

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No: HAC116 of 2012

BETWEEN : **THE STATE**
AND : **TUI MATEO**
BEFORE : **HON. MR. JUSTICE PAUL MADIGAN**
Counsel : Mr. J. Niudamu for the State
Accused in person
Dates of trial : 2nd and 3rd April 2013
Date of summing up: 3rd April 2013

SUMMING UP

- [1] Madame and gentlemen assessors:
The time has come now for me to sum up the case to you and to direct you on the law involved so that you can apply those directions to the facts as you find them.
- [2] I remind you that I am the Judge of the Law and you must accept what I tell you about the law. You in turn are the Judges of the facts and you and only you can decide where the truth lies in this case. If I express any particular view of the facts in this summing up then you will ignore it unless of course it agrees with your view of that fact.
- [3] The parties have addressed you on the facts but once again you need not adopt their views of the facts unless you agree with them. You will take into account all of the evidence both oral and documentary. You can accept some of what a witness says and reject the rest. You can accept all of what he or she says and you can reject all. As judges of the facts you are masters of what to accept from the evidence.

- [4] You must judge this case solely on the evidence that you heard in this courtroom. There will be no more evidence, you are not to speculate on what evidence there might have been or should have been. You judge the case solely on what you have heard and seen here.
- [5] The courtroom is no place for sympathy or prejudice. This has been a very short and straightforward case but you must give it your full attention without emotion as I am sure you will. You must judge this case solely on the evidence produced in this Court and nothing else.
- [6] I am not bound by your opinions but I will give them full weight when I decide the final judgment of the Court.
- [7] It is most important that I remind you of what I said to you when you were being sworn in. The burden of proving the case against this accused is on the Prosecution and how do they do that? By making you sure of it. Nothing less will do. This is what is sometimes called proof beyond reasonable doubt. If you have any doubt then that must be given to the accused and you will find him not guilty - that doubt must be a reasonable one however, not just some fanciful doubt. The accused does not have to prove anything to you. If you are sure however that Tui raped Merewairita on the 16th March 2012, you will find him guilty.
- [8] In our law, rape is committed when someone invades the body of another without that other's consent and for the purposes of this case rape is normal penile sexual intercourse without consent. Consent must have been freely given and not given in fear of authority or by threat.
- [9] In this case, it is not in dispute that there was an act of sexual intercourse in the afternoon of 16th March 2012. What IS in dispute is

the issue of consent. If you believe Merewairita that the Accused pulled her into his house and raped her, then you will find him guilty of rape. The accused however says that the sex was by mutual agreement and that Mere enjoyed it and agreed to it all along. It is a matter for you.

[10] The evidence in this case was only heard yesterday and it is not necessary for me to cover it in much detail, but it is my duty to remind you of the main points of both the complainant's and the accused's evidence.

[11] Merewairita told us that she had a boyfriend in the Jittu Estate and she used to go to visit him every weekend. On March 16th last year she was walking through the estate to his house when a man called her. She vaguely knew him because he was a friend of her boyfriend so she sat on his doorstep while he went to look for her boyfriend. He came back and dragged her inside his house. With much effort he pulled off her clothes and kissed her all over. He took off his own clothes and she could see he was sexually aroused. He then raped her. She didn't shout out because he had earlier threatened her and she was scared that he might "do something" to her. He had intercourse with her for about 20 to 25 minutes. When he was finished, she got dressed and went on to her boyfriend's house. She was crying and told him immediately what had happened and they went to Raiwaqa Police Station to report it.

[12] The boyfriend was the second witness. He reconfirmed what Mere had said. She arrived at his house and was crying and visibly very upset: he went to Tui's house to confront him but it was locked and nobody was there. They then went to Raiwaqa.

[13] The Police Officer from Raiwaqa told us about the interview of Tui after his arrest. The record of interview was produced and you read it

along with the officer. Now what the accused says in his interview is all a matter for you to consider in the normal way. You understand that it is a complete denial of the offence and in the interview Tui says that he did have sex with Mere but it was all with her consent and enjoyment. You will give the evidence in the interview whatever weight you wish.

[14] Dr. Boniface told us that he had examined Mere on the night of the incident but his findings don't really help us at all. There were no signs of abuse, but then he says that there can still be rapes without any physical signs especially when the victim is known to have been sexually active. You might think that the Doctor's evidence doesn't really help you to decide this case either in favour of the Prosecution or of the Defence.

[15] That was the end of the Prosecution case and you heard me explain to the accused what his rights in Defence are. The accused does not have to prove anything to you; it is the State that must prove their case to you so that you are sure. The accused is entitled just to sit back and say to you that the State has not proved their case to the requisite standard and therefore he is entitled to be found not guilty. However in this case the accused did elect to go into the witness box and give evidence. It then becomes evidence for you to consider but the difference is this: the fact that the accused gives evidence does not put a stop to the State's duty to prove their case beyond reasonable doubt. Even if you don't believe the accused it does not mean that he is guilty, simply because he doesn't have to prove anything to you. What you will do is consider the State's evidence, then consider the accused's evidence and decide where you think the truth lies. If you think the State has proved their case beyond reasonable doubt then the accused's evidence becomes irrelevant, even if you don't believe it.

[16] The accused told us that he lived alone in Jittu Estate and although he was once married he had 100 girlfriends and would change them every month. On the 16th March 2012 he went to town then came home and had a sleep. He woke up to find a girl had walked into his flat. She sat beside him and they talked. He had no idea that she was his friend's girlfriend. He lay down on the floor next to her. He didn't trust her so he said he "fixed" her. He kissed her and touched her and she liked it. He had sex with her for about 30 minutes and she liked it. He decided to let her stay with him and he showed her where the food was kept and how to go to the toilet without going outside. He admitted that he had sexual intercourse with her but it was entirely with her consent.

[17] Well Madame and gentlemen, that is all I am going to say about the evidence. If I have not mentioned something you think is important, then you will give it whatever weight you think it deserves. When you come back with your opinions it is better that you be all agreed but that is not strictly necessary. You will be asked individually for your opinion and your possible opinion will be either guilty or not guilty. Please let a member of my staff know when you are ready and I will reconvene the Court.

[18] You may now retire but first let me ask the Prosecutor and the accused if they wish me to amend or add anything to this summing up.

Paul K. Madigan
JUDGE

At Suva
3rd April 2013