

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

**Criminal Case No. HAC 30 of 2017**

**STATE**

**V**

**TAITUSI MANUCA**  
**1<sup>st</sup> Accused**

**JONE COLATA**  
**2<sup>nd</sup> Accused**

**Counsels:** Mrs. A. Vavadakua for the State  
Mr. J. Korotini (L.A.C.) for the 1<sup>st</sup> Accused  
Ms. K. Boseiwaqa (L.A.C.) for the 2<sup>nd</sup> Accused

**Dates of Trial:** 30, 31, July, 01 August 2018

**Date of Summing Up:** 01 August 2018

**Date of Judgment:** 01 August 2018

**JUDGMENT**

1. The two accused were tried in this Court on the following counts.

**FIRST COUNT**

***Statement of Offence***

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

***Particulars of Offence***

**TAITUSI MANUCA**, on 8 July 2017, at Taveuni, in the Northern Division, penetrated the vagina of **S.B.**, with his penis, without her consent.

**SECOND COUNT**

***Statement of Offence***

**SEXUAL ASSAULT**: Contrary to Section 210 (1) (a) of the Crimes Act 2009.

***Particulars of Offence***

**TAITUSI MANUCA**, on 8 July 2017, at Taveuni, in the Northern Division, unlawfully and indecently assaulted **S.B.**, by masturbating her genitalia.

**THIRD COUNT**

***Statement of Offence***

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

***Particulars of Offence***

**JONE COLATA**, on 8 July 2017, at Taveuni, in the Northern Division, penetrated the vagina of **S.B.**, with his finger, without her consent.

**FOURTH COUNT**

***Statement of Offence***

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

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

**JONE COLATA**, on 8 July 2017, at Taveuni, in the Northern Division, penetrated the vagina of **S.B.**, with his penis, without her consent.

2. After being directed on the law and the facts, three assessors returned unanimous opinions of guilty for both accused on all four counts.
3. The evidence adduced by the State came from the complainant (referred to herein as "Mrs. B.") and her husband ("Mr. B"). They are a New Zealand couple who moved to Taveuni in May 2017 to start a business.
4. On the 7<sup>th</sup> June 2017 they went to a local beach in the evening to relax and drink some beer they had taken with them. They were joined by the two accused and their girlfriends and beer and cigarettes were shared until about midnight. Eventually the NZ couple and the two accused ended their drinking "session" at another popular drinking spot known locally as the Korean wharf. The girlfriends had long before gone home. A bottle of rum was purchased and consumed by all four at the Korean wharf.
5. At about 4am Mrs. B. had had enough and went to recline on the front passenger seat of their twin cab vehicle. She fell asleep but woke to find the first accused on top of her kissing her and penetrating her. She knew that it was not her husband and could recognize the body type and voice of the first accused. Apart from raping her he also sexually assaulted her with his hand and tongue. The second accused was standing outside by

the open passenger door talking to the first accused whilst he was assaulting Mrs. B.

6. When the first accused was finished the two men changed places and the second accused proceeded to rape Mrs. B with both his finger and his penis while biting her face and neck.
7. While these assaults were occurring Mr. B. was nowhere to be seen or heard, but later when he returned he was suffering from memory loss and confusion.
8. At dawn Mr. B (not knowing what had occurred) drove the two accused to town and dropped them both off. It was only at this stage that Mrs. B. was able to tell her husband of the ordeal she had just been through. The Police were immediately informed and medical examinations conducted at the Taveuni District hospital. A lady medical officer told the Court that Mr. B was found to have a head wound on his scalp with fresh blood; a wound consistent with blunt force trauma within the previous 12 hours.
9. Both accused persons gave evidence in their defence, and both claimed to know nothing about assaults; each was asleep after so much beer and rum and if anything had happened to Mrs. B. it could not have been either of them because they were sleeping.
10. Each accused called a witness to support the defence neither of whom were any assistance to the accused calling that evidence.

## Analysis

11. I was impressed by the manner in which Mrs. B. gave her evidence. I allowed her to give evidence behind a screen because she was obviously nervous and distressed. She described the assaults in much detail and with honesty.
12. Despite the traumatic experience for her and she was adamant that she was able to distinguish the two accused by their voices, their body shape and even their odour. (She said that the second accused had a distinctive bad body odour). The differences in body types was obvious to all, the first accused being stocky and the second accused comparatively small and light.
13. After about 8 hours of drinking and talking I accept that she knew well the different voices of the two accused.
14. Mr. B. apart from being able to confirm his wife's evidence about the early stages of the drinking party was not able to assist the Court with the sexual assault. He had no memory of events soon after arriving at Korean wharf and both he and his wife told the Court that they suspected he had been knocked out by the two accused so that they could take advantage of Mrs. B. There is however no evidence of that before the Court and it is not something therefore that can be considered in coming to the judgment of the Court. All that is known is that for some reason he is not present within sight or hearing of the events and he is unable to tell us where he was or what he was doing. His memory returns however at about 5am at which stage he says he took the boys to town to drop them off (not suspecting a thing) and immediately thereafter being told of the abuse by his wife.

15. Both Mr. and Mrs. B. were frank and honest witnesses and endeavoured to tell the Court all the detail that they could recall and I believed them. Their evidence alone proved the prosecution case to the requisite standard.
16. The accused do not have to prove anything, but I disbelieved both of them. Neither of them said anything to make me doubt the prosecution case. Their witnesses were pathetic. The first accused's witness had obviously been coached and the second accused's witness didn't even know what he was meant to say.
17. In finding the case proved by the prosecution evidence I agree with the assessors' opinions and find each accused guilty of the two charges he faces. Each accused is convicted accordingly.
18. That is the judgment of the Court.



**P. K. Madigan**  
**Judge**



At Labasa  
01 August 2018