

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

**Crim. Case No: HAC 304 of 2019**

**STATE**

**vs.**

**NEUMI RAWAVATU**

**Counsel:** Mr. S.Komaibaba for the State  
Ms. S.Prakash for Accused

**Date of Hearing:** 28<sup>th</sup>, 29<sup>th</sup>, 30<sup>th</sup> September 2020

**Date of Closing Submission:** 01<sup>st</sup> October 2020

**Date of Summing Up:** 02<sup>nd</sup> October 2020

**Date of Judgment:** 02<sup>nd</sup> October 2020

---

**JUDGMENT**

---

1. The accused had been initially charged with one count of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes Act, three counts of Indecent Assault, contrary to Section 212 of the Crimes Act and one count of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act. Consequently, the plea of not guilty entered by the accused, and the matter proceeded to the trial. The trial commenced on the 28th of September 2020 and concluded on the 30th of September 2020. After the Prosecution case, the court found no evidence to establish the main elements of the two counts of Indecent Assault (counts 3 and 4 of the

Information) and one count of Sexual Assault (count 5 of the Information). Hence, the Accused found not guilty of those three counts and acquitted accordingly pursuant to Section 231 (1) of the Criminal Procedure Act.

2. The Prosecution presented the evidence of two witnesses, including the Complainant. The Defence adduced the evidence of two witnesses, though the accused opted not to give evidence. At the conclusion of the evidence, the Prosecution and Defence's counsel made their respective closing addresses. I then delivered the summing up.
3. The three assessors unanimously found in their opinion the accused not guilty of the count of Rape and count of Indecent Assault.
4. Having considered the evidence adduced during the hearing, the respective closing addresses of the counsel, the summing up, and the assessors' opinions, I now proceed to pronounce the judgment as follows.
5. The Prosecution alleges the accused had taken the Complainant near a vacant house. He had then touched her breast and penetrated her vagina with his finger on the evening of the 30th of October 2018. In contrast, the Defence claims that the accused played touch rugby with his friends during the time material to this alleged incident.
6. In her evidence, the Complainant stated that she met Kikica twice on her way to her grandmother's house in the afternoon of the 30th of October 2018. However, during the cross-examination, the Complainant admitted that she did not meet Kikica on the 30th of October 2018, but on the previous day, that was on the 29th of October 2018.
7. The Complainant then said in her evidence that she met three girls on her way to grandmother's house, but it has not recorded in the statement she made to the police. Moreover, the Complainant said the accused was standing in front of her while she was seated on the wooden log near the vacant house. He then forced himself to kiss her lips and then started to fondle her breast. His hand then went down and poked into her vagina. She

then said the accused made her lie down. He then laid on her. It is not clear whether he made her lie down after kissing her and touching her breast or before it. In addition to that, she has not stated that the accused made her lie down and then laid on top of her in the statement she made to the police.

8. Besides the above inconsistencies, the Complainant had informed the Doctor on the 3rd of November 2018, when she had the medical examination, that the accused had removed her undergarments and then tried to insert his penis into her vagina.
9. In view of these inconsistencies and contradictions in the evidence of the Complainant, there is reasonable doubt about the reliability and credibility of her evidence.
10. In her evidence, the Complainant did not specifically mention whether she consented to this alleged sexual advancement made by the accused. She only said she was scared of getting caught by her family and angry. However, she did not specify the reason for her anger. On her way home, she found that someone had already informed her mother about her being with the accused. According to the Complainant, the mother had asked her to report to the police about the rumors that her mother had heard.
11. The Complainant did not specifically explain whether the accused poked his finger into the vagina when she was still dressed in pants. Moreover, she did not explain how the accused could poke his finger into her vagina if she were still in her pants. Furthermore, the Complainant said during the cross-examination that she made a false allegation against the accused. There is reasonable doubt in view of these reasons, whether these alleged sexual acts took place and/or she had given her consent to it.
12. Accordingly, I do not accept the evidence of the Complainant as reliable, credible, and truthful evidence.

13. Having considered the above reasons, I find the Prosecution has failed to prove the accused guilty of these two counts beyond a reasonable doubt. Hence, I do not find any cogent reasons to disagree with the three assessors' unanimous opinion.
14. In conclusion, I find the accused not guilty of the first count of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes Act and the second count of Indecent Assault, contrary to Section 210 of the Crimes Act and acquit from the same accordingly.
15. Thirty (30) days to appeal to the Fiji Court of Appeal.



  
R.D.R.T. Rajasinghe  
Judge

**At Suva**

02<sup>nd</sup> October 2020

**Solicitors**

Office of the Director of Public Prosecutions for the State.  
Officer of the Legal Aid Commission for the Defence.