

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**  
**CRIMINAL CASE NO. HAC 047 OF 2019S**

**STATE**  
**Vs**  
**PAULIASI TAURA**

**Counsels** : **Ms. S. Shameen for State**  
**Ms. S. Daunivesi for Accused**  
**Hearings** : **9, 10 and 11 June, 2020.**  
**Summing Up** : **12 June, 2020.**  
**Judgment** : **12 June, 2020.**

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**JUDGMENT**

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1. The assessors had returned with a unanimous opinion finding the accused not guilty of rape. However, on the lesser offence of defilement, assessor no. 1 was of the opinion that the accused was not guilty, while assessor no. 2 and 3 found him guilty. On the defilement, it was a mixed verdict, the majority reaching a guilty opinion, while the minority a not guilty opinion.
2. It appears on the rape charge, the assessors did not accept the prosecution's version of events. It also meant they did not find the complainant's evidence on the same credible.

3. I have reviewed the evidence called in the trial and I had directed myself on 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 the guilt or otherwise of the accused. The assessors represent the public and their views must be treated with respect.
6. Like the assessors, on the rape allegation, I find the complainant's evidence on the consent issue not enough to be sure of the accused's guilt. She was rebellious against her parents, she did not respect them. She left her parent's house without their permission. She moved in with Pastor Tomasi's residence, not realizing the burden she will put on the Pastor's family.
7. Her evidence on the consent issue did not persuade me to accept her evidence beyond reasonable doubt. Given her character, as displayed to her parents, I have a reasonable doubt on whether or not she did not consent to sex with the accused. The benefit of that doubt must go to the accused.
8. On the defilement charge, the Agreed Facts showed that the accused agreed he penetrated the complainant's vagina on 18 December 2018. See paragraphs 15 and 16. He also agreed that the complainant was born on 17 July 2003. See paragraph 2. So the elements of defilement, as described in paragraph 14 hereof were satisfied, that is, the accused unlawfully inserted his penis into the complainant's vagina on 18 December 2018, and the complainant was aged between 13 and 16 at the time. In fact, she was 15 years old. Consent was not an issue. Therefore on the evidence, based largely on the Agreed Facts, I find the accused guilty of defiling the complainant, a 15 year old girl at the time. He

was 21 years old. He knew the complainant was under 16 years because by paragraph 2 of the Agreed Facts, he knew the girl was born on 17 July 2003.

9. Given the above, I accept the assessors' unanimous not guilty opinion on the rape charge, and also accept the assessors' majority guilty opinion on the defilement charge. I therefore find the accused not guilty of rape and acquit him accordingly. On the defilement charge, I find him guilty as charged and I convict him of the same.

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.**