

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 counsel for Prosecution and the Accused made submissions to you about the facts of this case. That is their duty as the Prosecution Counsel and the Accused. 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 assessing 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 and Indecent Assault. 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 offences 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. 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 time of this Court.
15. The agreed facts of this case are:
 1. It is agreed that Accused Ravneel Sharma was born on the 13th of February 1991.
 2. It is agreed that the Accused resides at 29 Natokowaqa, Lautoka.
 3. It is agreed that the Accused is a Cameraman at Dalrams Photo Studio.
 4. It is agreed that from 3rd May 2012 to 9.00 am of 5th May 2012, the Complainant MM stayed at the Accused, Ravneel Sharma's house at 29 Natokowaqa, Lautoka.

5. It is agreed that a medical examination of MM was conducted by Dr. J. Nabaro on the 5th of May 2012 at the Lautoka Hospital.
16. The charges against Accused are as follows:

COUNT 1

Statement of Offence

ABDUCTION OF PERSON UNDER 18 YEARS OF AGE WITH INTENT TO HAVE CARNAL KNOWLEDGE: Contrary to Section 211 (1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

RAVNEEL SHARMA on the 3rd day of May 2012, at Lautoka in the Western Division, with intent that **MM**, an unmarried girl aged 14 years and 11 months, be unlawfully and carnally known by him, took the said **MM** out of the possession and against the will of the mother, **NALINI DEVI**.

COUNT 2

Statement of Offence

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

Particulars of Offence

RAVNEEL SHARMA on the 4th day of May 2012, at Lautoka in the Western Division, penetrated the vagina of **MM**, with his finger, without her consent.

ALTERNATIVE COUNT 2

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

RAVNEEL SHARMA on the 4th day of May 2012, at Lautoka in the Western Division, unlawfully and indecently touched the vagina of **MM**, a girl of 14 years and 11 months.

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

18. 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.

19. If a person penetrates the vagina to any extent with a part of another's body, which is not the penis of that person, without the consent of the woman, that is Rape under Section 207 (2) (b).

20. So, the elements of the offence of Rape in this case are that:

a. the Accused

b. penetrated the vagina of victim to some extent with his finger
without her consent

c. knowing that she is not consenting.

21. Other parts of the offence are irrelevant to the facts of this case.

22. Consent as defined in 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. A woman under age of 13 years is considered by law as a person without necessary mental capacity to give consent.

23. In respect of the charge of Abduction, Section 211(1) of the Crimes Decree provides as follows:

“Any person who, with intent that any unmarried girl under the age of eighteen years shall be unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man or generally, takes or causes to be taken such girl out of the possession and against the will of her father or mother, guardian or any other person having the lawful care or charge of the person under 18 years.”

According to Section 211 (2), a defence is available to the Accused

“It shall be a sufficient defence if it shall be made to appear to the court that the person so charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of eighteen years.”

24. It must be proved that
 - a. the Accused
 - b. took the victim away from her parents without leave
 - c. the victim was under 18 at the time of incident and
 - d. the taking away was with the intention to have carnal knowledge of the victim.

25. I will now deal with the elements of the offence of Indecent Assault. The offence of Indecent Assault is defined under Section 212 of the Crimes Decree:

A person commits Indecent Assault if:

 - a. Unlawfully and indecently,
 - b. Assaults another person without her consent.

26. For the assault to be indecent it must be accompanied by a circumstance of indecency. Conduct is indecent when it is as such that ordinary people would so describe it, in light of prevailing standards of morality and, more specifically, in light of whether the victim has consented to the conduct in question.

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 victim

who saw, heard and felt the offence being committed. In this case, for example, the victim was a witness who offered direct evidence as to what she saw, heard or felt.

28. 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 victims.
29. Expert evidence is also important to be borne in mind. Usually, witnesses are not allowed to give opinion. They are allowed to give evidence on what they saw, heard or felt by their 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 expressed 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 witnesses, gives evidence and tells us his conclusion or opinion based on examination of the victim. That evidence is not accepted blindly. You will have to decide the issue of Rape and Indecent Assault before you by yourself and you can make use of doctor's opinion, if his 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. I will now deal with the summary of evidence in this case.
32. Prosecution called the Victim, MM, as the first witness. According to the Birth Certificate she tendered, marked P1, she was born on 14th May 1997. She was 14 years and 11 months old, Form 4 student of Tilak High School when the incident happened on 03rd May 2012.
33. MM left for school in school uniform on 3rd May 2012. She missed the school bus in town. She met the Accused Ravneel Sharma accidentally whom she had known through Facebook and some of her friends.

34. She went first to a Net Café, then to Accused's sister's house and finally to the Accused's house near Girit Centre. By the time she met the Accused she was in school uniform. Going into a public convenience, she changed into a sports uniform which she carried in her bag.
35. They reached the Accused's house during mid-day. Mother and grandmother of the Accused were there but did not talk to her. They went to the bedroom of the Accused and slept there in the night. MM slept on a mattress and the Accused on the bed. Only kissing took place that night.
36. On the following day (04.05.2012), they went to town, roamed for a while and came back to Accused's house in the afternoon. They slept in the night in the same bedroom and this time the Accused also came on to the mattress and they slept together.
37. In that night, the Accused asked to have sex with her but she said 'no'. Then he started kissing and inserted his finger into her vagina without her consent. At that time she was wearing her jeans and he took it off. It was painful when he inserted his finger into her vagina and she asked him to stop. He took his finger off and slept.
38. MM identified the Accused in Court.
39. In cross examination, MM denied that she was wearing a pair of jeans and a T-shirt by the time she met the Accused. She admitted that she knew the Accused for about a year, but not personally. She also admitted that she went with the Accused on a day she was supposed to sit for the exam; and also the following day. Nevertheless she carried the sports uniform in her bag. She always carried her sports uniform in her bag for Physical Education classes. She said that she missed the only bus that goes to school on that day. School was only 20 minutes- drive from the bus stand.
40. MM had many Facebook accounts and chatted with the Accused many times. She had told the Accused that she was a student of Tilak High School. However, she admitted that she did not publish that she was a Tilak High School student on the Facebook. She denied saying to the Accused that she was a Fiji National University (FNU) student.
41. MM did not want to go with the Accused on that day, yet she went with him. She admitted that the Accused had come to town on that day to buy medicine for her sister.

42. MM said to the Accused that she would go home around 3 p.m. when her parents come home. However, she denied saying that she would go home in a little while, when the Accused asked her whether she is not going home.
43. MM spoke to her mother on 3rd May 2012 using Accused's telephone and said that she is not coming home tonight. She admitted having lied to her mother when she said that she was at a friend's place in Nadi and secured a part time job.
44. MM admitted that the Accused left home clubbing with his friends on 3rd May 2012 leaving her behind and came back around midnight.
45. MM said that she had breakfast only on Saturday morning and that is the only meal she had with the Accused for the whole stay at his house from Thursday to Saturday, even though she went to town and roamed with him on Friday.
46. Accused kissed her around 8 p.m. on Friday night in the bed room and made love bites. She denied having received any call that night from her mum or brother. She did not know whether the Accused received a call from her mother around 8.30 p.m. on Friday. He made her to take her jeans off and inserted a finger into her vagina for nearly five minutes, he did it only once.
47. MM did not shout even though it was painful and did not complain to anybody on Friday or on her way home on Saturday morning although there was a Police Post about 200m away from the Accused's house.
48. On her return to her house on Saturday, she did not tell the mother or brother as to what happened to her at Accused's house on Friday night. They were very angry and her brother slapped her.
49. MM was taken to Police by her mother and brother. She told the Police, on Saturday, that Ravneel inserted his finger into her vagina. She denied having made up a story to get sympathy from her family or having given a false statement to Police. She also denied that she made a complaint because his brother slapped her.
50. MM admitted that she still maintained contacts with the Accused on Facebook and over mobile phone, having given him her number. She however denied that it is she who first made the call.

51. MM also admitted having visited the Accused's work place and having demanded money and a laptop in order to withdraw the case. She said that she did so to get rid of him and put an end to all the contacts with him as his approach was really irritating to her. She denied that she made a complaint to Police to get money from the Accused.
52. MM admitted that her father also approached the Accused and demanded money. She denied that she went with the Accused to skip university and to escape the exam. She also denied that she left home with the intention of going anywhere but school.
53. In re-examination, after the lunch break, she told that she lied to her mother over the phone because the Accused forced her to do so. She decided to withdraw the case and, with that in mind, came to the DPP's office with the Accused as she thought the Case was not good for her marriage.
54. Ladies and Gentleman, you remember, MM's mother Nalini Devi gave evidence next. Nalini told that her daughter MM left for school in school uniform and did not return that day. Nalini received a text message from MM saying that she is not coming home tonight. Then Nalini called back that number. MM answered the phone and said that she is not coming home tonight and will come on Saturday, as she got a part time job in Nadi and was staying with a friend.
55. Nalini said that she came to know about Ravneel only on Saturday when MM returned home. Ravneel did not ask if he could take her daughter to his house. He was not given permission to do so.
56. Then MM's brother Raneel Prasad came and gave evidence. He said that her mother told him on 3rd May 2012 that his sister MM did not return after school and telephoned saying that she is not coming home tonight. She cut off the phone. Mother wanted him to get a call to her sister and tried several times in vain.
57. On Friday, his call got through and a boy, identified himself as Raj, answered the phone. Raneel pretended that he is a Police Officer and inquired about a missing girl. Raneel made three calls to the same number and got suspicious answers. He admitted having slapped MM on her return home and being angry with her.
58. Prosecution called Doctor Jona Nabaro of Lautoka Hospital. He is a doctor with six years of experience. He, as a medical expert, gave

evidence on the medical report (P)2, he prepared after the examination of the Victim on 05th May 2012.

59. Doctor, referring to the history related by the patient in D (10) said that the Victim had eloped with his boy- friend and spent two nights with him. She appeared to have had intercourse with him.
60. Referring to D (11) the Doctor said the patient appeared calm and was not in a distressed state. Referring to cage D (12), the Doctor said hymen appeared partially visible and partially perforated. There were no obvious signs of forced penetration, no cuts or lacerations, no bruising or abrasions no signs of bleeding. He only observed presence of normal vaginal discharge.
61. Doctor opined that partially perforated hymen can either be a sign of penetration or normal variant present in females. Such a condition observed in hymen is not conclusive proof of penetration. So, he was unable to say conclusively whether penetration had taken place or not.
62. Prosecution called WPC Shareen Lata as the last witness. She conducted the investigation and the interview of the Accused. The incident was reported to the Police on 05th May 2012. It was first reported as that of a missing person.
63. After the Prosecution case was closed, you heard me explain the Accused's rights in defence through the Court clerk. His rights were explained not because the Accused had to prove anything. It is a requirement in law to do so.
64. You remember the Accused elected to give evidence. He said he went to town to buy medicine for his cousin brother. When he was standing in the bus stand MM, a Facebook friend for over two years came and spoke to him. He had met MM on several occasions when he did photo shooting in parties and weddings she attended.
65. MM had told the Accused that she was a FNU student. Accused did not know MM's age nor was the fact that she was a Form four student of Tilak High School. She had not published those particulars on her Facebook page. She was wearing a round neck T-shirt and a pair of jeans at the time he met her.
66. MM wanted to skip the University and come with him. He said no. She followed him to the internet Café, then to his aunt's place and finally to

his house. He did not ask her to come with him. She wanted to skip the University. She feared that the neighbors would complain to her mum if she gets back home early and wanted to join him. She said that she would go home by 3 p.m.

67. Ravneel's mother was angry when he came home with MM. He told his mother that she is a friend of him and would go back by 3.p.m. MM had lunch with him. She did not go by 3 p.m. Ravneel asked her if she is not going home.
68. She said she would go home in 20-30 minutes. But she did not want to go home and texted her mother using his phone. Her mother called on Ravneel's phone. MM said to her mother that she got a part time job in Nadi and staying with her friend. He did not force her to say so. After the call she said she would go home on Friday.
69. Having had dinner with her, Ravneel went clubbing with his friends leaving her at home. She was scared to join him and was alone in his bedroom. He returned home around 5 a.m. on Friday and slept on sofa in the sitting room.
70. After having breakfast, Ravneel went to town with her to drop her at the bus stop and gave her the bus fare to go home. But she refused to go and said she had already informed her mother that she would come home on Saturday. She roamed with Ravneel and his friends in town and returned home around 2.30 p.m.
71. Ravneel rejected the evidence of MM and denied having inserted his finger into MM's vagina. He also denied having touched her vagina. He admitted, however, that he kissed her before going to bed on Friday.
72. Ravneel was arrested by Police on Saturday the 6th May 2012. He came to know of Rape and Abduction allegations only when he received disclosures. He did not contact MM after 6th May 2012. However, MM contacted him through Facebook and on his mobile phone. She demanded money and a laptop to withdraw the case. Her family also approached him when he was in Natabua Prison and demanded money to build a house.
73. In cross examination, Ravneel said that he did not know that she was a Tilak High School student when he met MM on 03rd May 2012 and her age although he knew her for nearly two years before the alleged

incident. He did not talk to MM's mother and got permission to take MM to his house.

74. Ravneel rejected the allegation that he asked her for sex and did insert his finger into MM's vagina when she refused to have sex. He said that if he wanted to have sex with her he would have taken her somewhere else instead of going home.
75. He did not close the door of the bedroom where MM slept on Thursday and on Friday, the door was closed. His explanation was that on Thursday he was not there to close the door as he went out with his friends and rejected the suggestion that the door was closed on Friday with the intention of having sex.

That was the case for the Defence.

76. I have summarized evidence I thought of important to you in light of arguments of the Counsels of both parties. 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 form 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. You are the judges of facts. You are free to consider the evidence in its entirety and come to your own conclusion.
77. The Prosecution based its case mainly on the evidence of the Victim, MM. If you are satisfied that the evidence she gave in Court is reliable and trustworthy you can safely act upon her evidence in coming to your conclusion.
78. Please remember, there is no rule for you to look for corroboration of victim's story to bring home an opinion of guilt in a Rape case. The case can stand or fall on the testimony of victim depending on how you are going to look at her evidence. You may, however, consider whether there are items of evidence to support the victim's evidence if you think that it is safe to look for such supporting evidence. Corroboration in that sense is, therefore, only to have some independent evidence to support or to test the consistency and credibility of the victim's story of Rape.
79. If you are satisfied that MM told the truth and her evidence is believable, then you have to consider whether the Prosecution has discharged its burden and proved, each element of counts 1, 2 and 3 in the Information beyond reasonable doubt.

80. To help you to evaluate evidence, I would like to explain some of the criteria we as judges generally use to test the credibility of a witness. However, you are not bound to follow those tests and you are free to use your common sense and come to your own finding as members of public.
81. Test of 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.
82. MM told us to believe that she went to school, on an exam day, with her physical education kit in her bag. Her explanation was that she was in the habit of carrying the sports kit everyday whether there was an exam or not. She also told us that she missed the only bus plying on that road to her school which is only twenty to thirty minutes- drive from the bus stand and that was the reason for her to skip the school and to go with the Accused.
83. Then MM told us to believe that she did not have any meal during the two day stay in Accused's house except the breakfast she had on Saturday with the Accused after the alleged incident of rape.
84. She told that she did not shout when the Accused inserted his finger into her vagina although it was painful.
85. She did not complain about the penetration to two women in the Accused's house or to her own mother or brother when she returned home. Was it because she was scared to tell them as they were angry or otherwise?
86. Belatedness: She did not complain, on her way back home, to the Police Post she spotted about 200 meters away from the Accused's house. She complained and related the story of penetration to Police only on Saturday when her mother and brother asked her to do so. Would you consider it to be a belated complaint with enough time to make up a 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 for such delay.
87. According to Doctor's evidence MM's hymen was only partially perforated. You compare the evidence of the doctor with that of hers and consider whether painful penetration of a finger for about five minutes could cause such a condition and how probable or improbable it was and

whether that condition is consistent with the victim's evidence. Use your common sense and ask yourself whether her evidence is probable or improbable.

88. You can remember Ravneel went clubbing and to play soccer leaving MM behind in his house. You consider whether a man having a desire for sex would leave a girl he intended to take in his house alone and go clubbing with his friends and come back mid night only to go to bed, after kissing.
89. 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.
90. MM told us that she had to go with the Accused because he missed the school bus. If you look at the medical report P2 and the Doctor's evidence with regard to the history she related, she had told the Doctor that she eloped with his boy- friend.
91. In evidence-in-chief MM said that it is Ravneel who took off her clothes. In her cross examination she said that Ravneel made her to take it off.

I reproduce the exact words she uttered.

In Evidence-in-Chief she said

He took off my clothes.

In cross examination

Q. *You took off your jeans?*

A. *He made me take it off.*

You consider whether her evidence is contradictory and if contradictory whether this contradiction is material so as to impeach her credibility.

92. She told her mother that she secured a part time job and was staying with a friend's house in Nadi, when in fact she was staying with the Accused in his house. She admitted lying to her mother over the phone. You remember she came up with an explanation in her re-examination and said that she fabricated a story because the Accused was forcing her to do so. This is the first time she gave such an explanation. That is after the lunch- break. You consider whether you accept her explanation or not. In light of her disposition and conduct, you consider how truthful she is in Court when she gave evidence.

93. MM admitted having demanded money and a laptop from the Accused in order to withdraw the case. She even came to the DPP's office and made an attempt to withdraw the case. When she realized that she could not do so, she made up her mind and decided to go ahead with the case.
94. She told us that she wanted to withdraw the case in order to get rid of the Accused whose approach was quite irritating. And also the Court case could be damaging to her prospects of marriage. She also admitted that her father also approached the Accused when he was in prison and demanded money from the Accused to withdraw the case.
95. Although sequence of those events happened after the alleged incident of Rape, you have to consider whether MM possessed any other scheme or motive than that of telling the truth to this Court.
96. You need to consider all those matters in evaluating the evidence of MM. You shall, of course, not be 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. You watched MM giving evidence in Court. What was her demeanor like? How does she react to being cross examined and re-examined? Was she evasive? How she conducted herself generally in Court? It is up to you to decide whether you could accept her version.
97. You watched the Accused giving evidence in Court. You can apply the same tests and your common sense to evaluate the evidence of the Accused. What was his demeanor like? How does he react to being cross examined and re-examined? Was he evasive? How does he conduct himself generally in Court? 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 you must find him not guilty. Even if you reject his version still the Prosecution should prove its case beyond reasonable doubt.
98. I must remind you that when an Accused person elects to give 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.
99. You will generally find that an Accused gives an innocent explanation.

One of the three situations can arise out of Accused's evidence:

(i) You may believe him and, if you believe him, then your opinion must be 'Not Guilty'. He did not commit the offences.

(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 offences. 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 offences then the proper opinion would be 'Guilty'.

100. There is no issue in this case with regard to the identity of the Accused. It is not in dispute that it is the Accused who accompanied the Victim on that particular day and it is in his house that she stayed for two nights.
101. If you believe the evidence of the Prosecution, then you have to consider whether each of the elements of the three counts has been established.
102. According to the Information before you, the First Count is Abduction of an unmarried girl under the age of 18.
103. The offence is committed when a girl under the age of eighteen, is taken out of the possession of her parents against their will for the purpose of sexual intercourse.
104. MM tendered her Birth Certificate marked P1. That document is sufficient proof that she is fourteen years and eleven months at the time of the incident. There is no dispute that she is unmarried and was in the possession of her parents as she went to school from home on that day.
105. The "taking" need not be by force, it can either be actual or constructive and it is immaterial whether MM consented or not. You must be satisfied that there is some evidence that there was a substantial interference with the possessory relationship of parent and child when MM is alleged to have been taken from their parents.
106. You listened to MM's evidence. There was no evidence of force either actual or constructive. She had just followed the Accused. To remind you the exact words she said in her evidence, which I reproduce...

“ I was going to school and was to catch a bus to school. I met Ravneel in town and we went to a Net Café and from there we came back to the bus stand and from there we went to his sister’s place

...He had to do something important and we went there. From sister’s house we went to his house....”

107. You have then to consider whether there is sufficient evidence that the Accused did cause her to be taken to his house; whether he gave some inducement, promise or whether she was deceived to skip the school to go with him.
108. Another important element to be proved is that, whether the Accused intended, at the time of the ‘taking’, to have Carnal knowledge, that is sexual intercourse (penetration of her vagina with his penis), with her.
109. If you believe MM’s evidence to be true, maximum that had happened on Friday night was penetration of her vagina with his finger. That is not Carnal knowledge. The question is did he intend to have Carnal knowledge at the time of taking? It is up to you to decide having considered all the circumstances.
110. In the first night he went out clubbing with his friends and came after midnight. According to MM, only kissing took place and they went to sleep thereafter. There was ample opportunity for him to have sexual intercourse. According to her, Ravneel asked, on the following night, to have sex and that she refused. That was Ravneel’s expressed intention according to her. You can have sex in various ways. According to her evidence, he only inserted his finger. So, you have to consider whether his verbal expression (invitation to have sex) does unequivocally suggest that he intended to have Carnal knowledge or sexual intercourse and that intention was present at the time of ‘taking’.
111. You have to consider whether there was evidence that Ravneel planned to take MM to his house. It is not in dispute that they met each other accidentally at the bus stand. The mother Nalini said she did not consent her daughter to be taken to Ravneel’s house. The question you have to consider is whether the Accused took her to his house or she voluntarily went with him to skip the school and the exam or for any other reason.

112. The other point you have to remember is that it is a defence for the Accused to show that he did not know, or that he had reasonable cause to believe that she was over the age of eighteen.
113. Ravneel said that he was under the impression that MM was a University student and she was not in her school uniform at the time he met her. MM's mother said she went to school in her uniform. They were Facebook friends for nearly two years. Whether the circumstances warranted him to believe that she was a University student above the age of eighteen is a question for you to decide.
114. Coming to the offence of Rape, MM said that Ravneel inserted his finger into her vagina when she refused to have sex. She was not consenting to have sex. If you believe the evidence of MM, and of penetration, it is Rape.
115. If you think, in all the circumstances of the case, that the act of penetration took place with the consent of MM then, you have to consider, given her age, whether she had the mental capacity to consent. She was only 14 years and eleven months old at the time of the incident.
116. In dealing with the issue of penetration, medical evidence may be helpful. You may consider the issue of penetration in light of doctor's findings where he said that partial perforation of hymen is not conclusive proof of penetration. It is entirely a matter for you to be satisfied that the partial perforated hymen observed in MM's vagina is a result of penetration with Accused's finger.
117. I have already dealt with the alternative count of Indecent Assault. If you believe that Ravneel only touched MM's vagina instead of inserting a finger into her vagina you can find him guilty of Indecent Assault instead of Rape. Her consent again is irrelevant as she was under 16 at the time of incident.
118. 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.
119. If you accept the Prosecution version of events, and you are satisfied that the Prosecution has proved the case beyond reasonable doubt, so that you are sure of Accused's guilt of each charge you must find him guilty of

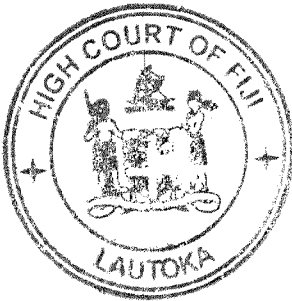
each charge. You have to consider evidence against each charge separately. If you do not accept the Prosecution's version of events, and you are not satisfied beyond reasonable doubt, so that you are not sure of the Accused's guilt, you must find him not guilty as charged. The fact that Accused is guilty of one charge does not mean that he is guilty of other charges as well.


Your possible opinions are as follows:

- (i) First count of Abduction Accused 'Guilty' or 'Not Guilty'?
- (ii) Second count of Rape Accused 'Guilty' or 'Not Guilty'?
- (iii) Third alternative count of Indecent Assault Accused 'Guilty' or 'Not Guilty'?

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.

120. Any re-directions?




Aruna Aluthge
JUDGE

AT LAUTOKA
On 22nd June 2015

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