

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 246 OF 2017S

**STATE**  
**VS**  
**VAKENI DONU**

**Counsels** : Mr. I. Rakaria for State  
Mr. I. Romanu for Accused  
**Hearings** : 1 and 2 April, 2019.  
**Summing Up** : 3 April, 2019.  
**Judgment** : 3 April, 2019.

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**JUDGMENT**

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1. The three assessors had returned with a unanimous opinion finding the accused not guilty of the rape charges in count no. 1 and 2, but guilty of the lesser offence of attempted rape for count no. 1 and 2.
2. Obviously, the assessors had not accepted the prosecution's version of events.
3. I have reviewed the evidence called in the trial and I have directed myself in accordance with the summing up I gave the assessors today.
4. The assessors' verdict was not perverse. It was open to them to reach such conclusion on the evidence.

5. Assessors are there to assist the trial judge come to a decision, on whether or not the accused was guilty as charged. Assessors represent the public and their views must be respected.
6. On my analysis of the case, I agree with the three assessors' opinion. The complainant described the events leading up to the alleged rape by the accused. I accept her evidence on that. She said, when cross-examined by defence that the accused's penis did not penetrate her anus and vagina, at the material time. This view was supported by doctor Tigarea's evidence, where he said, that the medical examination result of PW1, confirmed that there was no evidence of her anus and vagina been penetrated, at the material time.
7. I accept PW1's evidence that the accused attempted to rape her anally (count no. 1) and vaginally (count no. 2), at the material time. He did not succeed in raping PW1 because PW1's anus and vagina appeared small.
8. Given the above, I accept the three assessors' unanimous opinion and find the accused not guilty as charged on count no. 1 and 2, but guilty of the lesser offence of attempting to rape PW1 anally and vaginally on 2 August 2017. I acquit him of the charges in count no 1 and 2, but convict him of attempting to rape PW1 anally (count no. 1) and vaginally (count no. 2), on 2 August 2017.
9. Assessors thanked and released.



  
**Salesi Temo**  
**JUDGE**

**Solicitor for the State** : **Office of the Director of Public Prosecution, Suva.**  
**Solicitor for the Accused** : **I. Romanu, Barrister & Solicitor, Suva.**