

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

CASE NO: HAC. 48 of 2018

[CRIMINAL JURISDICTION]

STATE

V

1. MOLITONI TARO VUNIVAVALAGI
2. JOSUA BUETA

**Counsel** : Ms. S Kiran and Ms. S Sharma for the state  
Mr. J. Qetaki for the 1<sup>st</sup> Accused  
Ms. M. Ratidara for the 2<sup>nd</sup> Accused

**Hearing on** : 15 - 17 April 2019

**Summing up on** : 17 April 2019

**Judgment on** : 26 April 2019

**JUDGMENT**

1. The accused are charged with the following offences:

**COUNT ONE**

*Statement of Offence*

**Assault Causing Actual Bodily Harm:** contrary to section 275 of the Crimes Act 2009

*Particulars of Offence*

**MOLITONI TARO VUNIVAVALAGI** on the 14<sup>th</sup> day of December, 2017 at Lami, in the Central Division assaulted Imali Kudruva thereby causing actual bodily harm

## COUNT TWO

### *Statement of Offence*

**Rape:** contrary to section 207(1) and (2)(a) of the Crimes Act 2009

### *Particulars of Offence*

**MOLITONI TARO VUNIVAVALAGI** on the 14<sup>th</sup> day of December, 2017 at Lamu in the Central Division had carnal knowledge of Emali Kudruva by inserting his penis into the vagina of Emali Kudruva without her consent

## COUNT THREE

### *Statement of Offence*

**Rape:** contrary to section 207(1) and (2)(a) of the Crimes Act 2009.

### *Particulars of Offence*

**JOSUA BUETA** on the 14<sup>th</sup> day of December, 2017 at Lamu, in the Central Division had carnal knowledge of Emali Kudruva by inserting his penis into the vagina of Emali Kudruva without her consent.


2. On 12/04/19, the first accused pleaded guilty to the first count and the second accused pleaded guilty to the third count. Therefore the trial proceeded only in respect of the second count which is against the first accused.
3. The assessors have returned with the unanimous opinion that the first accused is not guilty of the second count.
4. I direct myself in accordance with the summing up delivered to the assessors on 17/04/19 and the evidence adduced during the trial.
5. The prosecution led the evidence of the complainant and the medical doctor who examined her. The first accused gave evidence in his defence.
6. The demeanour and deportment of the complainant when she gave evidence and the account she gave did not indicate that she is a reliable witness.

7. The sequence of events according to the complainant was that:
  - a) first she had consensual sexual intercourse with the first accused;
  - b) the first accused got angry because she was talking to others;
  - c) thereafter the first accused held her hands and the second accused removed her trousers,
  - d) then the first accused had sexual intercourse with her again; and
  - e) after the first accused, she had sexual intercourse with the second accused.
8. Initially, the complainant did not say that the first accused punched her. But later on she said that she was punched by the first accused because he got angry for her talking to the other two. She said the other two wanted to have sexual intercourse with her and she disagreed. She also agreed during cross-examination that the first accused punched her because he became jealous when she talked to the other two. She also agreed that the first accused sought forgiveness from her for punching her and then they reconciled that morning.
9. This account given by the complainant raised a glaring question. That is, based on the account given by the complainant whether it is probable for the first accused who became jealous when the complainant talked to the other two and went to the extent of punching her for that, to thereafter join the second accused and rape her? Especially, after seeking forgiveness from the complainant for punching her.
10. All in all, the account given by the complainant was not credible and reliable. It was manifestly clear that the account she gave was not complete.
11. I would therefore agree with the unanimous opinion of the assessors. I find the first accused not guilty of the second count and I would acquit him accordingly.

- 12 I am satisfied that the first accused had pleaded guilty to the first count voluntarily. Based on his admissions and the evidence led during the trial, I am satisfied that the said guilty plea is unequivocal.
- 13 Accordingly, I hereby find the first accused guilty of the first count and convict him accordingly.
- 14 Now I turn to the second accused. The second accused pleaded guilty to the third count before the trial. The second accused therefore did not challenge the evidence led by the prosecution. However, the evidence led by the prosecution does not establish the offence of rape against the second accused beyond reasonable doubt. The summary of facts initially presented by the prosecution also did not clearly indicate that the second accused penetrated the complainant's vagina without the complainant's consent and that he knew or believed that she was not consenting. This prompted the court to inquire from the second accused as to whether he admits that he inserted his penis into the complainant's vagina without her consent and that he knew that she was not consenting. Initially, the second accused said that he admits same.
- 15 Thereafter, the case was adjourned for 30 minutes for the prosecution to amend the summary of facts accordingly. The counsel for the second accused was informed to again explain the elements of the offence of rape to the second accused. When the case resumed, the counsel for the second accused informed the court that the second accused wants to withdraw his guilty plea after he was explained the elements of the offence.
- 16 The second accused was then asked his position in relation to the charge and his response was that he had sexual intercourse with the complainant but with her consent. When inquired, he said that he pleaded guilty because he was scared. It

was pointed out that the second accused is 19 years old and he had only studied up to class 3.

17. Given the above circumstances, I am not satisfied that the guilty plea entered by the second accused is unequivocal. Thus, I would allow the second accused to withdraw the said guilty plea.
18. Both prosecution and defence counsel submitted that a (re) trial should be conducted against the second accused in the event this court allows the second accused to withdraw his guilty plea.
19. The second accused was initially charged separately in Case No. HAC001/2018 and the said case was consolidated with this present case at a later stage. Given the present circumstances, I would hereby order a separate trial against the second accused under Case No. HAC 001/2018.
20. In summary:
  - a) The first accused is convicted of the first count on his guilty plea;
  - b) The first accused is acquitted of the second count;
  - c) Second accused's guilty plea entered for the third count is vacated; and
  - d) A separate trial is ordered against the second accused under Case No. HAC 001/2018.



Vincent S. Perera  
JUDGE

**Solicitors:**

Office of the Director of Public Prosecutions for the State.  
Legal Aid Commission for both Accused.