

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO. HAC 177 OF 2016**

**BETWEEN** : **STATE**

**AND** : **ASHISH KUMAR**

**Counsel** : **Mr. A. Singh with Mr. R. Chand for the State**  
**Mr. M. Anthony for the Accused**

**Hearing on** : **24<sup>th</sup> – 25<sup>th</sup> of August 2020**

**Summing up on** : **28<sup>th</sup> of August 2020**

**Judgment on** : **03<sup>rd</sup> of September 2020**

**JUDGMENT**

1. The accused, Mr. Ashish Kumar is charged with a count of Rape, alleged to have committed on the PW1, Wainikiti Ravaga.
2. The details of the offence he was charged with, by the Director of Public Prosecutions is as follows;

**COUNT 1**

***Statement of Offence***

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

***Particulars of Offence***

Ashish Kumar, on the 11<sup>th</sup> day of September 2016 at Sigatoka, in the Western Division, had carnal knowledge of Wainikiti Ravaga without her consent.

3. The accused pleaded not guilty to the charge and the ensuing trial lasted for 2 days. The complainant Wainikiti Ravaga gave evidence for the prosecution while the accused gave evidence in denial of the charge.
4. At the conclusion of the evidence and after the directions given in the summing up, the three assessors unanimously found the accused not guilty of the alleged count of Rape.
5. I direct myself in accordance with the law and the evidence led in this case, inclusive of which I have discussed in my summing up to the assessors.
6. The sole witness to substantiate on the alleged incidents is the PW1, Wainikiti Ravaga. I am mindful that the law requires no corroboration. Therefore it can be acted on the evidence of a sole witness. However, if we are to rely on a sole witnesses' evidence we must be extremely cautious of the credibility and the dependability of such evidence.

### **Analysis**

7. The prosecution case and the defence case is word against the word. Whereas the prosecution had the burden of proving their case beyond reasonable doubt, the maximum the defence needed to do was to create reasonable doubt in the prosecution case.
8. The evidence of the PW1 was weak and unreliable. She has been wearing a jeans and a panty and sleeping face down just before the alleged incident. The accused having come and removed her jeans and the panty, has entered his penis into her vagina without her knowledge. By the time she woke up the accused is said to be having sexual intercourse with her without her knowledge.
9. Above scenario, it self creates substantial doubt and without any consideration of the defence case, would suffice to opine of the assessors that the accused is not guilty. When gone beyond and considered the defence case it adds to the doubts of the prosecution case already in existence.

10. It is the duty of the prosecution to prove their case beyond reasonable doubt. When that burden is not properly discharged, the assessors and the court have no other option than finding the accused not guilty.
11. In my view, it would be unsafe for the court to rely on the evidence of the PW1. Therefore, I agree with the unanimous opinion of the assessors.
12. In result, I find the accused not guilty and acquit the accused Ashish Kumar of the alleged count of rape.
13. This is the Judgment of the Court.



**Chamath S. Morais**  
**JUDGE**

***Solicitor for the Prosecution*** :  
***Solicitor for the Accused*** :

***Office of the Director of Public Prosecution, Lautoka***