as her house was locked. While lying the accused had come on top of her, removed her panty, put his penis on her body, harassed her and bit her neck. Answering further the victim said that accused put his penis into her "yaya". To clarify further a Teddy Bear was shown to the victim. Victim has shown the place between the Teddy Bear's legs.
- [04] In the cross examination she admitted that if she had shouted that could have been heard by members of the house. She further admitted that the accused did nothing to her on that night. The incident happened in the dark.
- [05] The doctor who had examined the victim had gone abroad. Dr. Josese Vuki was called to give evidence on behalf of the absent doctor. As the hand writings of the doctor who examined the victim are not legible, the doctor read out only the portion which he could read. According to the witness penile penetration could cause the injuries noted in the vagina but he said that he can't really guarantee as examination was not done by him. Further witness said that doctors cannot say who caused the laceration to the vagina of victim but only can express an opinion whether hymen is disrupted or not.
- [06] Accused in his evidence denied the charge. According to him the victim only spent the night at his residence. According to him what victim said in court was told to her by others. He was merely suspected as the victim spent the night on 16/10/2012 at his house.

- [07] The paramount duty of the prosecution to prove the accused guilt beyond reasonable doubt. It is not for the accused to prove his innocence. The burden of proof lies on the prosecution to prove the accused guilt beyond reasonable doubt, and that burden stays with them throughout the trial.
- [08] After careful consideration of the evidence presented by prosecution, I find the victim's evidence contains serious contradictions and ambiguity which certainly affects the root of the case. This creates a serious doubt about the case and benefit of doubt must accrue to the accused person.
- [09] I have considered and evaluated the evidence, applying legal principles contained in my summing-up to the assessors.
- [10] I have no reason to disagree with the majority not guilty verdict of the assessors. It is also my decision that the accused is not guilty of the charge of Rape.
- [11] The judgment of this court is that the accused is not guilty of charge of Rape of E.K. He is acquitted accordingly.
- [12] 30 days to appeal.



A handwritten signature in black ink, consisting of a vertical line followed by a stylized, cursive name.

P Kumararatnam  
**JUDGE**

At Suva  
12/12/ 2014