

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: 183 OF 2011

STATE

-v-

JOHN DOUGHTY

Counsels : Mr. F. Lacanivalu for the State
Ms. M. Tarai for the Accused

Date of Trial : 11 February 2014 to 14 February 2014

Date of Summing Up : 17 February 2014

(Name of the complainant is suppressed. She is referred to as AD)

SUMMING UP

Madam Assessors and Gentleman Assessor:

1. We have now reached the final phase of this case. The law requires me – as the Judge who presided over this trial – to sum up the case to you on law and evidence. Each one of you will then be called upon to deliver your separate opinion, which will in turn be recorded. As you listened to the evidence in this case, you must also listen to my summing up of the case very carefully and attentively. This will enable you to form your individual opinion as to the facts in accordance with the law with regard to the innocence or guilt of the accused person.
2. I will direct you on matters of law which you must accept and act upon.

3. On matters of facts however, which witness you consider reliable, which version of the facts to accept or reject, these are matters entirely for you to decide for yourselves. So if I express any opinion on the facts of the case, or if I appear to do so, it is entirely a matter for you whether to accept what I say, or form your own opinions.
4. In other words you are the Judges of fact. All matters of fact 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.
5. The state counsel and the counsel for the defence made submissions to you about the facts of this case. That is their duty as the Prosecution Counsel and the defence counsel. But it is a matter for you to decide which version of the facts to accept, or reject.
6. You will not be asked to give reasons for your opinions, and your opinions need not be unanimous although it is desirable if you could agree on them. I am not bound by your opinions, but I will give them the greatest weight when I come to deliver my judgment.
7. On the matter of proof, I must direct you as a matter of law, that the accused person is innocent until he is proved guilty. The burden of proving his guilt rests on the prosecution and never shifts.
8. The standard of proof is that of proof beyond reasonable doubt. This means that before you can find the accused guilty, you must be satisfied so that you are sure of his guilt. If you have any reasonable doubt as to his guilt, you must find him not guilty.
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 might have heard or read about this case, outside of this Courtroom. Your duty is to apply the law as I explain to you to the evidence you have heard in the course of this trial.
10. Your duty is to find the facts based on the evidence and apply the law to those facts. Approach the evidence with detachment and objectivity. Do not get carried away by emotion.
11. As assessors, you were chosen from the community. You, individually and collectively, represent a pool of common sense and experience of human affairs in our community which qualifies you to be judges of the facts in the trial. You are expected and indeed required to use that common sense and experience in your deliberations and in deciding.

12. In accessing the evidence, you are at liberty to accept the whole of the witness's evidence or part of it and reject the other part or reject the whole. In deciding on the credibility of any witness, you should take into account not only what you heard but what you saw. You must take into account the manner in which the witness gave evidence. Was he/she evasive? How did he/she stand up to cross examination? You are to ask yourselves, was the witness honest and reliable.

13. I must give each one of you a word of caution. This caution should be borne in mind right throughout until you reach your own opinions. That is – as you could hear from evidence – this case involved an alleged incident of rape. An incident of rape would certainly shock the conscience and feelings of our hearts. It is quite natural given the inherent compassion and sympathy with which human-beings are blessed. You may, perhaps, have your own personal, cultural, spiritual and moral thoughts about such an incident. You may perhaps have your personal experience of such a thing, which undoubtedly would be bitter. You must not, however, be swayed away by such emotions and or emotive thinking. That is because you act as judges of facts in this case not to decide on moral or spiritual culpability of anyone but to decide on legal culpability as set down by law, to which every one of us is subject to. I will deal with the law as it is applicable to the offence with which the accused-person is charged, in a short while.

14. In this case the prosecution and the defence have agreed on certain facts. The agreed facts are part of evidence. Legal effect of such admissions is that they make sufficient proof of the facts admitted. Therefore, such facts need no further proof by way of evidence by prosecution. You should accept those agreed facts as accurate and truth. They are of course an important part of the case. The agreement of these facts has avoided the calling of number of witnesses and thereby saved a lot of court time.

15. The agreed facts of this case are:

1. It is agreed that the Victim in this matter is one AD.
2. It is agreed that AD is originally from Nakelo in Tailevu.
3. It is agreed that AD resides at Vunavutu Village in Sigatoka in the Western Division with her aunt Virisine Laca and cousins Josaia Hara ("Josaia") and Litia Babitu ("Litia").
4. It is agreed that AD works as a hairdresser at the hair salon owned by Virisine Laca.
5. It is agreed that on the 6th of September 2011, AD came home from work at about 6pm with Litia.
6. It is agreed that her cousin Josaia, the Accused and one Samuela Laro ("Samuela") were drinking outside on the veranda that same evening.

7. It is agreed that they were drinking about two bottles of 26oz Rum and six bottles of beer.
8. It is agreed that AD and Litia did some housework before they joined the drinking party.
9. It is agreed that after the alcohol, AD, Litia, Samuela and the Accused decided to go and buy some more beers at the Friendly Store nearby.
10. It is agreed that the Store is about 100 meters away from the house.
11. It is agreed that the Accused bought another four bottles of Fiji Bitter beer from the store.
12. It is agreed that they went and sat opposite the Store to drink the beers in (11) above.
13. It is agreed that Accused was serving the beers in a glass for the rest to drink.
14. It is agreed that the Accused placed a Fijian medicine named "ohe" into the serving glass which he bought himself from a house beside the shop where they were drinking.
15. It is agreed that the medicine acts as a sleeping pill and to make the beer strong.
16. It is agreed that AD, after only a few glasses, felt dizzy and her body was weak.

16. The information against accused is as follows:

First Count

Statement of Offence

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

Particulars of Offence

John Doughty on the 6th day of September 2011 at Vunavutu in Sigatoka in the Western Division, had carnal knowledge with a woman namely **AD** without her consent.

17. I will now deal with the elements of the offence.

18. The offence of rape is defined under Section 207 of the Crimes Decree. Section 207 (1) of the Decree makes the offence of rape an offence triable before this Court. Section 207 (2) states as follows:

A person rapes another person if:

- (a) The person has carnal knowledge with or of the other person without other person's consent; or

- (b) The person penetrates the vulva, vagina or anus of other person to any extent with a thing or a part of the person's body that is not a penis without other person's consent; or
 - (c) The person penetrates the mouth of the other person to any extent with the person's penis without the other person's consent.
- 19. Carnal knowledge is to have sexual intercourse with penetration by the penis of a man of the vagina of a woman to any extent. So, that is rape under Section 207 (2) (a) of the Crimes Decree.
- 20. So, the elements of the offence of Rape are that the accused penetrated the vagina of complainant to some extent with penis without complainant's consent, which means that the insertion of penis fully into vagina is not necessary. Accused knew or believed that complainant was not consenting and didn't care if she was not consenting is also an element of the offence.
- 21. Consent as defined by Section 206 of the Crimes Decree, means the consent freely and voluntarily given by a woman with a necessary mental capacity to give such consent. If consent was obtained by force, threat, intimidation or fear of bodily harm to herself, that "consent" is deemed to be no consent. It must be established by the prosecution beyond reasonable doubt that the accused knew the complainant was not consenting to sex, at the time. You will have to look at the parties' conduct, at the time, and the surrounding circumstances, to decide this issue. The issue you have to decide is whether at that particular time accused inserted his penis to vagina of the complainant when she was unwilling and he knew that, then that is rape.
- 22. It is also important to understand what is legally meant by voluntariness. According to Section 16 of the Crimes Decree, conduct can only be a physical if it is voluntary. Conduct is only voluntary if it is a product of the will of the person whose conduct it is. Evidence of self induced intoxication cannot be considered in determining whether conduct is voluntary. Intoxication is self induced unless it came about-
 - (a) Involuntarily; or
 - (b) As a result of fraud, sudden or extraordinary emergency, accident, reasonable mistake, duress or force.
- 23. You have to decide whether the complainant was in a position to give voluntary consent due to intoxication which was self induced or involuntarily induced by fraud.

24. Apart from the elements of the offence, the identity of the person who alleged to have committed the offence is very important. There must be positive evidence beyond reasonable doubt on identification of the accused-person and connect him to the offence that he alleged to have been committed.
25. Evidence that the accused has been identified by a witness as doing something must, when disputed by the accused, be approached with special caution because experience has demonstrated, even honest witnesses have given identification which have been proved to be unreliable. I give you this warning not because I have formed any view of the evidence, but the law requires that in every case where identification evidence is involved, that the warning be given.
26. In assessing the identification evidence, you must take following matters into account:
- (i) Whether the witness has known the accused earlier?
 - (ii) For how long did the witness have the accused under observation and from what distance?
 - (iii) Did the witness have any special reason to remember?
 - (iv) In what light was the observation made?
 - (v) Whether there was any obstacle to obstruct the view?
27. Proof can be established only through evidence. Evidence can be from direct evidence that is the evidence of a person who saw it or by a complainant who saw, heard and felt the offence being committed. In this case, for example, the complainant was witness who offered direct evidence, if you believe her as to what she saw, heard and felt.
28. Documentary evidence is also important in a case. Documentary evidence is the evidence presented in the form of a document. In this case, Medical Report is an example if you believe that such a record was made. Then you can act on such evidence. You can take into account the contents of the document if you believe that contemporaneous recordings were made at the relevant time on the document upon examination of the victim.
29. Expert evidence is also important to borne in mind. Usually, witnesses are not allowed to express opinions. They are allowed to give evidence on what they have seen, heard or felt by physical senses only, as described earlier. The only exception to this rule is the opinions of experts. Experts are those who are learned in a particular science, subject or a field with experience in the field. They can come as witnesses and make their opinions express on a

particular fact to aid Court and you to decide the issues/s before Court on the basis of their learning, skill and experience.

30. The doctor in this case, for example, came before Court as an expert witness. The doctor, unlike any other witness, gives evidence and tells us her conclusion or opinion based on examination of the complainant. That evidence is not accepted blindly. You will have to decide the issue of rape before you by yourself and you can make use of doctor's opinion if her reasons are convincing and acceptable to you; and, if such opinion is reached by considering all necessary matters that you think fit. In accepting doctor's opinion, you are bound to take into account the rest of the evidence in the case.
31. In assessing evidence of witnesses you need to consider a series of tests. They are for examples:

Test of means of opportunity: That is whether the witness had opportunity to see, hear or feel what he/she is talking of in his/her evidence. Or whether the witness is talking of something out of place mechanically crated just out of a case against the other party.

Probability and Improbability: That is whether what the witness was talking about in his or her evidence is probable in the circumstances of the case. Or, whether what the witness talked about in his/her evidence is improbable given the circumstances of the case.

Belatedness: That is whether there is delay in making a prompt complaint to someone or to an authority or to police on the first available opportunity about the incident that was alleged to have occurred. If there is a delay that may give room to make-up a story, which in turn could affect reliability of the story. If the complaint is prompt, that usually leaves no room for fabrication. If there is a delay, you should look whether there is a reasonable explanation to such delay.

Spontaneity: This is another important factor that you should consider. That is whether a witness has behaved in a natural or rational way in the circumstances that he/she is talking of, whether he/she has shown spontaneous response as a sensible human being and acted accordingly as demanded by the occasion.

Consistency: That is whether a witness telling a story on the same lines without variations and contradictions. You must see whether a witness is shown to have given a different version elsewhere. If so, what the witness has told court contradicts with his/her earlier version.

You must consider whether such contradiction is material and significant so as to affect the credibility or whether it is only in relation to some insignificant or peripheral matter. If it is shown to you that a witness has made a different statement or given a different version on some point, you must then consider whether such variation was due to loss of memory, faulty observation or due to some incapacitation of noticing such points given the mental status of the witness at a particular point of time or whether such variation has been created by the involvement of some another for example by a police officer in recording the statement where the witness is alleged to have given that version.

You must remember that merely because there is a difference, a variation or a contradiction or an omission in the evidence on a particular point or points that would not make witness a liar. You must consider overall evidence of the witness, the demeanor, the way he/she faced the questions etc. in deciding on a witness's credibility.

You must also consider the issue of omission to mention something that was adverted to in evidence on a previous occasion on the same lines. You must consider whether such omission is material to affect credibility and weight of the evidence. If the omission is so grave, you may even consider that to be a contradiction so as to affect the credibility or weight of the evidence or both.

In dealing with consistency you must see whether there is consistency *per se* and *inter se* that is whether the story is consistent within a witness himself or herself and whether the story is consistent between or among witnesses. In deciding that, you must bear in mind that the evidence comes from human beings. They cannot have photographic or videographic memory. All inherent weaknesses that you and I suffer, insofar as our memory is concerned, the memory of a witness also can be subject to same inherent weaknesses.

Please remember that there is no rule in law that credibility is indivisible. Therefore, you are free to accept one part of a witness's evidence, if you are convinced beyond doubt and reject the rest as being unacceptable.

32. You need to consider all those matters in evaluating the evidence of witnesses. You shall, of course, not limit to those alone and you are free to consider any other factors that you may think fit and proper to assess the evidence of a witness. I have given only a few illustrations to help what to look for to evaluate evidence.

33. I will now deal with the summary of evidence in this case.

34. Prosecution called the complainant AD as the first witness. She is 25 years old now. On 6.9.2011 she was staying at her aunt's house and was working as a hair dresser at aunt's saloon. On that day she had come home around 7.00 p.m. with Litia. Samu, Hara and John (Accused) were drinking rum in the verandah. After cooking she had joined drinking. She had beer. Once the beer was finished they had gone to store nearby to buy more beer.

John had bought 4 bottles of beer. She had sat with John, Samu and Litia beside the shop to drink beer. John was serving beer. She felt dizzy and weak after John served beer.

35. When she regain she was beside a drive way near a bush. John punched her thighs. She was dragged inside bushes. She was told to keep quiet and be still. He had taken off all her clothes. Then he had carnal knowledge with her. She was lying on ground and he was on top of her. She could feel he was inserting his penis into her vagina. She had not consented to that. She thought that she will die that day. After that John wore his clothes and went away. There was one house close by and she had seen the accused with aid of lights in that house. She identified the accused and the clothes worn by her in open Court.
36. Under cross examination she denied that Samu, Hara and John moved to mango tree from verandah for drinking. She denied that she did washing that evening. She further denied drinking some rum while doing house work. She denied being drunk but said she felt dizzy. She said her body was weak and she felt asleep. She was not aware that she was taken home. She further stated that there is no mango tree between the house and the drive way. She had some cuts and scratches. She said it was not dark at the place where she was dragged and raped as there was big tube light outside the house close by.
37. She said that she had a shower after coming home. John was at home. She went for work. The next day she did not go to work. She did not report the matter to police same day. She said that she is sure that it was John who raped her. In re-examination she stated that she told Litia everything that John did to her when she went home.
38. You watched her giving evidence in Court. What was her demeanour like? How she react to being cross examined and re-examined? Was she evasive? How she conduct herself generally in Court? Given the above, my directions on law, your life experiences and common sense, you should be able to decide whether witness's evidence, or part of witness's evidence is reliable, and therefore to accept and whether witness's evidence, or part of evidence, is unreliable, and therefore to reject, in your deliberation. If you accept the evidence of AD beyond reasonable doubt then you have to decide whether that evidence is sufficient to establish all elements of the charge.
39. The next witness for the prosecution was Samuela Laro (Samu). He is 52 years old now. He is living in Vunavutu village since birth. On 6.9.2011 he was drinking rum at Hara's place with John, Hara and an European lady in the afternoon. Litia and AD had joined them later. When rum and beer was over they had gone to nearby store and John bought four bottles of beer. Then he sat beside the shop with AD, Litia and John to drink beer. When he started serving beer, John grabbed the bottle and the glass to serve. When they finished the first bottle he saw complainant pass out.

40. John had told then that he will take the complainant home. He had also gone with them till the main gate. Then he had gone back for drinking. John had come back after ½ hour. John had told them that complainant is at home. Then they continued drinking for about 20 minutes till police came there. Then they have gone on separate ways to their homes.
41. He had gone with police and found slippers of the complainant by the road side and her chain further into the bushes. The chain was broken. Police have found the chain.
42. Under cross examination he said that he was serving drinks at Hara's house. Complainant only had two glasses of beer there. He said that complainant's condition started to change after John started serving beer. He denied asking John to buy some Fijian medicine called 'Ohe'. He denied talking to John following morning or telling him that he had sex with the complainant.
43. You watched him giving evidence in Court. What was his demeanour like? How he react to being cross examined and re-examined? Was he evasive? How he conduct himself generally in Court? Given the above, my directions on law, your life experiences and common sense, you should be able to decide whether witness's evidence, or part of a witness's evidence is reliable, and therefore to accept and whether witness's evidence, or part of evidence, is unreliable, and therefore to reject, in your deliberation. If you accept the evidence of this witness beyond reasonable doubt then you have to consider whether this evidence corroborates the evidence of the complainant.
44. Doctor was called as the next witness for the prosecution. She is a doctor with 14 years experience. She had examined the complainant on 9.9.2011 at 11.00 a.m. at the Sigatoka hospital. She identified and tendered the Medical report marked P5. Complainant had related the history to her. She was in fear. There were bruises on her knees, thighs and neck. Vaginal wall was swollen. All these injuries are due to blunt force. Vaginal injury could have been caused by forceful penile penetration. Bruises on the thighs could be due to punching. The injuries were consistent with the history given by the victim.
45. Under cross examination, she said that these are the only injuries she noticed. She had taken high vaginal swab and given it to the police. She said that bruises on knees could be due to falling or dragging.
46. The doctor is an independent witness. If you believe her evidence there is corroboration on sexual intercourse. Further there is corroboration from other injuries about the version given by the complainant.
47. The next witness for the prosecution was Netani Senivau. He is the brother of earlier witness Samuela Laro. He was at home, alone on the night of 6.9.2011. He had watched TV

and later a CD. His brother had come home around 12 midnight. No one else had come home.

48. Under cross examination he denied John coming to his house in the night of 6.9.2011. He said that police came to his house to record a statement. He never discussed with his brother before making the statement.
49. This witness is called by the prosecution as the accused had taken an alibi in his police statement that he went to this witness's house in the night in question. As the prosecution has to prove accused's guilt so that you are sure of it, he does not have to prove he was elsewhere at the time. On the contrary, the prosecution must disprove the alibi. Even if you conclude that alibi was false, that does not by itself entitle you to convict the accused. It is a matter which you may take into account, but you should bear in mind that an alibi is sometimes invented to bolster a defence.
50. If you believe the evidence of this witness beyond reasonable doubt then there is evidence that the accused did not go to Netani's house that night.
51. Ms. Virisine Laca gave evidence next. She is the aunt of the complainant. According to her on 6.9.2011 when she came back home after work around 5.30 p.m. her son, John, Samu and Tracy were drinking beer under mango tree. Litia and complainant came home around 6.30 p.m. They did house work and joined drinking. Then they went 50m away from house and continued to have beer. John came back around 12.00 - 1.00 in the night. He had water. He was sweating and looked exhausted. When asked about girls, he had told that he don't know where they are. He had left in 5 minutes. He had come again around 5.00 a.m. When asked he had told that he was watching movies at Netani's house.
52. Under cross examination she said the girls were at home when she went for work and both of them went to work around 8.45 a.m.
53. The next witness for the prosecution was WPC Mereseini Naiqiri. She is an officer with 8 years experience. On 8.9.2011 matter was reported. She had visited the scene of crime on 9.9.2011 and uplifted two exhibits from there, the slippers and the gold chain from a bush. This was about 50m away from the complainant's house. Hara and Samu had assisted the officers. She had also uplifted the clothes worn by the complainant.
54. Under cross examination she stated that the high vaginal swab taken from the victim and a DNA sample taken from the accused were sent for testing. However, there is no feedback.

55. The last witness for the prosecution was Litia Babitu. She was staying with the complainant at the time of the incident at aunt Virisine's house. She had come home after work with the complainant. Samu, Hara and John were drinking rum. Complainant joined the boys in drinking. Then boys went to nearby store to buy more beer. John had bought four bottles of beer. She had seen John pounding something in a white piece of cloth. When John saw her, he was shocked and he put that white piece of cloth into his pocket.
56. At the store they have gone to the opposite side and sat on the ground to drink beer. Samu had started serving beer. John had told Samu to give him the cup and the bottle to serve. When John started serving, complainant started to pass out. She was lying down on John's lap. She had never seen complainant like that before. Hara had told her to take complainant home. John had said that he will take complainant home. Samu had joined with John to take complainant home. Samu had returned soon after. John had come more than ½ hour later. When she went home complainant was not at home.
57. She had asked John. She was told that complainant was sleeping. When she asked again in the morning John had told her boyfriend took her. Following morning when complainant came home, with no shoes, bruises on neck and dirt in hair, she was in a state of shock. She had taken a wash and gone to work. At work she was not doing anything and just sitting around. After coming home, complainant had told her that John raped her.
58. Under cross examination she stated that Samu returned straight to the group. She said complainant had some rum while she was doing washing. She said complainant told her about the incident before she told the complainant that John brought her home. She told that Samu came back within 5 minutes.
59. You watched her giving evidence in Court. What was her demeanour like? How she react to being cross examined and re-examined? Was she evasive? How she conduct herself generally in Court? Given the above, my directions on law, your life experiences and common sense, you should be able to decide whether witness's evidence, or part of witness's evidence is reliable, and therefore to accept and whether witness's evidence, or part of evidence, is unreliable, and therefore to reject, in your deliberation. If you accept the evidence of Litia beyond reasonable doubt then you have to decide whether that evidence corroborates the evidence of the complainant and Samu.
60. After the prosecution case was closed you heard me explaining the accused his rights in defence.

61. The Accused elected to give evidence. His position was that he came to Hara's house that day. Then he had gone to town with Hara and Tracy and bought some drinks. He was drinking with Hara, Samu and Tracy from 10.30 a.m. Samu had sent him to buy 'Ohe' from an Indian man. After coming back he had continued to drink. When complainant and Litia came home after work he had served four glasses of rum to complainant. After finishing 6 bottles of beer they have gone to nearby store to buy more beer.
62. Four beer bottles were bought by him. Then they sat beside store to drink. He had served the beer. The complainant lied down and was sleeping on his lap. Samu mixed the medicine to beer. Hara had told him and Litia to take the complainant home. Instead of Litia, Samu wanted to join him. They have gone to the house. Then he had left Samu and the complainant at the verandah and entered the house through main door to open the door at complainant's room. When he came out no one was there. He had re-entered the house and waited for few minutes. Then he had gone to buy Tuna from Vavu's canteen. Then he had gone to Netani's house and enquired from him whether Samu had come home. He had come back to Hara's house and had dinner.
63. He had heard Samu shouting and when he went there saw police chasing them. Samu had told him not to talk about complainant with Litia. He had gone home with Litia and her work mate. Samu was standing outside. When Litia woke him up following morning and asked about complainant he had told that she may be sleeping in boyfriend's house in village. He had breakfast at Hara's house with Litia, Hara, complainant and aunt. After girl's left for work Samu had come. He had accompanied him to search for his gold chain. Samu had told him that he lost the chain where he took the girl last night. Samu had further told him not to tell anyone that he raped the complainant.
64. Under cross examination he admitted that he never told police that Samu told him that he raped the complainant. He admitted that the complainant did not know about the medicine in the beer. He admitted that he told police that he mixed the medicine to beer. He said that position in the police statement that Samu went back to join the group after leaving him and the complainant, is wrong. He further said that it is wrong to say that he went back to check whether the complainant had gone back to join the group, although he had said so to the police.
65. The accused in his defence takes an alibi. He says that he was not at the scene of crime but was elsewhere. As the prosecution has to prove his guilt so that you are sure of it, he does not have to prove he was elsewhere at the time. On the contrary, the prosecution must disprove the alibi. Even if you conclude that alibi was false, that does not by itself entitle

you to convict the accused. It is a matter which you may take into account, but you should bear in mind that an alibi is sometimes invented to bolster a defence.

66. You watched the accused giving evidence in Court. What was his demeanour like? How he react to being cross examined and re-examined? Was he evasive? How he conduct himself generally in Court? His position taken up in Court is different from some positions taken up by him in his caution interview statement. In other words his evidence is inconsistent.
67. It is up to you to decide whether you could accept his version and his version is sufficient to establish a reasonable doubt in the prosecution case. If you accept his version he should be discharged. Even if you reject his version still the prosecution should prove it's case beyond reasonable doubt.
68. I must remind you that when an accused person has given evidence he assumes no onus of proof. That remains on the prosecution throughout. His evidence must be considered along with all the other evidence and you can attach such weight to it as you think appropriate.
69. You will generally find that an accused gives an innocent explanation and one of the three situations then arises:
- (i) You may believe him and, if you believe him, then your opinion must be Not Guilty. He did not commit the offence.
 - (ii) Alternatively without necessarily believing him you may say 'well that might be true'. If that is so, it means there is reasonable doubt in your minds and so again your opinion must be Not Guilty.
 - (iii) The third possibility is that you reject his evidence as being untrue. That does not mean that he is automatically guilty of the offence. The situation then would be the same as if he had not given any evidence at all. He would not have discredited the evidence of the prosecution witnesses in any way. If prosecution evidence proves that he committed the offence then the proper opinion would be Guilty.
70. I have summarized all the evidence before you. But, still I might have missed some. That is not because they are unimportant. You heard every item of evidence and you should remind yourselves of all that evidence and from your opinions on facts. What I did was only to draw your attention to the salient items of evidence and help you in reminding yourselves of the evidence.

71. Please remember, there is no rule for you to look for corroboration of the complainant's story to bring home an opinion of guilty in a rape case. The case can stand or fall on the testimony of the complainant depending on how you are going to look at her evidence. You may, however, consider whether there are items of evidence to support the complainant's evidence if you think that it is safe to look for such supporting evidence. Corroboration is, therefore, to have some independent evidence to support the complainant's story of rape.
72. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies with the prosecution throughout the trial, and never shifts to the accused, at any stage of the trial. The accused is not required to prove his innocence, or prove anything at all. In fact, he is presumed innocent until proven guilty beyond reasonable doubt.
73. If you accept the prosecution's version of events, and you are satisfied beyond reasonable doubt so that you are sure of accused's guilt of the charge you must find him guilty for the charge. If you do not accept the prosecution's version of events, and you are not satisfied beyond reasonable doubt so that you are not sure of the accused's guilt, you must find him not guilty for the charge.

74. Your possible opinions are as follows:

First charge of Rape	Accused Guilty or Not Guilty
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75. You may now retire to deliberate on the case, and once you have reached your decisions, you may inform our clerks, so that we could reconvene, to receive the same.

76. Any re-directions?

Sudharshana De Silva
JUDGE

At Lautoka
17th February 2014

Solicitors : Office of the Director of Public Prosecution for State
Office of the Legal Aid Commission for Accused