

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

**Criminal Case No.: HAC 132 of 2017**

**STATE**

**v**

- 1. KOLINIO VOLANAVANUA**
- 2. SEMISI TEKEULA**
- 3. JEKE VOLI**
- 4. LEPANI ROKOVUNA**
- 5. "VD" (JUVENILE ONE)**
- 6. "PR" (JUVENILE TWO)**

**Counsel** : Ms. R. Uce for the State.  
: Ms. K. Vulimainadave for the first and second Accused.  
: Ms. V. Diroiroid and Ms. P. Reddy for the third Accused.  
: Ms. V. Narara and Mr. T. Varinava for the fourth Accused and both Juveniles.

**Dates of Hearing** : 20, 21, 22 and 26 March, 2019  
**Closing Speeches** : 27 March, 2019  
**Date of Summing Up** : 28 March, 2019

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**SUMMING UP**

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*(The name of the complainant and the two juveniles are suppressed, they will be referred to as "MD", "VD" and "PR" respectively).*

Madam and Gentlemen Assessors

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

## **ROLE OF JUDGE AND ASSESSORS**

2. In doing so, I will direct you on matters of law, which you must accept and act upon. On matters of facts, however, which witness to accept as reliable, what evidence to accept and what evidence to reject, these are matters entirely for you to decide for yourselves. If I do not refer to a certain portion of evidence which you consider as important, you should still consider that evidence and give it such weight as you wish.
3. So, if I express an opinion on the facts of the case, or if I appear to do so, then it is entirely a matter for you whether you accept what I say or form your own opinions. You are the judges of facts.
4. You decide what facts are proved and what inferences you properly draw from those facts. You then apply the law as I explain it to you and form your own opinion as to whether the accused persons and the juveniles are guilty or not.
5. State and Defence Counsel have made submissions to you about how you should find the facts of this case. That is in accordance with their duties as State and Defence Counsel in this case. Their submissions were designed to assist you as judges of facts. However, you are not bound by what they said. You can act upon it if it coincides with your own opinion. As representatives of the community in this trial it is you who must decide what happened in this case and which version of the facts to accept or reject.
6. You will not be asked to give reasons for your opinions and your opinion need not be unanimous. Your opinions are not binding on me but it will assist me in reaching my judgment.

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

7. As a matter of law, the burden of proof rests on the prosecution throughout the trial and it never shifts to the accused persons or the juveniles. There is no obligation on them to prove their innocence. Under our system of criminal justice, an accused person is presumed to be innocent until he or she is proven guilty.
8. The standard of proof in a criminal trial is one of proof beyond reasonable doubt. This means you must be satisfied so that you are sure of all the accused persons and both the juveniles guilt, before you can express an opinion that they are guilty. If you have any reasonable doubt about their guilt, then you must express an opinion that they are not guilty.
9. Your decision must be based exclusively upon the evidence which you have heard in this court and nothing else. You must disregard anything you must have heard about this case outside of this courtroom.
10. You must decide the facts without prejudice or sympathy for either the accused persons, the juveniles or the victim. Your duty is to find the facts based on the evidence without fear, favour or ill will.
11. Evidence is what the witnesses said from the witness box, documents or other materials tendered as exhibits. You have heard questions asked by the counsel and the court they are not evidence unless the witness accepts or has adopted the question asked.

## **INFORMATION**

12. The four accused persons and the two juveniles are charged with the following offences: (a copy of the information is with you).

### **FIRST COUNT**

#### **Statement of Offence**

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

#### **Particulars of Offence**

**KOLINIO VALANAVANUA**, on the 7<sup>th</sup> day of June, 2017 at Yasawa Island in the Western Division, inserted his penis into the vagina of **"MD"** without her consent.

### **SECOND COUNT**

#### **Statement of Offence**

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

#### **Particulars of Offence**

**"VD"**, on the 7<sup>th</sup> day of June, 2017 at Yasawa Island in the Western Division, inserted his penis into the vagina of **"MD"** without her consent.

### **THIRD COUNT**

#### **Statement of Offence**

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

#### **Particulars of Offence**

**"PR"**, on the 7<sup>th</sup> day of June, 2017 at Yasawa Island in the Western Division, inserted his penis into the vagina of **"MD"** without her consent.

#### **FOURTH COUNT**

##### **Statement of Offence**

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

##### **Particulars of Offence**

**SEMISI TEKEULA**, on the 7<sup>th</sup> day of June, 2017 at Yasawa Island in the Western Division, inserted his penis into the vagina of “**MD**” without her consent.

#### **FIFTH COUNT**

##### **Statement of Offence**

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

##### **Particulars of Offence**

**JEKE VOLI**, on the 7<sup>th</sup> day of June, 2017 at Yasawa Island in the Western Division, inserted his penis into the vagina of “**MD**” without her consent.

#### **SIXTH COUNT**

##### **Statement of Offence**

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

##### **Particulars of Offence**

**LEPANI ROKOVUNA**, on the 7<sup>th</sup> day of June, 2017 at Yasawa Island in the Western Division, inserted his penis into the vagina of “**MD**” without her consent.

13. To prove the offence of rape the prosecution must prove the following elements of the offence beyond reasonable doubt:
  - (a) The four accused persons and the two juveniles;
  - (b) Penetrated the vagina of the complainant “**MD**” with their penis;

- (c) Without her consent;
  - (d) The accused persons and the juveniles knew or believed the complainant “MD” was not consenting or didn’t care if she was not consenting at the time.
14. The slightest of penetration of the complainant’s vagina by the accused persons and the juveniles penis is sufficient to satisfy the act of penetration.
15. In this case, the accused persons and the juveniles are charged with a count of rape each, you should bear in mind that you are to consider the evidence in each count separately and each accused separately from the other. You must not assume that because one accused or one juvenile is guilty on one count that the other must be guilty as well.

**AMENDED ADMITTED FACTS**

16. In this trial the prosecution and the defence have agreed to certain facts which have been made available to you.
17. From the admitted facts you will have no problems in accepting the facts mentioned as proven beyond reasonable doubt and therefore you can rely on it. The admitted facts are part of the evidence and you should accept these admitted facts as accurate, truthful and proven beyond reasonable doubt.
18. In this trial the four accused persons and the two juveniles have denied committing the offence of rape. It is for the prosecution to prove beyond reasonable doubt that it was the four accused persons and the two juveniles who had penetrated the vagina of the complainant with their penis without her consent and the accused persons and the juveniles

knew or believed the complainant was not consenting or didn't care if she was not consenting at the time that is on the night of 7<sup>th</sup> June, 2017.

19. The first element of the offence is concerned with the identity of the persons who allegedly committed the offence. There is no dispute that it was not the four accused persons or the two juveniles as alleged. You are to consider this element of the offence as proven beyond reasonable doubt.
20. The second element is the act of penetration of the complainant's vagina by the accused persons and the juveniles with their penis. Like the first element there is no dispute that it was not the four accused persons and the two juveniles who had penetrated the vagina of the complainant as alleged. You are to consider this element of the offence as proven beyond reasonable doubt as well.
21. This leaves you to consider the third element that is of consent, you should bear in mind that consent means to agree freely and voluntarily and out of her own free will. If consent was obtained by force, threat, intimidation or fear of bodily harm or by exercise of authority, then that consent is no consent at all. Furthermore submission without physical resistance by the complainant to an act of another shall not alone constitute consent.
22. If you are satisfied that the four accused persons and the two juveniles had penetrated the vagina of the complainant with their penis and she had not consented, you are then required to consider the last element of the offence that is whether the accused persons and the juveniles knew or believed that the complainant was not consenting or did not care if she was not consenting at the time.

23. You will have to look at the conduct of both the complainant and the accused persons including the juveniles at the time and the surrounding circumstances to decide this issue.
24. If you are satisfied beyond reasonable doubt that the prosecution has proven beyond reasonable doubt that the four accused persons and the two juveniles had inserted their penis into the complainant's vagina without her consent then you must find them guilty as charged.
25. If on the other hand you have a reasonable doubt with regard to any of those elements concerning the offence of rape, then you must find the accused persons and the juveniles not guilty of the offence they are charged with.
26. As a matter of law, I have to direct you that an offence of sexual nature as in this case does not require the evidence of the complainant to be corroborated. This means if you are satisfied with the evidence given by the complainant and accept it as reliable and truthful you are not required to look for any other evidence to support the account given by the complainant.
27. I will now remind you of the prosecution and defence cases. In doing so it would not be practical of me to go through all the evidence of every witness in detail. It was a short trial and I am sure things are still fresh in your minds. I will refresh your memory and summarize the important features. If I do not mention a particular piece of evidence that does not mean it is not important. You should consider and evaluate all the evidence in coming to your opinion in this case.



## **PROSECUTION CASE**

28. The prosecution called two witnesses to prove its case against the four accused persons and the two juveniles.
29. The complainant informed the court in 2017 she was a Form 4 student in a secondary school. She resided in the school compound with Mr. Isoa a family friend who taught at the same school.
30. On 7<sup>th</sup> June, 2017 there was a fun night organized in the school dining hall for the students of the school. After the programme ended at about 9.30 pm, the complainant whilst going to Master Isoa's quarters met Kolinio the first accused. Koli was her boyfriend and a student of the same school.
31. Koli asked the complainant to go with him to the boys hostel she refused, however, he held her hand and took her to the hostel which was about 45 meters away. The complainant did not do anything since she was afraid he might do something to her such as punch her.
32. At the boys hostel Koli switched off the light and took the complainant inside, there was nobody around. He made the complainant sit on the floor then pushed her to lie down. He then removed her panty, laid on top of her and inserted his penis into her vagina. The complainant told Koli that she wanted to go home, but he stopped her from going. When Koli was removing her panty and had laid on top of her she did not do anything.
33. The complainant tried to push Koli away but could not she also did not shout or scream for help. She was afraid of Koli because he was forcing her. Both had sexual intercourse the complainant further stated that she

did not do anything because she was afraid Koli might do something to her such as punch her.

34. After the first accused had finished, the first juvenile "VD" who was standing behind Koli came. The complainant knows this juvenile since they were in the same Form. As the complainant was about to stand up, this juvenile pushed her on the floor.
35. The complainant tried to push the juvenile away but couldn't since he was lying on top of her, the juvenile then inserted his penis into her vagina. Whilst he was having sexual intercourse she was not doing anything because she was afraid he might do something to her.
36. After this juvenile had finished, the complainant saw four other boys standing they were Semisi Tekeula (second accused), second juvenile "PR", Jeke Voli (third accused) and Lepani Rokovuna (fourth accused). As soon as the first juvenile left when the complainant was about to stand up the second accused Semisi came and pushed her to lie down.
37. The complainant knows Semisi since they go to the same school she did not do anything because she was afraid he might do something to her. Semisi inserted his penis into her vagina she did not do anything because he was lying on top of her. Both had sexual intercourse, she tried to push him but couldn't since he was heavy.
38. After the second accused had finished and when she was about to stand up the second juvenile "PR" came. The complainant knows the second juvenile since they attended the same school. The second juvenile inserted his penis into the complainant's vagina. She did not do anything because she was afraid he might do something to her. Both had sexual intercourse.

39. After the second juvenile had finished and when the complainant was about to stand up, Jeke the third accused came and pushed her on the floor.
40. The third accused was her cousin who attended the same school. When she was pushed she did not do anything because she was afraid. Jeke inserted his penis into the complainant's vagina she did not do anything because she was afraid he might do something to her. Both had sexual intercourse.
41. After the third accused had finished and when the complainant was about to stand up, the fourth accused Lepani came on top of her. The complainant knows the fourth accused since they attended the same school.
42. The fourth accused inserted his penis into her vagina both had sexual intercourse she was lying down and did not do anything because she was afraid he might do something to her.
43. At this time Mr. Isoa entered the boys hostel, the fourth accused ran to his bed. The complainant was sitting by the time Mr. Isoa shone a torch light on her face. He asked her what she was doing in the boys hostel. The complainant did not respond she was then told to go home.
44. At home Mr. Isoa questioned the complainant again about what she was doing at the boys hostel. The complainant told him that Koli had taken her to the boys hostel thereafter she also told the names of all the six boys who had sexual intercourse with her. The next morning the complainant and Mr. Isoa informed the School Principal.

45. Furthermore, the complainant also stated that when having sexual intercourse, she felt pain, she did not shout or scream for help because she was afraid they might do something to her such as punch her. The complainant was afraid and not in her right state of mind that is why she did not respond to Mr. Isoa's questioning at the boys hostel.
46. Finally the complainant stated that she did not agree or consent to have sexual intercourse with any of the six boys.
47. In cross examination by counsel for the first and second accused, the complainant agreed that she had a boyfriend and girlfriend relationship with the first accused Koli which she had kept a secret from other students. The complainant agreed she had met Koli near Form 3 classroom and that to reach the boys hostel from the dining room she went past some classrooms, the Principal's quarters, and the Pastor's quarters. The complainant further agreed that below the senior boys dormitory which was opposite the boys hostel were the two teachers quarters. The complainant disagreed that on the night of the incident she was waiting for Koli under the mango tree and that she had followed him to the boys hostel.
48. She also disagreed that on the way to the boys hostel she had agreed to have sex with Koli. The complainant also disagreed that she had insisted on going to the boys hostel that night.
49. The complainant entered the hostel through the front door with Koli it was not very dark inside light came from the nearby senior dormitory and also there was moon light.

50. At this time it was only the complainant and Koli in the hostel. They were on the right side of the hostel from the back door. The complainant denied after the first accused had moved closer to her and was lying down she had grabbed his penis and started fondling it. She also denied taking Koli's penis in her hand and inserting it into her vagina when he was kneeling over her.
51. The complainant denied lying on the mattress face up and smiling at Koli. She stated that she pushed Koli away when he was having sex with her.
52. The complainant denied that during the first round of sexual intercourse she was lying down with her knees raised and Koli was kneeling. She further stated that this was the first time she had sex with the first accused and not on any other occasions as suggested by his counsel. She denied removing her panty and having sex with the first accused twice that night. She also said that she had not gone to the boys hostel on her own. She maintained that Koli had pushed her to the floor.
53. The complainant agreed when Master Isoa entered the hostel he asked the complainant what she was doing there but she did not reply and Master Isoa was really angry with her.
54. She agreed the only reason why she had said that she did not agree to have sex with the first accused Koli in her evidence was because she was caught by Mr. Isoa.
55. In respect of the second accused, Semisi Tekeula, the complainant stated that 7<sup>th</sup> June, 2017 was the first time she had sex with this accused. The complainant denied having sex with this accused on two previous

occasions but agreed on the night in question he had parted her thighs and touched her vagina and then both had sexual intercourse.

56. The complainant agreed that the only reason why she had said in her evidence that she did not agree to have sex with the second accused was because she got caught by Mr. Isoa that night.
57. In respect of the third accused Jeke Voli, the complainant stated that the third accused was standing in a line to have sex with her. The complainant agreed in her evidence she had informed the court that the third accused had pushed her on the floor. The complainant was referred to her Police Statement dated 16 June, 2017 to second page, from line 7 to line 10:
- “After Tekeula had his turn he stood up and Jeke a form 7 student also came on top of me and also inserted his erected penis into my vagina after Jeke had his turn he stood up and the last person was Lepani a form 7 student”.*
58. When counsel for the third accused questioned the complainant that it was not in her Police Statement that the third accused had pushed her on the floor the complainant maintained that she had told this to the police. However, she changed her position when she agreed that at no time the third accused had pushed her before having sexual intercourse and the only reason why she said this accused had pushed her was because Mr. Isoa had caught her at the boys hostel.
59. Furthermore the only reason she told the court that she was afraid of the accused was to save herself after she was caught by Mr. Isoa at the boys hostel. The complainant agreed that she had stated in her evidence that she did not agree or consent to have sexual intercourse because she was

trying to save herself. When she was caught by Mr. Isoa he was very angry with her and she knew she will get into trouble.

60. The complainant agreed she had sex with the third accused on 7<sup>th</sup> June, 2017 and that she was not expecting Mr. Isoa to come to the boys hostel. She was shocked and ashamed to see him. The complainant was also afraid that Mr. Isoa will inform her father that he had seen her at a place where she was not supposed to be so she told the court in her evidence that the third accused had pushed her and she did not do anything because she was afraid of the third accused. The complainant disagreed that she made this allegation against the third accused to save herself.
61. In respect of the first juvenile "VD" the complainant agreed this juvenile had not bullied her or had threatened her but was violent with her before the incident.
62. The complainant did not answer to the suggestion that there was no reason for her to be afraid of this juvenile on the night of 7<sup>th</sup> June when having sex with him. She did not raise any alarm although other boys were around, she disagreed the reason for this was that she did not want the others to know she was at the hostel.
63. The complainant was referred to her Police Statement dated 16<sup>th</sup> June, 2017 in particular to page two, first line:

*"...getting ready to stand up and wore my panty one ["VD"] a form 4 student also came and pushed me on the floor and he was already removed his trousers but was only wearing his T/ Shirt. I could also see four boys were lining up. ["VD"] pushed me on the floor and inserted his*

*erected penis into my vagina. After ["VD"] had his turn he stood up and ["PR"] who was standing behind..."*

64. When counsel for the first juvenile questioned the complainant that it was not in her Police Statement that she did not do anything because she was afraid the juvenile would do something to her, the complainant replied that she had told the police.

Madam and Gentlemen Assessors

65. The learned counsel for the third accused and the first juvenile in this regard were cross examining the complainant about some inconsistencies in the statement she gave to the police after the incident when the facts were fresh in her mind with her evidence in court. I will now explain to you the purpose of considering the previously made statement of the complainant with her evidence given in court. You are allowed to take into consideration the inconsistencies in such a statement when you consider whether the witness is believable and credible as a witness. However, the police statement itself is not evidence of the truth of its contents.
66. It is obvious that passage of time can affect one's accuracy of memory. Hence you might not expect every detail to be the same from one account to the next.
67. If there is any inconsistency, it is necessary to decide firstly whether it is significant and whether it affects adversely the reliability and credibility of the issue that you're considering. If it is significant, you will need to then consider whether there is an acceptable explanation for it. If there is an acceptable explanation, for the change, you may then conclude that the underlying reliability of the evidence is unaffected. If the



inconsistency is so fundamental, then it is for you to decide as to what extent that influences your judgment in respect of the reliability of this witness.

68. In respect of the second juvenile the complainant disagreed she had sexual intercourse with him on Monday before the fun night at the boys hostel. The complainant agreed the second juvenile had not threatened or assaulted her before this incident so there was no need for her to be afraid of him on 7<sup>th</sup> June, 2017.
69. In respect of the 4<sup>th</sup> accused Lepani, the complainant stated that Lepani had never threatened or assaulted the complainant before, however, she was afraid of Lepani that night that he might punch her. The complainant disagreed when juvenile one came to have sex with her she was on the floor only with her t-shirt and before having sex she had told him to close the curtains so that no one could see them.
70. The complainant agreed the reason why she alleged both the juveniles and the 4<sup>th</sup> accused had forceful sexual intercourse with her was to save herself after Mr. Isoa had caught her at the boys hostel.
71. In re-examination the complainant stated that she was afraid that Koli might do something to her that is why she did not shout or scream for help or try to escape from him when she was taken to the boys hostel.
72. Inside the boys hostel she also did not stop Koli from having sexual intercourse with her because she was afraid he might do something to her such as punch her.

73. In respect of the third accused Jeke Voli, the complainant stated that Jeke had pushed her she did not stop him from having sex with her because she was afraid he might do something and that she did not consent to have sex with Jeke.
74. In respect of juvenile one and juvenile two the complainant stated that she was afraid of them since they might punch her or do something to her. She did not raise any alarm to the other boys who were around when the first juvenile was having sex with her because she was afraid they might do something to her. The complainant clarified the reason why she had said the first juvenile was violent with her was because if she took his things he would get angry with her.
75. In respect of Lepani the complainant stated that she did not tell Lepani not to have sexual intercourse with her because she was afraid Lepani might do something to her. The complainant also stated that she did not give consent to any of the accused persons and the two juveniles to have sex with her that night.
76. The final prosecution witness Isoa Tuirara informed the court that in 2017 he was teaching at the secondary school where the complainant was a student. The complainant lived with him in the school compound.
77. On 7<sup>th</sup> June, 2017 the witness was one of the teacher's assigned to look after the students in the dormitory. After the fun night programme was over the dormitory was unusually quiet.
78. When he opened the dormitory door and went in he saw the complainant lying on the left of the dormitory he asked her what she was doing there but there was no response from her. According to the witness the

complainant was shocked to see him and was breathing heavily. At this time some boys were sleeping and some had gone outside.

79. He then told her to go home and he will question her later. At home the witness questioned the complainant about what she was doing in the dormitory when she was not supposed to be there.
80. The complainant replied that Tekeula, "PR", "VD" and Koli had sexual intercourse with her. The next morning she told him there were two more boys namely Jeke and Lepani. The complainant did not say anything else. The witness also stated the complainant had told him that when she was on her way home she met Koli and they went to the boys hostel. The complainant appeared to be afraid when she told him all this.
81. In cross examination by the counsel for the first and second accused the witness agreed that he was shocked to see the complainant inside the boys hostel and when he told her to go home he did not raise his voice or was angry.
82. In cross examination by the counsel for the third accused the witness stated that when he saw the complainant, she was in a corner leaning on the wall looking relaxed.
83. In cross examination by the counsel for the fourth accused and both juveniles the witness agreed there were other boys in the hostel the senior boys were also sharing the hostel with junior boys that night. When he saw the complainant leaning against the wall she was wearing her clothes. The witness also stated that when he saw the complainant she looked distressed and shocked and was breathing heavily.

84. In re-examination the witness clarified he had said the complainant looked relaxed from the way she was lying down.

Madam and Gentlemen Assessors

85. Victims of sexual offences may react in different ways to what they may have gone through. As members of the community, it is for you to decide whether it was acceptable for a child of 16 years to not complain to her teacher Isoa Tuirara about what she had gone through at the boys hostel moments before his arrival. Some in distress or anger may complain to the first person they see. Some due to fear, shame or shock or confusion, may not complain for some time or may not complain at all. A victim's reluctance to complain in full or complain at all as to what had happened to her could be due to shame or respect for an elder or shyness when talking about matters of sexual nature. Here according to the complainant she had told Isoa Tuirara at home that all the six boys had sexual intercourse with her after he had questioned her.
86. You are entitled to consider the evidence of recent complaint in order to decide whether the complainant is a credible witness. The prosecution says the complainant complained to Isoa Tuirara by telling him the names of the four boys who had sexual intercourse with her when questioned by him at his quarters immediately after the alleged incident and then telling him the names of the other two boys the next day is more likely to be truthful.
87. On the other hand, the defence says that the complainant did not respond to Isoa when asked what she was doing at the boys hostel and also she did not tell him anything about the alleged incident there so she should not be believed. Further, defence also says it was only upon questioning by Isoa at his quarters that the complainant told him about

the boys having sexual intercourse not forceful sexual intercourse with her at the hostel which is another reason why you should not believe her.

88. This is commonly known as recent complaint evidence. The evidence given by Isoa Tuirara is not evidence of what actually happened between the complainant and the four accused persons and the two juveniles since Isoa was not present and he did not see what had happened.
89. It is for you to decide whether the evidence of recent complaint helps you to reach a decision. The question of consistency or inconsistency in the complainant's conduct goes to her credibility and reliability as a witness. This is a matter for you to decide whether you accept the complainant as reliable and credible. The real question is whether the witness was consistent and credible in her conduct and in her explanation of it.
90. This was the prosecution case.

### **DEFENCE CASE**

91. At the end of the prosecution case you heard me explain options to the four accused persons and the two juveniles. They have those options because they do not have to prove anything. The burden of proving their guilt beyond reasonable doubt remains on the prosecution at all times and that burden never shifts. The accused persons and the juveniles chose to remain silent and not call any witnesses. That is their right. You should not draw any adverse inference from the fact that they decided to remain silent.
92. According to the line of cross examination, the four accused persons and the two juveniles take the position that on 7<sup>th</sup> June, 2017 they had sexual intercourse with the complainant but it was with her consent. The

complainant only cried rape after she was caught by Master Isoa in the boys hostel a place where she was not supposed to be. The complainant was living with Master Isoa and she knew she was in trouble because Master Isoa was very angry to see her in the boy's hostel so to save herself she made this allegation of rape.

### **ANALYSIS**

93. The prosecution alleges that on the 7<sup>th</sup> of June, 2017 at about 9.30 pm, the first accused Koli forcefully held the complainant's hand and took her to the boys hostel. At the hostel Koli switched off the light and took the complainant inside and made her sit on the floor then pushed her to lie down. After removing her panty, Koli forcefully inserted his penis into her vagina.
94. As the complainant was about to stand up, the first juvenile "VD" came and pushed her on the floor. The complainant tried to push the juvenile away but couldn't since he was lying on top of her. The first juvenile forcefully had sexual intercourse with the complainant. Thereafter the second accused Semisi came and pushed her to lie down. He forcefully inserted his penis into her vagina she did not do anything since he was lying on top of her, she tried to push him but couldn't since he was heavy.
95. When the complainant was about to stand up the second juvenile "PR" came and forcefully inserted his penis into the complainant's vagina. Thereafter the third accused Jeke came and pushed her on the floor and forcefully inserted his penis into the complainant's vagina. As the complainant was about to stand up, Lepani came on top of her and forcefully inserted his penis into her vagina.

96. The complainant did not do anything since she was afraid the four accused persons and the two juveniles might harm her she also did not agree or consent to have sexual intercourse with any of the six boys.
97. Isoa Tuirara the teacher who was assigned to look after the students in the dormitory that night saw the complainant lying in the boys hostel. He asked the complainant what she was doing there but there was no response from her. Isoa then told her to go home and he will question her later.
98. At home when Isoa questioned the complainant about what she was doing in the dormitory the complainant replied that Tekeula, "PR", "VD" and Koli had sexual intercourse with her. The next morning she told him there were two more boys namely Jeke and Lepani. Isoa also stated that the complainant had told him that when she was on her way home she met Koli and they went to the boys hostel. The complainant appeared to be afraid when she told him all this.
99. On the other hand the four accused persons and the two juveniles take the position that on 7<sup>th</sup> June, 2017 they had sexual intercourse with the complainant with her consent. The complainant only cried rape after she was caught by Master Isoa in the boys hostel a place where she was not supposed to be. The complainant was living with Master Isoa and she knew she was in trouble because Master Isoa was very angry to see her in the boy's hostel so to save herself she made this allegation of rape against all of them.

Madam and Gentlemen Assessors

100. You heard the evidence of all the witnesses. If I did not mention a particular piece of evidence that does not mean it's unimportant. You should consider and evaluate all the evidence in reaching your opinion.

101. Which version you are going to accept whether it is the prosecution version or the defence version is a matter for you. You must decide which witnesses are reliable and which are not. You observed all the witnesses giving evidence in court. You decide which witnesses were forthright and truthful and which were not. Which witnesses were straight forward? You may use your common sense when deciding on the facts. Assess the evidence of all the witnesses and their demeanour in arriving at your opinions.
102. In deciding the credibility of the witnesses and the reliability of their evidence it is for you to decide whether you accept the whole of what a witness says, or only part of it, or none of it. You may accept or reject such parts of the evidence as you think fit. It is for you to judge whether a witness is telling the truth and is correctly recalling the facts about which he or she has testified. You can accept part of a witness's evidence and reject other parts. A witness may tell the truth about one matter and lie about another, he or she may be accurate in saying one thing and not be accurate in another.
103. You will have to evaluate all the evidence and apply the law as I explained to you when you consider the charges against the accused persons and the juveniles have been proven beyond reasonable doubt. In evaluating evidence, you should see whether the story related in evidence is probable or improbable, whether the witness is consistent in his or her own evidence or with his or her previous statements or with other witnesses who gave evidence. It does not matter whether the evidence was called for the prosecution or the defence. You must apply the same test and standards in applying that.



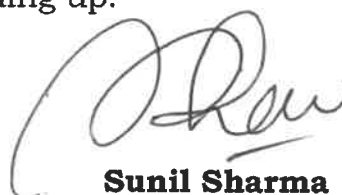
104. It is up to you to decide whether you accept the version of the defence and it is sufficient to establish a reasonable doubt in the prosecution case.
105. If you accept the version of the defence you must find the accused persons and the juveniles not guilty. Even if you reject the version of the defence still the prosecution must prove this case beyond reasonable doubt. Remember, the burden to prove the accused persons and the juveniles guilt beyond reasonable doubt lies with the prosecution throughout the trial and it never shifts to the accused persons and the juveniles at any stage of the trial.
106. The accused persons and the juveniles are not required to prove their innocence or prove anything at all. They are presumed innocent until proven guilty.
107. As stated earlier in this case the four accused persons and the two juveniles are charged with a count of rape each, you should bear in mind that you are to consider each count separately and each accused separately from the other. You must not assume that because one accused person or a juvenile is guilty that the other must be guilty as well.
108. Your possible opinions are:-
- COUNT ONE: **RAPE** ACCUSED ONE - GUILTY OR NOT GUILTY  
COUNT TWO: **RAPE** JUVENILE ONE - GUILTY OR NOT GUILTY  
COUNT THREE: **RAPE** JUVENILE TWO – GUILTY OR NOT GUILTY  
COUNT FOUR: **RAPE** ACCUSED TWO – GUILTY OR NOT GUILTY  
COUNT FIVE: **RAPE** ACCUSED THREE- GUILTY OR NOT GUILTY

COUNT SIX: **RAPE** ACCUSED FOUR- GUILTY OR NOT GUILTY

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

110. Before you do so, I would like to ask counsel if there is anything they might wish me to add or alter in my summing up.



**Sunil Sharma**  
**Judge**



**At Lautoka**  
28 March, 2019

**Solicitors**

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

**Office of the Legal Aid Commission for all the Accused and the two Juveniles.**