

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**Criminal Case No.: HAC 53 of 2016**

**STATE**

vs.

**UMESH CHAND**

**Counsel** : Ms S. Naibe with Ms R. Uce for the State  
Ms S. Dunn for the Accused

**Dates of Trial** : 7 and 9 February 2017

**Date of Summing Up** : 9 February 2017

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**SUMMING UP**

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1. Madame and Gentlemen assessors. It is now my duty to sum up to you. In doing so, I will direct you on matters of law which you must accept and act on. You must apply the law as I direct you in this case.
2. As far as the facts of this case are concerned, what evidence to accept, what weight to put on certain evidence, which witnesses are reliable, these are matters entirely for you to decide for yourselves. So if I express any opinion on the facts, or if I appear to do so it is entirely a matter for you whether you accept what I say or form your own opinions. In other words you are masters and the judges of facts.
3. Counsel for the prosecution and the defence have made submissions to you about how you should find the facts of this case, they have the right

to make these comments because it is part of their duties as counsel. However you are not bound by what counsel for either side has told you about the facts of the case. If you think that their comments appeal to your common sense and judgment, you may use them as you think fit. You are the representatives of the community in this trial and it is for you to decide which version of the evidence to accept or reject.

4. You will not be asked to give reasons for your opinions, but merely your opinions themselves, and you need not be unanimous although it would be desirable if you could agree on them. Your opinions are not binding on me and I can assure you that I will give them great weight when I come to deliver my judgment.
5. On the issue of proof, I must direct you as a matter of law that the onus or burden of proof lies on the prosecution to prove the case against the accused. The burden remains on the prosecution throughout the trial and never shifts. There is no obligation upon the accused to prove his innocence. Under our system of criminal justice an accused person is presumed to be innocent until he or she is proved guilty.
6. The standard of proof is one of proof beyond reasonable doubt. This means that before you can find the accused guilty of the offence charged, you must be satisfied so that you are sure of his guilt. If you have a reasonable doubt about the guilt of the accused, then it is your duty to express an opinion that the accused is not guilty. It is only if you are satisfied so that you feel sure of the guilt of the accused that you can express an opinion that he is guilty.
7. There has been very little evidence in this case; just the testimony of the complainant and that of the accused. You would assume that there could have been more evidence but you are not to speculate on that. You are required to judge this case solely on the evidence brought before this Court and not on anything else. Above all you are not to speculate.
8. I ask you not to be influenced by issues of morality or what you think would be acceptable behaviour on the part of young girls or single men. You are to approach the evidence dispassionately without judgment of others' lifestyles. You are to approach the evidence without reference to racial profiling.

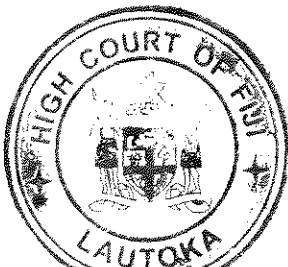
9. The accused faces one charge of rape. In our law and for the purposes of this trial, rape is committed when a person penetrates the vagina of another with his penis and where the person doing that does not have the consent of the victim or is reckless to whether she was consenting or not.
10. This has been a very brief case and I am sure that the evidence is still fresh in your minds. However it is my duty to remind you of the main points of it.
11. The complainant in this case was Vani the first and principal witness for the prosecution. She told us that on the 13<sup>th</sup> February 2016 she went to town with Mereani to watch a game at Churchill Park. After the game they stayed in town and as it was getting dark they met up with Sera another friend. They were sitting near the Mall when Sera recognized the accused whom she referred to as "Messy" passing in a taxi. They called out to each other and Messy invited the three girls to go and drink with him. They agreed and went in the taxi to Naikabula to Sera's house. In the house there were two other people, females she said. While they were drinking Messy asked Sera if he could have sex with one of the girls. The girls refused but he forced Mereani to go into the room. After about 4 to 5 minutes he came out of the room naked and Mere was still inside the room. He forced Vani to go into the room but she refused and they continued drinking. Messy and Mere joined the group drinking just as the drinks were about to finish. Messy then told them to go to Lomolomo and drink. Messy went to get more drinks and was away for about an hour. He returned without drinks but with a van. They all got in the van and went to Natabua to pick up a parcel. They didn't stop at Natabua but stopped at a shop near Lomolomo to buy drinks and then drove on to Lomolomo. They carried on drinking there, under a tree. Messy forced one of the girls to have sex with him. He was acting rough. Neither Vani nor Mereani wanted to have sex with him. He smashed a beer bottle and threatened her with it. He threatened Sera to make Vani have sex with him. Sera told her to do it. The witness refused so Messy slapped her cheek. He pulled her out of the van and threw her on the grass. He tore her clothes. He spread a carton on the ground and pulled her under a tree. He forced her to take off her clothes. He told her that if she didn't agree he would throw her in the water and kill her. Vani tried to get away but he lay on top of her. She was kicking but he penetrated her for about 5 minutes. The van moved away for a few metres. Vani ran to the van

and got in but Messy ran after her dragged her out and took her back to the same spot and again had sex with her. At this stage the van drove away. Later the Police came. Messy hid her so that the Police wouldn't see her and with his hands strangling her told her not to shout. Vani said she wouldn't shout so he released her. She then asked the Police for help she was dressed only in panties and bra. Messy had disappeared. She was taken in for Police enquiries and then taken to the Lautoka hospital for a medical examination.

12. The second witness for the Prosecution was the lady medical officer who examined Vani at Lautoka hospital in the morning of the 14<sup>th</sup> February 2016.
13. The medical examination revealed that there was dirt and grass in her pubic hair and there was minimal bleeding from the entrance to her vagina. Her hymen was not intact but appeared to have been freshly broken. There was tenderness on her upper thighs and on the perineum.
14. The doctor opined that her medical findings were consistent with the allegation of rape.
15. Well, that was the end of the prosecution case.
16. You heard me explain to the accused what his rights in defence are and he elected to give sworn evidence. Now I must direct you that in giving evidence the accused does not have to prove anything. The fact that he gives evidence does not relieve the State from proving their case to you so that you are sure.
17. Even if you don't believe a word he says does not make him guilty if the State has not proved their case beyond reasonable doubt.
18. The accused told us that on the 13<sup>th</sup> February last year he had finished work and was on his way home when he met Sera and she said that she wanted to drink beer she was with 2 other girls and they all got into a taxi and went to Sera's friend's house. On the way he bought a carton of beer. In the house there was an old Indian man who was Sera's friend and a young Fijian man. They all started drinking beer in the living room. After drinking one carton they said that they wanted to go to a night club in Nadi and told him to get transport for them. The accused

went to Lautoka bus stand and hired a van that had been arranged by Sera. He went to a liquor store to buy more beer and then returned to Naikabula. They drank some of the bottles and put some beer in the van to go to Nadi. On the way the girls decided that they would drink at Lomolomo to kill time before the nightclub got started. The accused bought more beer at Saweni. In the van he only spoke to Sera not the other two girls. It started to rain so when they got to Lomolomo they stayed in the van drinking. The girls started fighting and asked the accused to give them money so they could go to the nightclub. The accused left them fighting and walked away.

19. He insisted that he had never undressed that evening, nor did he have sex with anybody. He had never held a bottle, let alone smashed one and he had never left the van.
20. Well that was all of the evidence for you to judge the case on. I direct you not to decide whose story you believe; I ask you to consider the Prosecution case and decide if it proves to you beyond reasonable doubt that the accused is guilty of rape. In this exercise you may take into account the accused's evidence to determine if it does cast doubt on the prosecution case. If you think that what the accused says is true or may be true then you will find him not guilty. It is only if you think that the prosecution has proved the case to you beyond reasonable doubt and that the evidence of the accused does not shake that view that you can find him guilty.
21. You may retire now and consider your opinions, but before you do I shall ask Counsel if they wish me to change anything in these directions.
22. Counsel?
23. Please let a member of any staff know when you are ready.



**At Lautoka**  
**9<sup>th</sup> February 2017**

**P. Madigan**  
**JUDGE**