

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**  
**CRIMINAL CASE NO. HAC 273 OF 2014**

**STATE**

**VS**

**SHELVIN AMITESH MAHARAJ**

**Counsels** : **Ms S Puamau and Ms S Serukai for the State**  
**Mr S Singh for the Accused**

**Dates of Trial** : **22<sup>nd</sup> February 2016 – 26<sup>th</sup> February 2016**

**Summing Up** : **29<sup>th</sup> February 2016**

**Judgment** : **1<sup>st</sup> March 2016**

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**JUDGMENT**

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- [1] The Accused is charged by the DPP for Rape of his wife Divya Sami, contrary to Section 207(1) and (2)(b) of the Crimes Decree No. 44 of 2009.
- [2] The Accused pleaded not guilty and after trial the assessors, by their unanimous opinion, found the Accused not guilty to the count of Rape.

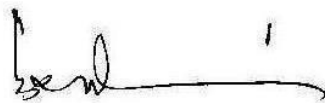
- [3] I direct myself in accordance with the law and the evidence which I discussed in my summing up to the assessors.
- [4] Prosecution case was essentially based on the evidence of the complainant. The complainant said in her evidence that after an argument with her, the Accused had pulled her to their bed and inserted his finger into her vagina and said as her husband he could do it. She gave details of evidence of penetration only after persistent examination by the prosecution.
- [5] The Accused left home that night itself and reported that he is leaving home on good terms as he had a DVRO against him. The complainant did not disclose the incident to her mother or to the Police when she was summoned by it the same night. Three days later she made the complaint against the Accused. In explaining the delay in reporting, the complainant said as the Accused already had a DVRO against him; she did not want to put him into further trouble and decided to report the incident only after he had obtained a DVRO against her.
- [6] The Accused denied the charge and alleged that the allegation is a fabrication of the complainant. In addition during the cross examination the complainant admitted that she had said three different versions during her examination in chief in relation to act of penetration and wanted the Court to act only on the third version. The Accused, in his evidence claimed that she took revenge for his refusal to return home by making this allegation.
- [7] The assessors were directed that the prosecution must establish its case on the evidence it presented and the fact that rejection of Accused's evidence does not automatically establish it for them. They were also directed in assessing truthfulness of a complainant and also to consider the relative probabilities of the two conflicting version presented by the complainant and the Accused.
- [8] In relation to the prosecution, the only evidence they presented to connect the Accused to the offending act is the evidence of the complainant.
- [9] The assessors have unanimously accepted the case presented by the Accused and thereby rejected the evidence of the complainant. I am in agreement with the opinion of the assessors.
- [10] The assessors, having observed the demeanour of the witnesses' for the Accused and the complainant, obviously have accepted the Accused's evidence as true and thereby would have thought the prosecution has not established its case beyond a reasonable doubt.

[11] In my view, the assessor's unanimous opinion was not perverse. It was open for them to reach such conclusion on the evidence. I concur with the opinion of the assessors as there is no cogent reason to hold otherwise.

[12] I am also satisfied that evidence of the prosecution presented through the complainant, if found to not be truthful and or reliable, is not sufficient to establish the guilt of the Accused beyond a reasonable doubt.

[13] I find the Accused not guilty to the count of Rape contrary to Section 207 (1) and (2) (b) of the Crimes Decree No. 44 of 2009. I therefore acquit the Accused **Shelvin Amitesh Maharaj** from the charge of Rape.

[14] This is the Judgment of the Court.



**ACHALA WENGAPPULI**  
**JUDGE**



**At Suva**

**1<sup>st</sup> March 2016**

**Solicitor for the State : Office of the Director of Public Prosecution, Suva**  
**Solicitors for the Accused : Shelvin Singh Lawyers, Level 2, Lords Bldg, Suva.**