

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

**Criminal Case No.: HAC 60 of 2015**

**STATE**

**V**

- 1. INIA NAQIA**
- 2. MAIKELI SAUKURU**

**Counsel** : Ms. S. Kiran for the State.  
: Ms. V. Diroiroy for the first Accused.  
: Ms. J. Manuelli for the second Accused.

**Dates of Hearing** : 16, 20, 21, 22 November, 2018  
**Closing Speeches** : 23 November, 2018  
**Date of Summing Up** : 27 November, 2018

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**SUMMING UP**

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**Ladies and Gentleman Assessors**

1. It is now my duty to sum up this case to you.

**ROLE OF JUDGE AND ASSESSORS**

2. In doing so, I will direct you on matters of law, which you must accept and act upon. On matters of facts, however, which witness to accept as reliable, what evidence to accept and what evidence to reject, these are matters

entirely for you to decide for yourselves. If I do not refer to a certain portion of evidence which you consider as important, you should still consider that evidence and give it such weight as you wish.

3. So, if I express an opinion on the facts of the case, or if I appear 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 facts.
4. You decide what facts are proved and what inferences you properly draw from those facts. You then apply the law as I explain it to you and form your own opinion as to whether the accused persons are guilty or not.
5. The Counsel have made submissions to you about how you should find the facts of this case. That is in accordance with their duties as State Counsel and Defence Counsel in this case.
6. Their submissions were designed to assist you as judges of facts. However, you are not bound by what they said. You can act upon it if it coincides with your own opinion. As representatives of the community in this trial it is you who must decide what happened in this case and which version of the facts to accept or reject.
7. You will not be asked to give reasons for your opinions and your opinion need not be unanimous. Your opinions are not binding on me but it will assist me in reaching my judgment.

### **BURDEN OF PROOF AND STANDARD OF PROOF**

8. As a matter of law, the burden of proof rests on the prosecution throughout the trial and it never shifts to the accused. There is no obligation on the accused persons to prove their innocence. Under our system of criminal justice, an accused person is presumed to be innocent until he or she is proven guilty.

9. The standard of proof in a criminal trial is one of proof beyond reasonable doubt. This means you must be satisfied so that you are sure of the accused persons guilt, before you can express an opinion that he or she is guilty. If you have any reasonable doubt about their guilt, then you must express an opinion that he or she is not guilty.
10. Your decision must be based exclusively upon the evidence which you have heard in this court and nothing else. You are not to assume or speculate on the facts of the case. You must disregard anything you must have heard about this case outside of this courtroom.
11. You are to only concentrate on the evidence that has been adduced in this courtroom and nothing else.
12. You must decide the facts without prejudice or sympathy either to the accused persons or the complainant. Your duty is to find the facts based on the evidence without fear, favour or ill will.
13. Evidence is what the witnesses said from the witness box, documents or other materials tendered as exhibits. You have heard questions asked by the counsel and the court. They are not evidence unless the witness accepts or has adopted the question asked.
14. There are two (2) accused persons who are charged with one (1) count of rape each. You must consider the evidence against each accused separately just because you may think that one accused is guilty, it does not mean that the other is. This also applies with findings of not guilty.

### **INFORMATION**

15. The accused persons are charged with the following offence: (a copy of the information is with you).

## **FIRST COUNT**

### *Statement of Offence*

**RAPE**: Contrary to section 207(1) and 2 (a) of the Crimes Act, 2009.

### *Particulars of Offence*

**INIA NAQIA** on the 3<sup>rd</sup> day of April, 2015 at Nadi in the Western Division penetrated the vagina of **ANI TINAI**, with his penis, without the consent of the said **ANI TINAI**.

## **SECOND COUNT**

### *Statement of Offence*

**RAPE**: Contrary to section 207(1) and 2 (a) of the Crimes Act, 2009.

### *Particulars of Offence*

**MAIKELI SAUKURU** on the 3<sup>rd</sup> day of April, 2015 at Nadi in the Western Division penetrated the vagina of **ANI TINAI**, with his penis, without the consent of the said **ANI TINAI**.

16. To prove counts one and two the prosecution must prove the following elements of the offence of rape beyond reasonable doubt:
  - (a) The accused persons;
  - (b) Penetrated the vagina of the complainant Ani Tinai with their penis;
  - (c) Without her consent;
  - (d) The accused persons knew or believed the complainant was not consenting or didn't care if she was not consenting at the time.
  
17. In this trial the accused persons have denied committing the offence of rape. It is for the prosecution to prove beyond reasonable doubt that it was the

accused persons who had penetrated the vagina of the complainant with their penis without her consent.

18. The slightest of penetration of the complainant's vagina by the accused persons penis is sufficient to satisfy the act of penetration.
19. The first element of the offence is concerned with the identity of the persons who allegedly committed the offence.
20. The second element is the act of penetration of the complainant's vagina by the penis.
21. The third element is that of consent, you should bear in mind that consent means to agree freely and voluntarily and out of her own free will. If consent was obtained by force, threat, intimidation or fear of bodily harm or by exercise of authority, then that consent is no consent at all.
22. If you are satisfied that the accused persons had penetrated the vagina of the complainant with their penis and she had not consented, you are then required to consider the last element of the offence that is whether the accused persons knew or believed that the complainant was not consenting or did not care if she was not consenting at the time.
23. You will have to look at the conduct of both the complainant and the accused persons at the time and the surrounding circumstances to decide this issue.
24. If you are satisfied beyond reasonable doubt that the prosecution has proven beyond reasonable doubt that the accused persons had inserted their penis into the complainant's vagina without her consent then you must find the accused persons guilty as charged.

25. If on the other hand you have a reasonable doubt with regard to any of those elements concerning the offence of rape, then you must find the accused persons not guilty of the offence they are charged with.
26. As a matter of law, I have to direct you that offences of sexual nature as in this case do not require the evidence of the complainant to be corroborated. This means if you are satisfied with the evidence given by the complainant and accept it as reliable and truthful you are not required to look for any other evidence to support the account given by the complainant.
27. You must be satisfied that the prosecution has proved all the elements of both the offences beyond reasonable doubt in order for you to find the accused persons guilty. If on the other hand, you have a reasonable doubt with regard to any of those elements concerning the offences, then you must find the accused persons not guilty.

#### **ADMITTED FACTS**

28. In this trial the prosecution and the defence have agreed to certain facts which have been made available to you titled as final agreed facts.
29. The admitted facts are part of the evidence and you should accept these admitted facts as accurate, truthful and proven beyond reasonable doubt.
30. I will now remind you of the prosecution and defence cases. In doing so it would not be practical of me to go through all the evidence of every witness in detail. It was a short trial and I am sure things are still fresh in your minds. I will refresh your memory and summarize the important features. If I do not mention a particular piece of evidence that does not mean it is not important. You should consider and evaluate all the evidence in coming to your opinion in this case.

## **PROSECUTION CASE**

31. The prosecution called two witnesses to prove its case against both the accused persons.
32. The complainant informed the court on 3<sup>rd</sup> April, 2015 she was drinking alcohol with both the accused persons and one Pio Namai in the early hours of the morning at the back of a dairy shop near Saunaka Village.
33. The complainant knew both the accused persons and Pio the drinking finished after 9am. At this time the complainant went to the nearby sugar cane field to relieve herself since she was really drunk she blacked out. When she regained consciousness both the accused persons were holding her tight so that she would stay still.
34. The accused persons removed her clothes, the first accused Inia started to touch all over her body while the second accused started forcefully kissing her mouth in order to stop him she bit his lips.
35. Both the accused persons then took turns in having sexual intercourse with her by penetrating her vagina with their penis. The first accused had sexual intercourse first followed by the second accused. The complainant did not allow any of the accused persons to have sexual intercourse with her. She also remembered calling the name of her ex-boyfriend so that they would stop but they did not. This made the complainant angry, a sense of regret and loss of self-esteem came over her.
36. After the accused persons left the sugar cane field the complainant walked to the Saunaka Village, it took her about 1 ½ to 2 hours to reach the village. At the village the complainant went to the house of her friend Solomoni Qurai and asked him to take her to the Police Station.
37. Solomoni had seen the love bites on her neck and had asked her the reason for going to the Police Station. She told him about what both the accused

persons had done to her when she was drinking with them in particular after being blacked out and waking up.

38. The complainant was able to recognize both the accused persons in court.
39. In cross examination by the counsel for the first accused the complainant disagreed that around 6am to 7am that morning the first accused had left the group. The complainant noticed the love bites on her neck when she went home, she was worried about what the villagers would think of her. The complainant maintained that the first accused had sexual intercourse with her that morning although she had blacked out she felt someone touching her body when she regained consciousness she saw both the accused persons.
40. The complainant disagreed with the suggestion that because she was so drunk she had blacked out she could not really tell it was the first accused who had sexual intercourse with her.
41. The complainant maintained that the first accused was there and she saw him after she regained consciousness.
42. In cross examination by the counsel for the second accused the complainant disagreed the second accused had left the group at around 7am. The complainant disagreed the accused had come to see her the next day, she also denied that she told him that she had made a false complaint against him and after seeking forgiveness she said she would withdraw the case. The complainant also disagreed with the suggestion that the second accused did not have sexual intercourse with her that day.
43. The final prosecution witness Solomoni Qurai informed the court that at about 3pm on 3<sup>rd</sup> April, 2015 he was at his home at Saunaka Village. The complainant came and asked for his help in taking her to the Police Station.



44. The complainant told the witness that she was forcefully held and raped by Maikeli and Inia. The witness observed the complainant was not in good condition particularly her appearance that is her face and hair. The witness felt sorry for the complainant.
45. The witness took the complainant to the Police Station in his vehicle after 3pm that day he knows the two accused persons, Inia the first accused is his cousin and Maikeli the second accused is his nephew.
46. In cross examination by the counsel for the first accused the witness stated that when he spoke to the complainant he saw her face, hair, the love bites on her neck and felt sorry for her.
47. Furthermore, the witness stated when the complainant came into his house she started to cry whilst telling him what the two accused persons had done to her.

#### Ladies and Gentleman Assessors

48. Victims of sexual offences may react in different ways to what they may have gone through. As members of the community, it is for you to decide whether it was acceptable for the complainant to walk from the alleged scene and tell her friend Solomoni Qurai what she had gone through. Some in distress or anger may complain to the first person they see. Some due to fear, shame or shock or confusion, may not complain for some time or may not complain at all. A complainant's reluctance to complain in full or not at all as to what had happened could be due to shame or shyness or cultural taboo when talking about matters of sexual nature.
49. A late complaint does not necessarily signify a false complaint and on the other hand an immediate complaint does not necessarily demonstrate a true

complaint. It is a matter for you to determine what weight you would give to the fact that the complainant in this case informed her friend Solomoni Qurai immediately after she arrived at Saunaka Village on the day of the alleged incidents. When asked by her friend why she wanted to go to the Police Station the complainant told him the two accused persons had raped her after drinking together behind the dairy shop.

50. This is commonly known as recent complaint evidence. The evidence given by Solomoni Qurai, the friend of the complainant is not evidence of what actually happened between the complainant and the accused persons since Solomoni was not present and he did not see what had happened between them.
51. You are, however, entitled to consider the evidence of recent complaint in order to decide whether the complainant is a credible witness. The prosecution says the complainant told her friend what the accused persons had done to her in particular forcefully having sexual intercourse with her in the morning of 3<sup>rd</sup> April, 2015 therefore she is more likely to be truthful. On the other hand, the defence says the complainant was so drunk that morning that she falsely accused both the accused persons of raping her when they were not present at the crime scene therefore she should not be believed.
52. It is for you to decide whether the evidence of recent complaint helps you to reach a decision. The question of consistency or inconsistency in the complainant's conduct goes to her credibility and reliability as a witness. This is a matter for you to decide whether you accept the complainant as reliable and credible. The real question is whether the witness was consistent and credible in her conduct and in her explanation of it.
53. This was the prosecution case.

## Ladies and Gentleman Assessors

54. At the end of the prosecution case you heard me explain to both the accused their options. They have these options because they do not have to prove anything. The burden to prove their guilt beyond reasonable doubt remains with the prosecution at all times.
55. They could have remained silent but they chose to give sworn evidence. The first accused also called a witness.

## **DEFENCE CASE**

56. I now draw your attention to the evidence adduced by the defence during the course of the hearing. The accused persons elected to give evidence on oath and the first accused called a witness. You must then take into account what the accused persons and their witness adduced in evidence when considering the issues of fact which you are determining. You must consider their evidence and give such weight as you think fit.

## **FIRST ACCUSED**

57. The first accused Mr. Naqia informed the court that in the afternoon of 2<sup>nd</sup> April, 2015 he was at home drinking grog with his parents, wife and an aunt. The grog session finished at around 10pm or 11pm after this he went to his neighbours house to drink grog until 1 am or 2 am the next morning.
58. He asked one of his uncle's to buy him rum and cola while drinking in front of the dairy shop the complainant, the second accused and Namai came, by this time it was about 3am. They purchased 6 or 7 cans of Woodstock beer and thereafter all went about 20 meters away from the shop to drink. After a while some more beer was purchased.

59. During the drinking session nothing happened all were having fun. The accused knew the complainant the drinking ended after 6am. After 6am but before 7am he left for home at this time the complainant and the second accused Maikeli were drinking. There were about 7 others drinking at a spot beside them.
60. The accused took short cuts and reached home at around 7am. His mum was cooking he went straight to bed waking up in the afternoon at about 4pm to 5pm. When he woke up he was informed by his mother that the complainant blamed him and Maikeli for rape.
61. Upon hearing this, the accused ran to the house of the complainant to see her but she was not at home so the accused went to see Maikeli and told him what he had heard.
62. The police did not come that day so the accused went to the Police Station the next day he was told it was a public holiday so he went on Tuesday. Before going to the Police Station the accused did not meet the complainant he does not know why the complainant had made this allegation against him.
63. In cross examination by the state counsel the first accused denied making sexual advances towards the complainant during the drinking party. He also denied remaining there until the complainant had blacked out. The accused stated he had left between 6am and 7am that morning he denied making this up and also denied remaining throughout until he had forced himself on the complainant.
64. The accused agreed there was no reason for the complainant to make any false complaint against him he had gone to see the second accused because when he had left, the complainant and the second accused were there. He denied the suggestion that he had gone to see the second accused to make up a story.

65. The accused did not go to the police to tell them that the complainant had made a false complaint against him because he did not want to and also it did not come to his mind so he just went to see the complainant. The accused denied committing the offence as alleged.
66. In re-examination the accused stated that he had left for home early and he does not know what happened after he left.
67. The final witness called by the first accused Vikaili Kuaso also known as Vikaili Tuisabeto informed the court that the first accused was her son.
68. In the morning of 3<sup>rd</sup> April, 2015 the witness was boiling tea when she saw Inia coming home just before 7am. He went straight to sleep and woke up at around 5pm when the witness checked on the first accused at about 9am or 10am he was asleep.
69. In cross examination by the state counsel the witness stated that Inia resided with her but she did not know where Inia was the day before. She was specifically able to remember 3<sup>rd</sup> April, 2015 since it was Easter and that Inia had come home twenty minutes before 7 in the morning.
70. The witness was shown the police statement she had given to the police during the police investigations. She agreed that she had given a police statement and in it she had informed the police that Inia had come home between 6am and 6.30am. According to the witness what she told the police was correct.

#### Ladies and Gentleman Assessors

71. The learned state counsel in this regard was cross examining the witness about some inconsistencies in the statement she gave to the police immediately after the incident when facts were fresh in their mind with her

evidence in court. I will now explain to you the purpose of considering the previously made statement of the witness with her evidence given in court. You are allowed to take into consideration the inconsistencies in such a statement when you consider whether the witness is believable and credible as a witness. However, the police statement itself is not evidence of the truth of its contents.

72. It is obvious that passage of time can affect one's accuracy of memory. Hence you might not expect every detail to be the same from one account to the next.
73. If there is any inconsistency, it is necessary to decide firstly whether it is significant and whether it affects adversely the reliability and credibility of the issue that you're considering. If it is significant, you will need to then consider whether there is an acceptable explanation for it. If there is an acceptable explanation, for the change, you may then conclude that the underlying reliability of the evidence is unaffected. If the inconsistency is so fundamental, then it is for you to decide as to what extent that influences your judgment of the reliability of the witness.
74. The witness did not speak to Inia when he came home she wanted her son to go to Prison to teach him a lesson not to do such acts.
75. The witness could not remember the day the complaint was made against Inia, before coming to court the witness had spoken to Inia about the case in particular what he had done and for him not do it again and to think about his children. The witness maintained that she was correct in saying that Inia had come home between 6am to 6.30am.

### **DEFENCE OF ALIBI**

76. The first accused has put forward the defence of alibi. He says that he was not at the scene of crime when it was committed. As the prosecution has to

prove his guilt so that you are sure of it, he does not have to prove he was elsewhere at the time. On the contrary, the prosecution must disprove the alibi. Even if you conclude that the alibi was false, that does not by itself entitle you to convict the accused. It is a matter which you may take into account, but you should bear in mind that an alibi is sometimes invented to bolster a genuine defence.

77. The prosecution says the evidence of alibi adduced in court is unreliable and should be rejected. The prosecution further states that the evidence of the first accused mother in respect of when he came home on the day of the incident is not reliable since she cannot be sure of the time the first accused had come home on the 3<sup>rd</sup> of April therefore it is justifiable to infer that the first accused had raped the complainant before going home.
78. The first accused on the other hand says he did not commit the offence as alleged since he had left before the complainant was raped and his mother had seen him at home. The accused also says that you should not believe the complainant because she was so drunk that she wrongly implicated him. He asks you to believe him and his witness that he was at home when the complainant alleged she was raped.

#### Ladies and Gentlemen Assessors

79. It is obvious that passage of time can affect one's accuracy of memory. Hence you might not expect every detail to be the same from one account to the next.
80. Even if you conclude that the defence put forward by the first accused has not been made out that does not of itself entitle you to convict the accused person? The prosecution must still satisfy you beyond reasonable doubt of his guilt.

81. The accused has denied any wrong doing his defence is he did not commit the offence of rape.
82. This was the case of the first accused.

### **SECOND ACCUSED**

83. The second accused informed the court on 2<sup>nd</sup> April, 2015 he was drinking grog at his neighbour's house, late in the night he was invited by the complainant to go with her for a wash down. He knows the complainant since she was staying at his aunt's house.
84. The complainant, Namai and the accused went to the dairy shop it was here they were joined by the first accused Inia. All of them went behind the dairy shop to drink. The accused was unable to remember the time the drinking started and the time it ended.
85. According to the accused they were drinking and having fun after a while more beer was purchased. Just before beer was bought by Namai for the third time the first accused Inia said that he was about to leave. At this time it was early in the morning about 6.30am to 7am the accused asked the complainant to accompany him home.
86. The complainant did not agree she went and joined the other group drinking nearby. When the accused left for home no one from his group was there. He walked home but does not remember the time he arrived home, after eating he went to bed waking up around lunch time.
87. While watching movies at home in the afternoon the accused heard the complainant shouting at the village gate saying "*Inia, Maikeli police today*". Upon hearing this, the accused told his elder sister to go and get the complainant into the house. By this time the complainant went to the



house of Solomoni Qurai he was not in good terms with Solomoni. At this time the complainant was wearing a sulu only. When he had left the complainant she was not that drunk he does not know the reason why the complainant had made such an allegation against him.

88. In cross examination by the state counsel the second accused agreed that because his relationship with Solomoni Qurai was not good Solomoni gave false evidence against him. When it was suggested that Solomoni had stated in his evidence that he helped the complainant by taking her to the Police Station and that he had not seen him do anything to the complainant the accused maintained his replied that he was not in good terms with Solomoni.
89. When the accused was asked that Solomoni was not questioned by his counsel about his relationship with Solomoni not being good the accused stated that he had informed his counsel of this.
90. The accused agreed he did not remember the time he went to drink with the complainant and Namai and also did not know how long he has known the complainant also the time he started drinking and when he finished that morning. The accused also agreed he does not remember any timing that day but was specifically able to remember that he wanted to leave the group around 6.30am and 7am.
91. The reason why the accused could not remember the timing was because he was drunk. He could not remember the time he reached home but his father had informed him of the time when he met his father who was on his way to buy bread.
92. The accused denied the allegation against him he stated that when the complainant came to the village gate and was shouting the villagers were there. It was about 5 pm when the complainant was shouting with a bottle in her hand. When it was suggested that the complainant was at the Police

Station at around 3.58pm as per her Medical Examination Form the accused disagreed. The accused did not know of any reason why the complainant had made a false complaint against him.

93. The accused did not go to the Police Station to make a complaint against the complainant for making a false complaint against him since he was told to wait for the police to come to him. The accused disagreed with the suggestion that he did not go to the Police Station because he knew the complaint against him was true and he was just waiting for the police to come and take him. The accused agreed that while waiting for the police to come he was with the first accused Inia Naqia and his family. There was a discussion about the complaint made against both of them and in this discussion he agreed to the story that he was going to tell.
94. In cross examination by the counsel for the first accused the second accused agreed that the first accused had left straight after he indicated he wanted to leave which was around the break of daylight.
95. This was the case of the second accused.

### **ANALYSIS**

96. The prosecution alleges that after 9am on 3<sup>rd</sup> April, 2015 the complainant went to the nearby sugar cane field to relieve herself since she was really drunk she blacked out. When she regained consciousness both the accused persons were holding her tight so that she would stay still. The accused persons removed her clothes and forcefully had sexual intercourse with her by penetrating her vagina with their penis. The complainant did not consent to any of the accused persons to have sexual intercourse with her.
97. After the accused persons left the sugar cane field the complainant walked to the Saunaka Village. At the village the complainant went to the house of her friend Solomoni Qurai and asked him to take her to the Police Station.

98. She told Solomoni about what both the accused persons had done to her when she was drinking with them in particular after being blacked out and waking up. Solomoni took the complainant to the Police Station.
99. Solomoni Qurai informed the court that at about 3pm on 3<sup>rd</sup> April, 2015 he was at his home at Saunaka Village. The complainant came and asked for his help in taking her to the Police Station.
100. The complainant told the witness that she had been raped by Maikeli and Inia. The witness observed the complainant was not in good condition particularly her appearance that is her face and hair. The witness felt sorry for the complainant after 3pm he took the complainant to the Police Station.
101. Both the accused persons have denied committing the offences as alleged. During the drinking session nothing happened all were having fun.
102. According to the first accused the drinking ended after 6am but before 7am he left for home at this time the complainant and the second accused Maikeli were drinking. There were about 7 others drinking at a spot beside them.
103. The accused took short cuts and reached home at around 7am his mum was cooking he went straight to bed waking up in the afternoon at about 4pm to 5pm.
104. Vikaili Kuaso also known as Vikaili Tuisabeto informed the court that the first accused was her son.
105. In the morning of 3<sup>rd</sup> April, 2015 she was boiling tea when she saw Inia coming home just before 7am. He went straight to sleep and woke up at around 5pm when the witness checked on the first accused at about 9am or 10am he was asleep.

106. The second accused was invited by the complainant to go with her for a wash down. All went behind the dairy shop to drink. According to this accused they were drinking and having fun after a while more beer was purchased. It was early in the morning about 6.30am to 7am the accused asked the complainant to accompany him home.
107. She did not agree but went and joined the other group drinking nearby. The accused walked home he does not remember the time he arrived home.

## **CONCLUSION**

### Ladies and Gentleman Assessors

108. You have seen the witnesses giving evidence keep in mind that some witnesses react differently when giving evidence.
109. Which version you are going to accept whether it is the prosecution version or the defence version is a matter for you. You must decide which witnesses are reliable and which are not. You observed all the witnesses giving evidence in court. You decide which witnesses were forthright and truthful and which were not. Which witnesses were straight forward? You may use your common sense when deciding on the facts. Assess the evidence of all the witnesses and their demeanour in arriving at your opinions.
110. In deciding the credibility of the witnesses and the reliability of their evidence it is for you to decide whether you accept the whole of what a witness says, or only part of it, or none of it. You may accept or reject such parts of the evidence as you think fit. It is for you to judge whether a witness is telling the truth and is correctly recalling the facts about which he or she has testified. You can accept part of a witness's evidence and reject other parts. A witness may tell the truth about one matter and lie

about another, he or she may be accurate in saying one thing and not be accurate in another.

111. You will have to evaluate all the evidence and apply the law as I explained it to you when you consider the charges against the accused persons have been proven beyond reasonable doubt. In evaluating evidence, you should see whether the evidence is probable or improbable, whether the witness is consistent in his or her own evidence or with his or her previous statement or with other witnesses who gave evidence. It does not matter whether the evidence was called for the prosecution or the defence. You must apply the same test and standards in applying that.
112. It is up to you to decide whether you accept the version of the defence and it is sufficient to establish a reasonable doubt in the prosecution case.
113. If you accept the version of the defence you must find the accused persons not guilty. Even if you reject the version of the defence and do not believe a single word the accused persons and their witness told in court still the prosecution must prove this case beyond reasonable doubt. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies with the prosecution throughout the trial and it never shifts to the accused at any stage of the trial.
114. The accused persons are not required to prove their innocence or prove anything at all. They are presumed innocent until proven guilty.

#### Ladies and Gentleman Assessors

115. I would like to remind you that separate opinions must be returned in respect of each accused persons named in the information.
116. You must consider the case against and for each accused separately. Similarly both the accused persons are entitled to have the charge

considered separately. This means you must carefully distinguish between the evidence against one accused and the evidence against the other. You must not for instance, use the evidence against one accused by taking into account evidence implicating another. You must not assume that because you find there is enough evidence to convict one, that the other must be guilty as well.

117. I do not think you will have any difficulty in keeping distinct in your minds evidence which properly and fairly relates to both of them and that which relates to one of them alone.

118. What version of the facts you accept is a matter for you. If you have any doubt in respect of the above or on the role played by each of the accused persons or there is no evidence, direct or circumstantial that it was both the accused persons as alleged then you should find them not guilty.

119. You may find the accused persons guilty for the offence of rape if you are satisfied of their guilt beyond reasonable doubt. If you have any reasonable doubt about their guilt then you must find them not guilty. Remember to consider the evidence for each accused separately.

120. Your possible opinions are:-

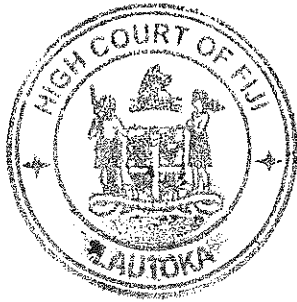
**RAPE:** ACCUSED ONE - GUILTY OR NOT GUILTY


**RAPE:** ACCUSED TWO - GUILTY OR NOT GUILTY

Ladies and Gentleman Assessors

121. This concludes my summing up you may now retire and deliberate together and once you have reached your individual opinions please inform a member of my staff so that the court can be reconvened.

122. Before you do so, I would like to ask counsel and the two accused persons if there is anything they might wish me to add or alter in my summing up.



  
**Sunil Sharma**  
**Judge**

**At Lautoka**

27 November, 2018

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Office of the Legal Aid Commission for Accused 1 and 2.**