

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 94 of 2016

[CRIMINAL JURISDICTION]

STATE

V

JOSEVATA HENAO

Counsel : Ms. L. Bogitini for State
Ms. B. Malimali for Accused

Dates of Hearing : 05th - 08th June 2017

Date of Summing up: 09th June 2017

(The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "AK".)

SUMMING UP

Madam and gentleman assessors;

1. It is now my duty to sum up the case to you. I will now direct you on the law that applies in this case. You must accept my directions on law and apply those directions when you evaluate the evidence in this case in order to determine whether the accused is guilty or not guilty. You should ignore any opinion of mine on the facts of this case unless it coincides with your own reasoning. You are the judges of facts.
2. Evidence in this case is what the witnesses said from the witness box inside this court room, the exhibits tendered and the admitted facts. Your opinion should be based only on the evidence presented inside this court room. If you have

heard, read or otherwise come to know anything about this case outside this court room, you must disregard that information.

3. A few things you heard inside this court room are not evidence. This summing up is not evidence. The arguments, questions and comments by the lawyers for the prosecution and the defence are not evidence. A suggestion made by a lawyer during the cross examination of a witness is not evidence unless the witness accepted that suggestion. The arguments and comments made by lawyers in their addresses are not evidence. You may take into account those arguments and comments when you evaluate the evidence only to the extent you would consider appropriate.
4. A statement made by a witness to the police can only be used during cross-examination to highlight inconsistencies. That is, to show that the relevant witness on a previous occasion had said something different to what he/she said in court. You have to bear in mind that a statement made by a witness out of court is not evidence. However, if a witness admits that a certain portion in the statement made to the police is true, then that portion of the statement becomes part of his/her the evidence.
5. You must not let any external factor influence your judgment. You must not speculate about what evidence there might have been. You must approach the evidence with detachment and objectivity and should not be guided by emotion. You should put aside all feeling of sympathy for or prejudice against, the accused or anyone else. No such emotion should influence your decision.
6. You and you alone must decide what evidence you accept and what evidence you do not accept. You have seen the witnesses give evidence before this court, their behavior when they testified and how they responded during cross-examination. Applying your day to day life experience and your common sense as representatives of the society, consider the evidence of each witness and decide how much of it you believe. You may believe all, part or none of any witness' evidence.

7. Experience has shown that victims of sexual offences may react in different ways to what they went through. Some, in distress or anger may complain to the first person they see. Some, due to shame, fear, shock or confusion may not complain for some time or may not complain at all.
8. When the complainant gave evidence she said she is 16 years old. You may have come across children of that age. You will have an idea of the way they think, talk and the way they describe things. It would be a mistake to think that children behave in the same way as adults, because their reaction to events is conditioned by their personal experience and immaturity and not by any moral or behavioural standard taught or learned. What happened in this particular case is, however, a decision for you to make. Your task is to decide whether you are sure that the complainant has given you a truthful and a reliable account of her experience concerning the offences the accused is charged with.
9. When you assess the testimony of a witness, you should bear in mind that a witness may find this court environment stressful and distracting. Witnesses have the same weaknesses you and I may have with regard to remembering facts. Sometimes we honestly forget things or make mistakes regarding what we remember.
10. In assessing the credibility of a particular witness, it may be relevant to consider whether there are inconsistencies in his/her evidence. That is, whether the witness has not maintained the same position and has given different versions with regard to the same issue. This is how you should deal with inconsistencies. You should first decide whether that inconsistency is significant. That is, whether that inconsistency is fundamental to the issue you are considering. If it is, then you should consider whether there is any acceptable explanation for it. You may perhaps think it obvious that the passage of time will affect the accuracy of memory. Memory is fallible and you might not expect every detail to be the same from one account to the next. If there is an acceptable explanation for the inconsistency, you may conclude that the underlying reliability of the account is unaffected.

11. However, if there is no acceptable explanation for the inconsistency which you consider significant, it may lead you to question the reliability of the evidence given by the witness in question. To what extent such inconsistencies in the evidence given by a witness influence your judgment on the reliability of the account given by him/her is for you to decide.
12. Therefore, if there is an inconsistency that is significant, it might lead you to conclude that the witness is generally not to be relied upon; or, that only a part of his/her evidence is inaccurate; or you may accept the reason he/she provided for the inconsistency and consider him/her to be reliable as a witness.
13. You may also consider the ability and the opportunity a witness had, to see, hear or perceive in any other way what he/she said in evidence. You may ask yourself whether the evidence of a witness seem reliable when compared with other evidence you accept. These are only examples. It is up to you how you assess the evidence and what weight you give to a witness' testimony.
14. Based on the evidence you decide to accept, you may decide that certain facts are proved. You may also draw inferences based on those facts you consider as directly proved. You should decide what happened in this case, taking into account those proved facts and reasonable inferences. However, when you draw an inference you should bear in mind that that inference is the only reasonable inference to draw from the proved facts. If there is a reasonable inference to draw against the accused as well as one in his favour based on the same set of proved facts, then you should not draw the adverse inference.
15. In this case, there are certain facts which are agreed by the prosecution and the defence. You have been given copies of those admitted facts. You should consider those facts as proven beyond reasonable doubt.
16. As a matter of law you should remember that the burden of proof always lies on the prosecution. An accused is presumed to be innocent until proven guilty. This means that it is the prosecution who should prove that the accused is guilty

and the accused is not required to prove that he is innocent. The prosecution should prove the guilt of the accused beyond reasonable doubt in order for you to find him guilty. You must be sure of the accused person's guilt.

17. In order to prove that the accused is guilty, the prosecution should prove all the elements of the offence beyond reasonable doubt. If you have a reasonable doubt in respect of any element of an offence the accused is charged with, as to whether the prosecution has proved that element, then you must find the accused not guilty of that offence. A reasonable doubt is not a mere imaginary doubt but a doubt based on reason. I will explain you the elements of the offences in a short while.
18. You are not required to decide every point raised by lawyers in this case. You should only deal with the offences the accused is charged with and matters that will enable you to decide whether or not that charges have been proved.
19. You will not be asked to give reasons for your opinion. In forming your opinion, it is always desirable that you reach a unanimous opinion. But it is not necessary.
20. Let us now look at the Information. The Director of Public Prosecutions has charged the accused for the following offences;

FIRST COUNT

Statement of Offence

RAPE: contrary to section 207(1) and (2)(a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

JOSEVATA HENAO between the 1st day of November 2015 to the 30th day of November 2015 at Nasinu, in the Central Division had carnal knowledge of **AK** without her consent.

SECOND COUNT

Statement of Offence

RAPE: contrary to section 207 (1) and (2)(a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

JOSEVATA HENAO between the 1st day of January 2016 to the 31st day of

January 2016 at Nasinu in the Central Division had carnal knowledge of AK without her consent.

21. Though the accused is charged with two counts of rape you should remember to consider each count separately. You must not assume that the accused is guilty of the other count just because you find him guilty of one count. You must be satisfied that the prosecution has proved all the elements of each count separately in order for you to find the accused guilty of both counts.
22. To prove the offence of rape, the prosecution must prove the following elements beyond reasonable doubt;
 - a) the accused;
 - b) penetrated the vagina of the complainant with his penis;
 - c) without the consent of the complainant; and
 - d) the accused knew or believed that the complainant was not consenting; or the accused was reckless as to whether or not she was consenting.
23. The first element is concerned with the identity of the person who committed the offence. The prosecution should prove beyond reasonable doubt that it was the accused who committed the offences.
24. When you consider the evidence on the identification of the accused in respect of each offence, please bear in mind that an honest and a convincing witness can still be mistaken. Mistaken recognition can occur even of close relatives and friends. Therefore, you should closely examine the following circumstances among others when you evaluate the evidence given by the complainant on identification of the accused in relation to each offence;
 - a) Duration of observation;
 - b) The distance within which the observation was made;
 - c) The lighting condition at the time the observation was made;
 - d) Whether there were any impediments to the observation or was something obstructing the view; and
 - e) Whether the complainant knew the accused and for how long.

25. The second element involves the penetration of the complainant's vagina with the penis. The law states that this element is complete on penetration to any extent. Therefore, it is not necessary to have evidence of full penetration or ejaculation. A slightest penetration is sufficient to satisfy this element.
26. The third and the fourth elements are based on the issue of consent. To prove the third element of the offence of rape, the prosecution should prove that the accused penetrated the complainant's vagina without her consent.
27. You should bear in mind that consent means, consent freely and voluntarily given by a person with the necessary mental capacity to give consent and the fact that there was no physical resistance alone shall not constitute consent. A person's consent to an act is not freely and voluntarily given if it is obtained under the following circumstances;
 - a) by force; or
 - b) by threat or intimidation; or
 - c) by fear of bodily harm; or
 - d) by exercise of authority.
28. Apart from proving that the complainant did not consent for the accused to insert his penis inside her vagina, the prosecution should also prove that, either the accused knew or believed that the complainant was not consenting; or the accused was reckless as to whether or not the complainant was consenting. This is the fourth element of the offence of rape.
29. What is meant by 'reckless as to whether or not she was consenting'? If the accused was aware of the risk that the complainant may not be consenting for him to penetrate her vagina and having regard to those circumstances known to him it was unjustifiable for him to take the risk and penetrate the complainant's vagina, you may find that the accused was reckless as to whether or not the complainant was consenting. Simply put, you have to see whether the accused did not care whether the complainant was consenting or not.

30. In the event you are satisfied that the prosecution has proved beyond reasonable doubt that the accused penetrated the complainant's vagina with his penis, but you find that the prosecution has failed to prove either the third element or the fourth element beyond reasonable doubt; then you should find the accused not guilty of rape and consider whether the accused is guilty of the lesser offence of defilement.
31. A person who penetrates the vagina of a complainant who is between the age of 13 and 16 years with his penis is guilty of the offence of defilement under section 215(1) of the Crimes Act. It is a defence to this offence if it appears to you that the accused had reasonable cause to believe, and did in fact believe, that the complainant was of or above the age of 16 years. However, it is not a defence that the complainant consented to sexual intercourse when it comes to the offence of defilement.
32. Please remember that knowledge and intention of the accused can only be inferred based on the other proven facts because you will not find direct evidence regarding same.

Prosecution case

33. The complainant said in her evidence that;
- a) *In November 2015 she was residing at Lot 51 Pilling Road with her grandparents. Her cousin sister, the accused, three other cousins and her uncle also lived there. One day during the month of November 2016 around 3am to 4am she heard someone calling her from outside while she was sleeping in her bedroom. She then saw the accused standing outside her window. He asked her to open the back door. When she opened the door she could smell liquor from him.*
 - b) *The accused then took her hand and took her to the toilet saying that he wants to show her something. He then locked the toilet door and took his clothes off. He also removed her clothes. When the accused took her clothes off she wanted to shout and she told him not to do that. She did not shout because the accused put his hand on her mouth. Then the accused made her sit on the toilet pan and inserted his penis inside her vagina. She felt pain. She said she did not consent to this and she was shocked and confused.*
 - c) *She said the accused had his penis inside her vagina for 10 minutes and then he wore his clothes and went to his room. He told her not to tell anyone. Then she wore her clothes, went back to her room and slept. After the incident she told her*

father that her cousin 'Joe' had done something bad to her. Her father did not do anything about it. She said she did not tell her father exactly what happened because she was scared that the father might do something to the accused. She said the father was residing in the next house which is at Lot 50. She did not tell anyone else because she was scared and confused.

- d) In January 2016 when she was sleeping in her bedroom she heard the accused calling her from outside around 3am and 4am. The accused asked her to open the back door for him. After she opened the back door the accused took her hands and took her inside the same toilet. The accused closed the door and took his clothes off and also hers. She struggled when the accused was removing her clothes. She wanted to run outside but she couldn't as the accused was standing in front of the door. Then the accused made her sit on the toilet pan by putting his hands around her waist and he licked her vagina. Then he inserted his penis inside her vagina. She wanted to shout but she couldn't because the accused put his hands around her mouth. She said she did not give her consent for the accused to do this.*
- e) She said the accused's penis was inside her vagina for 10 minutes and thereafter he wore his clothes, told her not to tell anyone and went back to his room.*
- f) After that incident she told her sister Alanieta about it. She said she told her that the accused had sexual intercourse with her. She also told her best friend Fane that her cousin brother had sexual intercourse with her. She did not tell her father about the incident because she was scared and confused. She did not tell her grandparents because she respected them.*
- g) Thereafter she contacted the school counsellor and informed him of what happened to her in November 2015 and in January 2016. She identified the accused in court. Her school counselor referred her to the Social Welfare and the Social Welfare took her to the Valelevu Police Station.*
- h) She said she was residing with her grandparents because her parents got separated when she was a child. She said she was 15 years in November 2015 and in January 2016.*
- i) She said she opened the door for the accused in January 2016 because she thought of him as her brother. She had known the accused since the age of 5 years.*
- j) She said the passage leading to the back door had no light and it was dark when she opened the door for the accused. She could recognize the accused from his physical features as he was broad and was dark in complexion and also from his voice. She said the other males who were residing in the same house at that time were her three cousins and her uncle. She said the physical features of her other three male cousins are different from the accused. The accused's voice is also different from the other cousins.*
- k) During cross examination she agreed that altogether there were about ten people who were living in the house. She said that her grandparents usually do their morning devotion around 4am and 5am. She agreed that her grandparents' room was just opposite her bedroom and Grace's room was just next to hers. She agreed that if someone is talking outside the toilet door it can be heard from someone*

inside her grandparents' room. She also agreed that the toilet in which the incidents took place is a narrow toilet and it would be about the same size of the witness box. She said she knew that it was 3am to 4am in the morning because when she came back to the room after the incident she checked the time from her phone and the time was around 4.30am. She said she did not inform her grandparents of what happened because she was shy and confused over what happened. She did not knock on Grace's door and tell her because she was scared, shy and confused. She did not inform her sister who was living with her father in the next house because she was confused.

- l) She said the incident in January 2016 also took about 10 minutes and she came to know the time through her phone in her bedroom. She said the time on the phone was 4.30. She could not recall the date. But she could recall there was school the next day. She said after she checked the time, she went to sleep. She said 'yes' when she was asked whether she had a test the next day.
- m) She agreed that the people in her house generally wake up around 4.30am. She agreed that the toilet seat was only about 40cm high from the floor level. She said the accused bent down a bit when he inserted his penis inside her vagina.
- n) She agreed that she was not happy to live with her grandparents because they were very strict with her and would not allow her to hang out with her friends in the neighborhood. She admitted that the accused and her cousin Grace used to tell her off when they saw her hanging out with her friends in the neighborhood and also inform her grandparents. She agreed that she told her sister Alanieta that the grandparents were ill-treating her.
- o) She agreed that she used to tell her grandparents that she will be at her father's house next door and then hang out with her friends. She admitted that she snuck out of the house and was talking to couple of people on the road on the day they had a party for Grace's graduation. She said she can't recall when it was suggested that the accused screamed at her and told her to get back in the house when he found her that day. She said she can't recall when it was suggested that it was after this incident that she spoke to the counsellor. She agreed that her family including the accused stopped her from having fun. They wouldn't allow her to meet and talk to boys. She agreed that she was treated unfairly at the grand parents' house.
- p) She agreed that she told her best friend that the incident happened before the schools started in January.
- q) When it was suggested to her that the incident did not happen as she described, she said she did not agree with that.
- r) During re-examination she said that she remember there was a test on the following day after each incident because she focused on her tests and did not want to tell anyone about what happened. She said Grace is the accused's elder sister.
- s) She waited until Thursday to call the counsellor after taking his number on Monday because she forgot the number until she topped up her phone on Thursday.

34. Next witness was the complainant's father. He said;

- a) *In the month of November 2015 the complainant came to him one afternoon and complained that her cousin brother Jovi asks her at night to open the door for him while he is intoxicated and he makes attempts on her. When he asked her whether there was any physical confrontation she said 'no'. When he told the complainant that he will speak to her grandfather, she told him not to do that. He noted that the complainant was frightened about him confronting the grandfather. He said he had known the accused for about 3 years.*
- b) *During cross examination he agreed that the accused and his sister moved into Lot 51 Pilling Road in 2007. He said he used to meet the complainant twice a week. He said he is not aware that the complainant wanted to withdraw the complaint against the accused.*

35. Next prosecution witness was the complainant's sister. She said;

- a) *She was residing at Pilling Road with her father from January 2015 for about 1½ hours. One day in January 2017 the complainant came to her and told her that one night the accused came back from drinking, knocked at her window for her to open the door and after the complainant opened the door he forced the complainant into her room and had sexual intercourse with her. She was not told how many times this happened. She said the complainant looked scared when she relayed this story.*
- b) *During cross examination she said that the complainant came to her to complain about the grandparents many times. She said the complainant complained about the incident in February 2016.*

36. The fourth prosecution witness said that;

- a) *At the beginning of the school term in 2016 the complainant was her best friend. She said the complainant had told her about her family problems. Apart from that the complainant had told her during school holidays that the complainant's cousin brother 'Jovi' forced her to have sex with her. When the complainant was telling this to her she noticed that the complainant was scared. She encouraged the complainant to seek advice from the counsellor.*
- b) *During cross examination she said the counsellor she advised the complainant to meet was her father. She said the complainant told her about the incident during the holidays while they were walking along the Pilling Road. The complainant told her about the family problems at school. She said she didn't tell the police that the complainant looked scared when she told her the story because the police didn't ask her that question.*

37. The fifth prosecution witness said that;

- a) *He is a counsellor attached to the Ministry of Education. In February 2016 when he was conducting training at Lautoka, the complainant called him and informed*

him that she was sexually abused. When they had the face to face discussion on the following Monday the complainant informed him that she was forced by her cousin 'Joe' to have sexual intercourse, and that she was sexually abused two times. He said the complainant cried while she was disclosing the story.

- b) During cross examination he agreed that the complainant stayed at his house for one night after the matter was reported to the police since there was no other place for her to stay.

38. Final witness for the prosecution was Dr. Elvira Ongbit. She said that;

- a) She medically examined the complainant in February 2016. She tendered the medical report as PE 1. She noted three healed hymenal lacerations. In her opinion these injuries were caused by something that went through the vaginal opening. She said if an injury is healed then it would be more than two weeks old. At D14 in her report, she noted that there were two incidents in November 2015 and one incident in the 3rd week of January 2016.
- b) During cross examination she said what she wrote in D14 was based on what the complainant told her.

39. At the end of the prosecution case you heard me explain several options to the accused. He had those options because he does not have to prove anything. The burden of proving his guilt beyond reasonable doubt remains on the prosecution at all times. The accused chose to give sworn evidence and to call one witness.

Defence case

40. The accused said in his evidence that;

- a) He moved into Lot 51 Pilling Road to live with his grandparents in 2007. He denied the two allegations against him. He said the grandparents were very religious and very strict. They always kept an eye on the complainant and his sister because they are girls.
- b) He said the complainant was actually good but he noticed a change when she started high school. The complainant became rebellious when talking to the grandparents. He and his sister were bit offended because of this. He said sometimes the complainant used to sneak out of the house during the night and due to that she got told off by her grandparents. As a big brother he also had to tell her off.
- c) The grandparents' bedroom is situated opposite the complainant's bedroom. He said that the toilet the complainant was referring to is very small. The photographs shown to the complainant marked for identification as MFI-B1 to MFI-B6 were taken by him and he tendered the said photographs as DE 1 to DE 6. He said it is

not possible for him to bend his knees where it is marked 'X' in DE 1 because it is very narrow. He tendered a photograph where he is standing on the side of the toilet pan as DE 7. He tendered the photograph taken from the back of the house as DE 8.

- d) To his knowledge the grandparents would be awake from around 4.30am. He said if someone calls out from the back of the house it can be heard from the front.*
- e) He said his sister Grace's graduation was on 5th February 2016. That night around 10 o'clock he caught the complainant talking with two boys at the back of her father's house and he told her off. He could tell that the complainant was upset.*
- f) He said he was informed of the allegations by his sister and he got shocked. He said he is not sure why the complainant made these allegations against him.*
- g) During cross examination he said he and his cousin brother Marika, have the same built and the complexion. He agreed that his voice is different from the other four cousin brothers.*

41. Second witness for the defence was the accused's sister. She said that;

- a) She had been living with her grandparents since 2003. The complainant moved in there in 2005 or 2006. The accused moved into that house in 2007. Her grandparents were very loving and they were very religious. She had a good relationship with the complainant and their bedrooms were right next to each other. She said the complainant was a good kid but when she started high school her behavior changed. The complainant would not listen to the grandparents thereafter and she started to lie about her whereabouts.*
- b) She came to know about the allegations against her brother on 15/02/16 when an officer from Social Welfare came to their house along with a police officer. She was shocked to hear that.*
- c) During cross examination she said that the accused normally came home around 11pm or 12am.*

42. That is a summary of the evidence adduced by the prosecution and the defence. Please note that I have only referred to the evidence which I consider important to explain the case and the applicable legal principles to you. If I have not referred to certain evidence which you consider important, you should still consider that evidence and give it such weight you may think fit.

43. The defence says that the complainant is not a credible and a reliable witness; that the complainant's version is not probable. The defence alleges that there is an ulterior motive behind the allegations made against the accused.

44. The defence says that there are inconsistencies in the evidence given by the complainant. The defence says that it is not physically possible for the incidents to take place inside the relevant toilet in the manner described by the complainant. The defence points out that the complainant had described both incidents in the same manner and the events that took place after the two incidents according to the complainant are also exactly the same.
45. You have heard evidence that the complainant had complained about the alleged incident to her father, her sister, to her best friend and then to a counsellor.
- a) *You would recall that the second prosecution witness, the father of the complainant said that the complainant told him in November 2015 that there was no physical confrontation though she made a complaint to him against the accused.*
 - b) *The third prosecution witness said that the complainant told her in February 2016 among other things that the accused forced the complainant into her room and had sexual intercourse with her. She was not told when this happened or how many times it happened. It should also be noted that according to this witness the incident complained of took place inside the complainant's room and not inside the toilet. The complainant's evidence was that the two incidents took place inside the toilet.*
 - c) *The fourth prosecution witness said that the complainant told her during school holidays at the beginning of the school term in 2016 that the complainant's cousin brother 'Jovi' forced her to have sex with her.*
 - d) *The fifth prosecution witness said that when he had the face to face session with the complainant the complainant told him that she was forced by her cousin 'Joe' to have sexual intercourse, and that she was sexually abused two times.*
46. The prosecution says that they are relying on recent complaint evidence. In this regard you should consider whether the complainant made a prompt complaint to someone regarding the incident and whether she sufficiently complained of the offences the accused is charged with.
47. Such complaint need not specifically disclose all the ingredients of the offence and describe every detail of the incident, but should contain sufficient information

with regard to the alleged conduct of the accused. However, please remember that this evidence of recent complaint is not evidence as to what actually happened between the complainant and the accused. It may only assist you to decide whether the complainant is consistent and whether or not the complainant has told you the truth. In the end you are deciding whether the complainant has given a truthful account of her encounter with the accused.

48. You heard the evidence of the sixth witness for the prosecution, the doctor who medically examined the complainant. She gave her opinion based on what she observed when she examined the complainant. You are not bound to accept that evidence. It is a matter for you to give whatever weight you consider appropriate with regard to the observations made and the opinion given by the doctor. The defence points out as one of the inconsistencies the fact that the complainant had told the sixth prosecution witness that there were two incidents in November 2015 and one in the 3rd week of January 2016.
49. You must remember to assess the evidence for the prosecution and defence using the same yardstick but bearing in mind that always the prosecution should prove the case against the accused beyond reasonable doubt.
50. I must again remind you that even though an accused person gives evidence, he does not assume any burden of proving his case. The burden of proving the case beyond reasonable doubt remains on the prosecution throughout. An accused's evidence must be considered along with all the other evidence and you can attach such weight to it as you think appropriate.
51. Generally, an accused would give an innocent explanation and one of the three situations given below would then arise in respect of each offence;
 - (i) You may believe his explanation and, if you believe him, then your opinion must be that the accused is 'not guilty'.

(ii) Without necessarily believing him you may think, 'well what he says might be true'. If that is so, it means that there is reasonable doubt in your mind and therefore, again your opinion must be 'not guilty'.

(iii) The third possibility is that you reject his evidence. But if you disbelieve him, that itself does not make him guilty. The situation would then be the same as if he had not given any evidence at all. You should still consider whether prosecution has proved all the elements beyond reasonable doubt. If you are sure that the prosecution has proved all the elements, then your proper opinion would be that the accused is 'guilty' of the offence.

52. Any re-directions?

53. Madam and Gentlemen Assessors, that is my summing up. Now you may retire and deliberate together and may form your individual opinion on the charges against the accused. You may peruse the exhibits if you wish to do so. When you have reached your separate opinion you will come back to court and you will be asked to state your separate opinion.

54. Your possible opinion should be as follows;

1st count (rape) - guilty or not guilty

If not guilty

Defilement - guilty or not guilty

2nd count (rape) - guilty or not guilty

If not guilty

Defilement - guilty or not guilty



Vinsent S. Perera

JUDGE

Solicitors for the State : Office of the Director of Public Prosecutions, Suva.
Solicitor for the Accused : Pacific Chambers, Barristers & Solicitors, Suva.