

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

**Crim. Case No: HAC 150 of 2018**

**STATE**

**vs.**

**METUISELA MATAYALEWA**

**Counsel:** Ms. U. Tamanikaiyaroi for the State  
Ms. M. Ratidara for Accused

**Date of Hearing:** 02<sup>nd</sup>, 03<sup>rd</sup>, 04<sup>th</sup> December 2019

**Date of Closing Submission:** 05<sup>th</sup> December 2019

**Date of Summing Up:** 10<sup>th</sup> December 2019

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## **SUMMING UP**

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1. The name of the complainant is suppressed.
2. The hearing of this case has now reached to its conclusion. It is my duty to sum up the case to you. As I explained you before the commencement of the hearing, we have different functions. 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.
3. Your function is 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 explain it to you, to the facts as you find them to be, and in that way arrive at your opinion.

4. I may comment on the facts if I think it will assist you when considering the facts. However, 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 the facts of this case, unless it coincides with your own independent opinion.
5. 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 exhibits tendered as evidence. This summing up, statements, arguments, questions and comments made by the counsel of the parties are not evidence. The purposes of the opening address by the learned counsel for the prosecution is to outline the nature of evidence intended to be put before you. Therefore, the opening address of the prosecution is not evidence. 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.
6. 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. Ensure that no external influence plays a part in your deliberation. You are allowed to talk, discuss and deliberate facts of this case only among yourselves. However, each one of you must reach 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 make my judgment.
7. 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, the complainant 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 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**

8. 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 guilty of the offence.
9. 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 to prove his innocence, as his innocence is presumed by law.
10. 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 find 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.

### **Information and elements of the offences**

11. The accused is being charged with two counts of Rape, contrary to Section 207 (1) (2) (a) and (3) of the Crimes Act and three counts of Rape contrary to Section 207 (1) (2) (a) of the Crimes Act. The particulars of the offences are in the information. Hence, I do not wish to reproduce them in the summing up.

12. The main elements of the first two counts of Rape are that:

- i) The accused,
- ii) Penetrated into the vagina of the complainant with his penis.

13. The prosecution claims that the complainant was twelve years old at the time of these two offences took place. Hence, she was incapable of giving consent to any kind of penetration into her vagina. If you are satisfied that the complainant was twelve years old at the time of these two offences took place, then the consent of the complainant is not relevant for these two offences.

14. The main elements of the third, fourth and fifth counts are that:

- i) The Accused,
- ii) Penetrated into the vagina of the complainant with his penis,
- iii) The complainant did not consent to the accused to penetrate into her vagina with his penis,
- iv) The accused knew or believed or reckless that the complainant was not consenting for him to insert his penis in that manner.

### **Admitted Facts**

15. I now request you to draw your attention to the agreed facts, which are before you. They are the facts that the prosecution and the defence have agreed without dispute. Hence, you are allowed to consider them as proven fact by the prosecution beyond reasonable doubt.

### **Separate Consideration**

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

Likewise, if you find the accused not guilty of one count, that does not automatically make him not guilty of the remainder of the counts.

### **Accused**

17. It is the onus of the prosecution to prove beyond reasonable doubt that it was the accused who committed these offences to the complainant. According to the admitted facts, the accused is a cousin of the complainant and they are known to each other. Moreover, the accused had admitted that he had sexual intercourse with the complainant on three occasions in 2017. Hence, the identity of the accused is not a disputed issue between the prosecution and the defence.

### **Penetration**

18. Evidence of slightest penetration of the penis 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.

### **Consent**

19. Consent is a state of mind which can take many forms from willing enthusiasm to reluctant agreement. In respect of the offence of Rape, the complainant consents only, if she had the freedom and capacity to voluntarily make a choice and express that choice freely. A consent obtained through fear, by threat, by exercise of authority, by use of force or by intimidation could not be considered as a consent given freely and voluntarily. A submission without physical resistance by the complainant to an act of another person shall not alone constitute consent.
20. The complainant must have the freedom to make the choice. It means that she must not be being pressured or forced to make that choice. Moreover, the complainant must have a mental and physical capacity to make that choice freely. The consent can be withdrawn at

any time. The consent is an ongoing state of mind and is not irrevocable once given. It should not be an optional choice. The consent of a person should not be assumed.

21. If you are satisfied, that the accused had inserted his penis into the vagina of the complainant and she had not given her consent, you are then required to consider the last element of the offence, that is whether the accused honestly believed or knew or reckless that the complainant was freely consenting for this alleged sexual act. I must advise you that belief in consent is not the same thing as a hope or expectation that the complainant was consenting. You must consider whether the accused knew either that the complainant was not in a condition or a position to make a choice freely and voluntarily, or the complainant had made no choice to agree to sexual act. If you conclude that the accused believed or knew that the complainant was consenting, you must then consider whether such belief of the accused was reasonable under the circumstances that was prevailed at the time of the alleged incident.

### **Evidence of Corroboration**

22. 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, credible and truthful; you are not required to look for any other evidence to support the account given by the complainant.
23. 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.
24. 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.

25. It is your duty to assess the evidence in order to determine whether the accused has actually committed this crime to the complainant. 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.
26. If you are satisfied the accused had penetrated into the vagina of the complainant in respect of the last three counts or any of the last three counts, but find the complainant had given her consent to such penetration or not sure whether she gave her consent to such penetration, then you can consider the alternative counts of Defilement of Young Person between 13 and 16 years of age, though it is not charged in the information.
27. The main elements of the offence of Defilement of Young Person between 13 and 16 years of age are that:
  - i) The accused,
  - ii) Unlawfully,
  - iii) Penetrated into the vagina of the complainant,
  - iv) The complainant is a person of the age between 13 and 16 years of age.
28. According to the admitted fact, during the time material to the third, fourth and fifth counts, the complainant was above the age of 13 years but below the age of 16 years. Therefore, unless it appears to you that the accused had reasonable cause to believe, and did in fact believe, that the complainant was of or above the age of 16 years, you should find the accused guilty of defilement.

### Evidence of the Prosecution

29. Let me now remind you the evidence presented by the prosecution and the defence during the course of the hearing. The prosecution called the complainant to give evidence during the course of the hearing. I will now summarize the evidence of the prosecution.
30. The accused is a cousin of the complainant. He used to visit her grandmother's place very often. One of the school days in 2016, the complainant had gone home to have her lunch with her grandmother. She had gone to the toilet when she reached home. When she came out of the toilet, she found the accused was standing in front of it. He then pushed her inside the toilet and closed her mouth. He then closed the door of the toilet. The accused then pulled her dress up and undergarment down. Thereafter, he penetrated into the vagina of the complainant with his penis. The complainant felt pain and asked the accused to stop. He said wait. Once he ejaculated, he had left her and gone through the passage facing the dalo patch, asking her to go and get her bath. She then had her bath, had her lunch with the grandmother and went back to school.
31. The accused had told the complainant not to tell anyone about this incident and if he found such, he will do something to her. She did not shout out for help as she was scared of the accused. She did not tell her grandmother about this incident, as she was afraid of her uncle. The complainant explained about the nature of the relationship she had with her grandmother, uncle and aunty. Therefore, she was afraid that her uncle might do something to her if they found out what the accused did to her.
32. Another day in 2016, when she went home for lunch from school, her grandmother had asked her to go and get water from the bathroom. When she went to the bathroom she found the accused was standing at the passage to the toilet. He called her. The grandmother who was in kitchen had asked her who was he. She then replied to grandmother, saying it was the accused. The grandmother told the complainant don't go to him. The accused asked her to get his mobile phone charged. She then went and took the mobile phone and charged it. While she was in the sitting room, the accused called her again. The accused was at the



toilet. The grandmother was still in the kitchen. The complainant then went to the accused. The accused then pushed her into the toilet, covered her mouth and closed the door. He then pulled up her dress and pulled down her undergarment. Having done that, the accused inserted his penis into the vagina of the complainant. The complainant felt pain and told the accused it's enough. The accused replied, saying wait and it will be fast. Once he ejaculated, he went away. The complainant then had her bath, and her lunch and went back to school.

33. The complainant did not tell anyone about this incident as she was afraid of her uncle and also the accused told her not tell anyone. During the year 2016, she was 12 year old of age.
34. One of the days in the year 2017, her grandmother had asked her to go and get coconut leaves. She had gone to the place called Naitaga to get the coconut leaves. The accused followed her and offered his assistance to get the coconut leave. He had climbed the coconut trees and cut the coconut leaves. At that time, aunty of the complainant had called her twice. The accused had asked the complainant not to respond to her aunty. He then asked the complainant to pull down her pants, which she did not. The accused took a branch of a tree and threatened her to do it. She then pulled down her pants. The accused then inserted his penis into her vagina. Once the accused ejaculated, he told her not to tell anyone else. The complainant was 13 years old at that time.
35. Another day in 2017, she had gone to collect firewood with the accused, his mother and his siblings to Moala. They have gone there in two bamboo rafts. After collecting the firewood, the mother of the accused took her lead as the accused asked the complainant to wait for them to go and have a swim in the river. They then went with the brother of the accused. While she was swimming in the river, the accused waited on the land. He called her to his place, which she refused to go. He then came to her in the water and inserted his penis into her vagina.
36. She did not tell anyone about this incident. The complainant said that she was afraid of her uncles and felt ashamed to tell her aunties as she had done something she was not supposed

to do. She explained the accused put his penis into her vagina when she has not reached to that certain age.

37. Another day in 2017, when the complainant did something to her grandmother, she shouted at the complainant. The accused was at home at that time and wanted to hit her. She then wanted to tell what the accused had been doing to her, but he signalled her not to do that.
38. Another day in 2017, the accused called the complainant to his house, asking her to come and get something. The house of the accused is located just 20 meters away from her house. When she went there, he closed her mouth and closed the door. At that point of time, her grandmother called her to go and get something from the village canteen. She then went back home and went to the canteen. Once she came back from the canteen, the accused called her again to his house. She then went and asked him why did he call her. The accused then told her to go inside the house. He held her by her hand and closed the door. He then told her to take off her clothes. When she did not do that, he forcefully pulled her clothes and pushed her on the floor. Thereafter, he put his penis into her vagina. Once he ejaculated, he told her not to tell anyone.
39. The complainant explained during her evidence the reasons that she did not tell anyone about this incident, because she was scared of the accused as he told her not to tell anyone. Moreover, she did not tell her grandmother as she might tell it to her uncle and they would do something to her. She was afraid of her uncle. Her mother was in Suva in 2016 and then passed away before the last three incidents took place in 2017.
40. During the cross examination by the learned counsel for the defence, the complainant said that she did not tell anyone including her best friend about these incidents as the accused told her not to tell to anyone, if she does so, he would do something to her. She further said that she was ashamed of telling her friend about these incidents. She denied that she touched the front side of the pants of the accused when he was in the living room of her house.

41. The complainant denies that she ran after the accused when he was walking to his dalo plantation at Naitaga, and asked him to help her to get coconut leaves. When he cut the coconut tree and was climbing down, he had asked her to wait. The aunty called her when they were having sexual intercourse. The accused told her not to respond to the aunty.
42. The complainant further denies that she did not take off her own clothes while she was swimming in the river. She went to pick firewood with them because her grandmother asked her to go and bring firewood. She had the choice to go back with the mother of the accused, but she stayed back as the accused asked her to stay. After the incident at Moala, she took the lead to come back home as they did not want anyone to get suspicious on them.
43. On the last occasion, she went back to the house of the accused because he asked her to come and get something. None of these five occasions, the accused punched, slapped, or kicked her. These incidents came out, when her uncle inquired from her whether the accused had done something to her. Initially, she had not revealed anything about these allegations. However, she explained about these incidents when the uncle threatened her that he will bring the police.
44. During the re-examination, the complainant said the aunty called her before the accused inserted his penis into her vagina at Naitaga.

### **Evidence of the Defence**

45. At the conclusion of the case of the prosecution, the accused was explained about his rights in defence. The accused opted to give evidence. I will now proceed to summarize the evidence given by the accused for the defence.
46. The accused in his evidence denies these allegations. One of the days in 2016, the complainant came home from school, when he was talking to her grandmother. Once she arrived, the grandmother went to the kitchen. The complainant then came and touched the front part of his pants. The complainant ran to the kitchen when the accused shouted, calling

the grandmother. That was the only such incident happened in 2016. The accused denied the second allegation.

47. In respect of the third incident at Naitaga, the accused was going to his dalo plantation at Naitaga when the aunty of the complainant asked him to take the complainant to Naitaga to get coconut leaves. He then took her there and cut coconut leaves. Once he did that, he asked her to have sexual intercourse, for which the complainant agreed. They then had sexual intercourse with her consent.
48. In relation to fourth incident, once they had collected the firewood, the complainant was asked to take the load with the accused's mother, but she decided to stay back with the accused. She came to accused when he was swimming and removed her clothes. They then had sexual intercourse with her consent.
49. The last incident, which happened at the house of the accused also took place with the consent of the complainant. She came to his house on her way to the canteen. However, her grandmother heard their voices and shouted at the complainant to go to the canteen. When she returned from the canteen, she came back to his house asking for salt. They then had sexual intercourse with her consent.
50. I have summarized the evidence presented during the course of this hearing. However, I might have missed some. It is not because they are not important. You have heard every items of evidence and recall yourselves on all of them. What I did only was to draw your attention to the main items of evidence and help you in recalling yourselves of the evidence.

### **Analysis and Directions**

51. The prosecution alleges the accused had forcefully penetrated into the vagina of the complainant on five separate occasions during the period between 2016 to 2017. The defence denies the allegation, claiming that the first two incidents in 2016 never happened. However the accused admitted that he had sexual intercourse with the complainant on three

separate occasions in 2017, first at Naitaga, then at Moala and lastly at his home, with the consent of the complainant.

52. Accordingly, you have to decide whether the first two incidents pertaining to counts one and two have actually happened as alleged. In respect of the third, fourth and fifth counts, you have to decide whether the complainant had given her consent to the accused to penetrate into her vagina with his penis. In order to do that, you have to determine the reliability and credibility of the evidence given by the prosecution and the defence.

### **Evaluation of the Evidence**

53. I now take your attention to the direction of evaluation of the evidence. The evolution of evidence consists with two main steps, the determination of the reliability and the credibility of the evidences.

### **Reliability of Evidence**

54. You must be satisfied that you can rely on the evidence as reliable evidence. In order to do that, you have to be satisfied that evidence is free from mistakes, errors and inaccuracies. If you find the evidence is free from such mistakes, errors and inaccuracies, you can take the evidence into consideration as reliable evidence.

### **Credibility of Evidence**

55. The assessment of credibility of evidence does not concern with unintended inaccuracy, mistakes or errors. It is focused on the lies or inaccurate facts that are intentional and motivated attempts to deceive. The credibility depends on the individual who gives evidence, his or her motivations, his or her relationship to and the reaction to the particular situation.

56. Evaluation of the reliability and credibility of evidence will assist you to determine what evidence you may accept and what part of the evidence you may refuse. In doing that, you may accept or reject such parts of the evidence as you think fit. It is for you to decide whether a witness is telling the truth and is correctly recalling the facts about which he or she has testified.
57. 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 talking in the evidence. You should then 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.
58. It is your duty to consider the demeanour of the witnesses, how they react to being cross examined and re-examined and were they evasive, in order to decide the credibility of the witness and the evidence.
59. Moreover, you must bear in your mind that 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.

### **Evidence of the Defence**

60. I now kindly draw your attention to the evidence adduced by the defence. The accused elected to give evidence on oath. The accused in his evidence denies these allegations and claims that he never inserted his penis into the vagina of the complainant in 2016. However, he said that he had consensual sexual intercourse with the complainant on three occasions in 2017 pertaining to counts three, four and five.

61. It is for you to decide whether you believe the version of the accused. If you consider that the account given by the defence is or may be true, then you must find the accused not guilty of the offence as charged.
62. If you neither believe nor disbelieve the version of the accused, yet, it creates a reasonable doubt in your mind about the prosecution case. You must then find the accused not guilty of the offence as charged.
63. Even if you reject the version of the defence that does not mean that the prosecution has established that the accused guilty of these offences. Still you have to satisfy that the prosecution has established on its own evidence beyond reasonable doubt that the accused has committed this offence as charged in the information.

#### **Evaluation of Evidence of Prosecution**

64. As I explained you before, you have to take the evidence of the prosecution into consideration in order to determine whether the evidence given by the complainant is reliable. In doing that you must carefully consider whether the evidence of the complainant is free from mistakes, inaccuracies, and errors. If you find such or have reasonable doubt of the existence of such mistakes, inaccuracies and errors, then you must find which part of the evidence is infested with such mistakes, inaccuracies and errors. Then you can determine whether such unreliability of evidence have affected the whole or part of the evidence given by the complainant.
65. Likewise, you have to take the evidence of the complainant into consideration in order to determine the credibility of her evidence. In doing that you have to determine whether the complainant lied, intentionally provided inaccurate facts or intentionally provided facts in order to deceive. When you determine the credibility of the evidence given by the complainant, you could take into consideration whole of the evidence presented during the course of the hearing.

66. If you find such or have reasonable doubt of the existence of such lies, intentionally provided inaccurate facts or intended attempts of deceive, then you must find which part of the evidence is infested with such lack of credibility. Then you can proceed to determine whether such evidence have affected the whole or part of the evidence given by the complainant.

### **Inconsistencies and omissions**

67. Madam and Gentleman, you have heard that the complainant said during the evidence in chief that she was asked by the accused not to respond to her aunty when she was calling out her name while they were at the Naitaga. However, during the cross examination she said the aunty called when they were having sexual intercourse. During the re-examination, she said the aunty called her before the accused penetrated into her vagina with his penis.
68. You are allowed to take into consideration about the inconsistencies in the evidence of a witnesses when you consider whether the evidence given by the witness is reliable and credible.
69. It is obvious that the passage of time will affect the accuracy of memory. Memory is fallible and you might not expect every detail to be the same from one account to the next.
70. If there is an inconsistency, it is necessary to decide firstly, whether it is significant and whether it affects adversely to the reliability and credibility of the issue that you are considering. If it is significant, you will next need to 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 such witness.

### **Delay in Reporting**

71. You may recall that the learned counsel for the defence suggested to you to consider the delay in reporting this matter to her uncle and the grandmother by the complainant could



make less likely that the complaint made against the accused was true. The complainant had not informed her uncle and grandmother until the uncle questioned her threatening that he will bring the police.

72. It is a matter for you to consider and resolve. However, it would be wrong to assume that every person who has been the victim of a sexual assault will report it as soon as possible. The experience of the courts is that victims of sexual offences can react to the trauma that they have faced in different ways. Some, in distress or anger, may complain to the first person they see. Others, who react with shame or fear or shock or confusion, do not complain or go to authority for some time. It takes a while for self-confidence to reassert itself. There is, in other words, no classic or typical response. A late complaint does not necessarily signify a false complaint; likewise an immediate complaint does not necessarily demonstrate a true complaint.

#### **Final Directions**

73. Ladies and Gentleman, I now take your attention to the final directions of the summing up.

#### **First Count**

74. Upon consideration the 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 count one, you can find the accused guilty of 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 count one, you must find the accused not guilty of the said count of Rape.

### **Second Count**

76. If you are satisfied that the prosecution has proven beyond reasonable doubt that the accused has committed the offence of Rape as charged under count two, you can find the accused guilty of the said offence of Rape.
77. 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 count two, you must find the accused not guilty of the said count of Rape.

### **Third Count**

78. If you are satisfied that the prosecution has proven beyond reasonable doubt that the accused has committed the offence of Rape as charged under count three, you can find the accused guilty of the said offence of Rape.
79. 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 count three, you must find the accused not guilty of the said count of Rape.
80. If you find the accused not guilty of count three, then you can proceed to consider the alternative count of Defilement of Young Person between 13 and 16 years of age.
81. If you are satisfied that the prosecution has proven beyond reasonable doubt that the accused has committed the offence of Defilement of Young Person between 13 and 16 years of age, you can find the accused guilty of the said offence.
82. If you are not satisfied or have doubt whether the prosecution has proven beyond reasonable doubt that the accused has committed the offence of Defilement of Young Person between 13 and 16 years of age, you must find the accused not guilty of the said offence.

#### **Fourth Count**

83. If you are satisfied that the prosecution has proven beyond reasonable doubt that the accused has committed the offence of Rape as charged under count four, you can find the accused guilty of the said offence of Rape.
84. 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 count four, you must find the accused is not guilty of the said count of Rape.
85. If you find the accused not guilty of count four, then you can proceed to consider the alternative count of Defilement of Young Person between 13 and 16 years of age.
86. If you are satisfied that the prosecution has proven beyond reasonable doubt that the accused has committed the offence of Defilement of Young Person between 13 and 16 years of age, you can find the accused guilty of the said offence.
87. If you are not satisfied or have doubt whether the prosecution has proven beyond reasonable doubt that the accused has committed the offence of Defilement of Young Person between 13 and 16 years of age, you must find the accused not guilty of the said offence.

#### **Fifth Count**

88. If you are satisfied that the prosecution has proven beyond reasonable doubt that the accused has committed the offence of Rape as charged under count five, you can find the accused guilty of the said offence of Rape.
89. 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 count five, you must find the accused not guilty of the said count of Rape.

90. If you find the accused not guilty of count five, then you can proceed to consider the alternative count of Defilement of Young Person between 13 and 16 years of age.
91. If you are satisfied that the prosecution has proven beyond reasonable doubt that the accused has committed the offence of Defilement of young person between 13 and 16 years of age, you can find the accused guilty of the said offence.
92. If you are not satisfied or have doubt whether the prosecution has proven beyond reasonable doubt that the accused has committed the offence of Defilement of Young Person between 13 and 16 years of age, you must find the accused not guilty of the said offence.

### **Conclusion**

93. 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.
94. Learned counsel of the prosecution and the accused, do you have any redirections to the assessors?



  
R.D.R.T. Rajasinghe  
Judge

**At Suva**  
10<sup>th</sup> December 2019

**Solicitors**  
Office of the Director of Public Prosecutions for the State.  
Office of the Legal Aid Commission for the Defence.