

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

**Criminal Case No.: HAC 174 of 2013**

**STATE**

**V**

**PAULA SOLI**

**Counsel** : Ms S. Naibe and Ms. R. Uce for the State.  
: Ms V. Narara and Ms N. Sharma for the Accused

**Dates of Hearing** : 21, 22, 24, March, 2017  
**Closing Speeches** : 24 March, 2017  
**Date of Summing Up** : 27 March, 2017  
**Date of Judgment** : 29 March, 2017

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**JUDGMENT**

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*[The name of the Complainant is suppressed, the complainant will be referred to as "SL"]*

[1] The Director of Public Prosecutions charged the accused by filing the following Information:

**FIRST COUNT**

*Statement of Offence*

**RAPE:** Contrary to Section 207 (1) and (2) (a) of the Crimes Decree, 2009.

*Particulars of Offence*

**PAULA SOLI**, on the 10<sup>th</sup> May, 2013, at Yasawa in the Western Division, inserted his penis into the vagina of “**SL**”, without her consent.

- [2] On a no case to answer application by the defence this court ruled on 24 March, 2017 that the accused had no case to answer on the charge of rape but a case to answer for the offence of attempt to commit rape.
- [3] I find the accused not guilty for the offence of rape, accordingly I acquit him of this charge.
- [4] After the trial proceeded in respect of the offence of attempt to commit rape the three assessors unanimously returned a guilty opinion that the accused was guilty for the offence of attempt to commit rape.
- [5] I adjourned to consider my judgment. I direct myself in accordance with the law and the evidence adduced at the trial.
- [6] The prosecution called three witnesses and the defence called the accused to give evidence.
- [7] On the evidence before the court, it was open to the assessors to reach such a conclusion.
- [8] On 10 May, 2013 at about 11pm the complainant left a birthday party at Teci Village to go home to Bukama Village with a couple namely Esira and Nai.
- [9] While walking to Bukama Village the accused accompanied the complainant and the couple. The complainant and the accused are known and related to each other since the accused's father was the complainant's cousin.
- [10] Esira and Nai were walking in front after sometime the accused pulled the complainant's blue backpack saying that they should follow the couple. This made the complainant afraid because by this time Esira and Nai had gone far ahead.

- [11] At this time the accused pulled the complainant's backpack and pushed her to the ground, the push was hard enough for the complainant to fall to the ground. She fell on the ground face up and she felt pain on her back.
- [12] The complainant was afraid when the accused removed her sulu, shorts and panty. After taking off his shorts the accused was about to insert his penis into the vagina of the complainant, she felt pain on both her thighs and her vagina. The complainant felt his penis and also saw the penis of the accused was outside his shorts. The complainant felt pain in her thighs because the accused was pressing her thighs and forcing himself on her. Thereafter the accused was pushing the complainant down by pressing both her arms.
- [13] The complainant did not consent to what the accused had done to her. She pushed the accused and ran away to Esira and Nai. Two days later the complainant informed her sister Sioana of what had happened to her.
- [14] I accept the evidence of the complainant as truthful and reliable. The complainant was able to recall what had happened to her and was forthright in her evidence. The complainant was also able to withstand cross examination. I have no doubt in my mind that the complainant told the truth in court. Her demeanour was consistent with honesty.
- [15] Sioana the complainant's sister who went to Bukama Village in July, 2013 told the court that the complainant told her that it was at the Bukama Airstrip the accused had forced the complainant to lie down. He then removed her panty and tried to have sex with her and also told the complainant not to tell anyone about what had happened.
- [16] I also accept the evidence of Sioana as reliable and truthful who was able to remember what the complainant had told her.
- [17] The accused informed the court he left the birthday party at 10pm with his two brothers behind them were Esira, Nai and the complainant about 30 metres away but he was not able to see them.
- [18] The accused maintained that he did not meet anyone on his way to Bukama Village that night more specifically the complainant or the

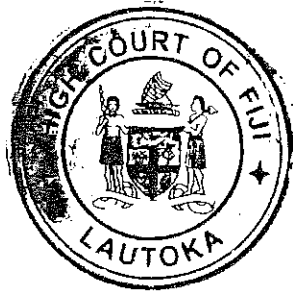
Village Nurse Mere Tubetube. The accused denied that he had attempted to rape the complainant on the night of 10 May,2013.


- [19] I note from the Amended Admitted Facts that the prosecution and the defence had agreed to certain facts which are considered as proven beyond reasonable doubt. At paragraph 7 the following is noted:-

*“Both the complainant and the accused with others had walked back to Bukama Village from Teci Village after the birthday.”*

- [20] The Village Nurse Mere Tubetube left the birthday party to go to Bukama Village with her three sisters and daughter. Whilst walking on the beach Mere saw a white t-shirt. After the torch light was shone Mere recognized the accused who was with a person wearing a blue UNICEF bag.
- [21] Mere called out to the accused to wait so that all could walk together thereafter she met the accused. In cross examination the recognition of the accused by this witness was not challenged or disputed.
- [22] Despite admitting the fact that both the complainant and accused with others had walked back to Bukama Village from Teci Village after the birthday party the accused informed the court that he walked from Teci Village to Bukama Village with his brothers and no one else.
- [23] I do not accept that the accused did not meet the complainant and Mere Tubetube that night on his way to Bukama Village and I reject the evidence of the accused in this regard. I accept as truthful and reliable the evidence of Mere Tubetube who had recognized the accused and had met him on the beach.
- [24] The complainant and Mere Tubetube were referred to their police statements which they had given in 2013 with their evidence in court. I find that the inconsistencies were not significant which had adversely affected the reliability and credibility of the complainant and Mere Tubetube.

- [25] I am satisfied beyond reasonable doubt that it was the accused who had on 10 May, 2013 attempted to penetrate the vagina of the complainant with his penis without her consent.
- [26] I also accept that the accused knew or believed the complainant was not consenting or didn't care if she was not consenting at the time. I agree with the unanimous opinion of the assessors.
- [27] In view of the above I find the accused guilty for the offence of attempt to commit rape as alleged and I convict him accordingly.
- [28] This is the Judgment of the Court.



  
**Sunil Sharma**  
Judge

**At Lautoka**  
**29 March, 2017**

**Solicitors**

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

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