

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 322 OF 2017S

STATE
vs
SELESTINO DOROKA NO. 4

Counsels : **Ms. L. Bogitini and Ms. S. Shameen for State**
Ms. L. Ratidara and Ms. L. Filipe for Accused

Hearings : **1, 2 and 3 July, 2019.**

Summing Up : **4 July, 2019.**

Judgment : **4 July 2019.**

JUDGMENT

1. The three assessors had returned with a unanimous opinion finding the accused not guilty of the complainant's rape but guilty of sexually assaulting her, on 3 October 2017.
2. Obviously the three assessors had not accepted the prosecution's version of events on the charge of rape. However, they are of the opinion that the accused was guilty of sexually assaulting the complainant.

3. I have reviewed the evidence called in the trial and I had directed myself in accordance with the summing up I gave the assessors today.
4. The three assessors' opinion was not perverse. It was open to them to reach such a 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. They represent the public's view on the case and their views must be treated with respect.
6. On what constitute a female's vulva, I accept what Doctor Ongbit (PW2) said in her evidence.
7. The State's case rested on the credibility of the child complainant's verbal evidence. I had listened to her very carefully on 1 and 2 July 2019. I accept her evidence that the accused licked her vagina, at the material time. However, on the question of whether or not the accused's tongue penetrated her vulva, her evidence was not clear cut on this issue. At times, she said the accused's tongue penetrated her vulva. At other times, she said the opposite. In my view, on this issue of whether or not the accused's tongue penetrated her vulva, her evidence was not certain. It was inconsistent. Therefore, I have a reasonable doubt on this issue. The benefit of that doubt must go to the accused.
8. However, I accept her evidence that the accused licked her vagina at the material time and she was incapable of giving her consent to the same. The act was also indecent. In my view, on this evidence, I find the accused had sexually assaulted PW1, at the material time.
9. As a result of the above, I agree with the unanimous opinion of the three assessors. I find the accused not guilty as charged. However, I find him guilty of sexually assaulting PW1 at

the material time. I acquit him of the rape charge and convict him of sexually assaulting PW1 at the material time.

10. Assessors thanked and released.



A handwritten signature in blue ink, appearing to be "Salesi Temo".

Salesi Temo
JUDGE

Solicitor for the State : **Office of the Director of Public Prosecution, Suva.**
Solicitor for the Accused : **Legal Aid Commission, Suva.**