

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 17 of 2017

[CRIMINAL JURISDICTION]

STATE

V

1. PETERO MAWI

2. SALAUCA VOLAUKILODONI

Counsel : Ms. L. Bogitini and Ms. S. Shameem for the State
Mr. Qetaki and Ms. O. Grace for the 1st Accused
Mr. J. Daurewa for the 2nd Accused

Hearing on : 26 - 28 March 2019

Summing Up on : 29 March 2019

[The complainant's name is suppressed, She will be referred to as "LL"]

SUMMING UP

Madam assessors;

1. It is now my duty to sum up the case to you. Please remember that you should accept the directions on law that I will be giving you in this summing up and should apply those directions when you evaluate the evidence in this case in order to determine whether the accused are guilty or not guilty. You should ignore any opinion of mine on the facts of this case unless you agree with that opinion. You are the judges of facts.
2. As I have told you in my opening address, your opinion should be based only on the evidence presented inside this court room. If you have heard, read or

otherwise come to know anything about this case outside this court room, you must disregard that information.

3. Evidence you should assess in this case is what the witnesses said from the witness box inside this court room, the admitted facts and the exhibit tendered. A few things you heard inside this court room are not evidence. This summing up is not evidence, Arguments raised by the lawyers for the prosecution and the defence during the proceedings, their questions and comments are not evidence. A suggestion made by a lawyer during the cross examination of a witness is not evidence unless the witness accepted that suggestion. The arguments and comments made by lawyers in their addresses are not evidence. You may take into account those arguments and comments when you evaluate the evidence only if you agree with them.
4. You must not let any external factor influence your judgment. You must not speculate about what evidence there might have been. You must approach the evidence with detachment and objectivity and should not be guided by emotion. You should put aside all feelings of sympathy for or prejudice against, the accused or the complainant. No such emotion should influence your decision.
5. You and you alone must decide what evidence you accept and what evidence you do not accept. You have seen the witnesses give evidence before this court, their behaviour when they testified and how they responded during cross-examination. Applying your day to day life experience and your common sense as representatives of the society, consider the evidence of each witness and decide how much of it you believe. You may believe all, part or none of any witness' evidence.
6. The complainant said she is 15 years old and she gave evidence about an incident that had allegedly taken place in 2016. You may have come across children of her age. You will have an idea of the way a child of a particular age behave, think, talk and the way they describe things.

7. Children can be confused about what has happened to them. Sometimes children do not speak out for fear that they themselves will be blamed for what has taken place, or through fear of the consequences should they do so. They may feel that they may not be believed. They may fear they will be punished. They may be embarrassed because they did not appreciate at the time what they were doing was wrong.
8. I mention these possibilities because experience shows that children do not all react the same way to sexual acts as adults would. It would be a mistake to think that children behave in the same way as adults, because their reaction to events is conditioned by their personal experience and immaturity and not by any moral or behavioural standard taught or learned. What happened in this particular case is, however, a decision for you to make.
9. When you assess the testimony of a witness, you should bear in mind that a witness may find this court environment stressful and distracting. Witnesses have the same weaknesses you and I may have with regard to remembering facts. Sometimes we honestly forget things or make mistakes when recalling past events.
10. In assessing the credibility of a particular witness, it may be relevant to consider whether there are inconsistencies in his/her evidence. That is, whether the witness has not maintained the same position and has given different versions with regard to the same issue. You may also find inconsistencies when you compare the evidence given by witnesses on the same issue. This is how you should deal with any inconsistency you may come across. You should first decide whether that inconsistency is significant. That is, whether that inconsistency is fundamental to the issue you are considering. If it is, then you should consider whether there is any acceptable explanation for it. If there is an acceptable explanation for the inconsistency, you may conclude that the underlying reliability of the account is unaffected. In this regard, you may perhaps think it 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.

11. However, if there is no acceptable explanation for the inconsistency which you consider significant, it may lead you to question the reliability of the evidence given by the witness in question. To what extent such inconsistencies in the evidence given by a witness influence your judgment on the reliability of the account given by that witness is for you to decide.
12. Therefore, if there is an inconsistency that is significant, it might lead you to conclude that the witness is generally not to be relied upon; or, that only a part of the witness' evidence is inaccurate; or you may accept the reason the witness provided for the inconsistency and consider him/her to be reliable as a witness.
13. You may also consider the ability and the opportunity a witness had, to see, hear or perceive in any other way what the witness said in evidence. You may ask yourself whether the evidence of a witness seem reliable when compared with other evidence you accept. These are only examples. It is up to you how you assess the evidence and what weight you give to a witness' testimony.
14. Based on the evidence you decide to accept, you may decide that certain facts are proved. You may also draw inferences based on those facts you consider as directly proved. You should decide what happened in this case, taking into account those proven facts and reasonable inferences. However, you should bear in mind that the inference you draw should be the only reasonable inference to draw from the proven facts. If there is a reasonable inference to draw against the accused as well as one in his favour based on the same set of proven facts, then you should not draw the adverse inference.
15. In this case, there are certain facts which are agreed by the prosecution and the defence. You have been given copies of those admitted facts. You should consider those facts as proven beyond reasonable doubt.

16. As a matter of law you should remember that the burden of proof always lies on the prosecution. An accused is presumed to be innocent until proven guilty. This means that it is the prosecution who should prove that the accused is guilty and an accused is not required to prove that he is innocent. The prosecution should prove the guilt of an accused beyond reasonable doubt in order for you to find him guilty. You must be sure of the accused person's guilt.
17. In order to prove that an accused is guilty of an offence, the prosecution should prove all the elements of that offence beyond reasonable doubt. If you have a reasonable doubt in respect of any element of an offence the accused is charged with, as to whether the prosecution has proved that element, then you must find the accused not guilty of that offence. A reasonable doubt is not a mere imaginary doubt but a doubt based on reason. I will explain you the elements of the offences in a short while.
18. You are not required to decide every point the lawyers in this case have raised. You should only deal with the offences the accused are charged with and matters that will enable you to decide whether or not those charges have been proved.
19. Please remember that you will not be asked to give reasons for your opinion. In forming your opinion, it is always desirable that you reach a unanimous opinion. But it is not necessary.
20. Let us now look at the amended Information. The Director of Public Prosecutions has charged the accused for the following offences;

COUNT 1

Statement of Offence

DEFILEMENT OF A YOUNG PERSON BETWEEN 13 AND 16 YEARS OF AGE: contrary to section 215 (1) of the Crimes Act 2009.

Particulars of Offence

PETERO MAWI between the 1st day of July, 2016 and the 31st day of July, 2016 at Lau, in the Southern Division, had unlawful carnal knowledge of LL,

a young person above the age of 13 years and under the age of 16 years.

COUNT 2

Statement of Offence

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

Particulars of Offence

SALAUCA VOLAUKILODONI between the 1st day of July, 2016 to the 31st of July, 2016 at Lau, in the Southern Division, inserted his penis into the vagina of LL without her consent.

21. Please remember that you should consider the case against each accused separately. In the event you find one accused guilty of the relevant charge, you must not simply assume that the other accused must be guilty of the other charge.
22. To prove the offence of defilement which is the charge against the first accused, the prosecution should prove the following elements beyond reasonable doubt:
 - a) The accused;
 - b) Unlawfully penetrated the vagina of the complainant with his penis;
 - c) The complainant was between the age of 13 years and 16 years at the material time.
23. The first element involves the identity of the offender. The identity is not disputed by the first accused.
24. To establish the second element, the prosecution should prove beyond reasonable doubt that the first accused penetrated the vagina of the complainant with his penis. The law states that this element is complete on penetration to any extent. Therefore, it is not necessary to have evidence of full penetration or ejaculation. A slightest penetration is sufficient to satisfy this element. The word "unlawfully" simply means without lawful excuse.

25. To establish the third element, the prosecution should prove beyond reasonable doubt that the complainant was between the age of 13 years and 16 years at the material time.
26. Please remember that it is a defence to this offence if 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 at the material time. However, it is not a defence that the complainant consented to sexual intercourse when it comes to the offence of defilement.
27. To prove the offence of rape, the prosecution must prove the following elements beyond reasonable doubt;
- a) the accused;
 - b) penetrated the vagina of the complainant with his penis;
 - c) without the consent of the complainant; and
 - i. the accused knew or believed that the complainant was not consenting; or
 - ii. the accused was reckless as to whether or not she was consenting.
28. The first element is concerned with the identity of the accused. The second accused claims that this is a case of mistaken identity in relation to the second count. When you consider the evidence on the identification of the second accused, please bear in mind that an honest and a convincing witness can still be mistaken. Mistaken recognition can occur even of close relatives and friends. Therefore, you should closely examine the following circumstances among others when you evaluate the evidence given by the complainant on identification of the second accused in relation to the second count;
- a) Duration of observation;
 - b) The distance within which the observation was made;
 - c) The lighting condition at the time the observation was made;

- d) Whether there were any impediments to the observation or was something obstructing the view; and
 - e) Whether the complainant knew the accused and for how long.
29. The second element involves the penetration of the complainant's vagina with the penis. The law states that this element is complete on penetration to any extent. Therefore, it is not necessary to have evidence of full penetration or ejaculation. A slightest penetration is sufficient to satisfy this element.
30. The third and the fourth elements are based on the issue of consent. To prove the third element of the offence of rape, the prosecution should prove that the accused penetrated the complainant's vagina without her consent.
31. You should bear in mind that consent means, consent freely and voluntarily given by a person with the necessary mental capacity to give consent and the fact that there was no physical resistance alone shall not constitute consent. A person's consent to an act is not freely and voluntarily given if it is obtained under the following circumstances:
- a) by force; or
 - b) by threat or intimidation; or
 - c) by fear of bodily harm; or
 - d) by exercise of authority.
32. Apart from proving that the complainant did not consent for the accused to insert his penis inside her vagina, the prosecution should also prove that, either the accused knew or believed that the complainant was not consenting; or the accused was reckless as to whether or not the complainant was consenting. This is the fourth element of the offence of rape.
33. It is not difficult to understand what is meant by the sentence "the accused knew or believed". But you may wonder as to how you could determine whether the accused was reckless. If the accused was aware of the risk that the

complainant may not be consenting for him to penetrate her vagina and having regard to those circumstances known to him it was unjustifiable for him to take the risk and penetrate the complainant's vagina, you may find that the accused was reckless as to whether or not the complainant was consenting. Simply put, you have to see whether the accused did not care whether the complainant was consenting or not.

34. In the event you find that the accused did insert his penis inside the complainant's vagina, but you are not sure whether the prosecution has proven the elements involving consent, you should consider the lesser offence of defilement, the same offence the first accused is charged with and I have already explained the elements of the offence of defilement.
35. Please remember that no witness can look into an accused's mind and describe what it was at the time of the alleged incident. Therefore, it is not possible to have direct evidence regarding an accused's state of mind. Knowledge or intention of an accused can only be inferred based on relevant proven facts and circumstances.
36. Now let us look at the evidence. Please remember that I will only refer to evidence which I consider important to explain the case and the applicable legal principles to you. If I do not refer to certain evidence which you consider important, you should still consider that evidence and give it such weight you may think fit.
37. The complainant said in her evidence that:
 - a) *She is 15 years old. She said that her date of birth is 20/05/2003 and she tendered her birth certificate as PE 1. She said that her parents passed away when she was around 5 years old and thereafter she lived with her grandparents in Tuwaci Village. In 2016, she was in class 7 and was attending the village school.*
 - b) *One day in July 2016 around 8.00pm while she was hanging clothes outside her house, the first accused shone a torchlight towards her and called her. She went to him. He told her that he wants to have sexual intercourse with her and she replied*

by saying "no". However, because he kept on asking her, finally, she said "yes". She could smell liquor from him.

- c) He told her to lie-down next to the water tank and to remove her panty and she complied. Then the first accused unzipped his trouser and inserted his penis inside her vagina. She said she felt pain when the first accused was initially trying to insert his penis and also when his penis was inside her vagina.
- d) Then her grandmother came out of the house to relieve herself and they hid themselves behind the water tank. After the grandmother went inside the house, she was again told by the first accused to lie-down and he again inserted his penis inside her vagina. After 3 to 4 minutes, he pulled his penis out and they stood up.
- e) Thereafter, when she looked to her right, she saw Salauca coming towards the first accused. By this time she was leaning onto the water tank. Salauca then spoke with the first accused. Thereafter the first accused came to her and told her that Salauca wants to speak to her. Then Salauca came to her and told her that he wants to do the same thing the first accused did. She said "no". Then Salauca told her that if she says 'no', he would tell her grandfather about her having sexual intercourse with the first accused.
- f) After Salauca said that she did not say anything, Salauca then told her to lie-down and she complied. He then told her to lift her legs and she saw him kneel down. She was not wearing her panty at that time. Salauca then opened the front part of his trouser, he touched his penis and then inserted his penis inside her vagina. She said that Salauca lifted her legs and her legs nearly touched her eyes.
- g) She said she was crying while Salauca's penis was inside her vagina. She said she regretted saying 'yes' to the first accused and then to Salauca. She said that the reason she said 'yes' to Salauca was because he told her that he will tell her grandfather about her. She could smell homebrew from Salauca.
- h) She said Salauca is related to her and they are cousins. She had known him for years. Her house was at the top of a hill and Salauca's house was at the base of the same hill. When she was having sexual intercourse with Salauca, the first accused was also there about 4 meters away from them.
- i) She said she clearly saw Salauca's face when he was walking towards the first accused. She said that she did not see his face when he inserted his penis inside her vagina but she knows that it was Salauca because she saw him coming towards the first accused and then he came to her and 'told her to lie-down and did all those things'. She said that there was light coming from the solar light near her main door and from this light, she clearly saw the face of Salauca. This light was coming from behind the first accused.
- j) After Salauca stood up the first accused came to her and told her not to inform anyone about what happened and then Salauca and the first accused left. She stood there for a while and when she was walking back she felt pain in her vagina and she could also feel that her thighs were wet.

- k) *She said she told her friend Tale about the incident and also two of her aunts. When she told her aunts, they got angry and told her that they will report the matter to the police.*
- l) *She said that she had given two statements to the police. She said that her aunts told her to say that she did not consent to the first accused and Salauca in her statement to the police and she listened to them because she was told that otherwise she might get into trouble.*
- m) *She identified the first accused in open court and also she identified the second accused as the person she was referring to as Salauca.*
- n) *During cross-examination on behalf of the first accused she agreed that in her first statement to police given on 16/11/16 she said that the first accused raped her and in the statement she gave in March 2019, she stated that it was consensual. She admitted that she told her friend Tale about everything that happened on the next day. She also admitted that she told Tale that the first accused and Salauca peeped through her window and then she went to her grandfather's room to sleep. She agreed that she had not mentioned in her second statement that she was forced to give her statement in 2016.*
- o) *During cross-examination on behalf of the second accused she agreed that there were around 20 young men who were around the same age as the second accused at that time. She agreed that the only time she saw the second accused's face was when he was walking towards the first accused and she said that she saw him from a distance of about 5 meters. She agreed that the solar power light was not as bright as the normal light powered by electricity. She said the light was about 8 meters away.*
- p) *She agreed with the suggestion that she saw the second accused for about 2 to 3 seconds while he was walking to the first accused. She denied the suggestion that she had mistaken the second accused for someone else. She agreed that the matter was reported after about 4 months and that she is scared of the two aunts.*

38. At the end of the prosecution case you heard me explain several options to the accused. They had those options because they do not have to prove anything. The burden of proving an accused's guilt beyond reasonable doubt remains on the prosecution at all times. The first accused chose to give evidence. The second accused opted to give evidence and to call one witness.

39. The first accused said in his evidence that:

- a) *He denies having sexual intercourse with the complainant. He said that on the day in question he went for diving with Salauca and after they returned they had Kava. Thereafter Salauca invited him to have homebrew. They went near the mango tree between the complainant's house and Salauca's house to have homebrew. This was*

around 3:00am. Then he saw someone standing next to the cloth line and he shone a light at that person and asked "who are you". He said that person was the complainant and Salauca then told him to stay there and went to the complainant.

- b) Then he saw Salauca and the complainant having sexual intercourse beside the tank. After Salauca came back he told him goodbye and left.
- c) During cross-examination on behalf of the prosecution he agreed that his wife is related to the complainant. He also agreed that he knew that the complainant was attending primary school at that time. He said he could not confirm her age.

40. The second accused said in his evidence that:

- a) In 2016 his job was to dive for sea cucumber and he started this in July 2016. He said he was part of a team of divers who used to be out of the village from Mondays to Saturdays and would be in the village only Saturday afternoons and on Sundays. He said he worked for one Semiti Vuli. He said he did not consume homebrew during the weekends he was in the village as he was always tired because he used to dive in the reef. He would just eat and sleep.
- b) He said there were about 20 young men in the village at that time. He said he does not agree with the allegation made by the complainant because he was not there. He also said that the complainant had made the allegation against him because of a family dispute.
- c) During cross-examination on behalf of the first accused, he agreed that the first accused used to dive with him sometimes in 2016. He denied that he drank homebrew with the first accused in the village.
- d) During cross-examination on behalf of the prosecution he agreed that he and complainant are cousins. He said he was in Tutuua Village for 2 years and when he came to the village, the complainant was in class 6. He agreed that he knew the complainant and her family. He said he did not know the complainant's age in 2016.
- e) He agreed that he is related to Semiti Vuli. He said the 20 young men he referred to are not identical to each other.

41. The second witness called by the second accused was one Semiti Vuli. He said that:

- a) He resided in Tutuua in 2016. He said that in July 2016, he used to sell seafood. He used to go with his divers on Monday and return on Saturday. He said Salauca Volaukilodoni accompanied him during July 2016. He said, during July 2016 on Saturday nights and Sundays Salauca stayed with him at his house which was located at the end of the village.
- b) He said that in Tutuua, there were many young men similar to Salauca. When Salauca was staying with him during the weekends, he had not seen Salauca consume Kava or homebrew. He does not know whether Salauca went anywhere.

during the night when Salauca was staying with him during the weekends in July 2016. He said Salauca was his labourer.

- c) During cross-examination on behalf of the first accused he agreed that he did not keep a track of Salauca because he trusted him,*
- d) During cross-examination on behalf of the prosecution he said that diving was done not only from July but from January 2016 to December and Mr. Volaukilodoni was working for him since January 2016. He said he cannot confirm which month he had been with Salauca at Tiruua Village. He also agreed that he cannot confirm the events of July 2016.*

Analysis

- 42. In this case, there was a delay of about 4 months for the complainant to make a complaint to the police. As I have already highlighted, experience has shown that victims of sexual offences may react in different ways to what they went through. Some, in distress or anger may complain to the first person they see. Some, due to shame, fear, shock or confusion may not complain for some time or may not complain at all. However, if there is a delay, that may give room to make-up a story, which in turn could affect the reliability of the story. If the complaint is prompt, that usually leaves no room for fabrication. If there is a delay in making a complaint, you should see whether there is a reasonable explanation to such delay. Ultimately your task is to decide whether you are sure that the complainant has given you a truthful and a reliable account of her experience concerning the offences the accused are charged with.

- 43. The counsel for the first accused also highlighted the fact that the complainant admitted in her evidence that she told her friend Tale on the next day about everything that happened and the fact that the complainant also admitted that she told Tale that the first accused and Salauca peeped into her room. The counsel also points out that in 2016 the complainant had made the allegation that the first accused raped her and in the statement given to police in March 2019 she has stated that she had consensual sexual intercourse with the first accused. The complainant said in her evidence that her aunts forced her to say in her first statement to police that she did not consent. It was also pointed out

that the complainant had admitted in her evidence that she did not mention about her aunts forcing her to give her statement in November 2016.

44. The counsel for the first accused therefore says that the complainant had not been consistent with regard to her version of events and therefore she is not a credible witness. I have already explained to you on how to deal with inconsistencies. You should deal with the aforementioned inconsistencies and any other inconsistency you may find, in accordance with those directions.
45. The second accused says that he was not there at the place of offence at the time the offence is alleged to have been committed. This defence is known as the defence of *alibi*. Accordingly, the second accused says that he could not have committed the offence he is charged with because he was not there at the place of offence at the material time. Though an accused raises the defence of *alibi*, please remember that there is no burden for the accused to prove that he was elsewhere during the time the offence is alleged to have been committed. The prosecution should still prove that it was the accused that committed the offence and therefore the *alibi* is not true.
46. Having considered the evidence of the second accused and his witness regarding his *alibi*, if you think that the version of the second accused is true or it may be true, then you must find the second accused not guilty of the second count.
47. However, you should also bear in mind that you should not assume that the second accused is guilty of the offence he is charged with merely because you decide not to accept his *alibi*. You should remember that sometimes an accused may invent an *alibi* just because it is easier to do so rather than telling the truth. Main question remains the same. That is, whether you are sure that the second accused committed the offence he is charged with.

48. You heard the evidence of the first accused who said that he saw one Saluaca having sexual intercourse with the complainant. His defence was that the allegation against him was fabricated by the complainant because he saw the complainant having sexual intercourse with Saluaca. As I have pointed out the defence of the second accused is that he was never there where the offence was committed at the time the offence was committed. Therefore, if you believe the above evidence of the first accused and also if you find that the person the first accused referred to as Saluaca is the second accused, that would place the second accused in the scene of crime.
49. You should remember few things when you consider this evidence of the first accused against the second accused. The evidence of an accused is admissible as evidence in a case. A while ago, I have explained that you should examine the case of each accused separately and in turn. When you are considering the case of the second accused, the evidence of the first accused will be relevant. When you are considering the case of the first accused, the evidence of the second accused will be relevant. But, in this case the second accused has not given any evidence that implicates the first accused, because as I already said, the second accused's version is that he was never there. So, you must assess the truth of the first accused's evidence as you would, the evidence of any other witness but, when you do that, bear in mind that the first accused has his own interest to consider when giving evidence in his own defence.
50. Considering the facts you may consider to have been proved beyond reasonable doubt based on the evidence led in this case and the reasonable inferences you would draw from those proven facts, you have to ask yourselves, firstly, whether you are satisfied beyond reasonable doubt that the complainant had given you a truthful and a reliable account. Thereafter, you should decide whether the elements of each offence have been proved beyond reasonable doubt given the evidence you would consider to be credible and reliable.

51. With regard to the first count which is against the first accused, the complainant says that she had sexual intercourse with the first accused where the first accused inserted his penis inside her vagina. She said she is 15 years old now and her date of birth is 20/05/2003. The first accused says that the complainant is not a credible witness and that she has fabricated the case against him because he witnessed the complainant having sexual intercourse with one Salauca.
52. With regard to the second count which is against the second accused, the complainant says that the second accused had sexual intercourse with her where the second accused inserted his penis inside her vagina. She says that she agreed to have sexual intercourse with the second accused after he threatened her that he will inform her grandfather about her having sexual intercourse with the first accused. The second accused says that the complainant has mistaken him for someone else and that he was elsewhere at the time of offence. The second accused also said in his evidence that the complainant had made this allegation against him due to a family dispute.
53. With regard to the issue of identity, I have already pointed out to you that an honest and a convincing witness can still be mistaken. Mistaken recognition can occur even of close relatives and friends.
54. The complainant said that she recognized the second accused who is her cousin with the light emanating from the solar light next to her main door when the second accused was walking towards the first accused. She observed the second accused for few seconds while he was so walking. She said thereafter the second accused spoke to her where he said that he wants to do the same thing the first accused did with her and then threatened her when she refused. Then he told her to lie-down and he was putting his penis inside her vagina for 3 to 4 minutes. She says she clearly identified the second accused and nothing was obstructing her view of the second accused when she recognized him. She agreed during cross-examination that the solar light was not bright as a normal light powered by electricity.

55. You have to consider all the evidence relevant to the identification of the second accused and decide whether you are sure that it was the second accused who committed the offence he is charged with.
56. You must remember to assess the evidence for the prosecution and the defence using the same yardstick but bearing in mind that always the prosecution should prove the case against the accused beyond reasonable doubt.
57. I must again remind you that even though an accused person gives evidence, he does not assume any burden of proving his case. The burden of proving the case against an accused beyond reasonable doubt remains on the prosecution throughout. An accused's evidence must be considered along with all the other evidence and you can attach such weight to it as you think appropriate.
58. Generally, an accused would give an innocent explanation and one of the three situations given below would then arise in respect of each accused in relation to their respective charge;
- (i) You may believe his explanation and, if you believe him, then your opinion must be that the accused is 'not guilty'
 - (ii) Without necessarily believing him you may think, 'well what he says might be true'. If that is so, it means that there is reasonable doubt in your mind and therefore, again your opinion must be 'not guilty'.
 - (iii) The third possibility is that you reject his evidence. But if you disbelieve him, or his witness, that itself does not make him guilty. The situation would then be the same as if he had not given any evidence at all. You should still consider whether the prosecution has proved all the elements beyond reasonable doubt.

If you are sure that the prosecution has proved all the elements, then your proper opinion would be that the accused is 'guilty' of the offence.

59. Any re-directions?
60. Madam and Gentlemen Assessors, that is my summing up. Now you may retire and deliberate together and may form your individual opinion on the charges against the accused. When you have reached your separate opinion you will come back to court and you will be asked to state your separate opinion.

61. Your opinion should be as follows:

First accused (defilement) – guilty or not guilty

Second accused (rape) – guilty or not guilty

If not guilty

Defilement – guilty or not guilty



A handwritten signature in blue ink, appearing to read 'Vinsent S. Perera'.

Vinsent S. Perera

JUDGE

Solicitors

Office of the Director of Public Prosecutions for the State

Legal Aid Commission for the 1st Accused

R. Vananalagi & Associates for the 2nd Accused