

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 107 OF 2014S

**STATE**

**VS**

**LAIASIA NINO RAVUDI**

**Counsels** : **Mr. Y. Prasad and Ms. S. Serukai for State**  
**Ms. T. Kean for Accused**

**Hearings** : **27 and 28 April, 2016**

**Summing Up** : **2 May, 2016**

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**SUMMING UP**

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**A. ROLE OF JUDGE AND ASSESSORS**

1. Madam and Gentlemen Assessors, it is my duty to sum up to you. In doing so, I will direct you on matters of law, which you must accept and act upon. On matters of fact however, what evidence to accept and what evidence to reject, these are matters entirely for you to decide for yourselves. So if I express my opinion on the facts of the case, or if I appears to do so, then it is entirely a matter for you whether you accept what I say or form your own opinions. You are the judges of fact.
2. State and Defence Counsels have made submissions to you, about how you should find the facts of this case. That is in accordance with their duties as State and Defence Counsels, in this case. Their submissions were designed to assist you, as the judges of fact. However, you

are not bound by what they said. It is you who are the representatives of the community at this trial, and it is you who must decide what happened in this case, and which version of the evidence is reliable.

3. You will not be asked to give reasons for your opinions, but merely your opinions themselves and they need not be unanimous. Your opinions are not binding on me, but I will give them the greatest weight, when I deliver my judgment.

**B. THE BURDEN AND STANDARD OF PROOF**

4. As a matter of law, the onus or burden of proof rest on the prosecution throughout the trial, and it never shifts to the accused. There is no obligation on the accused to prove his innocence. Under our system of criminal justice, an accused person is presumed to be innocent until he is proved guilty.

5. The standard of proof in a criminal trial, is one of proof beyond reasonable doubt. This means that you must be satisfied, so that you are sure of the accused's guilt, before you can express an opinion that he is guilty. If you have any reasonable doubt so that you are not sure about his guilt, then you must express an opinion, that he is not guilty.

6. Your decision must be based exclusively upon the evidence which you have heard in this court, and upon nothing else. You must disregard anything you might have heard about this case outside of this courtroom. You must decide the facts without prejudice or sympathy, to either the accused or the victim. Your duty is to find the facts based on the evidence, and to apply the law to those facts, without fear, favour or ill will.

**C. THE INFORMATION**

7. You have a copy of the information with you, and I will now read the same to you:

*"...[read from the information]..."*

**D. THE MAIN ISSUE**

8. In this case, as assessors and judges of fact, each of you will have to answer the following question:
  - (i) Did the accused, on 8 March 2014, at Nakorovou Village, Rewa in the Central Division, rape the complainant?

**E. THE OFFENCE AND IT'S ELEMENTS**

9. The accused was charged with "rape", contrary to Section 207 (1) and (2) (a) of the Crimes Decree 2009. For the accused to be found guilty of "rape", the prosecution must prove beyond reasonable doubt, the following elements:
- (i) the accused had sexual intercourse with the complainant, that is, his penis penetrated the complainant's vagina;
  - (ii) without the complainant's consent; and
  - (iii) he knew the complainant was not consenting to sex, at the time.
10. In law, the slightest penetration of the complainant's vagina by the accused's penis, is sufficient to constitute "sexual intercourse", and it's irrelevant whether or not the accused ejaculated.
11. Consent is to "agree freely and voluntarily and out of her own free will", and she must have the necessary mental capacity to give her consent. If consent was obtained by force, threat, intimidation or fear of bodily harm or by exercise of authority over her, that "consent" is deemed to be no consent. The consent must be freely and voluntarily given by the complainant. If the consent was induced by fear, it is no consent at all.
12. It must also 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.

**F. THE PROSECUTION'S CASE**

13. The prosecution's case were as follows. The female complainant (PW1) was 33 years old, married with six children. She was married to PW3. The accused (DW1) was 18 years 5 months old on 8 March 2014. The couple and their children, including the accused reside in the same village in Rewa in the Central Division.
14. According to the prosecution, on 7 March 2014, at about 11 pm, the complainant (PW1) and her husband (PW3) went to sleep in their bedroom. Their children were asleep in their sitting room. At about 1 am on 8 March 2014, PW1 was feeling hot and she went into the sitting room to sleep with her children. She was only wearing a wrap around sulu. Because she was hot, she took off her bra and panty, and went to sleep wearing only her warp around sulu.

15. According to the prosecution, the accused and some of his friends were drinking liquor at a nearby village jetty. They finished at 1 am on 8 March 2014. According to the prosecution, the accused came to the complainant's house at about 2 am on 8 March 2014. The couple and their children were asleep at the time. The accused pushed open the door to the couple's house, and entered the same. He turned on the light in the sitting room.
16. According to the prosecution, the complainant was lying asleep naked in the sitting room. It appeared her wrapped around sulu fell off while she was asleep. The accused saw the complainant. He was sexually aroused. The complainant was lying on the floor face up. According to the prosecution, the accused took off his trousers, laid on her and inserted his penis into her vagina. According to the prosecution, he merely inserted the head of his penis into PW1's vagina when she suddenly woke up. PW1 immediately stood up, went to her bedroom, and told her husband what the accused did.
17. The matter was later reported to police. An investigation was carried out. The accused was caution interviewed by police on 27 March 2014. He appeared in the Nausori Magistrate Court on 28 March 2014 charged with raping the complainant. Because of the above, the prosecution is asking you as assessors and judges of fact, to find the accused guilty as charged. That was the case for the prosecution.

**G. THE ACCUSED'S CASE**

18. On 27 April 2016, the first day of the trial proper, the information was put to the accused, in the presence of his counsel. He pleaded not guilty to the charge. In other words, he denied the rape allegations against him. When a prima facie case was held against him, at the end of the prosecution's case, wherein he was called upon to make his defence, he choose to give sworn evidence and called no witness. That was his right.
19. The accused's case was simple. On oath, he denied inserting his penis into the complainant's vagina on 8 March 2014. He denied raping her at the material time. This was so despite his alleged confession in his police caution interview statements, tendered as Prosecution Exhibit No. 1(A), 1(B) and 1(C). He asks you to disregard his alleged confession because the police forced the same out of him, and he did not give the same voluntarily and it was given without his own free will. He said, the alleged confessions were not true.

20. Because of the above, he asks you, as assessors and judges of fact, to find him not guilty as charged and acquit him accordingly. That was the case for the accused.

H. **ANALYSIS OF THE EVIDENCE**

**(a) Introduction:**

21. In analysing the evidence, please bear in mind the directions I gave you in paragraph 4, 5 and 6 hereof on the burden and standard of proof. In the acceptance and/or rejection of the evidence presented at the trial and your role as assessors, please bear in mind the directions I gave you in paragraphs 1, 2 and 3 hereof. In analysing the evidence, we will first discuss the "Agreed Facts", then we will consider the State's case against the accused, which will include a discussion on identification evidence, confessional evidence and the Doctor's Evidence. Then we will discuss the accused's evidence and the need to look at all the evidence.

**(b) Agreed Facts:**

22. The parties had submitted an "Agreed Facts". A copy of the same is with you. There are nine paragraphs of "Agreed Facts". Because the parties are not disputing these "Agreed Facts", you may treat the same as established facts and that the prosecution had proven those facts beyond a reasonable doubt. The significance of the "Agreed Facts" was that it confirmed that on 8 March 2014, both the complainant and the accused were residing in the same village in Rewa. It also confirmed that the complainant (PW1) was in her house (the crime scene) on 8 March 2014, and the accused visited her house on that date.

**(c) The State's Case Against the Accused:**

23. The State's case against the accused was based substantially on the sworn evidence of the complainant (PW1) and the alleged confession the accused made to the police when he was caution interviewed on 27 March 2014. We will first discuss PW1's sworn evidence. On oath, she said, she was asleep at her house on 7 March 2014, at 11 pm. PW1 said, her husband (PW3) and her were asleep in their bedroom, while their six children were asleep in the sitting room.
24. PW1 said, she was hot and she went into the sitting room to sleep with her children. She said, she was wearing a bra, panty and a wrap around sulu. The time was now 1 am on 8 March 2014. PW1 said, because she was hot, she took off her bra and panty and only wore her wrap

around sulu. She said she then went to sleep. PW1 said, while sleeping, she could feel someone pushing his penis into her vagina. She said she felt a penis go into her vagina.

25. She said, she woke up to find the accused kneeling between her legs. She was lying on her back. She said, the sitting room electric light was on and she saw the accused's face, which was approximately 2 to 2 ½ feet away from her face. PW1 said, she observed his face for 2 minutes, and saw him pull up his underwear and ¾ pants. PW1 said, there was no obstruction when she saw the accused, and she knew him very well because he was related to her husband, and saw him nearly every day in the village. PW1 said, she was frightened and shocked. She got up, went to her husband, and told him what happened. The accused immediately went out of the house. PW1 said, her husband told her to report it to the police.
26. Later on the same day, PW1 said, she reported the matter to police at Nausori Police Station. Her statements were taken. She was medically examined at Nausori Health Centre. PW1 said, she told the doctor she was raped. The doctor produced a medical report, which was later tendered as Prosecution Exhibit No. 2. We will discuss this report later when we discussed the doctor's evidence.
27. In assessing the quality of PW1's identification of the accused, I must direct you as follows. In assessing the quality of PW1's identification evidence against the Accused, I must direct you as follows. First, whenever the case against the accused depends wholly or substantially on the correctness of one identification of the accused which the defence may alleged to be mistaken, the judge should warn the jury of the special need for caution before convicting the accused in reliance on the correctness of the identification, because an honest and convincing witness may be mistaken. Second, you must carefully examine the circumstances in which the identification was made. How long did the witness have the accused under observation? At what distance? In what light? Was the observation impeded in any way? Had the witness ever seen the accused before? How often? Was there any special reason for remembering the accused's faces? Was a police identification parade done? Third, are there any specific weakness in the identification made. The answers to the above questions will determine the quality of the identification evidence. If the quality is good, you may rely on the identification evidence. If its otherwise, you may reject it.

28. In this case, PW1 said she observed the accused's face for 2 minutes. So, obviously it was not a fleeting glance. PW1 said, the accused's face was 2 to 2 ½ feet away. So, the accused's face was close to hers. PW1 said, the sitting room electric light was turned on and it was bright. So, it appeared, the light exposed the accused's face to PW1. PW1 said, there was no impediment in the way when she saw the accused's face. PW1 said, she knew the accused as he was related to her husband and saw him every day in the village. A special reason for remembering his face was because of what he did to her that morning. There was no police identification parade held. Nevertheless, in cases of recognition, it was often prejudicial to the accused to have a police identification parade held because the witness already knew the accused. Was there any weakness in PW1's identification of the accused at the time? In my view, there appears to be none. However, it is entirely a matter for you to accept or reject PW1's identification evidence of the accused, at the time. If you think the quality of the identification evidence was good, you may use it against the accused. If it's otherwise, you are entitled to reject it. It is entirely a matter for you.

**(d) The Accused's Alleged Confession:**

29. On 27 March 2014, PC 4469 Pita Tikoibua (PW2) caution interviewed the accused at Nausori Police Station in the "itaukei" language. He asked the accused 56 questions and the accused gave 56 answers. PW2 said, the accused was given his right to counsel and all other legal rights. PW2 said, he started the interview at 10.10 am and concluded at 11.57 am. PW2 said the interview took 1 hour 47 minutes. The interview notes were tendered as Prosecution Exhibit 1(A) – hand written itaukei version; 1(B) – typed itaukei version; and 1(c) – typed English version. From Questions and Answers 14 to 51 of Prosecution Exhibit 1(c), the accused described what he did before he went to PW1's house. The accused described how he went into PW1's house, how he turned on the sitting room light, how he saw PW1 naked, how he was aroused, how he took off his clothes, and how he inserted his penis into PW1's vagina, while she was asleep. The accused admitted he inserted his penis into PW1's vagina, at the material time. He admitted PW1 was asleep at the time, therefore she did not give her consent. He knew she did not give her consent to sex at the time, because he knew she was asleep. If you accept the above confession, you will have to find the accused guilty as charged. If otherwise, you will have to work at the other evidence, to decide whether or not the accused was guilty as charged. It is a matter entirely for you.

30. When considering the above evidence, I must direct you as follows, as a matter of law. A confession, if accepted by the trier of fact – in this case, you as assessors and judges of fact – is strong evidence against its maker. However, in deciding whether or not you can rely on a confession, you will have to decide two questions. First, whether or not the accused did in fact make the statements contained in his police caution statements? If your answer is no, then you have to disregard the statements. If your answer is yes, then you have to answer the second question. Are the confessions true? In answering the above questions, the prosecution must make you sure that the confessions were made and they were true. You will have to examine the circumstances surrounding the taking of the statements from the time of his arrest to when he was first produced in court. If you find he gave his statements voluntarily and the police did not assault, threaten or made false promises to him, while in their custody, then you might give more weight and value to those statements. If its otherwise, you may give it less weight and value. It is a matter entirely for you.
31. In this case, you have heard what the accused said about the police caution interviewing him on 27 March 2014. I do not need to describe the details to you. He said the police repeatedly hit his head with a 6 feet long stick. He said, they swore at his father and called him names. He said, the police repeatedly punched him. He said, they talked roughly to him. He said, he was afraid and frightened and that's why he admitted the offence. He said, the police also stomped on his back. However, when cross examined by prosecution, he admitted he made no complaints to the police, to the Magistrate Court and the High Court, when the opportunity was given. He also admitted he did not ask the Magistrate Court or High Court for a medical examination to treat and prove his injuries.
32. The police on the other hand, said they did not assault, threaten or made promised to the accused while he was in their custody. They said, the accused gave his statements voluntarily and out of his own free will. They said, while in police custody, the accused was given all his meals and was given the standard rests. How you treat the above evidence is a matter entirely for you.

**(e) Doctor Viniana Madanavosa's (PW4) Evidence:**

33. Doctor Madanavosa (PW4) saw the complainant (PW1) on 11 March 2014 - 3 days after the alleged rape. She prepared a medical report, which she tendered in evidence, as Prosecution Exhibit No. 2. In D(10) of the report, PW4 described the patient's history as related by her. In



D(12) of the report, she said that there was no penetration or any sexual contact with the victim. PW4 said, because of what she told her, she did not medically examine the complainant's vagina.

34. When looking at the above report, you must consider that this was an alleged insertion of a penis into a vagina, when the alleged victim was asleep. When a person is asleep, then that person cannot comprehend the insertion of a penis into her vagina, while she was asleep. Yet in her evidence, PW1 said she could feel a penis going into her vagina, at the time she was asleep.

35. You will have to consider the above evidence, and make some sense out of it. Remember, as a matter of law, a complainant's verbal evidence on an alleged rape does not need to be corroborated by independent evidence, that is, even medical evidence. So, if you accept PW1's evidence on the alleged rape, and you judge the same to be credible, that in itself is sufficient to ground a possible rape conviction. It is a matter entirely for you.

**(f) The Accused's Evidence:**

36. In his evidence, the accused denied raping the complainant, at the material time. He denied inserting his penis into PW1's vagina, at the material time.

**(g) Considering All the Evidence:**

37. You must consider all the evidence together. You must compare and evaluate all the evidence together. You must consider the weight and value of all the evidence together. You have watched and heard the witnesses give evidence. You have observed their demeanour in the courtroom. Who do you think was the credible witness? Who do you think was forthright as a witness? Who was evasive as a witness? Who do you think, from your point of view, was telling the truth? If you accept that the complainant was a credible witness, and you accept her evidence, you must find the accused guilty as charged. If otherwise, you must find the accused not guilty as charged. It is a matter entirely for you.

**I. SUMMARY**

38. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies on the prosecution throughout the trial, and it 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. If you accept the prosecution's version of events, and you are satisfied beyond reasonable doubt so that you are sure of the accused's guilt, you must find him guilty as charged. 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.

39. Your possible opinions are as follows:

(i) Rape : Accused : Guilty or Not Guilty

40. You may now retire to deliberate on the case, and once you've reached your decisions, you may inform our clerks, so that we could reconvene to receive your decisions.



**Salesi Temo**  
**JUDGE**

**Solicitor for State** : **Office of the Director of Public Prosecution, Nausori.**  
**Solicitor for Accused** : **Legal Aid Commission, Nausori.**