



give reasons for your opinions. Your individual opinions can be unanimous or divided. If the opinions are unanimous, it is more desirable, but what matters is, your honest individual opinion on the already led evidence. I am not bound by your opinions when delivering the final judgment of this court. Nevertheless, the due weight and recognition will be given to your opinions.

- (ii) In my Summing Up, I will mainly address you on matters of law. That is because “legal issues” are in my domain. Therefore, you have to accept and act upon on my directions in relation to the legal matters. ‘Facts’ of this case are entirely in your ‘periphery’. In fulfilling their duties the counsel for the prosecution and defence made their submissions and made certain suggestions to substantiate their arguments. In my Summing Up, I might, though inadvertently, express or appear to express certain views. You are not bound to accept any of those views, suggestions or arguments, unless you agree with them. That is how you become the ‘masters of facts’ in this trial.
- (iii) In this instance, it is your task to deliberate what exactly took place on 12<sup>th</sup> December 2010. That deliberation has to be done based on the evidence led in court and nothing else. There are two conflicting versions before you. The complainant says that the 1<sup>st</sup> and 2<sup>nd</sup> accused had sexual intercourse forcefully. It is alleged by the prosecution that the 3<sup>rd</sup> and 4<sup>th</sup> accused aided and abetted the 1<sup>st</sup> and 2<sup>nd</sup> accused. On the other hand, all four accused say that it was the complainant who consented to have sexual intercourse with 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> accused. Your duty, after this Summing Up is to decide whose version that you are going to accept and believe.
- (iv) As I said earlier, your decisions should solely base on the evidence presented in court. You must disregard anything you heard or saw in relation to this case from the electronic or printed media or from your family members, relatives, friends or anybody else, before or during the trial. Simply focus on what you heard and saw as evidence within the four corners of this court room. In my Summing Up, I might not touch or mention all the evidence that you might think to be crucial. You are at liberty to take into consideration whatever the piece of evidence you think relevant and important.
- (v) Whereas this is a case which solely rests on the issue of ‘consent’, a proper assessment of the credibility and the truthfulness of the witnesses is vital. In

deciding that, you have to consider the demeanour of the witnesses when they took the stand, especially the way they faced the cross examination. The firmness or evasiveness in stand can be a guiding factor to determine their credibility.

- (vi) When it comes to the truthfulness of the witnesses, you have to utilize your day to day life experiences and common sense. You were chosen to be the judges of facts in this trial as you represent a pool of common sense and experience of human affairs in this community. You are not alien to the life pattern of the ordinary people of the society. It is that experience you have to apply to conclude whether a particular witness is honest and truthful. In doing so, you can accept the whole testimony of a witness or a portion, or else, you can reject the whole testimony or a part of it.
- (vii) Madam assessor and gentlemen assessors, please recall your oath administered when you assume duties as assessors; your true opinion to be given without any fear or favour or ill will in accordance with the evidence and the law. You are not supposed to be passionate towards anybody or any party.

## 2. THE BURDEN OF PROOF

- (i) The 4 accused are presumed to be innocent until proven guilty. Even though they are charged with two counts of 'Rape' and 4 counts of 'Aiding and Abetting Rape', their innocence is presumed until otherwise decides by this court. The burden in proving that accused are not innocent or guilty as charged rests on the prosecution throughout the trial. That burden never shifts. The accused need not prove anything either to show their innocence or otherwise.
- (ii) The prosecution must discharge their burden by proving the charges against the accused beyond reasonable doubt. That is for you to be 'sure' of the guilt of the accused. If you have any reasonable doubt over the guilt of the accused after analyzing the evidence, the benefit of such a doubt should be awarded to the accused. Nevertheless, a 'doubt' must be reasonable or substantial and

stemmed out of the evidence. A mere trivial or imaginary doubt won't create a reasonable doubt.

3. **THE INFORMATION**

- (i) The information filed by the Director of Public Prosecutions against the accused contains following two counts of Rape and 4 counts of Aiding and Abetting Rape.

First Count

*Statement of Offence (a)*

**RAPE**: Contrary to section 207 (1) (2) (a) of the Crimes Decree 44 of 2009.

*Particulars of Offence (b)*

**VILIKESA RAMAQA**, on the 12<sup>th</sup> day of November 2010 in Nasinu in the Central Division had carnal knowledge of N.R., without her consent.

Second Count

*Statement of Offence (a)*

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

*Particulars of Offence (b)*

**NIKO QAQARA** on the 12<sup>th</sup> day of November 2010 in Nasinu in the Central Division had carnal knowledge of N.R., without her consent.

Third Count

*Statement of Offence (a)*

**AIDING AND ABETTING RAPE**: Contrary to section 45 (1) (2) (a) and 207 (1) (2) (a) of the Crimes Decree 44 of 2009.

*Particulars of Offence (b)*

**MORITIKEI NAYAVAGAKI**, on the 12<sup>th</sup> day of December 2010 in Nasinu in the Central Division aided and abetted another person namely Vilikesa Ramaqa to have carnal knowledge of N.R. without her consent.

Fourth Count

*Statement of Offence (a)*

**AIDING AND ABETTING RAPE**: Contrary to Section 45 (1) and (2) (a) and 207 (1) (2) (a) of the Crimes Decree No. 44 of 2009.

*Particulars of Offence (b)*

**MORITIKEI NAYAVAGAKI**, on the 12<sup>th</sup> day of December 2010 in Nasinu in the Central Division aided and abetted another person namely Niko Qaqara to have carnal knowledge of N.R. without her consent.

Fifth Count

*Statement of Offence (a)*

**AIDING AND ABETTING RAPE**: Contrary to section 45 (1) (2) (a) and 207 (1) (2) (a) of the Crimes Decree 44 of 2009.

*Particulars of Offence (b)*

**MORITIKEI NAYAVAGAKI**, on the 12<sup>th</sup> day of December 2010 in Nasinu in the Central Division aided and abetted another person namely Vilikesa Ramaqa to have carnal knowledge of N.R. without her consent.

Sixth Count

*Statement of Offence (a)*

**AIDING AND ABETTING RAPE**: Contrary to Section 45 (1) and (2) (a) and 207 (1) (2) (a) of the Crimes Decree No. 44 of 2009.

*Particulars of Offence (b)*

**MORITIKEI NAYAVAGAKI NAICOBOCOBO**, on the 12<sup>th</sup> day of December 2010 in Nasinu in the Central Division aided and abetted another person namely Niko Qaqara to have carnal knowledge of N.R. without her consent.

4. **ELEMENTS OF THE OFFENCE**

- (i) The charges against the 4 accused are based on Section 207 (1) (2) (a) and Section 45 (1) (2) (a) (b) of the Crimes Decree 2009. For the prosecution to bring home the charge of 'Rape' successfully, they have to prove the following elements in the charge.
- The accused, (Vilikesa Ramaqa in the 1<sup>st</sup> count and Niko Qaqara in the 2<sup>nd</sup> count)
  - had carnal knowledge of the complainant (Ms. N.R. in this instance)
  - without her consent.
- (ii) Carnal knowledge or sexual intercourse is proved when the penis of the Accused has penetrated the complainant's vagina. In the eyes of law, even a slightest penetration of the complainant's vagina by the penis of the Accused is sufficed to establish "*sexual intercourse*". Ejaculation is irrelevant and not essential in proving the "*penetration*". In this instance, 'penetration' is not a contested issue, as both parties have agreed on that.
- (iii) If the complainant agrees freely and voluntarily out of her own free will to perform the sexual intercourse in issue, she is said to have '*consented*' to the alleged sexual act. But, if that '*consent*' was obtained by force or threat or intimidation or putting her in fear of bodily harm, that is not a "*free and*

*voluntary*” consent on the part of the complainant. It is this ‘consent’ is disputed by the parties in this trial. At the same time, the Accused must know that the complainant was not consenting to have sex at the time in issue or that he was reckless in having sexual intercourse with her without knowing whether she was consenting to the act or not.

- (iv) When it comes to 3<sup>rd</sup> and 4<sup>th</sup> accused, the following elements have to be proved beyond reasonable doubt by the prosecution.
- The conduct of the 3<sup>rd</sup> and 4<sup>th</sup> accused have aided or abetted the commission of the offence; (Rape in this instance)
  - The 3<sup>rd</sup> and 4<sup>th</sup> accused did intend to aid and abet the 1<sup>st</sup> and 2<sup>nd</sup> accused to commit the “offences” of “Rape”. In this instance, first you have to see whether the 1<sup>st</sup> and 2<sup>nd</sup> accused did commit the offence of “Rape” or not. If the answer is ‘Yes’, you can proceed to see the responsibility of the 3<sup>rd</sup> and 4<sup>th</sup> accused.
- (i) As a matter of law, I am directing you that there is no need to look for any corroboration of the complainant’s evidence for an accused to be convicted on a charge of ‘Rape’. If the evidence of the complainant is so convincing that you can place your reliance beyond reasonable doubt, you can solely act upon it even in the absence of any corroborative evidence. As a matter of law I am directing you that the absence of injuries or remarks for physical resistance on the complainant does not necessarily mean that she ‘consented’ to the sexual act.
- (v) The prosecution says that all 4 accused made separate confessions to the police during their cautioned interviews and for you to rely on those. The 2<sup>nd</sup> and 4<sup>th</sup> accused said that police officers assaulted them during their interviews and that is why they admitted the allegations. Prosecution denies those allegations. 1<sup>st</sup> and 3<sup>rd</sup> accused do not expressly challenge their admissions at the caution interviews. Now, madam assessor and gentlemen assessors, you must consider whether the accused made such an admissions or confessions or not. If you are sure that they did so and it is true, you may take those into consideration when considering your decision. But, if you are not sure, that the accused made such admissions or confessions, simply disregard it.

- (vi) As I have already informed you at the opening address, you have to analyze evidence separately for each and every count. At the same time, the evidence against each accused also has to be assessed separately. As you know, 1<sup>st</sup> and 2<sup>nd</sup> accused are facing two different counts of 'Rape'. 3<sup>rd</sup> and 4<sup>th</sup> accused have two counts each for 'Aiding and Abetting to 1<sup>st</sup> and 2<sup>nd</sup> accused to Rape Ms. N.R. It is the duty of the prosecution to prove all the counts and their elements to your fullest satisfaction.

## 5. AGREED FACTS

- (i) The following facts are been agreed between the prosecution and the defence at the beginning of this trial. Thus, the prosecution is relieved from proving those facts. You madam assessor and gentlemen assessors, can positively assume that the prosecution has proved those facts beyond reasonable doubt. A copy of the Agreed Facts is provided for your perusal.

- It is agreed that N.R. is the complainant in this matter.
- It is agreed that N.R. is the daughter of Waisea Vagasa and Unaisi Vereilagi.
- It is agreed that N.R. was born on 18<sup>th</sup> March 1994. Her birth certificate is attached and marked "A". There is no dispute between the State and the Defence about the authenticity, content and admissibility of her birth certificate.
- It is agreed that N.R. was about 17 years old at the time of the alleged incident.
- It is agreed that N.R. was medically examined by Dr. Tasveer Singh on 14<sup>th</sup> December 2010. Her medical report is attached and marked "B". There is no dispute between the State and the Defence about the authenticity, content and admissibility of her medical report.
- It is agreed that the first accused, Vilikesa Ramaqa was caution interviewed by D/Sgt Apimeleke Digitaki on 21<sup>st</sup> December 2010. His caution interview is attached and marked "C". There is no dispute between the State and the Defence about the authenticity, content and admissibility of his caution interview.
- It is agreed that the second accused was charged by Cpl 1826 Iosa on 22<sup>nd</sup> December 2010. His charge statement is attached and marked "F". There



is no dispute between the State and the Defence about the authenticity, content and admissibility of his charge statement.

- It is agreed that the third accused, Moritikei Nayavagaki was caution interviewed by A/Cpl 3659 Inoke Tui on 21<sup>st</sup> December 2010. His caution interview is attached and marked "G". There is no dispute between the State and the Defence about the authenticity, content and admissibility of his caution interview.
- It is agreed that the third accused was charged by D/IP Anare Masitabua on 22<sup>nd</sup> December 2010. His charge statement is attached and marked "H". There is no dispute between the State and the Defence about the authenticity, content and admissibility of his charge statement.

## 6. CASE OF THE PROSECUTION

- (i) Ms. N. R. is the complainant and the 1<sup>st</sup> witness of the prosecution. She recalled some of the events which took place on 12<sup>th</sup> of December 2010 and said she met Moritikei, the 3<sup>rd</sup> accused when she was going home with one Laisa. After dropping Laisa at home, Ms. N.R. had come back to Moritikei and seated beside him. Then both of them had a walk along the road, where they had met several other youths.
- (ii) Thereafter Moritikei had brought an empty box of a beer carton and put it on the ground for both of them to have 'sex'. She said that she agreed to have 'sex' with Moritikei, but only with him. She informed court that she was not aware that four (4) more people were waiting at the other side of the road to have 'sex' with her. After having 'sex' for about 15 minutes, Ms. N.R. said that Moritikei stood up and called another one. When the 2<sup>nd</sup> person came to her, she said that she was pulling up her panty. Though she had pushed him away, he had managed to lay her down and insert his penis to her vagina.
- (iii) When the 2<sup>nd</sup> person finished the sexual intercourse with her in about 15 minutes, a 3<sup>rd</sup> person had sexual intercourse with her by inserting his penis into her vagina. The 4<sup>th</sup> person had approached Ms. N.R. once the 3<sup>rd</sup> finished his task and 'asked to have sex' with her. When she told him that she wants to go home he had not done anything. Then that 4<sup>th</sup> person and Ms. N.R. had gone to the place where other three (3) were standing. She said they were just

around 10 meters away to the place where these alleged 'sexual activities' took place. She had then gone home, had her bath, dinner and went to sleep.

- (iv) Ms. Laisa Koto was the 2<sup>nd</sup> prosecution witness. She confirmed that she shopped with Ms. N.R. and they met Moritikei on their way home. Ms. N.R. had told her to proceed as Ms. N.R. wants to remain with Moritikei. She recalled that some others were also around in that place, but said that she cannot be specific who they were. Ms. Laisa had met Ms. N.R. on the following morning as they were neighbours. Ms. N.R. had told her that she was raped by four (4) boys. When Laisa asked what was the reason for such an act, Ms. N.R. had told her that she does not know. In answering to the question of Ms. Laisa, whether she liked it, Ms. N.R. had replied her saying that she 'liked it'.
- (v) Detective Corporal 3684 Viliame Nagatalevu testified next. Since the Interviewing Officer of Vilikesa Ramaqa had passed away and he was the Supervising Officer of D/C Viliame, he tendered the caution interview statement of the 1<sup>st</sup> accused marked as Prosecution Exhibit No. 1. The defence did not have any objection to that and did not challenge the voluntariness of this statement.
- (vi) D/C Viliame was the witnessing officer to the cautioned interview statement of Niko Qaqara, the 2<sup>nd</sup> accused. He said that Corporal Elia Waqasoqo did the interview and he is not available now in the country. D/C Viliame said that he was present throughout the interview and the rights of the accused offered before the commencement of the interview. He stressed that neither him nor the interviewing officer did threaten or assault to the accused before or during or after the interview. The caution interview statement of Niko Qaqara, the 2<sup>nd</sup> accused was tendered to court marked as Prosecution Exhibit No. 2. The defence did challenge the voluntariness of 2<sup>nd</sup> accused's caution interview statement.
- (vii) Detective Corporal 3659 Inoke was the Interviewing Officer of Moritikei, the 3<sup>rd</sup> accused. Defence does not challenge the voluntariness of this caution interview statement. It was tendered to court marked as Prosecution Exhibit No. 3.

- (viii) Detective Corporal 2222 Taufu offered evidence next. He was the Interviewing Officer of the 4<sup>th</sup> accused. He tendered the caution interview of the 4<sup>th</sup> accused as Prosecution Exhibit No. 4 and said neither he nor any other officer assaulted, threatened or made promises to the 4<sup>th</sup> accused before or during the cautioned interview. Again defence challenged the voluntariness of this caution interview statement of the 4<sup>th</sup> accused.
- (ix) Doctor James Fong was the last prosecution witness. He tendered the Medical Report prepared by Doctor Tasveer Singh after examining the complainant as Prosecution Exhibit No. 5. Referring to the history narrated to Doctor Singh, the witness said that the complainant had alleged that she was “raped by 5 men on 10<sup>th</sup> and 12<sup>th</sup> of December 2010”. Having noted that there are no injuries observed by Dr. Singh on the complainant, Dr. Fong said that ‘lack of injuries does not mean that she was not raped’ and ‘if she consented to the 1<sup>st</sup> intercourse, there can be some lubrication and subsequent acts might result lack of injuries’.

## 7. THE DEFENCE CASE

- (i) At the end of the case of the prosecution, court decided to call for the defence from the accused. All the accused opted to give evidence from the witness box, under oath and subject to cross examination. The learned defence counsel informed that they will not call any other witnesses on their behalf.
- (ii) Mr. Vilikesa Ramaqa, the 1<sup>st</sup> accused who was around 20 years in 2010, took the stand first. He said that on 12<sup>th</sup> of December 2010, when he was at home with the 4<sup>th</sup> accused, the 3<sup>rd</sup> accused came to his house with Ms. N.R., the complainant. Since she had requested ‘Sun Pops’, all of them had gone to a nearby house to buy ‘Sun Pops’. Then the 1<sup>st</sup> accused and the 3<sup>rd</sup> accused had gone to another boutique to buy cigarettes. There they had met the 2<sup>nd</sup> accused. After buying cigarettes, Vilikesa, Moritikei (3<sup>rd</sup> Accused) and Niko (2<sup>nd</sup> Accused) had joined Ms. N.R. and Moritikei Naicobocobo, the 4<sup>th</sup> Accused.
- (iii) Later, the 3<sup>rd</sup> accused had asked Ms. N.R. whether he could have sex with her. She had responded positively. Then the same request had been made by

Vilikesa and the 2<sup>nd</sup> accused as well. According to the 1<sup>st</sup> accused their requests were accepted by Ms. N.R. Describing the surrounding area where the sexual acts took place, Vilikesa told that there were close by houses, 4 on the right and 2 on the left, just 10-15 meters away from the lamp post where they were standing.

- (iv) As Ms. N.R. had told them to 'take turns' or to come one by one, 3<sup>rd</sup> accused had gone with her first. After he returned, Vilikesa had gone to Ms. N.R. He said she was laying down when he went to her and he asked her for the second time whether he could have sex with her. Upon her saying "yes", he had laid on top of her and had 'sex'. Vilikesa went on to say that Ms. N.R. looked relaxed and was smiling while he had sex with her. After Vilikesa returned to the others, the 2<sup>nd</sup> accused had gone to Ms. N.R. Both Niko Qaqara and Ms. N.R. had returned back to the 'gang' after several minutes and all of them (4 accused and Ms. N.R.) had gone back to the place where 2<sup>nd</sup> accused joined them. At this point, Vilikesa said that Ms. N.R. said that she wants to go home. When all the accused said 'good bye' to her, Vilikesa said, that she responded in I-taukei language by saying 'tomorrow again'.
- (v) Vilikesa recalled 21<sup>st</sup> of December 2010 and said all the other accused along with him were brought to Toorak, CID Headquarters on that day. He said that he witnessed police officer Inoke punched the left eye of the 4<sup>th</sup> accused and police officer Taufu slapped the back of the head of the 4<sup>th</sup> accused. He had further seen, police officer Elia punching the 4<sup>th</sup> accused to his ribs and the 4<sup>th</sup> accused bending down and touching the ribs area in pain.
- (vi) Niko Qaqara, the 2<sup>nd</sup> accused offered evidence next. He was 19 years at the time of the incident in issue. He basically confirmed what Vilikesa Ramaqa, the 1<sup>st</sup> accused said about the sequence of events. Admitting the fact that he had sexual intercourse with Ms. N.R, Niko said, she hugged him and kissed his backside while having sex. After they finished, Niko said that both of them got dressed up and joined with 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused. Ms. N.R's comment, 'tomorrow again', when she left the gang, came out of 2<sup>nd</sup> accused as well.
- (vii) Recalling the events took place on 21<sup>st</sup> December 2010 at CID Headquarters, Niko said that he saw police officer Inoke punched the left eye of the 4<sup>th</sup>

accused and police officers Taufu and Elia slapped the 4<sup>th</sup> accused's face as well. He further said that officer Elia punched his ribs whilst interviewing. The 2<sup>nd</sup> accused said that he admitted whatever suggested to him by Elia, his interviewing officer.

- (viii) Moritikei Nayavagaki, the 3<sup>rd</sup> accused also took up the same stand like the 1<sup>st</sup> and 2<sup>nd</sup> accused. He admitted that first he asked from Ms. N.R. whether he could have sex with her. He said that she responded positively and the course was followed by the 1<sup>st</sup> and 2<sup>nd</sup> accused as well. Moritikei had taken the lead and expressly admitted that he had sexual intercourse with Ms. N.R. on a card board of an empty beer carton. Moritikei said after Ms. N.R. removing her clothes, she kept those beside her and laid down to have sexual intercourse. Then the rest of the events, 1<sup>st</sup> accused going to Ms. N.R. followed by the 2<sup>nd</sup>, up to 'tomorrow again', are same as other two accused.
- (ix) The last witness for the defence was the 4<sup>th</sup> accused, Moritikei Naicobocobo. He was 24 years of age at the time of the incident. As far as the sexual activities with Ms. N.R. are concerned, his evidence was a repetition of other three accused. Naicobocobo said he did not have sexual intercourse with Ms. N.R, though he was with the three accused who did so, but, claimed that he was punched to his left eye by Inoke and Elia and Taufu slapped to his head whilst he was cautioned interview. He went on to say that he was given a paper to sign and he signed as Taufu kept on slapping him. Therefore, he claimed that he does not know what contained in the papers which he signed.
- (x) That is the summary of the defence case.

## 8. ANALYSIS

- (i) The overall picture of the elaborated events which took place on 12<sup>th</sup> of December 2010 shows us that the 1<sup>st</sup> accused, 2<sup>nd</sup> accused and the 3<sup>rd</sup> accused had sexual intercourse with Ms. N.R. Both, the accused and the complainant admit that. But, the complainant says that she consented to have sexual intercourse only with the 3<sup>rd</sup> accused and other two forcefully approached her, after she finished with the 3<sup>rd</sup> accused and raped her. That is why the 3<sup>rd</sup> accused is been charged only for 'Aiding and Abetting' to the 1<sup>st</sup> and 2<sup>nd</sup> accused to commit the offence of 'Rape. On the other hand, the 1<sup>st</sup> and 2<sup>nd</sup>

accused claim, with the support of the 3<sup>rd</sup> and 4<sup>th</sup> accused, that everything which took place on that night, happened with the consent of Ms. N.R. It is your duty now madam assessor and gentlemen assessors to decide which side of the story that you are going to believe.

- (ii) You would recall that evidence was tendered from both the prosecution and the defence to say that there were close by houses to the place where this incident took place. The complainant said that though there were close by houses, she did not shout or scream as it was the night. The defence suggested Ms. N.R. that is the most suitable time to raise alarm and that she could have even run away from the accused, had she really wanted to escape. The argument of the defence is that had the complainant did not consent to have sex with 1<sup>st</sup> and 2<sup>nd</sup> accused, after she had sexual intercourse with the 3<sup>rd</sup> accused, either she could have raised alarms or run away. She did not do so, they argue, because she was a willing participant to all what happened. To support their version, defence highlights that the complainant told the accused 'tomorrow again' when she left the gang and on the following morning she had told Laisa that she 'liked' for what she described as 'rape' by 4 boys.
- (iii) On the other hand, prosecution heavily relies upon the four cautioned interview statements of the four accused. Those were produced and tendered as evidence during the trial and all the copies were provided for your perusal. It was suggested to the accused during their cross examination, that what they say in court is totally different from what said to the police at the caution interviews. 2<sup>nd</sup> and 4<sup>th</sup> accused claimed that they were assaulted by several police officers and therefore they admitted everything with the police. The prosecution managed to highlight certain contradictions of all 4 accused. You madam assessor and gentlemen assessors, have to decide now, what weight you are going to attach to the caution interview statements of the accused and the contents of those.
- (iv) Finally, you would recall that Prosecution Exhibit No.5, the Medical Report tendered to court by the prosecution. The history given to the examining doctor by the complainant says that she was raped by 5 men on 10<sup>th</sup> and 12 of December 2010. The prosecution did not lead any evidence about this alleged 10<sup>th</sup> December incident. On 12<sup>th</sup> December, it was altogether three different

incidents of sexual intercourse, one with consent and two with force as narrated by the complainant in court. The examining doctor had not observed any injuries on the complainant and Dr. Fong expressed his professional opinion about the absence of injuries. After carefully analyzing the medical evidence and the medical report (exhibit no. 5), it is your task now to assess the weight that you are going to attach to those.

9. **SUMMARY**

- (i) Please recall that the accused need not to prove anything to show their innocence. You might not agree with the explanation offered by the accused. That does not necessarily mean the accused is guilty as charged. The burden of proving the guilt of the accused beyond reasonable doubt still lies on the prosecution. The evidence adduced by the prosecution to prove their case must be appealing to your conscience to be sure of the guilt of the accused.
- (ii) I have directed to you at the very beginning that you have to approach the case in an open mind. That is because the accused is presumed to be innocent until proven his guilt. If you are satisfied that the prosecution has proven the guilt of the accused to your fullest satisfaction or for you to be sure, you must return with an opinion of 'guilty'. If you are not sure of the guilt of the accused, it must be an opinion of 'not guilty'.
- (iii) Your possible opinions in this instance for all six counts are 'GUILTY or 'NOT GUILTY' to the two charges of 'Rape' and four charges of 'Aiding and Abetting Rape'.
- (iv) You may now retire to deliberate your opinions. When you are ready with the opinions, I will reconvene the court and ask your individual opinions.
- (v) Any re-directions or additions to what I said in my summing up Mr. Vosawale?
- (vi) Mr. Waqainabete?

Janaka Bandara  
**Judge**

**At Suva**

Office of the Director of Prosecution for State

Office of the Legal Aid Commission for the Accused