

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 139 of 2017

STATE

v.

WASEA DOBUI

Counsel: Ms. L. Bogitini for State
Ms. K. Boseiwaqa, Ms. M. Ratidara for Respondent

Date of Hearing: 20th to 22nd March 2018

Date of Summing Up: 26th March 2018

SUMMING UP

1. The name of the Complainant is suppressed. She is referred to as "AB".
2. The hearing of this case has now reached to its conclusion. It is my duty to sum up the case to you. You will then retire to consider your respective opinions.
3. Our functions are different. It is my task to ensure that the trial is conducted according to law. As part of that, I will direct you on the law that applies in this action. You must accept the law from me and apply all directions I give you on matters of law.
4. You are to determine the facts of the case, based on the evidence that has been placed before you in this courtroom. That involves deciding what evidence you accept or refuse. You will then apply the law, as I shall explain it to you, to the facts as you find them to be, and in that way arrive at your opinion.

5. I may comment on the facts if I think it will assist you when considering the facts. While you are bound by directions I give as to the law, you are not obliged to accept any comment I make about the facts. Hence, it is entirely upon you to accept or disregard any comment I make about facts, unless it coincides with your own independent opinion.
6. You must reach your opinion on evidence, and nothing but on the evidence itself. Evidence is what the witnesses said from the witness box and the documents tendered as exhibits. This summing up, statements, arguments, questions and comments made by the counsel of the parties are not evidence. The opening address made by the counsel for the prosecution is not evidence. The purpose of the opening address is to outline the nature of evidence intended to be put before you. The closing addresses of the counsel of the prosecution and the defence are not evidence either. They are their arguments, which you may properly take into account when you evaluate the evidence, but the extent to which you do so is entirely a matter for you.
7. If you heard, or read, or otherwise learned anything about this case outside of this courtroom, you must exclude that information or opinions from your consideration. You must have regard only to the testimony put before you in this courtroom during the course of this trial. Ensure that no external influence plays a part in your deliberation. As judges of facts you are allowed to talk, discuss and deliberate facts of this case only among yourselves. However, each one of you must reach your own conclusion and form your own opinion. You are required to give merely your opinion but not the reasons for your opinion. Your opinion need not be unanimous. I must advise you that I am not bound by your opinion, but I assure you that I will give the greatest possible weight on your opinions when I deliver my judgment.
8. Moreover, I must caution you that you should dismiss all emotions of sympathy or prejudice, whether it is sympathy for or prejudice against the accused or anyone else. No such emotion has any part to play in your decision, nor should you allow public opinion to influence you. You must approach your duty dispassionately; deciding the facts solely upon the whole of the evidence. It is your duty as judges of facts to

decide the legal culpability as set down by law and not the emotional or moral culpability of the action.

Burden and Standard of Proof

9. I now draw your attention to the issue of burden and standard of proof. The accused is presumed to be innocent until he is proven guilty. The presumption of innocence is in force until you form your own opinion that the accused is guilty for the offence.
10. The burden of proof of the charge against the accused is on the prosecution. It is because the accused is presumed to be innocent until he is proven guilty. In other words there is no burden on the accused person to prove his innocence, as his innocence is presumed by law.
11. The standard of proof in criminal trial is “proof beyond reasonable doubt”. It means that you must be satisfied in your mind that you are sure of the accused’s guilt. If there is a riddle in your mind as to the guilt of the accused after deliberating facts based on the evidence presented, that means the prosecution has failed to satisfy you the guilt of the accused beyond reasonable doubt. If you found any reasonable doubt as to the commission of the offence as charged or any other offence by the accused, such doubt should always be given in favour of the accused person.

Information and the Elements of the Offences

12. The accused is charged with four counts of Rape, contrary to Section 207 (1), (2) (b) and (3) of the Crimes Act and two counts of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act. The particulars of the offences are before you. Therefore, I do not wish to repeat the same in my summing up.
13. At the conclusion of the Prosecution’s evidence, the court found that the accused is not guilty for the second count of Sexual Assault. Therefore, you are not required to consider count number two of the information.

14. The prosecution alleges that the accused had penetrated the vagina of the Complainant with his tongue on the 17th and 24th of March 2017 and 13th of April 2017. The Prosecution further alleges that the accused had penetrated the vagina of the Complainant with his finger on the 13th of April 2017. Moreover, the prosecution alleges that the accused had unlawfully and indecently rubbed his penis on her anus on the 24th of March 2017.
15. Section 207 (1) (2) (b) and (3) of the Crimes Act states that;
- (2) A person rapes another person if—*
- b) the person penetrates the vulva, vagina or anus of the other person to any extent with a thing or a part of the person's body that is not a penis without the other person's consent; or*
- c)*
- (3) for this section, a child under the age of 13 years is incapable of giving consent.*
16. The Complainant was twelve years old at the time of this offence took place. The defence has not disputed the age of the Complainant. Hence, she is incapable of giving consent to any kind of carnal knowledge. Accordingly, the main elements of the offence of Rape as charged under counts 1, 3 and 5 are that:
- i) The Accused,
ii) Penetrated the vagina of the Complainant with his tongue.
17. The main element of Rape as charged under count six are that;
- i) The Accused,
ii) Penetrated the vagina of the Complainant with his finger.
18. The main elements of the offence of Sexual Assault as charged under count four are that;
- i) The accused,

- ii) Unlawfully and Indecently,
- iii) Assault the Complainant.

19. The word “unlawfully” simply means without lawful excuse. An act is an indecent act if right-minded persons would consider the act as indecent. It is your duty as Assessors to consider and decide whether the act of rubbing on the anus of the Complainant by the accused with his penis is an indecent act, making it a sexual assault.

Separate Consideration

20. The accused is charged with four separate counts of Rape and one count of Sexual Assault. It is your duty to consider each of these five counts separately. If you found the accused is guilty for one count, that does not automatically make him guilty for the remaining counts for which he is charged with.

Agreed Facts

21. I now take your attention to the agreed facts. They are the facts that the Prosecution and the Defence agreed on without any dispute. Hence, you are allowed to consider the agreed facts as proven facts beyond reasonable doubt by the Prosecution.

The First Element

22. It is the onus of the Prosecution to prove that it was the accused who has committed these crimes on the Complainant. As I explained above, at no point of time the onus shift on the Accused to prove that it was not him who has committed this crime.

Penetration

23. I will now explain you the element of penetration. Evidence of slightest penetration of the finger and the tongue of the accused into the vagina of the Complainant is

sufficient to prove the element of penetration. Hence, it is not necessarily required to adduce the evidence of full penetration.

Evidence of Corroboration

24. You must bear in mind that offences of sexual nature do not need the evidence of corroboration. It means that 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 independence evidence that incriminates the accused or to support the account given by the Complainant.
25. One or more of you may have assumptions as to what constitutes rape, what kind of person may be the victim of rape, what kind of person may be the rapist or what a person who is being or has been raped will do or say. Though such assumptions are natural in ordinary life, it is important that you must leave behind such assumptions as there is no stereotype of circumstances for a rape, a rapist or a victim of rape.
26. Offences of this nature can take place in any circumstance between any kinds of persons, who act in a variety of ways. You must approach the case dispassionately, putting aside any view as to what you might or might not have expected to hear, and make your judgment strictly on the evidence that you have heard from the witnesses and the exhibits during the course of the hearing.
27. It is your duty as judges of facts to assess the evidence in order to determine whether the prosecution has proven the charges beyond reasonable doubt. In doing that, you must be mindful that not to bring in to the assessment of the evidence any preconceived views as to how a victim of rape in a trial such as this should react to the experience that the victim had gone through. Every person has his or her own way of coping with such incident. Some may display obvious signs of distress and others may not. Demeanours of the Complainant in the court while giving evidence is not necessarily a clue to the truth of the Complainant's account.

Evidence of Prosecution

28. Let me now remind you briefly the summary of the evidence presented by the prosecution and the defence during the course of the hearing. This hearing lasted only for three days. Therefore, I trust that you can properly and correctly recall all of the evidence adduced during the hearing.
29. The Complainant in her evidence said that she was living with her family at Qarani Village, Gau, in March 2017. Their house was located at the end of the village, close to the government office. She had been living with her step-father, who is the accused, mother and four siblings. There is a pathway to the plantation and the bush beside their house. Anyone who walks pass that pathway could see inside the house, but not inside the bedroom. The Accused is a farmer. He usually goes to the farm after the Complainant and her siblings go to school.
30. The Complainant could recall that she was alone at home in the afternoon of the 17th of March 2017. There was a fundraising event at the village. Her mother had gone there to make food parcels. Her siblings also went to the village. While she was alone at home, the accused came home. He was drunk after drinking grog. He asked her to scratch his back. He went into the bedroom. The Complainant went and scratches his back. The Accused was just wearing a towel. He then asked her if he could hug her, for which she replied "no". He then stood up and undressed her. Her legs were separated by the accused, while she was lying facing upwards. He then started to lick her vagina with his tongue. The Complainant used the word "mimi" to refer her vagina. He licked inside her vagina. She felt the pain coming from the vagina. The accused did it for about fifteen minutes. After that the accused had told her if she tells anyone about this, he will do something to her. The Complainant in her evidence said that she was scared and did not tell anyone because of that threat.
31. According to the evidence given by the Complainant, the accused has done the same thing again to her on the 24th of March 2017. When she came home after school, the Complainant found that her mother had gone to clean the District Officer's house. The accused was at home at that time. He had then asked her siblings to go to fetch some

firewood. Once her siblings left, the accused had called the Complainant into the house, and asked her if he could hug her. The Complainant had told "no". He then undressed her and licked her vagina. The accused had also rubbed his penis on her anus. The Complainant used the word "polo" to refer the penis of the accused. She was lying down, facing up when the accused licked her vagina. He had licked inside of her vagina. The Complainant said that she felt pain inside her vagina when he licked her vagina. Her legs were spread up by the accused. After that he started to rub his penis on her anus. The accused had done it for about 30 minutes. He then told the Complainant that if she tells anyone about this, he will do something to her. The Complainant was scared and did not tell anyone about this.

32. On the 13th of April 2017, the Complainant found that her mother had gone for fishing when she returned from school. Her siblings went to play. The accused then came home from the plantation. He told the Complainant to go and have her bath. When she returned from her bath, she found him inside the room. He then told her that he wants to hug her, which she refused. The accused then undressed the Complainant and licked her vagina with his tongue. He then penetrated her vagina with his finger. The Complainant in her evidence said that he licked inside her vagina with his tongue. He inserted his finger inside her vagina. She felt pain in her vagina. The accused had done this for about 25 minutes. You may recall that she explained the position of her body and the accused's when he licked and penetrated her vagina. After that, the accused had told the Complainant that he will do something if she tells anyone about this. She was scared and had not told anyone about these incidents.
33. During the weekend before the 24th of April 2017, the accused and her mother had a big fight. The accused wanted to take the Complainant and her siblings to the farm and have a camping there. Her mother had refused and objected to this idea of camping. Therefore, the accused had a fight with the mother of the Complainant during the weekend. According to the evidence given by Salanieta, the best friend of the Complainant, the accused wanted to take all the children, leaving their mother at home. The Complainant did not want to go with him to the camp as she knew that the accused would do something to her in the farm. The Complainant had gone to Aunty Salote's place on the 24th of April 2017, to tell her about these incidents. Salote is the

mother of Salanieta. On the 24th of April 2017, Salanieta was getting ready to go to her mother's village to spend the weekend. The Complainant first told Salanieta about what the accused had been doing to her. Salanieta then told her mother, Salote about this.

34. During the cross examination, the Complainant said that the accused was very strict on her and her siblings. He wanted her mother to have an after school program for them. The Complainant said that she hates the accused as he always gets angry. She does not like when the accused fights with her mother. She is very close to her mother.
35. I trust that you could recall the evidence given by Doctor Goundar. She explained the medical findings that she found in the Complainant during the medical examination. Doctor Goundar has noted no external injuries on her genitalia. Hymen of the Complainant was not visualized. According to her evidence, hymen could lose its integrity if the person is sexually active. It could lose its integrity due to penetrated sexual intercourse, an object inserted into the vagina or some form of trauma to the vagina. Finger of a person could be a such an object that could damage the integrity of the hymen. Damage caused to the hymen by insertion of a tongue depends on the degree of its penetration.
36. Doctor Goundar explained that hymen does not regenerate. She further explained that if a finger was inserted twelve days before the examination, the injuries caused by such a penetration could have already been healed. Normally injuries to vagina would take 10 to 14 days to heal. Injuries to the hymen of a child could heal faster than an adult. It actually takes less than ten days. If a medical examination is done twelve days after a finger or tongue inserted into the vagina of a twelve years old girl, and the injuries caused by such penetration were minor, then no visible clinical finding could be found. However, it all depends on the depth of the injuries. According to the nature of the tearing of the hymen of the Complainant, Doctor Goundar in her opinion found that there is a possibility of penile penetration. She further said that she could conclude from her clinical findings, that there are high reasons to suspect of finger

penetration than other possibilities as the cause for the damage found in the hymen of the Complainant.

Evidence of the Defence

37. At the conclusion of the prosecution's case, the accused was explained about his rights in defence. The accused opted to give evidence on oath and also called three witnesses for his defence.
38. The accused in his evidence denied these allegations. According to his evidence he was drinking grog with a group of villagers in the afternoon of the 17th of March 2017. He had participated at the cementing of the cemetery in the morning. At around one a clock, they have gone to Naicurucuru to drink grog. Ilimocama and Josefa Miki were among the group who started to drink grog. They were at Naicurucucu for about half an hour. They then moved to Baba's house to continue their drinking. Ilimotama was also moved with the group. When the fundraising ceremony started at the village hall they all went there. During that period of time, the accused had not gone to his house. He finally went to his house before the lights were off.
39. On the 24th of March 2017, the Accused had gone to the farm after his children went to school. He had worked in his farm from 9am to around 5pm. He then came home and found that his children were not at home. He had asked his wife to go and look for them. The accused then went to Miki's place to drink grog.
40. On the 13th of April 2017, the accused had gone to his farm in the morning. On his way, he had met Waisele, a cousin of him. They both went to the farm together and worked there until the sun set. When he returned home, the accused found that his wife and children were not at home. He was angry after finding that nothing was cooked for the dinner. With that anger he went and joined the grog session at Miki's house.
41. Mr Josefa Miki in his evidence said that he was with the accused at the cemetery on the morning of 17th of March 2017. They were all took part at cementing the

cemetery. The works begun at around 8am and lasted for 30 minutes. After that they went to Naicurucuru to drink grog. The accused was with him. He was seated next to Mr. Miki while they drank grog. The group drank grog for about 20 hours. At around 7pm they moved to Baba's house to continue their drinking. The accused was with him all the time and had not gone to anywhere.

42. Mr. Ilimotama is the second witness for the defence, who is a police officer attach to the Qarani Police Post. He came home for his lunch break at around 1pm. on the 17th of March 2017. He saw a group of people were drinking grog at Naicurucuru. The accused was one of them. He spent his lunch break at home till 2pm and then went back to work. According to the evidence given by Ilimotama, he last saw the accused on the 17th of March 2017, at around 2pm.
43. Mr. Waisale Serevi in his evidence explained that he met the accused in the morning of 13th of April 2017 on his way to his farm. They then walked together to their farms. They worked till the sun set and walked back together.
44. I summarized the evidence presented during the cause of this hearing. However, I might have missed some. It is not because they are not important. You have heard every items of evidence. What I did only to draw your attention to the main items of evidence and help you in reminding yourselves of the evidence.

Analysis

45. The prosecution and the defence presented conflicting versions of events, which took place in private between the Complainant and the accused. The Complainant claims that the accused penetrated her vagina with his tongue on the 17th and 24th of March and 13th of April 2017. Furthermore, the accused had penetrated the vagina of the Complainant with his finger on the 13th of April 2017. The Complainant claims that the accused indecently and unlawfully rubbed his penis on her anus on the 24th of March 2017.

46. The Accused denies these allegations. He claims that he was at the drinking session with a group of villagers on the 17th of March 2017. He then claims that he was at his farm during the day time of the 24th of March 2017 and 13th of April 2017. Upon his returned from the farm, he went and joined at a drinking session at Josefa Miki's place.

Evaluation of Evidence

47. In order to determine whether the prosecution has proven beyond reasonable doubt that the accused had committed these offences, you have to consider 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 accurate in another thing.
48. In assessing evidence of the witnesses, you must consider whether the witness had the opportunity to see, hear and or feel what the witness is testifying in the evidence. You then should consider whether the evidence presented by the witness is probable or improbable considering the circumstances of the case. Apart from that, you are required to consider the consistency of the witness not only with his or her own evidence but also with other evidence presented in the case.
49. It is your duty as judges of facts to consider the demeanours of the witnesses, how they react to being cross examined and re-examined, were they evasive, in order to decide the credibility of the witness and the evidence.

Presentation of the Evidence by the Victim

50. You have seen that the Complainant gave evidence from a special room via Skype. She was accompanied by one of the court's staff, who assisted her in giving evidence.

Thereafter, she gave evidence behind a screen. Giving of evidence in this way is perfectly normal in cases like this. It is designed to enable the witness to feel more at ease when giving evidence. It is not intended to prejudice the evidence which the witness gives. The fact that the evidence has been given in that manner, must not in any way be considered by you as prejudicial to the accused.

Evidence of the Child Complainant

51. The most important part of your task is to judge whether the child Complainant has told the truth, and has given a reliable account of the events that she was describing. Some of you will have children and grandchildren who are of a similar age to the complainant. If so, I think you will recognize the sense of the advice I am going to offer you about your judgment of the evidence of the child complainant, but remember that I am speaking only about an approach to consider the evidence. Still the evaluation of the evidence is your responsibility. You do not have to accept my advice, if you do not agree with it. If so, you should reject it.
52. Children do not have the same life experience as adults. They do not have the same standards of logic and consistency, and their understanding may be severely limited for a number of reasons, such as their age and immaturity etc. Life viewed through the eyes and mind of a child may seem very different from life viewed by an adult. Children may not fully understand what it is that they are describing, and they may not have the words to describe it. They may, however, have come to realize that what they are describing is, by adult standards, bad or, in their perception, naughty. They may be embarrassed about it, and about using words they think are naughty, and therefore find it difficult to speak.
53. Experience has shown a number of things. A child may not fully understand the significance of sexual activities and that may be reflected in the way they remember it or describe it. A child's perception of the passage of time is very likely to be different from that of an adult. A child's memory can fade even in the short term. When recounting events later, even a fairly short time later, a child's recall of when and in what order events occurred may not be accurate. She may well not be able to speak of the context in which those events occurred. A child may have particular difficulty

dealing with conceptual questions such as how she felt some time ago, or why she did or did not take a particular course of action.

54. Remember how you normally talk to children of this age. You should bear those difficulties in mind when you consider the answers given by the child complainant. All decisions about the evidence are for you to make.

Expert Evidence

55. It is the general rule that witnesses are normally not allowed to give opinion and only allow to give evidence on what they have seen, heard, or felt by their physical sense. However, the exception is that the evidence of expert witnesses. Expert witnesses are those who are learned and experts in a particular subject or field with relevant experience. Such witnesses are allowed to give evidence of their opinion.
56. In this case you have heard the evidence of Dr. Goundar. She is a medical doctor and gave her professional opinion about the findings which she found during the medical examination of the Complainant.
57. Expert evidence is permitted in a criminal trial to provide you with scientific and professional information and opinion, which is within the witness expertise, but which is likely to be outside your experience and knowledge. It is by no means unusual for evidence of this nature to be called; and it is important that you should see it in its proper perspective, which is that it is before you as part of the evidence as a whole to assist you with regard to the injuries, the physical and medical condition of the Complainant subsequent to these alleged offences.
58. With regard to these particular aspects of the evidence you are not experts; and it would be quite wrong for you as assessors to attempt to and/or to come to any conclusions on those issues on the basis of your own observations or experiences. However you are entitled to come to a conclusion based on the whole of the evidence which you have heard, and that of course includes the expert evidence. You should

bear in mind that, having carefully considered, if you do not accept the evidence of the expert, you do not have to act upon it.

Evidence of Recent Complaint

59. You have heard the evidence that the Complainant had told her friend Salanieta and Salote, the mother of Salanieta about these incidents on the 24th of April 2017. This form of evidence is known as evidence of recent complaint. It is not an evidence as to what actually happened between the Complainant and the accused. Salanieta and/or Salote were not present and witnessed what happened between the Complainant and the accused.
60. You are entitled to consider the evidence of recent complaint in order to decide whether or not the Complainant has told the truth. It is for you to decide whether the evidence of recent complaint helps you to reach a decision, but it is important that you must understand that the evidence of recent complaint is not independent evidence of what happened between the Complainant and the victim. It therefore cannot of itself prove that the complaint is true.

Evidence of the Accused

61. I now take your attention to the evidence adduced by the defence. The accused elected to give evidence on oath. The accused is not obliged to give evidence. He does not have to prove his innocence. However, the accused decided to give evidence and also called three witnesses to give evidence for his defence. Therefore, you have to take into consideration the evidence adduced by the defence when determining the issues of fact of this case.

Defence of Alibi

62. The accused's defence is alibi. The accused says that he was not present at home during the material time for these offences on the 17th and 24th of March 2017 and also on the 13th of April 2017. The accused in his evidence said that he was with a

group of villagers, drinking grog in the afternoon of the 17th of March 2017. The accused further said that he was at his farm till the sun set on the 24th of March 2017 and 13th of April 2017. He then came home and went to drink grog at Josefa's house. The accused called three witnesses to establish that he was not at home at any of the relevant time material to these offences.

63. While the accused has put forward the defence of alibi, the burden of the proving the case against him remains on the prosecution. The prosecution must prove so that you are sure that it was the accused who have committed these offences on the Complainant.
64. Both the accused and the witnesses of the defence were cross-examined by the learned counsel for the prosecution about the alibi. You are invited by the learned counsel for the prosecution in her closing address to conclude that they were lying.
65. If you conclude that the accused's alibi is true or may be true, then the accused cannot have committed these crimes on the Complainant and you must find him not guilty. If, on the other hand, you are sure, having considered the evidence carefully, that the accused's alibi is false, that is a finding of fact which you are entitled to take into account when judging whether he is guilty. But do not jump to the conclusion that because the alibi put forward is false the defendant must be guilty. You should bear in mind that sometimes an alibi is invented because the defendant thinks it is easier than telling the truth. The main question for you to answer is upon considering whole of the evidence presented at the trial, are you sure that it was the accused who has committed these offences as charged.

Final Directions

First Count

66. Upon consideration of whole of the evidence adduced during the course of the hearing, if you are satisfied that the prosecution has proven beyond reasonable doubt

that the accused has committed the offence of Rape as charged under the first count, you can find the accused guilty for the said offence of Rape.

67. If you are not satisfied or have doubt whether the prosecution has proven beyond reasonable doubt that the accused has committed the offence of Rape as charged under the first count, you must find the accused is not guilty for the said count of Rape.

Third Count

68. If you are satisfied that the prosecution has proven beyond reasonable doubt that the accused has committed the offence of Rape as charged under the third count, you can find the accused guilty for the said offence of Rape.

69. If you are not satisfied or have doubt whether the prosecution has proven beyond reasonable doubt that the accused has committed the offence of Rape as charged under the third count, you must find the accused is not guilty for the said count of Rape.

Fourth Count

70. If you are satisfied that the prosecution has proven beyond reasonable doubt that the accused has committed the offence of Sexual Assault as charged under the fourth count, you can find the accused guilty for the said offence of Sexual Assault.

71. If you are not satisfied or have doubt whether the prosecution has proven beyond reasonable doubt that the accused has committed the offence of Sexual Assault as charged under the fourth count, you must find the accused is not guilty for the said count of Sexual Assault.

Fifth Count

72. If you are satisfied that the prosecution has proven beyond reasonable doubt that the accused has committed the offence of Rape as charged under the fifth count, you can find the accused guilty for the said offence of Rape.

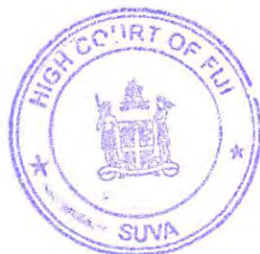
73. If you are not satisfied or have doubt whether the prosecution has proven beyond reasonable doubt that the accused has committed the offence of Rape as charged under the fifth count, you must find the accused is not guilty for the said count of Rape.


Sixth Count

74. If you are satisfied that the prosecution has proven beyond reasonable doubt that the accused has committed the offence of Rape as charged under the sixth count, you can find the accused guilty for the said offence of Rape.
75. If you are not satisfied or have doubt whether the prosecution has proven beyond reasonable doubt that the accused has committed the offence of Rape as charged under the sixth count, you must find the accused is not guilty for the said count of Rape.

Conclusion

76. Madam and Gentleman assessors, I now conclude my summing up. It is time for you to retire and deliberate in order to form your individual opinions. You will be asked individually for your opinion and will not require to give reasons for your opinion. When you have reached to your opinion, you may please inform the clerks, so that the court could reconvene.
77. Learned counsel of the prosecution and the accused, do you have any redirections to the assessors?




R.D.R.T. Rajasinghe
Judge

At Suva
26th March 2018

Solicitors

Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission for the Respondent.