

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

Criminal Case No.67 of 2013

STATE

v

ASHOK CHAND

Counsel: Mr M. Mataiva for the State
Mr. A. Kohli for the accused.

Dates of trial: 18,19 August 2014

Date of Summing Up: 19 August 2014

SUMMING UP

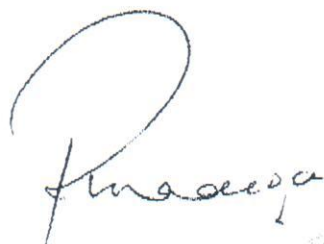
1. Madame and gentlemen assessors. It is now my duty to sum up to you. In doing so, I will direct you on matters of law which you must accept and act on. You must apply the law as I direct you in this case.

2. As far as the facts of this case are concerned, what evidence to accept, what weight to put on certain evidence, which witnesses are reliable, these are matters entirely for you to decide for yourselves. So if I express any opinion on the facts, or if I appear to do so it is entirely a matter for you whether you accept what I say or form your own opinions. In other words you are masters and the judges of facts.
3. Counsel for the prosecution and the defence had made submissions to you about how you should find the facts of this case. They have the right to make these comments because it is part of their duties as counsel. However you are not bound by what counsel for either side has told you about the facts of the case. If you think that their comments appeal to your common sense and judgment, you may use them as you think fit. You are the representatives of the community of this trial and it is for you to decide which version of the evidence to accept or reject.
4. You will not be asked to give reasons for your opinions, but merely your opinions themselves, and you need not be unanimous although it would be desirable if you could agree on them. Your opinions are not binding on me and I can assure you that I will give them great weight when I come to deliver my judgment.
5. On the issue of proof, I must stop direct you as a matter of law that the onus or burden of proof lies on the prosecution to prove the case against the accused. The burden remains on the prosecution throughout the trial and never shifts. There is no obligation upon the accused to prove his innocence. Under our system of criminal justice an accused person is presumed to be innocent until is proved guilty.

6. The standard of proof is one of proof beyond reasonable doubt. This means that before you can find the accused guilty of the offence charged, you must be satisfied so that you are sure of his guilt. If you have a reasonable doubt about the guilt of the accused, then it is your duty to express an opinion that the accused is not guilty. It is only if you are satisfied so that you feel sure of the guilt of the accused that you can express an opinion that he is guilty.
7. The accused faces one charge of rape. In our law and for the purposes of this trial, rape is committed when a person penetrates the vagina of another and where the person doing that does not have the consent of the victim or is reckless to whether she was consenting or not.
8. Now there is no dispute in this case that there was an act of sexual intercourse on the morning of the 27th August last year but that is where agreement stops. Mrs Prasad says that the accused forced himself on to her; the accused said to the Police in his interview under caution that is before you that they did have sex but she consented and in fact they had been having sex for about a year. It is your duty Madame and Gentlemen to tell me if the prosecution have proved their case to you beyond reasonable doubt. If you believe Monisha then that will go a long way for you to find the case against the accused proved. However if you think that there may have been a relationship between her and Ashok or you are not sure then you might find that the sex was consensual. I ask you to be cautious here because even if they were in a relationship and they did have consensual sex before, it doesn't mean that she was not raped on the 27th. Even wives can be raped. A woman is entitled to say no even to her lover.

9. If you think that there was “something going on” then that will reflect on the credibility of the victim and that is something you can surely take into account.
10. This has been a very brief case and I am sure that the evidence is still fresh in your minds. However it is my duty to remind you of the main points of it.
11. Monisha says that on the morning of the 27th , her husband had gone to the farm and she was home alone doing the house-work when the accused came asking her to look after one of the work books for his cane cutting gang. She was putting the book away when the accused held her from behind and forced her into the bedroom and on to the bed. He pulled her skirt up and pulled her tights and panty off and raped her for about 10 minutes.
When her husband came home from work at about 6pm she let him settle down and then told him about the rape. A report was made and she was medically examined.
12. The doctor was called and he gave evidence of examining Monisha the next day. She told him the history of what had happened but said that there were no injuries. He did not examine the genitalia of the victim because of that information.
13. The young boy who was leading his bullocks through the farm that day told us that the victim Monisha had called out to him and had given him the attendance book with the message to Ashok that he need not leave his book with her again. It is a matter for you what you make of that evidence.

14. The husband gave evidence telling us that he came home from work at 6pm; his wife gave him tea and then started crying and told him of her ordeal. The version he recounted was virtually the same as she had told us. He was angry and a report was made to the Police.
15. You heard me explain to the accused what his rights in defence are and he elected not to give evidence or call any witnesses.
16. That is his right. He is entitled to remain silent and to require the prosecution to make you sure of his guilt. You must not assume he is guilty because he has not given evidence. However you will appreciate that he has not said anything in this trial to undermine, contradict or explain the evidence put before you by the prosecution.
17. Well ladies and gentleman that is all I wish to say to you about the evidence. It is now time for you to retire and consider your opinions. It would be better if you could all be agreed but that is not strictly necessary. You will be asked individually for your opinion and you will not give a reason for it.
18. You may now retire.
19. Redirections Counsel?



P.K. Madigan
Judge

