

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 332/2011

BETWEEN: **THE STATE**

AND: **SAMISONI RASIGA**

COUNSEL: **Mr L Fotofili and Mr A Datt for the State**

Mr R Vananalagi for the Accused

Dates of Trial: **02-14/10/2013**

Date of Summing Up: **16/10/2013**

[Name of the victim is suppressed. She will be referred to as HR]

SUMMING UP

Madam and Gentlemen of Assessors,

- [1] It is now my duty to sum up this case to you. I will direct on matters of law which you must accept and act upon. On matters of facts however, which witnesses to accept as reliable, which version of the evidence to accept, these are matters for you to decide for yourselves. So if I express my opinion to you about facts of the case or if I appear to do so it is a matter for you whether you accept what I say, or form your own opinion. In other words you are the judges of facts. All matters of facts are for you to decide. It is for you to decide the credibility of the witnesses and what parts of their evidence you accept as true and what parts you reject.

- [2] You have to decide what facts are proved and what inferences drawn from those facts. You then apply law as I explain it to you and form your individual opinion as to whether the accused is guilty or not guilty.
- [3] Prosecution and defence made their submissions to you about the facts of this case. That is their duty. But it is a matter for you to decide which version of the facts to accept or reject.
- [4] You will not be asked to give reasons for your opinions but merely your opinions of yourself and your opinion need not be unanimous but it would be desirable if you agree on them. Your opinions are not binding on me but I can tell you that they carry great weight with me when I deliver my judgment.
- [5] On the question of proof, I must direct you as a matter of law that the onus of burden of proof lies on the prosecution throughout the trial and never shifts. There is no obligation on the accused person to prove his innocence. Under our criminal justice system accused person is presumed to be innocent until he is proved guilty. This is the golden rule.
- [6] The standard of proof in a criminal trial is one of proof beyond reasonable doubt. This means you must be satisfied so that you are sure of the accused's guilt before you can express an opinion that he is guilty. If you have any reasonable doubt about his guilt then you must express an opinion that he is not guilty.
- [7] Proof can be established only through evidence. Evidence can be from direct evidence that is the evidence that who saw the incident or felt the offence being committed. The other kind of evidence is circumstantial evidence that you put one or more circumstances together and draw certain irresistible inferences. Evidence presented in the form of a document is called Documentary Evidence.
- [8] The caution interview statement of the accused is in evidence. What an accused says in his caution interview is evidence against him. I will direct you shortly on how you should consider that evidence.

- [9] Your decisions must be solely and exclusively upon the evidence, which you have heard in this court and upon nothing else. You must disregard anything you have heard about this case outside of this court room.
- [10] Your duty is to find the facts based on the evidence apply the law to those facts. Approach the evidence with detachment and objectivity. Do not get carried away by emotions.
- [11] Now let's look at the charge.

FIRST COUNT

Statement of Offence

RAPE: Contrary to Section 207(1) and 207(2) (a) of the Crimes Decree No: 44 of 2009.

Particular of Offence

SAMISONI RASIGA on the 3rd day of March 2011, at Rukuruku, Levuka, in the Eastern Division, had unlawful carnal knowledge of HR without her consent.

SECOND COUNT

Statement of Offence

RAPE: Contrary to Section 207(1) and 207(2) (b) of the Crimes Decree No: 44 of 2009.

Particulars of Offence

SAMISONI RASIGA on the 3rd day of March 2011, at Rukuruku, Levuka in the Eastern Division, penetrated the vagina of HR with his finger without her consent.

THIRD COUNT
Statement of Offence

RAPE: Contrary to Section 207(1) and 207(2) (c) of the Crimes Decree No: 44 of 2009.

Particulars of Offence

SAMISONI RASIGA on the 3rd day of March 2011, at Rukuruku, Levuka in the Eastern Division, penetrated the mouth of HR with his penis without her consent.

[12] In order to prove the 1st count of Rape the prosecution has to prove the following elements beyond reasonable doubt.

1. The accused had carnal knowledge of the complainant,
2. Without her consent,
3. He knew or believed that that she was not consenting or didn't care if she was not consenting.

[13] Carnal knowledge is the penetration of vagina or anus by the penis. It is not necessary for the prosecution to prove that there was ejaculation, or even that there was full penetration.

[14] In order to prove the 2nd count of Rape the prosecution has to prove the following elements beyond reasonable doubt.

1. It was the accused,
2. Who had sexual intercourse with the victim or that he sexually abused the victim by invading her with his finger,
3. Penetrated the vulva or vagina of the victim to some extent, by inserting a finger,
4. Without her consent.

[15] In order to prove the 3rd count of Rape the prosecution has to prove the following elements beyond reasonable doubt.

1. It was the accused ,
2. Who had sexual intercourse with the victim or that he sexually abused the victim by invading her with his penis,
3. Penetrated the mouth of the victim to some extent, by inserting his penis,
4. Without her consent.

[16] As far as the element of consent is concern, in our law, a child is under the age of 13 years is incapable of giving consent. In this case victim was 20 years of age at the time of the offence and, therefore, she had the capacity under the law to consent. Therefore, the offence of rape is made out only if there was no consent from the alleged victim.

[17] I now remind you of the prosecution and defence cases. In doing this it would be tedious and impractical for me to go through the evidence of every witness in detail and repeat every submission made by the counsel. I will summarize the salient features. If I do not mention a particular witness, or a particular piece of evidence that does not mean it is unimportant. You should consider and evaluate all the evidence and all the submissions in coming to your decision in this case.

[18] Now let's look at the evidence led by the prosecution in this case.

[19] Victim in this case was a volunteer teacher from England. She had come to Fiji in January 2011 and was teaching at Taviya District School, Ovalau Island. She stayed with her host mother Sala as she came to Fiji alone. On 3/3/2011 she attended a teachers meeting at Rukuruku District School. After the meeting at 6.30pm she had gone up to a hill to call her mother in England as the phone reception was not clear at the place. She took the road way to reach the spot as the sea was deeper at that time. On her way she had met some men and women. As she got to top of the road, she had seen a man sitting on the left side of the road. He was facing the main road. He was topless and a red colour T-shirt was tied over his head. He was wearing a pair of shorts about his knee long. He is dark in complexion (Fijian Colour) She greeted him "Bula" and he greeted her back. The man had said

something which she could not hear. She turned left and sat under a mango tree which is about 70 meters from the place where the man seated. While speaking to her mother over the phone she heard a noise behind her as if someone was running. When she turned around she saw a man on a crouching position. His T-shirt was tied around his head. She only saw his eyes. He resembled the man she met earlier at the top of the hill. He forcefully put his arm around her, closed her mouth and lifted her from the ground. As his hand slipped from her mouth she cried for help to her mother. When he was pushing her towards the road, she was screaming and offered cash of fear of death. Declining the offer he dragged her about 70 meters from the road to a flat land. At the flat land he tied his T-shirt around her head to cover her eyes and moved around to check whether any one was around. Promising that he would not kill her, he ordered her to lie down and remove her clothes. At the time of incident she was wearing a T- shirt, a bra, a under garment and a pair of shorts. As per direction she lowered her short and the under garment up to her knee. But the man had pulled both down rest of the way. First she felt the man rubbing her vagina and then he tried to penetrate his penis into her vagina. At that time she was lying on her back and the man was on top of her. As she was wailing with pain the man told her to keep quiet and told her to bite his T-shirt. After penetrating his penis into her vagina, he demanded oral sex (drink lollipop). He then forcibly inserted his penis into her mouth. Then he penetrated his penis into her vagina again. At this time he put her both legs over his shoulder. He then forced her to kiss him and put her tongue into his mouth. As she was with so much of pain he again demanded oral sex which lasted about 15-20 minutes. She was struggling for breath at that time. At this time he took off the T-shirt from her head. When he performed oral sex he used his dark colour mobile phone to see her face. As a vehicle passed by, he got panicked and told her to hurry up. He then put his fingers in to her vagina and found blood on his hand. This was seen with his mobile phone light. As per his order she then dressed up with the help of his mobile phone. Then he took her to the place where she took a call to her mother and stood very close to her. He then threatened her with death if she divulges this to anybody. Due to fear of death she agreed. After smoking a cigarette he went away from the scene. She managed to go home at about 9.30pm. Due to this incident she

was terrified and presently taking anti depression medicine. She says that she can't trust male. Further she can't concentrate her university education. She had informed her ordeal to police who then took her for a medical examination. She had given her consent for medical examination by placing her signature in the medical report. She identified her signature. She was shown photographs of the crime scene and her dresses which she wore at the time of the incident. She could not identify the perpetrator.

- [20] In the cross examination victim said that it was not dark at 6.40pm on 03/03/2011. As she could not cross the sea, she walked through Rukuruku Village and reached the hill top. It took about 20 minutes. When she reached the place from where she called her mother it was not dark. She was blind folded before she was being raped. Hence she could not say whether it was fully dark or not.
- [21] Vilawa Labati is a villager of Rukuruku since his birth. He is a cousin of the accused. In the year 2011 a course was conducted for the villagers of Rukuruku. At that time he heard a story about a rape incident which had taken place at the resort. After a month of the incident Samisoni the accused had told him that he raped a European girl. This was told in a mid day at his resident. He further said that he dragged the girl to a slope and had sexual intercourse while she was screaming. Initially he did not divulge this to anybody due to fear but later he told this to his brother Livai Koroduadua. He identified the accused in open court.
- [22] In the cross examination witness said that Rukuruku is a big village and he know its landscape very well. To walk from accused's house to the road it takes about 5 minutes. From the main road to the junction it takes about 20 minutes. Witness said that they use the shortcut to go to Taviya from Rukuruku Village. According to him usually, the place of incident was dark at 7.30pm in the night. The accused had told him that he raped a European girl in March, 2011. He confirmed that another rape occurred in the month of September, 2011 at Mili Dulai's house in Rukuruku. In that case the victim also a European girl. He denied that Livai Koroduadua was identified as the suspect in that case. He admitted that he did not tell anybody except Livai Koroduadua. Witness reiterated that he was scared when he heard the story from the accused.

- [23] Livai Koroduadua is a resident of Rukuruku village since his birth. He knows Samisoni Rasiga since his birth. He is one of his cousins. On 03/03/2011 he met Samisoni at his resident before he went to Rukuruku Village School hall to participate in a workshop pertains to Fisheries. Samisoni did not attend the course. When he met him he was wearing a T-shirt and a pair of shorts. He had met Samisoni on the following day. Witness said that Vilawa Labati had told him a story about Samisoni about two months after 03/03/2011. After about two days he had met Samisoni under a Frangipani tree beside Samisoni's house. When he asked from him whether he raped a European girl on top of the hill, Samisoni laughed at the witness and said that he inserted his fingers into European woman's vagina. He told this to Levuka Police when he was taken into custody for an investigation.
- [24] In the cross examination witness said that he is quite aware of the landscape of Rukuruku Village. Also familiar with road network of the village. According to him it will take about 20 minutes to reach the hill top from Samisoni's house. This is the closest route. He had passed the junction several times in the night. It was dark all the times. After two months from 03/03/2011, Vilawa had told him that Samisoni had told him that he raped an European girl. When he asked from Samisoni he admitted. When the witness was taken into custody in respect of a rape case by Levuka police on 17/09/2011, he had told Officer In Charge Lomaiviti what he was told by Vilawa and Samisoni. Witness denied committing an attempted rape on Sovaia but was charged for trespass for entering her house. He denied entering Sovaia's house second time on 1st week of September, 2011.
- [25] Gene Robinson, on 03/03/2011 had seen a medium built person coming from Rukuruku Village side and crossed over his back yard. His head was covered with a T-shirt. He had seen this while he was under the porch of the house. He could not identify the person.
- [26] In the cross examination witness admitted that he compared the person with Vilawa Labati. He further said that the man is taller than Vilawa.
- [27] Sosiceni Tamani has been a police officer for 18 years. On 03/03/2011, he had commenced investigations regarding a rape committed on a female English

volunteer in Rukuruku Village. He had a meeting with all male persons of the village but was unable to get a break through. As the police suspected Jovili Mua and Samisoni Rasiga both had been taken by police for investigations. After a verbal inquiry, both had been released forthwith.

- [28] On 19/09/2011, on the instructions of Crime Officer Levuka, Tomasi Tukana he had gone to Rukuruku Village with police officers Bower and Vodo to check Samisoni Rasiga, as they had received information from Livai Koroduadua that Samisoni Rasiga had committed the rape on 03/03/2011. On the way to Rukuruku, they met Samisoni, got him into the vehicle and brought him to the Police Station after allowing him to change his dress. Though strict warning given not to meet any witnesses, Samisoni had gone to Vilawa Labati's house. He went to search accused's house and scene reconstructions.
- [29] In the cross examination witness said that Livai was a suspect in a rape case which was committed on another English volunteer on 17/09/2011 at Rukuruku Village. Witness denied that Livai was tried for attempted rape on Sovaia before the 2nd rape. Livai was charged for criminal trespass in the court. He denied that police assaulted the accused on 05/03/2011. According to him he has no personal grudge with the accused. They are relations.
- [30] Police officer Nakeleto Vodo who had gone to Rukuruku Village on 19/09/2011 corroborated the evidence of Sosiceni Tamani.
- [31] Dr. Kalinimolikula Siliasau had examined the victim on 03/03/2011 at Levuka Hospital. He had obtained the consent of the victim before examination. In the history victim said that she was assaulted by an unknown perpetrator. At the time of examination victim was in a state of shock. Abrasions on arms, back and feet noted. There is obvious bleeding per vagina with no hymen intact. Internal laceration of vagina vault cannot be ascertained due to vaginal spasms. There are multiple bruises noted on the medial aspect of both thighs. According to his professional opinion the state of the patient and findings during the examination are consistent with that of the alleged assault. According to witness though she said only assault, she indirectly said what happened to her.

- [32] George Bower was attached to Levuka Police Station from 1996-2012. He is the investigating and interviewing officer in this case. He had received the first information on 03/03/2011 and went to Rukuruku Village on 04/03/2011 with Tamani, Vodo and Tomasi. He went straight to village Chief and called a meeting with participation of all the men of the village. About 40-50 men gathered in the hall. With the permission of village chief all the men who were present subjected to a body search but no break though made. Thereafter a search carried out in the houses. He visited the scene of crime, took photographs and prepared a sketch with the information obtained from the victim. The sketch was marked as P2. Victim's slippers was recovered 6m away from the place where victim was seated. The place of incident is 46.1m away from the place where victim was seated. Two photographs of the crime scene was marked as P3. Victim's clothes also photographed and marked as P4.
- [33] Samisoni and Jovili were taken to Levuka Police for questioning and released later. They were being questioned by police officers who came to assist from Nausori Police Station. Before questioning they were taken to hospital to take their saliva sample.
- [34] Livai Koroduadua was arrested in respect of second rape case which had occurred on 17/09/2011 at Rukuruku Vilage. Upon information provided by Livai, Samisoni Rasiga was arrested in respect of 1st rape case which occurred on 03/03/2011. He had gone to Rukuruku village with Sosiceni Tamani and the group to apprehend the accused. A Nokia mobile phone and a Sulu were recovered from accused's house. The productions were properly entered into the search list. The list was marked as P5. The mobile phone, Sulu and sleepers were marked as P6, P7 and P8 respectively.
- [35] On 19/09/2011 accused was caution interviewed by the witness at 10.00pm. Interview was conducted at CID office Levuka in the presence of police officer Viliame Volau and Vilivo Ratumaisala. All the rights were given to the accused. Caution Interview was recorded in Itaukei language in question and answer form. Accused was normal during the interview. Interview was commenced on 19/09/2011 and concluded on 20/09/2011. Accused, witness and witnessing officers placed their signatures after completion of the caution interview statement. Original caution interview statement hand

written Fijian version was marked as P9 (a), and its typed version was marked as P9(b) and translated English version was marked as P9(c).He identified the accused in open court.

- [36] In the cross examination witness said that accused was not beaten on 05/03/2011.The search list was prepared with information given by the victim. Witness reiterated that he cautioned the accused before recording the caution interview statement. He denied that the interview notes were fabricated by him.
- [37] Viliame Volau was the witnessing officer of the caution interview statement of the accused. All the rights were given to the accused before recording the interview. He was normal and answered the questions voluntarily. Witness identified P9 (a) in open court.
- [38] Vilivo Ratumaisala was the last witness to the prosecution. He was the second witnessing officer to the caution interview statement of the accused. According to him interview was conducted in a fair manner. He identified his signature on P9 (a). He identified the accused in open court.
- [39] In the cross examination he said that he can't re-call whether accused was verbally interviewed on 5/3/2011. He also denied assaulting the accused on that day. He reiterated that the interview was conducted in a fair manner in the presence of the accused.
- [40] That is the end of prosecution case. Defence was called and explained the rights of the accused. After understanding his rights he elected to give evidence from witness box and called witnesses.
- [41] According to the accused on 3/3/2011 in the evening he was sleeping and woke up after 6.00pm. He then plucked bread fruits. Though his father told him to scrap coconut, he went to the play ground to see people playing touch rugby. He came back home around 6.30pm and went to the river to have a bath. After bath, changed his clothes and went to one of his aunts Laisani Ciwa's house to have his dinner. After dinner he had gone to watch movies and came back home at about 12.00pm.
- [42] On 5/3/2011, in the afternoon, village headman called a meeting and all males were checked by police officers for bruises. Then police officers took Jovili

and himself to Levuka Police Station for further investigation. At the police station he was beaten by the police officers on his ribs and slapped on his right side of the face. He could not identify the police officers who assaulted him on 5/3/2011. He only identified Vilivo who kicked his thighs. This was lasted about two hours and he got black eye on his right side of the face. He was then released and given his bus fare to go home. As last transport arrived, he went back home without going to the hospital. When he got back home his father and rest of the family were drinking grog. He told his father to give some massage to his body. As his left ear was bleeding, his aunt Venina had treated him with Fijian medicine. Injuries lasted about three days.

- [43] On 19/09/2011 he was arrested and taken to Levuka Police Station for questioning. Tamani had told him that Livai has implicated him with the rape which occurred on 03/03/2011. He denied the charge. In the police station he was threatened by police officers to admit the charge. He was taken out from the cell at about 10.00pm and took his signature to some documents. He identified his signature on P9(a). According to him he was interviewed on 05/03/2011 and got his signature on 19/09/2011. He was taken for re-constructions. He did not point out any spot at the crime scene. He denied that he told Livai about committing rape on 03/03/2011 at the hill top.
- [44] In the cross examination accused said he don't know about day light saving. He admitted that he is a relation of Livai, Vilawa, Tamani and Vodo. Photographs in P3 were shown to the accused. He identified the junction and the resort road. He admitted the Gene Robinson stays in the house close to the beach. Accused said that he used his father's mobile phone on 03/03/2011 to call a girl namely Talei at about 7.30pm. He admitted that he had a red T-shirt and a green sulu in the month of March,2011. Also agreed a light is on the mobile phone. He can't remember what he had for his dinner on 03/03/2011. Witness admitted that never complain to anybody with regard to police assault, even to learned magistrate before whom he was produced on 29/09/2011. No complaint lodged to the village headman with regard to police assault.
- [45] Kesaia Lewa, mother of the accused, said that on 03/03/2011 at about 6pm she asked the accused to scrap coconut but he refused. Her husband was

attending a workshop in the village hall. Accused then went for bath in the river. As soon as the accused went for a bath, her husband returned home and looked for his mobile. After a bath the accused went to his aunt's place to have his dinner. She had dinner with her husband and went for sleep. Accused came home around 8.30pm and went out to watch movie. He gave the phone to her. On the following day, at the workplace accused's aunt had told her that accused had dinner with her last night.

- [46] She had seen punching mark on the accused when returned from police on 05/03/2011. Accused had told her that police had assaulted him severely to admit the charge. Due to punching he almost admitted the charge. She massaged his ribs and applied hot water over the bruised area.
- [47] Witness admitted that she signed her statement after reading. She admitted that accused was wearing a green Sulu and a red T-shirt. Lines 16 and 17 of her statement was marked as P10 (a) Fijian version and P10(b) English version.(Half pass nine son Samisoni returned and I asked about the phone and then he handed the phone to me) According to her the phone was returned to her by the accused at about 9.30pm. She never complain to village headman or even to her nephew.
- [48] Laisani Ciwa is an aunt of the accused. On 03/03/2011 at about 6.30pm while she was preparing dinner accused had spoke to her when he was going to the river. Around 7.00pm he came back again, had dinner with them and left home around 8.00pm. They had fried noodles with cane fish. On 05/03/2011 she had told this to accused's mother. She admits that she given a statement to the police. Finally she said that accused's mother requested her to give evidence on behalf of the accused.
- [49] Sovaia Ratubuli gave evidence with regard to a sexual assault allegedly done by Livai Koroduadua. She went into detail about the incident. Further she had massaged the accused on 06/03/2011 while she was having grog with accused's grandmother. She had seen black mark on his right ribs and on right eye. She applied hot water on the affected area.
- [50] Livai Ravonu confirmed his son was present in the house at about 6.00pm on 3/3/2011.He did not see his mobile for 2-3 hours after 6.00pm on 3/3/2011.

[51] That is the end of defence case.

Analysis of the Evidence

[52] Madam and Gentlemen of Assessors, the victim had come from England and was engaged as a volunteer teacher at Taviya District School. While she was speaking to her mother over the phone, an unidentified person blind folded her and committed rape on her. She was under his custody for about two hours. After the rape the person threatened her with death. Due to this tragic incident now the victim is under medication for depression. This incident had ruined her university education. According to her the person had vaginal and oral sex and poked his finger into her vagina which was painful. She lodged her complaint immediately after the incident to the police. As Assessors and Judges of facts you have to consider her evidence very carefully.

[53] Madam and Gentlemen of Assessors, you heard the evidence of Vilawa Labati and Livai Koroduadua. Both are relation of the accused. Accused voluntarily confessed committing rape on the victim to Vilawa Labati after a month of the incident. He vividly explained how he dragged the victim to a slope and had sexual intercourse forcibly. Due to fear he did not divulge this to anybody immediately. He had told this to his brother Livai Koroduadua after two months of the incident. Livai got the confirmation from the accused before he provided the information to the police. Accused had confessed his involvement to Vilawa and Livai without any force or intimidation. As Assessors and Judges of facts you have to consider their evidence very carefully.

[54] Madam and Gentlemen of Assessors, the doctor gave evidence and explained the injuries. Though victim said that she was assaulted, he had examined the victim's vagina and the body. According to the doctor victim indirectly said what happened to her on 03/03/2011. He gave evidence as an expert. Consider his evidence to reach your decision.

[55] Accused denied the charge and takes up an alibi. When a person, charged with a crime, proves that he was, at that time alleged, in a different place from that in which it was committed, he is said to be proved an alibi. The

effect of which is to lay a foundation for the necessary inference, that he could not have committed it. Accused in his evidence said that he was at Laisani Ciwa's house and had dinner with them from 7.00pm to 8.00pm. Laisani giving evidence said that she served fried noodles with cane fish for the dinner. Accused giving evidence said that he can't remember what he had on that night. As Assessors and Judges of facts you have to consider this evidence very carefully.

[56] Madam and Gentlemen of Assessors, in this case prosecution tendered accused person's caution interview statement as evidence. I have told you earlier that what one accused person says in his caution interview statement it is evidence against him. Accused says that prior to caution interview he was assaulted by the police on his ribs and right side of the face. This was happened on 04/03/2011. But the interview was conducted on 19-20/09/2011. According to accused's mother she massaged him and applied hot water on 06/03/2011. Sovaia Ratubuli said that she massaged and applied hot water on the affected area. But accused in his evidence said that his father massaged him. Consider these evidence with great caution.

[57] Next accused takes up the position that his caution interview was not recorded in his presence and it was fabricated by the police. Only his signature was obtained to a document. Though he knew that he can lodge a complaint to an appropriated authority he never complained to anybody up to now. Even their family members did not take any action regarding the police assault. You have heard the police officer who recorded the caution interview of the accused denied ill-treating or assaulting the accused. What weight you choose to give the interview made by the accused is a matter entirely for you. If you consider them to be unreliable either because the police ill-treated and assaulted the accused, or because the accused told lies to police, then you may think that you cannot put much weight on them at all. If however you consider it is a reliable record of what the accused said to the police, then you may think that they contain important statement of what allegedly occurred on 03/03/2011.

[58] Madam and Gentlemen of Assessors, in this case the accused person opted to give evidence from witness box and called witnesses. That is his right. But he has nothing to prove to you.

- [59] In this case the accused is charged for rape contrary to Section 207(1) and 207(2) (a)(b) and (c) of the Crimes Decree No: 44 of 2009.(three counts) I have already explained to you about the charges and its ingredients.
- [60] Madam and Gentlemen of Assessors, you have heard all the prosecution and defence witnesses. You have observed them giving evidence in the court. You have observed their demeanour in the court. Considering my direction on the law, your life experiences and common sense, you should be able to decide which witness's evidence, or part of their evidence you consider reliable, and therefore to accept, and which witness's evidence, you consider unreliable and therefore to reject.
- [61] You must also carefully consider the accused's position as stated above. Please remember, even if you reject the version of the accused that does not mean that the prosecution had established the case against the accused. You must be satisfied that the prosecution has established the case beyond reasonable doubt against the accused.
- [62] Madam and Gentlemen of Assessors, remember, it is for the prosecution to prove the accused's guilt beyond reasonable doubt. It is not for the accused to prove his innocence. The burden of proof lies on the prosecution to prove the accused's guilt beyond reasonable doubt, and that burden stays with them throughout the trial.
- [63] Once again, I remind, that your duty is to find the facts based on the evidence, apply the law to those facts and come to a correct finding. Do not get carried away by emotions.
- [64] This is all I have to say to you. You may now retire to deliberate. The clerks will advise me when you have reached your individual decisions, and we will reconvene the court.

[65] Any re-directions

I thank you for your patient hearing to my summing- up.

P Kumararatnam
JUDGE

At Suva
16/10/ 2013

