

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO.: HAC 156 OF 2016**

STATE

-v-

RAVINDRAN MANI

Counsel : Ms. S. Naibe for the State  
Ms. V. Narara with Ms. Kumar for the  
Accused

Dates of Trial : 27<sup>th</sup>, 28<sup>th</sup> August, 2018

Date of Summing Up : 30<sup>th</sup> August, 2018

(Name of the victim is suppressed. She is referred to as AS)

**SUMMING UP**

Ladies and Gentleman Assessor:

1. We have now reached the final phase of this case. The law requires me, as the Judge who presided over this trial to sum up the case to you. Each one of you will then be called upon to deliver your separate opinion, which will in turn be

recorded. As you listened to the evidence in this case, you must also listen to my summing up of the case very carefully and attentively. This will enable you to form your individual opinion as to the facts in accordance with the law with regard to the innocence or guilt of the accused person.

2. I will direct you on matters of law which you must accept and act upon.
3. On matters of facts however, which witness you consider reliable, which version of the facts to accept or reject, these are matters entirely for you to decide for yourselves. So, if I express any opinion on the facts of the case, or if I appear to do so, it is entirely a matter for you whether to accept what I say, or form your own opinions.
4. In other words you are the judges of facts. All matters of fact are for you to decide. It is for you to decide the credibility of the witnesses and what parts of their evidence you accept as true and what parts you reject.
5. The counsel for the Prosecution and the Accused made submissions to you about the facts of this case. That is their duty as the Counsel. But it is a matter for you to decide which version of the facts to accept, or reject.
6. You will not be asked to give reasons for your opinions. Your opinions need not be unanimous although it is desirable if you could agree on them. I am not bound by your opinions. But I will give them the greatest weight when I come to deliver my judgment.
7. On the matter of proof, I must direct you as a matter of law, that the Accused person is innocent until he is proved guilty. The burden of proving his guilt rests on the Prosecution and never shifts.

8. The standard of proof is that of proof beyond reasonable doubt. This means that before you can find the Accused guilty, you must be satisfied so that you are sure of his guilt. If you have any reasonable doubt as to his guilt, you must find him not guilty.
9. Your opinions must be solely and exclusively upon the evidence which you have heard in this Court and upon nothing else. You must disregard anything you might have heard or read about this case outside of this courtroom. Your duty is to apply the law as I explain it to you to the evidence you have heard in the course of this trial.
10. Your duty is to find the facts based on the evidence and apply the law to those facts. You are free to draw inferences from proved facts if you find those inferences reasonable in the circumstances. Approach the evidence with detachment and objectivity. Do not get carried away by emotion.
11. As Assessors you were chosen from the community. You, individually and collectively, represent a pool of common sense and experience of human affairs in our community which qualifies you to be judges of facts in the trial. You are expected and indeed required to use that common sense and experience in your deliberations and in deciding.
12. In assessing the evidence, you are at liberty to accept the whole of the witness's evidence or part of it and reject the other part or reject the whole. In deciding on the credibility of any witness, you should take into account not only what you heard but what you saw. You must take into account the manner in which the witness gives evidence. Was he or she evasive? How did he or she stand up to cross examination? You are to ask yourselves, was the witness honest and reliable. But, please bear in mind that many witnesses are not used to giving evidence and may find Court environment distracting.
13. In evaluating evidence, you should see whether the story relayed in evidence is probable or improbable; whether witness is consistent in his or her own evidence

and with his or her previous statements or with other witnesses who have given evidence in court. It does not matter whether that evidence was called for the Prosecution or for the Defence. You must apply the same test to evaluate evidence.

14. In testing the consistency of a witness you should see whether he or she is telling a story on the same lines without variations and contradictions. You should also see whether a witness is shown to have given a different version elsewhere and whether what the witness has told Court contradicts with his/her earlier version. You must however, be satisfied whether such contradiction is material and significant so as to affect the credibility or whether it is only in relation to some insignificant or peripheral matter.
15. If it is shown to you that a witness has made a different statement or given a different version on some point, you must then consider whether such variation was due to loss of memory, faulty observation or due to some incapacitation of noticing such points given the mental status of the witness at a particular point of time or whether such variation has been created by the involvement of some another, for example by a police officer, in recording the statement where the witness is alleged to have given that version.
16. Merely because there is a difference, a variation or a contradiction or an omission in the evidence on a particular point or points that would not make witness a liar. You must consider overall evidence of the witness, the demeanor, the way he/she faced the questions etc. in deciding on a witness's credibility.
17. When the victim was giving evidence, the Defence Counsel referred to her previous witness statement recorded by police. A previous statement made by a witness is not evidence in itself unless it is adopted and accepted by the witness under oath as being true. You can of course use those statements to test the consistency and credibility of the witness if you are satisfied that such a statement was made.

18. I now wish to direct you on recent complaint evidence. You heard that the victim said that she relayed the incident to two of her classmates, Kritika and Arishna when she came to school on the following day of the alleged incident. Kritika and Arishna gave evidence and said that they received a complaint from the victim on Tuesday the 2nd August, 2016 that she was sexually abused by her father. However, both of them were not present when the alleged incident happened and therefore, they are not capable of giving evidence as to what actually happened between the victim and the accused. What they heard from the victim is not evidence as to what actually happened between the victim and the accused. Recent complaint evidence is led to show consistency in the conduct of the victim and is relevant in assessing her credibility. If you find Kritika and Arishna credible witnesses than you may use the complaint they received to test the consistency and credibility of the victim.
  
19. You may consider whether there is a reason or motive on the part of the witness to make up an allegation against the accused. If she or she had such a motive, then you may think that this allegation has been fabricated.
  
20. In this case the Prosecution and the Defence have agreed on certain facts. The agreed facts are part of evidence. You should accept those agreed facts as accurate and truth. They are of course an important part of the case.
  
21. The agreed facts of this case are:
  - I. The victim is AS born on the 1st of June 2004 is the biological daughter of the accused, Ravindran Mani.
  - II. AS was in Form 7 at Andra Sangam School in 2016.
  - III. On the 1st of August, 2016, AS was 12 years and 2 months old.
  - IV. AS's mother is separated from the accused and has moved to New Zealand whilst she resided with her brother, Ayush Mani (15 years old) and the accused in their three bedroom house at Kashmir, Lautoka.
  - V. AS and accused each have a bedroom in the house at Kashmir, Lautoka.
  - VI. On the 4th of August, 2016, AS was medically examined at the Lautoka Hospital by the Pediatric Register, Dr. Savenaca Seduadua.

22. The accused is charged with three counts in the information. The Court at the close of prosecution's case, found no evidence to maintain the 1<sup>st</sup> count of Indecent Assault. Therefore, the accused was acquitted of the first count. You are not supposed to express your opinion on the 1<sup>st</sup> count. Please disregard it.

## COUNT 2

### Representative Count

#### *Statement of Offence*

**SEXUAL ASSAULT**: Contrary to Section 210 (1) (a) of the Crimes Decree 44 of 2009.

#### *Particulars of Offence*

**RAVINDRAN MANI** on the 1st of August, 2016 at Lautoka in the Western Division, unlawfully and indecently assaulted AS.

## COUNT 3

### *Statement of Offence*

**RAPE**: Contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Decree 44 of 2009.

#### *Particulars of Offence*

**RAVINDRAN MANI** on the 1st of August, 2016 at Lautoka in the Western Division, penetrated the anus of AS a 12 year old girl, with his penis.

23. I will now deal with the elements of the offence of Sexual Assault. A person commits the offence of Sexual Assault if he,

- (a). Unlawfully and indecently,
- (b). Assaults another person.

24. For the assault to be indecent it must be accompanied by a circumstance of indecency. A conduct is unlawful when it is done without a lawful excuse. A conduct is indecent when it is as such that ordinary people would so describe it, in light of prevailing standards of morality and, more specifically, in light of whether the victim has consented to the conduct in question. However, Prosecution is under no burden to prove that the particular assault took place without the consent of the victim so long as it constitutes an unlawful and indecent act.
25. You might wonder what representative count means. It simply means this. The prosecution says that, on the day given in the information, (1<sup>st</sup> August, 2016) accused sexually assaulted the victim more than one occasion.
26. I will now deal with the elements of the offence of Rape. A person rapes another person if:
- (a) The person has carnal knowledge with or of the other person without other person's consent; or
  - (b) The person penetrates the vulva, vagina or anus of other person to any extent with a thing or a part of the person's body that is not a penis without other person's consent; or
  - (c) The person penetrates the mouth of the other person to any extent with the person's penis without the other person's consent.
27. Consent as defined by Section 206 of the Crimes Decree, means the consent freely and voluntarily given by a person with a necessary mental capacity to give such consent. A person under age of 13 years is considered by law as a person without necessary mental capacity to give consent. The victim in this case was 12 years of age at the time of the alleged offence and therefore, she did not have the capacity under the law to consent. So, the Prosecution does not have to prove the absence of consent on the part of the victim because law says that she, in any event, cannot consent.

28. The elements of the offence of Rape in this case are that:
  - a. the accused, Ravindran Mani
  - b. penetrated the anus of the victim, with his penis.
  
29. Other parts of the offence are irrelevant to the facts of this case.
  
30. Proof can be established only through evidence. Evidence can be from direct evidence that is the evidence of a person who saw it or by a complainant who saw, heard and felt the offence being committed. In this case, for example, the victim was a witness who offered direct evidence, if you believe her as to what they saw, heard and felt.
  
31. You saw victim give evidence hiding behind a screen so she could not see the accused. The screen was put up because the victim in this case is an underage vulnerable witness. You must not draw any negative inference from that against the accused.
  
32. You will appreciate that 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. Life viewed through the eyes and mind of a child may seem very different from life viewed by an adult. You have to be mindful about that.
  
33. 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. Bear in mind that they are being asked questions by an adult they see as being in a position of authority—the policeman in the interview, or a counsel in Court. That can make it difficult for them.



34. Please remember, there is no rule in Fiji for you to look for corroboration of Complainant's story to bring home an opinion of guilt in a case of sexual nature. The case can stand or fall on the testimony of complainant, depending on how you are going to look at her evidence.
35. I will now remind you of the Prosecution and Defence cases. It was a short trial and I am sure things are still fresh in your minds. I will refresh your memory and summarize the salient features. If I do not mention a particular piece of evidence that does not mean it is unimportant. You should consider and evaluate all the evidence in coming to your decision in this case.

### **Case for the Prosecution**

#### **PW 1 AS (The Victim)**

36. In 2016, AS was 12 years old. She was living with her father, Ravindran Mani, her brother and grandparents in Lautoka. She said that she was sexually abused by her father on 1st August, 2016. After this incident, she was sent to Treasure House, an orphanage in Nadi. She has been staying there since then. Her mother is separated from her father and is living in New Zealand.
37. On 1st August, 2016, she was at home with her grandparents and brother. Her father came home around 10 or 11 pm when only she and her brother were awake. Father was drunk and told her and her brother to serve his food. When his brother was feeding him, father told her brother to go and buy him a cigarette. Then father told her to sit beside him. While she was sitting beside him her brother came home. Father sent her brother to sleep and told her to stay awake. When she went to put the plate in the sink, father told her if he could kiss her lips and she said 'no'. And then he offered her his phone and forced her to kiss. She said she did not want anything. Then he pulled her to his bed and started kissing while she was crying. He was kissing her lips and then he came down and started kissing her breast while her clothes were still on.

38. When she was still crying, he took her to her room and then he told her that he will teach her how to kiss. She said "no". Then he undressed her and started kissing her lips again and came down and kissed her breast and vagina.
39. Then he took her back to his room, holding her hand forcefully. Whilst in his bedroom, she put the blanket on her. While she was still crying, he made her lie down on his bed and then he took out the blanket and started kissing her lips, breast and vagina. Then he, while sitting on his knees, made her lie down on her stomach and put his sperm on her back side. It was little bit sore. She described 'sperm' as his private part. She described her back side as her 'bum'. She said that he put his private part inside her bum. She felt weird. She didn't like it. She told him not to do it but he kept on doing it.
40. Then he made her turn around and put his private part in her vagina. She shouted loudly and told him to stop. Then he just left her. She then ran to her room and got dressed and cried in her room. She said that her private part was a bit sore. She said her brother was sleeping in his room when this was happening. She said that she wanted to shout but father closed her mouth with his hand.
41. When she went to school on the following day, she told this to her best friends in school, Arishna and Kritika. They told her to tell this to the teacher. Then she went and told everything to Ms Kumar, her teacher, that she was sexually abused by her father. Teacher went to the Head Teacher and Head Teacher wrote a letter to Welfare. At 5.00 pm, the Welfare van arrived. Her father told her and her brother that if the Welfare asked anything, just say "no". The welfare van took her and her brother to the Social Welfare Office and they started asking her questions. Later, a police officer came to see her. She said that she told them just the truth.
42. SA said that she could not recall any incident that happened in year 2015. You saw what she drew when she was asked to depict his father's private part and her back side that she was referring to in her evidence.

43. Under cross-examination, AS admitted that, when the incident happened, her grandparents were home but they were sleeping. She admitted that she did not alert her brother when she went past his room. She said that when she was crying loudly, her father growled at her to keep her mouth shut but she didn't listen to him and kept on crying. Then he just covered her mouth.
44. She admitted that she read the statement she gave to police on 4th August, 2016, before she came to court to give evidence. She admitted that in her statement, she had never mentioned that his father had turned her around and inserted his private part in her vagina. In her explanation for this omission, AS said that she forgot to tell some of the things that happened and when she read the statement she could remember the things she forgot.
45. When she was asked by Court, she confirmed that her father put his private part into her vagina. She said that when she read the statement, she realized that the part that her father inserting his private part into her vagina was missing, but she did not tell the prosecutor because she did not know that they could re-write the things again. She agreed that she had a good relationship with her father. She said, I quote, *'he was a really good father, he gives me whatever I want, he pets me a lot, but this things had happened, he had broken my trust to him'*. She further said that her mother was not in contact with her ever since she left for New Zealand, when she was still in Kindergarten.

## **PW 2 Arishna Aachal Singh**

46. In the year 2016, Arishna was 12 years old. AS was her friend at Lautoka Andrha Primary School.
47. On Tuesday the 2nd of August, 2016, during recess time, when she was sitting inside in classroom, AS came and sat beside her and started crying. She asked AS what happened, is there any problem? Then AS told her that, her papa, on the 1st of August, had kissed her face and her private part. Then he told her to go inside a room. when she lay on the bed, her father came and asked her to take off her

clothes. She didn't want to take off her clothes but her papa forced her. After that her papa was kissing her while saying some indecent words. AS was crying and was a bit hurt. AS also told this incident to her class mate Kritika.

48. She asked AS if she wanted to inform the teacher. AS said "no", because she feared that her father will hit her. She started crying. Therefore she didn't do anything. On Thursday, she asked AS again. This time, AS agreed to tell this to the teacher. Then she went to Mrs Subashni with AS and Kritika and told the story.

### **PW 3 Kritika Aniwaash Kumar**

49. Kritika said that, when she was studying at school, AS came and sat beside her and started crying. She asked AS about what happened as she was really crying hard. AS said that her father was doing bad things to her which she really didn't like. Then she suggested to AS that they should go and talk to the teacher. AS did not want to tell the teacher fearing that her father would smack her if she would go and tell. She went home and told her mother about the case. Her mother and brothers told her to tell the teacher. Then they went and told teacher Subashni on the next day.

### **PW 4 Subashni Lakshmi Kumar**

50. In 2016, Subashni was a teacher at Lautoka Andhra Primary School. That time, AS was in Year 7. One morning, AS and two of her friends came to her. One friend said that AS wanted to share something as she was in a problem. When she asked AS, she was crying, and a bit disturbed. She didn't tell much but she just said that whatever the father was doing, she didn't like it. She sensed that something must be wrong so she went and reported the matter to the Head Teacher. The next day she heard that AS was not coming to school anymore.

51. After the Prosecution had closed its case, you heard me explain the accused his rights in defence; his right to remain silent, right to give evidence and call witnesses on his behalf.
52. You are aware that the accused elected to give evidence under oath although he had nothing to prove in this case. By electing to give evidence, he assumes no onus of proof. That remains on the Prosecution throughout. He is under no obligation to prove his innocence. His evidence must be considered along with all the other evidence and you can attach such weight to it as you think appropriate.

### **Case for the Defence**

#### **DW 1 Ravindran Mani**

53. Accused Mani said that in 2016, he was residing at Kashmir, Lautoka with her parents, his brother, sister in law and their kids and his son and daughter AS. His wife left him and they are separated for 10 or 11 years. He was a layer cutter at Danam and supports his family. On the 1st day of August 2016, he came home night time at 9.30 after drinking beer. His kids were awake so they had food together and after having dinner, they all sat on the bed talking. Then he hugged them, said good night, and he told them to go to their own rooms. He saw his children again in the next morning.
54. He denied the allegation. He could not understand why his daughter whom he loved and cared so much has made this serious allegation against him. He had a good relationship with her daughter and they were staying together in a happy way.
55. Accused said that he did not rape her daughter. He is not able and not in a state to rape anybody. His wife left him because he could not sexually satisfy her. He had a boil on his buttocks and had undergone an operation. After the operation,

he could not erect his penis. He said that he went to a doctor the day before to ask for a medical report but the doctor asked him to bring a letter from court to provide a medical report.

56. Under cross-examination, accused admitted that on 1st of August, 2016, he came home drunk, after drinking alcohol. He denied sexually abusing and raping her daughter. He said that his wife left her in 2006 before the operation. As time passed by, his penis became smaller and smaller. He did not tell this to anybody because of his dignity. He admitted that he went to a doctor only when the prosecution case was over. He said he had no time to go to the doctor.
57. That was the case for Defence.

### **Analysis**

58. Ladies and gentleman assessors, the accused is charged with one count of Sexual Assault and one count of Rape. To find the accused guilty of Sexual Assault, you must be satisfied beyond a reasonable doubt that the accused kissed victims breasts and vagina on the 1<sup>st</sup> August 2016. To find him guilty of rape you must be satisfied beyond reasonable doubt that the accused penetrated victim's anus with his penis.
59. Prosecution called four witnesses, the victim and two of her class mates and her teacher. Prosecution's case is substantially based on the evidence of the victim. The resolution of the dispute depends on whether you accept the victim as a truthful witness. If you are satisfied that the evidence she gave in court is truthful and believable, then you can safely act upon her evidence in coming to your conclusion. No corroboration of her evidence is required.
60. Defence case is one of denial. Accused denies committing any of the sexual offences mentioned in the information.

61. Prosecution says that the victim maintained her consistency when she promptly complained to two of her friends in school after the alleged incident and then to the teacher. She was crying and in a distressed condition when she reported the matter. The victim was 12 years old student at the time of the offence. Prosecution says that she had no motive to make up such a serious allegation against the accused who is her biological father.
62. Defence Counsel argues that the victim did not tell the truth in court because her previous statement to police is not consistent with her evidence in court. You heard what the victim had to say about it and her explanations as to why she omitted to tell certain parts of her story to police. You decide if the explanations given by the victim for those omissions are satisfactory and, if so, it is safe to act upon her evidence.
63. You had the opportunity to observe victim's demeanour. Prosecution says that the victim is straightforward and not evasive. You decide if she told the truth in court.
64. Evidence of the accused is that he never committed any of these offences. He could not tell why her daughter with whom she had a good relationship has made this allegation. His version is that he was not medically fit to have sexual intercourse after the operation on his buttocks. Prosecution says that there is no evidence to support accused's version and it's a just a cover up to save his skin.
65. It is up to you to decide which version is to believe and whether you could accept the version of the Defence. If you accept the version of the Defence you must find the accused not guilty. Even if you reject the version of the Defence, still the Prosecution should prove their case beyond reasonable doubt.
66. The victim said that her father put his private part into her bum. She said it was little bit sore and she felt weird. You saw the diagrams she made when she was

asked to depict the private part of the accused and her bum. You decide whether the elements of rape are satisfactorily proved in this case.

67. If you believe that the victim is telling you the truth when she that the accused kissed her naked breast and vagina, you can find him guilty of sexual assault. If you are satisfied that accused penetrated victim's anus with his penis, you should find the accused guilty of Rape. But if you do not believe victim's evidence regarding the alleged offences, or if you have a reasonable doubt about the guilt of the accused, then you must find the accused not guilty. Your possible opinion is either guilty or not guilty on each count.
68. You may now retire to deliberate on your opinions. Once you have reached your decisions, you may inform our clerks, so that we could reconvene, to receive the same.
69. Any re-directions?



A handwritten signature in black ink, appearing to read "Aruna Aluthge".

Aruna Aluthge

Judge

AT LAUTOKA

30<sup>th</sup> August, 2018

Solicitors: Office of the Director of Public Prosecution for State  
Legal Aid Commission for Defence