

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 96 of 2011

BETWEEN

STATE

AND

PRANEET ANAND REDDY

BEFORE: THE HON. JUSTICE PAUL K. MADIGAN

Counsel: Mr L. Fotofili with Mr.A. Dutt for the State
Mr. A. Reddy with Mr. J. Reddy for the accused

Dates of hearing: 27,28 and 29 January 2014

Date of Summing up: 29 January 2014

SUMMING UP

Madam and gentlemen assessors:

(1) 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] Counsel 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 you heard in this Court Room. There will be no more evidence. You are not to speculate on what evidence there might have been or should have been. You judge this case solely on what you have heard and seen here.
- [5] The court room is no place for sympathy or prejudice. You may have particular moral or religious views about sexual relationships but you must not let that cloud your view of the proceedings. You will judge the case solely on the law as I direct you and on the evidence before you and on nothing else. You must use that evidence to apply it to the principles of law that I direct you on in this summing up as they apply to the crimes of rape and defilement that the accused faces and to 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 however you are sure that the accused raped Mere or that he had sex with her not believing that she was 16, then you will find him guilty.
- [8] The accused is charged with Count 1, Rape and Count 2, Defilement. These two counts are charged in the alternative. You cannot find him guilty of both. First consider Count 1 which is the more serious offence which charges him with rape. If you find him guilty of that then you will not consider Count 2 at all. However, if

you are not sure about the rape then you will find him not guilty of that count and go on to consider the second count of defilement.

- [9] Rape in our law is committed when there is sexual intercourse without consent. It must be proved that there is at least some penetration (and in this case but not always penetration of the vagina.) Consent to sex must be freely and voluntarily given by the passive party to the rape but the law says that consent cannot be freely and voluntarily given if it is obtained by the exercise of authority over the victim. The State is saying to you that apart from Mere telling Mr. Reddy that she did not want sex that evening, she was in a position of helplessness because he was her teacher and he had authority and so she had no choice but to submit to his advances. If you agree with the State, then you will find that Mere had not given consent and therefore the act of sexual intercourse, if indeed you find that it took place is in our law rape. It is the defence case of course that there was no sex at all and therefore it is unnecessary to consider the question of consent at all.
- [10] The legal definition of defilement in our case is to have sex with someone who is over the age of 13 years but under the age of 16 years. All the State has to prove to you is that there was sex between the parties and that Mere was under the age of 16. It is a legal defence to the charge of defilement if the accused shows to you in all probability that he thought that Mere was at least 16 years old **and** that he had good cause to believe that she was at least 16.
- [11] I will be discussing these legal aspects of the case later in this summing up but first it is my duty to sum up the evidence to you. I know that you have only heard it in the last few days and I am sure that it will be fresh in your minds, but it is a duty that I must perform in every case out of fairness to both sides to remind you of the important evidence. Now here I must again stress that what I think is important does not have to be accepted by you as important. You may give weight to any aspect of the evidence you may wish to even if I don't mention it and you may disregard anything I appear to stress. You are masters of the facts.
- [12] Our first witness was Mere, the school student complainant. She said that she was born on the 30th November 1995. She told us that at 7pm on the 13th March 2011, she went with her friend Sovaia to the teachers' quarters to get noodles. When they arrived they saw teachers Reddy and Kumar there. Reddy was her form teacher and taught her Maths and Physics. She had only known him for a

few months she said because he was new at the school. She had respect for him because he was the teacher but out of class she would speak to him and he would ask her if he needed things fetched from his office. When they got to the house, Mr. Reddy was talking to her friend, Sovaia and he told her (Mere) to go inside the bedroom which she did. He followed her into the room and closed the door. She stood in a corner and the accused came and touched her body parts, her neck, her breasts and he bit her on her left neck. The lighting was coming from tube lights. Her told her, not asked her, to have sex and she said no because she respected him as a teacher. He held her hand, she tried to push it away and he made her lie on the bed. He made her lie on a mattress and he took off her sulu and shorts, leaving her in her panties and T-shirt. He took off his clothes and lay on top of her. He then proceeded to rape her. He caused her pain. He penetrated her for about 5 to 10 minutes, leaving his penis inside her until at one stage she felt wetness on her thighs. He was wearing a condom but she was still worried about getting pregnant. He stood up and she stood up and they returned to the living room. She didn't tell anybody, not even her friend because she was so ashamed. They went back to the dorm and got back about 9pm. The next morning the Vice Principal saw her bite marks and asked where she got them. Mere told her everything that had happened the night before.

- [13] In cross-examination by Counsel Reddy she admitted that she had lied to the Police about her age. She had said that she was born in 1994. She did this she said because she was ashamed of what had happened. Mr. Reddy then asked her questions about the rape, why she did not scream, why she did not push him away etc. He asked whether he blocked her mouth at the time. He asked her in detail about the sex act and the mechanics of it. He suggested to her that she had changed her story to say she was raped to appease her angry father. It was never put to this witness that there was no sex at all which was certainly the version of events we heard from the accused.
- [14] The second prosecution witness was the friend Sovaia. She told us that she had been walking with Mere in the evening of the 13th March when Mr. Reddy, the accused called out to them from his house. They went back to the dorm when Mere immediately suggested to go to Mr. Reddy's house to buy noodles. At the house the accused got the noodles and then said that he wanted to have sex with Mere. Mere refused and he forced her to go inside the room. She couldn't see what was happening in the room but she did hear banging on the floorboards. They

were in the room for about 5 to 10 minutes. Mere came out and looked confused. They went back to the dorm where Mere showed Sovaia a red mark on her neck, on her throat and she said that Mr. Reddy had forced her to have sex.

- [15] The third witness was the medical officer who examined Mere on the 8th April 2011. Mere had given a false date of birth as 3rd April 1993 but nevertheless the mother had consented to the examination because Mere was a minor. Mere reported the history as having gone with a friend to the accused's house where she was locked in and raped. The doctor said she appeared to be upset. The medical findings were faded bruises on her neck, bruises which could be about three weeks old, and the hymen was not intact. The accused was reported to have used a condom and it was too late for contraception to be considered. The doctor agreed, albeit very reluctantly that the faded bruises could have been love bites despite her original view that there were forceful finger marks. It is for you to make what you will of this medical evidence.
- [16] Mere's mother gave evidence and she told of Mere coming home from school for a week and telling her that "something happened" at school between her and a teacher. Mere's father went to the school to talk about it to the staff. It was after that meeting that it was decided to involve the Police.
- [17] A police officer produced Mere's birth Certificate from which we can see that her real date of birth was 30 November 1995, making her just 15 on the 13th March, 2011.
- [18] Finally in the Prosecution case you heard a Woman Police Officer read out the cautioned interview of the accused. The answers in that interview are for you to consider as evidence in the normal way and there is certainly no suggestion from the Defence that the answers were not true nor given involuntarily.
- [19] That then Madame and Gentlemen was the end of the case for the Prosecution and you heard me tell the accused what his rights are in defence. He could give evidence, he could remain silent and whatever he did, he could call witnesses. His counsel told me that he had advised his client and the accused elected to give sworn evidence in his own defence.

- [20] The accused told us that on the 13th March 2011 he was in his quarters working on his books while his colleague Mr. Kumar was cooking. Kumar said that someone had come in and the accused turning around saw two students known to him from his Maths classes. They said they were looking for "chow", meaning noodles. Kumar was chatting with them while the accused carried on working on his books. He told the girls to sit down because he had to go into the other room to get the noodles. He went into his food stocks and returned with a multi pack of noodles from which he gave 2 to the girls. Kumar was not in the room at this stage. The girls took the noodles and fled. In the following week, the Vice Principal had interviewed Mere about the marks on her neck, and as a result the accused was interviewed. He told her that he didn't make them and he suggested that a medical examination be done. The girl was suspended and on her return she wrote him an apology written in a book, shown to him secretly and then taken away. He told us that she apologised for causing so much trouble and she said that she loved him. The accused said he didn't have a copy of it and it should be noted that nothing of this sort was put to the complainant by Defence Counsel. It is a matter for you whether you believe this apology evidence or not and what weight you might give it. On the 7th April, he was detained by the Police and taken for enquiries.
- [21] The accused having given evidence and having called a witness leads me to another direction in law. The accused did not have to give evidence for the very reason he does not have to prove anything to you. That burden of proof is on the State and nothing the accused says or his witness says in this trial takes away that burden. You are entitled to take into account what the accused says and you may give it whatever weight you wish, however if you don't believe a word he says it doesn't make him guilty, it may just reinforce the thrust of the prosecution case in your mind. Decide the guilt or otherwise of the accused solely on the prosecution evidence.
- [22] The accused called as his witness the principal of the school at the time. He told us that he had been told that an incident had happened and so he convened a meeting of the Vice Principal and the Assistant Principal and the 2 girls. He said the girls admitted going to the teachers quarters one evening in March. As this was strictly against the rules they were suspended. Mere had told him about the inappropriate touching but did not say that there had been sex. He had checked the age of the complainant in the school register but couldn't remember what her

date of birth was. There was however a birth certificate and he assumed that she would have been 15 or 16.

- [23] Well, that brought us to the end of all the evidence and it will now be your task to return an opinion to me on that evidence in respect of the two charges. Remember that you must consider the rape charge first and if you find him guilty of that you do not go on to consider the second defilement charge. But should you find the accused not guilty of the rape, then you will consider the defilement charge and return an opinion on that.
- [24] To assist you in your duties I will now set out the processes you should be going through. You will first consider the Rape. The State says that Mere was raped in the teacher's quarters and Mere has described in some detail what she says in effect happened that evening and how she did not give her consent to sexual connection. The defence says that there was no sex at all, and not even the love bites. It was just a visit to get noodles and when they got them, they left. You must first decide then if there was an act of sex or not. If there was not any sex then you will find the accused not guilty of the rape and also not guilty of the alternative charge of defilement.
- [25] If you find that there was sex that night then you must go on to find if there was consent to that act. Remember the exercise of authority cancels out any freely given consent. If there was sex but no consent then you will find the accused guilty of rape and stop there - don't even consider the second count.
- [26] If you find that there was sex but you are of the view that it was with the full consent of Mere and she wasn't intimidated by the authority of the teacher then you will find him not guilty of the rape and then go on to consider the defilement count. If there was sex, you can accept from me that Mere was only 15 years old and the accused must be guilty of defilement UNLESS he has shown you, in all probability, that he believed that she was 16 years old or more and that he had reasonable cause to believe that she was of that advanced age. This is a two limb test. There is evidence that might have led him to believe she was 16, but is there evidence from him that he thought she was 16? These are questions on the evidence that you must decide. Do you have evidence from the accused that he believed her to be 16 years or more and is there evidence that he had reasonable cause to believe that?

- [27] You have a lot to decide Madam and Gentlemen and you will now retire to consider your opinions. It would be far better if the three of you could be unanimous in your opinions although that is not strictly necessary. Please let a Member of my staff know when you are ready with your opinions and I will reconvene the Court.
- [28] Before you go however I must ask Counsel if there is anything they might wish me to add to or alter in this summing up.

P.K. Madigan
Judge

At Suva

29 January 2011.