

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 066 OF 2020S

STATE
vs
MOALA BATI

Counsels : Mr. S. Komaibaba, Mr. Y. Prasad and Ms. M. Lomaloma for State
Ms. S. Daunivesi and Ms. O. Grace for Accused

Hearings : 30 November, 1, 2, 3, 4, 7 and 8 December, 2020.

Summing Up : 10 December, 2020.

SUMMING UP

A. ROLE OF JUDGE AND ASSESSORS

1. Madam and Gentlemen Assessors, it is my duty to sum up to you. In doing so, I will direct you on matters of law, which you must accept and act upon. On matters of fact however, what evidence to accept and what evidence to reject, these are matters entirely for you to decide for yourselves. So if I express my 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 fact.
2. State and Defence Counsels 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 Counsels, in this case. Their submissions were designed to assist you, as the judges of fact. However, you are not bound by what they said. It is you who are the representatives

of the community at this trial, and it is you who must decide what happened in this case, and which version of the evidence is reliable.

3. You will not be asked to give reasons for your opinions, but merely your opinions themselves and they need not be unanimous. Your opinions are not binding on me, but I will give them the greatest weight, when I deliver my judgment.

B. THE BURDEN AND STANDARD OF PROOF

4. As a matter of law, the onus or burden of proof rest on the prosecution throughout the trial, and it never shifts to the accused. There is no obligation on the accused to prove his innocence. Under our system of criminal justice, an accused person is presumed to be innocent until he is proved guilty.
5. The standard of proof in a criminal trial, is one of proof beyond reasonable doubt. This means that you must be satisfied, so that you are sure of the accused's guilt, before you can express an opinion that he is guilty. If you have any reasonable doubt so that you are not sure about his guilt, then you must express an opinion, that he is not guilty.
6. Your decision must be based exclusively upon the evidence which you have heard in this court, and upon nothing else. You must disregard anything you might have heard about this case outside of this courtroom. You must decide the facts without prejudice or sympathy, to either the accused or the victims. Your duty is to find the facts based on the evidence, and to apply the law to those facts, without fear, favour or ill will.

C. THE INFORMATION

7. At the end of the prosecution's case, I have found the accused not guilty of count no. 9, which is rape. You must disregard that from the information. I will now read the information to you as amended:

"... [read from the information]...."

D. THE MAIN ISSUES

8. In this case, as assessors and judges of fact, each of you will have to answer the following questions:

- (i) On count no. 1, did the accused, between 1 to 31 August 2019, at Sinuda, Nabalolo Settlement, Levuka in the Eastern Division, rape the first complainant (PW4)?
- (ii) On count no. 2, did the accused, between 1 to 31 August 2019, at Sinuda, Nabalolo Settlement, Levuka in the Eastern Division, attempted to rape the first complainant (PW4)?
- (iii) On count no. 3, did the accused, between 1 to 31 August 2019, at Sinuda, Nabalolo Settlement, Levuka in the Eastern Division, attempted to rape the first complainant (PW4)?
- (iv) On count no. 4, did the accused, between 1 to 31 August 2019, at Sinuda, Nabalolo Settlement, Levuka in the Eastern Division, rape the first complainant (PW4)?
- (v) On count no. 5, did the accused, between 1 to 31 August 2019, at Sinuda, Nabalolo Settlement, Levuka in the Eastern Division, rape the first complainant (PW4)?
- (vi) On count no. 6, did the accused, between 1 to 31 August 2019, at Sinuda, Nabalolo Settlement, Levuka in the Eastern Division, attempted to rape the first complainant (PW4)?
- (vii) On count no. 7, did the accused, between 31 January 2019 to 31 January 2020, at Sinuda, Nabalolo Settlement, Levuka in the Eastern Division, rape the second complainant (PW1)?
- (viii) On count no. 8, did the accused, between 31 January 2019 to 31 January 2020, at Sinuda, Nabalolo Settlement, Levuka in the Eastern Division, attempted to rape the second complainant (PW1)?
- (ix) On count no. 10, did the accused, between 1 to 31 October 2019, at Sinuda, Nabalolo Settlement, Levuka in the Eastern Division, rape the third complainant (PW3)?

- (x) On count no. 11, did the accused, between 1 to 31 October 2019, at Sinuda, Nabalolo Settlement, Levuka in the Eastern Division, attempted to rape the third complainant (PW3)?
- (xi) On count no. 12, did the accused, between 1 to 31 October 2019, at Sinuda, Nabalolo Settlement, Levuka in the Eastern Division, rape the third complainant (PW3)?
- (xii) On count no. 13, did the accused, between 1 to 31 October 2019, at Sinuda, Nabalolo Settlement, Levuka in the Eastern Division, sexually assault the third complainant (PW3)?

E. THE OFFENCES AND THEIR ELEMENTS

9. At present, the accused is facing 6 counts of “rape”, contrary to section 207 (1), (2) (a), (2) (b) and (3) of the Crimes Act 2009; 5 counts of “attempted rape”, contrary to section 208 of the Crimes Act 2009, and one count of “sexual assault”, contrary to section 210 (1) (a) of the Crimes Act 2009. It was alleged that, between 31 January 2019 and 31 January 2020, the accused allegedly raped three female child complainants on six different occasions, attempted to rape them on five different occasions and sexually assaulted the third complainant (PW3) on one occasion, at Nabalolo Settlement, Levuka in the Eastern Division. At the time, all the complainants were under 13 years old.
10. For the accused to be found guilty of “rape”, the prosecution must prove beyond reasonable doubt, the following elements:
- (i) the accused;
 - (ii) penetrated the complainants’ anus with his penis (count no. 1, 4, 5 and 7); or
 - (iii) penetrated the complainant’s vulva with his tongue (count 10); or
 - (iv) penetrated the complainant’s vulva with his penis (count 12)
 - (v) without the complainants’ consent; and
 - (vi) he knew they were not consenting to 10 (ii) or 10 (iii) or 10 (iv), at the time.

11. Crucial to the above offence is the meaning of the verb “penetrate”. In the **Oxford Advanced Learner’s Dictionary**, 6th edition, Oxford University Press, 2002, the word “penetrate” means “to go into or through something”. The slightest penetration of the complainants’ anus (counts no. 1, 4, 5 and 7), or vulva (count no. 10 and 12) by the accused’s penis (count no. 1, 4, 5 7 and 12) or tongue (count no. 10), is sufficient to satisfy element 10 (ii), 10 (iii) and 10 (iv) above.
12. “Consent” is to agree freely and voluntarily and out of her own freewill. If consent was obtained by force, threat, intimidation or by fear of bodily harm to herself or by exercise of authority over her, that “consent” is deemed to be no consent. The consent must be freely and voluntarily given by the complainant. In this case however, we are dealing with female complainants, who were under 13 years old at the time. In law, a person under 13 years old is incapable of giving her consent to her anus or vulva being penetrated by a penis or tongue. So, for a child under 13 years old, the prosecution does not need to prove non-consent by the child complainant. It is already a presumption in law.
13. It must also be established by the prosecution beyond reasonable doubt that the accused knew the complainants were not consenting, at the time. You will have to look at the parties’ conduct at the time, and the surrounding circumstances, to decide this issue. However, for a child complainant who was under 13 years old at the time, an adult accused is presumed to know in law that she is incapable of giving her consent to her anus or vulva being penetrated by the accused’s penis or tongue. This policy was put there to protect children.
14. If you find the above elements of rape proven by the prosecution beyond reasonable doubt, you must find the accused guilty as charged. If otherwise, you must find him not guilty as charged. It is a matter entirely for you.
15. For the accused to be found guilty of “attempted rape”, the prosecution must prove beyond reasonable doubt, the following elements:

- (i) the accused
- (ii) attempted
- (iii) to rape
- (iv) the complainant.

16. The definition of the offence of rape had been discussed in paragraphs 10, 11, 12 and 13 hereof. The important word in the above offence is the word “attempt”. In the **Oxford Advanced Learner’s Dictionary** (supra), the word “attempt” means “to make an effort or try to do something, especially something difficult”, or “an act of trying to do something, especially something difficult, often with no success”. Also, the accused’s conduct must be more than merely preparatory to the commission of the offence, and the question whether conduct is more than merely preparatory to the commission of the offence is one of fact for you.
17. If you find the elements of the offence of attempted rape had been proven by the prosecution beyond reasonable doubt, you must find the accused guilty as charged. If otherwise, you must find him not guilty as charged. It is a matter entirely for you.
18. For the accused to be found guilty of “sexual assault”, the prosecution must prove beyond reasonable doubt, the following elements:
- (i) the accused
 - (ii) unlawfully and indecently
 - (iii) assaults
 - (v) the female complainants.
19. Sexual assault is an aggravated form of indecent assault. The prosecution must prove the above elements against the accused beyond reasonable doubt. “Assault” is really to apply unlawful force to the person of another without his or her consent. The “assault” must be considered “indecent” by right thinking members of society. For a child under 13 years old, the rule of non-consent as applied to rape in paragraph 12 and the rule that an adult is presumed to know such child cannot consent to the indecent assault as applied to rape in

paragraph 13 hereof, also applied to “sexual assault”. If you find the above elements proven by the prosecution beyond reasonable doubt against the accused, you may find him guilty of sexual assault or indecent assault. If otherwise, you must find him not guilty of the same. It is a matter entirely for you.

20. Count no. 1 to 6, involving the first complainant (PW4) are said to have occurred between 1 to 31 August 2019. Count nos. 7 to 8, involving the second complainant (PW1), are said to have occurred between 31 January 2019 to 31 January 2020. Count nos. 10 to 13, involving the third complainant (PW3), are said to have occurred between 1 to 31 October 2019. It is normal for the prosecution to draft the charge in such a way if the child complainant does not remember the exact date and time of the alleged incident. However, if you find and accept that an alleged incident occurred within such time period, that would be enough to support the charge.
21. There are twelve counts in the information. You must consider them separately and come to a considered decision on each of them separately, in the light of the whole evidence presented at the trial.

F. THE PROSECUTION’S CASE

22. The prosecution’s case were as follows. The accused was 35 years old at the time of the alleged incidents. It was alleged that between 31 January 2019 and 31 January 2020, he attempted to rape, raped and sexually assaulted three female complainants, who were all under 13 years at the time. He allegedly did the above on twelve separate occasions. The accused and the three child complainants resided next to each other in a settlement at Levuka, Ovalau. They were all related to each other. The accused was the three child complainants’ uncle. Complainant no. 1 (PW4) was 9 years old at the time, while complainant no. 2 (PW1) was 8 years old, and complainant no. 3 (PW3) was 10 years old.
23. According to the prosecution, between the 1st and 31st October 2019, the accused allegedly took the first complainant (PW4) on three separate occasions, to his farm. His farm was in

the bush. On each occasion, his modus operandi was similar. According to the prosecution, he would tell PW4 to lie on the ground on a sack, facing down. He would allegedly take PW4's clothes off and then his clothes off. He would then allegedly spit on his hand and rub the spit on PW4's anus. He would then allegedly rub spit on his penis, and then attempt to insert his erect penis into PW4's anus. According to prosecution, his penis would allegedly slightly penetrate PW4's anus, as she would feel pain in her anus. According to prosecution he allegedly did the above on six separate occasions (count no. 1 to 6).

24. As far as complainant no. 2 (PW1) was concerned, the prosecution's case were as follows. Sometime between 31 January 2019 to 31 January 2020, PW1 went to the accused's house to ask for his children. According to the prosecution, the accused called her into the house to see his children. PW1 went in, but could not find his children. According to the prosecution, the accused then allegedly carried PW1 into his bedroom. He allegedly forced her onto a mattress that was on the floor. He then allegedly took off PW1's clothes and his clothes. PW1 was lying face down on the mattress. According to prosecution, accused allegedly spat on his erect penis and rubbed the same on PW1's anus. Then he allegedly tried to insert his erect penis into PW1's anus. According to prosecution, the accused's penis allegedly penetrated PW1's anus slightly, as there was blood in her stool when she returned home, and blood on her underwear (count no. 7 and 8).

25. For complainant no. 3 (PW3), the prosecution's case were as follows. According to the prosecution, between the 1st and 31st October 2019, the accused allegedly attempted to rape PW3 once, raped her twice and sexually assaulted her once. On the first occasion, PW3 was returning a coconut scraper to the accused's house. When PW3 went into the house, the accused forcefully carried her to his bedroom, and allegedly made her lie on a mattress on the floor. He later allegedly took her clothes off and licked her "mimi" (vagina). According to the prosecution, his tongue allegedly penetrated her vulva, at the time (count no. 10). Later, he allegedly spat on his penis, rubbed the same ontop of PW3's anus and attempted to insert the same into PW3's anus (count no. 11). According to the prosecution,

the family went out to catch crabs. The accused allegedly took PW3 to a secluded spot and took off her clothes, including his. He allegedly made PW3 lie on a sack on the ground. Then he allegedly rubbed his “balls” (penis) on her “mimi” (vulva). According to the prosecution, by doing the above, the accused allegedly penetrated her vulva with his penis (count no. 12). Finally, while sleeping at Moala’s house with his children on one occasion, the accused allegedly came to PW3 and laid over her. He allegedly put oil on her thighs and rubbed his “ball” (penis) on the same, until he ejaculated (count no. 13).

26. The above matters were later reported to police. An investigation was carried out. The complainants were medically examined. On 5 February 2020, the accused appeared in the Nausori Magistrate Court charged with raping and sexually assaulting the complainants. Because of the above, the prosecution is asking you as assessors and judges of fact, to find the accused guilty as charged on all counts. That was the case for the prosecution.

G. THE ACCUSED’S CASE

27. On 30 November 2020, the information was put to the accused, in the presence of his counsels. He pleaded not guilty to all the counts. In other word, he denied the allegations against him. At the end of the prosecution’s case, he was acquitted of count no. 9 (rape), as there was no evidence to support the same, but a prima facie case was found against him on all the other counts, that is, count nos. 1, 2, 3, 4, 5, 6, 7, 8, 10, 11 and 13. He was called upon to defend himself on the above counts. He chose to remain silent and called his niece (DW1), as his only witness. That was his right.
28. Nothing negative whatsoever should be imputed to the accused when he chose to exercise his right to remain silent. This is because the burden to prove his guilt beyond reasonable doubt, remains with the prosecution throughout the trial, and it never shifts to the accused, at any stage of the trial. Remember what I told you in paragraph 4 hereof, and I repeat the same here. There is no burden on the accused to prove his innocence, or prove anything at all. He is presumed innocent until he is proven guilty beyond a reasonable doubt. He is

entitled, as he had done here, to fold his arms, sit there in the dock, and demand the prosecution prove his guilt beyond a reasonable doubt.

29. The accused called his niece (DW1) to give evidence. On the allegations against the accused, DW1's evidence was not helpful to the defence.
30. The accused pleaded not guilty to all the counts. Because of the above, the accused is asking you, as assessors and judges of fact, to find him not guilty as charged, on all counts. That was the case for the defence.

H. **ANALYSIS OF THE EVIDENCE**

(a) **Introduction:**

31. In analyzing the evidence, please bear in mind the directions I gave you in paragraphs 4, 5 and 6 hereof on the burden and standard of proof. In the acceptance and/or rejection of the evidence presented at the trial and your role as assessors and judges of fact, please bear in mind the directions I gave you in paragraphs 1, 2 and 3 hereof. In analyzing the evidence, we will first discuss the Agreed Facts, then the State's case against the accused. Then, we will discuss the Accused's case. Then we will consider the need to look at all the evidence.

(b) **The Agreed Facts:**

32. The parties had submitted an "Agreed Facts", dated 30 November 2020. A copy of the same is with you. Please, read it carefully. There are 4 paragraphs of "Agreed Facts". Because the parties are not disputing the same, you may treat the same as established facts, and that the prosecution had proven those facts beyond a reasonable doubt.

(c) **The State's Case Against the Accused:**

33. A crime can be proven on the basis of the sworn evidence of a witness, if you, as assessors and judges of fact, accept the same as credible, and that it satisfied the elements of the offence beyond reasonable doubt. This also applied to the unsworn

evidence of a child witness, if you accept the same as credible. The State's case against the accused in this case, was based fundamentally on the verbal evidence of the three child complainants (i.e. PW1, PW3 and PW4), given in court before you on 30 November, 1, 2 and 3 December 2020. You had watched their evidence given in court, and had assessed their demeanors while they were responding to the questions thrown at them by the prosecutor and defences' counsels. At the time of the alleged offences, PW1 was 8 years old, PW3 was 10 years old and PW4 was 9 years old. They were trying to recall what allegedly occurred 1 year ago. I am sure their evidence are still fresh in your minds, and I do not wish to bore you with the details. However, in our discussion, I will concentrate on the salient points in the evidence, and the issue of whether or not the prosecution had made you sure that the elements of the offences had been satisfied.

34. The first complainant (PW4) said that, at the material time, she knew the accused. She was 9 years old. She said, the accused was her uncle and they lived near each other at the settlement. She said, sometime in August 2019, the accused took her to his farm. At the farm, PW4 said, the accused made her lie on a sack spread on the ground. She said, she was facing down. PW4 said, he removed her clothes, and he removed his clothes. PW4 said, she was bending down. PW4 said, the accused spat on his hand, and rubbed the same on her anus. PW4 said, he then spat on his hand, and rubbed the same on his "stick" (penis). PW4 said, he then rubbed his "stick" on her anus, and he was trying to insert the same into her anus. PW4 said, at the time, she felt pain in her anus. PW4 pointed at Photo No. 16 and 17 in the Booklet of Photos (Prosecution Exhibit No. 7) as the place where the accused did the above to her. PW4 said, that was the first occasion.
35. PW4 said, on the second occasion, the accused again took her to his farm. This was again in August 2019. PW4 said, he repeated what he did above to her at his farm. PW4, in court, pointed to Photo 19 in the Booklet of Photos (Prosecution Exhibit No. 7) as the place where the accused allegedly attempted to rape her, and actually raped her, at the farm. PW4 appear to say that the accused's modus operandi was similar to what he did to her on the first occasion. PW4 said, on the third occasion, sometimes in August 2019, the

accused again took her to his farm. PW4 said, he again did what he did in the first and second occasions to her. In court, PW4 pointed at Photo 20 in the Booklet of Photos (Prosecution Exhibit No. 7), as the place where the accused did the above to her.

36. PW4 said, on all the above occasions, she clearly saw the accused's face, as it was daylight and the sun was shining. When the alleged offences were done, he was an arm's length from her, and he did the above to her for a while. PW4 said, nothing blocked her view and she knew the accused well, as he was her uncle. PW4 said, the accused told her not to tell anyone about the above, or he will kill her. However, PW4 said, she later told her aunty about the above. The matter was later reported to police and an investigation was carried out [count nos. 1, 2, 3, 4, 5 and 6].
37. The second complainant was PW1. She was 8 years old. PW1 said, she knew the accused as her uncle and they resided next to each other in the same settlement. She said, she often plays with the accused's daughters and often visit their home for the same. PW1 said, one day she went to the accused's house to see his daughters. PW1 said, the accused suddenly came to her and forcefully carried her to his bedroom. PW1 said, he made her lie on a mattress on the floor, facing down. PW1 said, he later took off her clothes and also his pants. PW1 said, he then spat on his hand and rubbed it on his "stick" (penis). PW1 said, he also spat and rubbed the same on her anus. PW1 said, he then rubbed his "stick" on her anus, and tried to insert the same into her anus. PW1 said, as she lay on the mattress facing down, the accused was pressing down on her. She said, when she returned home, she found blood in her stool. She said, there was also blood in her underwear.
38. PW1 said, the accused told her not to tell anyone about the above incident or he will not give her a gold chain. However, PW1 said, he later told her mother about the above incident. PW1's mother, who was PW2, told the court that PW1 told her about the above incident on 31 January 2020. PW2 said, PW1 told her that the above incident occurred on

or about the previous Sunday. The matter was reported to police and an investigation was carried out [counts no. 7 and 8].

39. The third complainant was PW3. She is related to the accused. She was 10 years old. The accused is her uncle. PW3 said, they lived in the same settlement and their houses were next to each other. PW3 said, she often played with the accused's two daughters. PW3 said, sometime in October 2019, the accused did some bad things to her. PW3 said, on the first occasion, her grandmother had asked her to return the coconut scrapper to the accused's house. PW3 said, she went into the accused's house to return the scrapper. PW3 said, as soon as she was in the house, the accused closed the door. PW3 said, the accused then brought a cloth and tied it around her mouth. PW3 said, he then carried her to his bedroom. PW3 said, he then made her lie down on a mattress on the floor. PW3 said, he took off her clothes. PW3 said, he then licked her "mimi" (vulva) with his tongue. PW3 said, she felt itchiness in her "mimi" (count no. 10).
40. PW3 said, on the second occasion, she was out gathering mangoes with the accused and her daughter. PW3 said, after a while, the accused told her daughter to take the lead home. PW3 said, the accused later took her to a secluded spot and made her lie down on a sack spread on the ground. PW3 said, the accused removed her pants. PW3 said he then spat on his hand and rubbed the same on his "ball" (penis), and rubbed the same on her anus. PW3 said, the accused was trying to insert his "ball" into her anus. PW3 said, she felt pain in her anus (count no. 11). PW3 said, on the third occasion, they went out to catch some crabs. After a while, PW3 said, the accused took her to a secluded spot. PW3 said, the accused later made her lie down on a sack spread on the ground. PW3 said, he later removed her clothes, and also removed his pants. PW3 said, he then spat on his "balls" (penis) and then rubbed the same on top of her "mimi" (vulva). PW3 said, he did the above for about 5 minutes (count no. 12).
41. PW3 said, on the fourth occasion, she was sleeping at the accused's house with his daughters. PW3 said, she awoke at 5 am to find the accused lying over her. PW3 said,

she was lying with others on the mattress on the floor. PW3 said, she felt something dripping down her thighs. PW3 said, she felt it was oil. PW3 said, the accused took his “balls” (penis) and rubbed it on her thighs until he ejaculated (count no. 13). PW3 said, she later told her teacher about the above. The matter was later reported to police and an investigation was carried out.

42. If you accept the three child complainants’ evidence as described above, and you find the same to be credible, you must find the accused guilty as charged, on all counts. If otherwise, you must find the accused not guilty as charged, on all counts. It is a matter entirely for you.

(d) **The Accused’s Case:**

43. I had summarized the accused’s case to you from paragraphs 27 and 30 hereof. I repeat the same here. He chose to remain silent. That was his right. His witness, DW1, add nothing to the defence. As a result, you will have to assess the strength of the prosecution’s case and decide accordingly.

(e) **The Need To Consider All the Evidence:**

44. The prosecution called 12 witnesses:
- (i) The Second Complainant (PW1);
 - (ii) The Second Complainant’s Mother (PW2);
 - (iii) The Third Complainant (PW3);
 - (iv) The First Complainant (PW4);
 - (v) Ms. Nanise Masirewa (PW5);
 - (vi) Doctor Fay Kean (PW6);
 - (vii) Doctor Ripeka Kaurasi (PW7);
 - (viii) Doctor Sailosi Soqo (PW8);
 - (ix) WPC 4894 Ulamila Nadakuitavuki (PW9);
 - (x) DC 4996 Jovesa Rokotakala (PW10);
 - (xi) WPC 5152 Macira Dilagi (PW11); and

(xii) D/Cpl 4309 Sakeasi Koroi (PW12).

The prosecution submitted the following exhibits:

- (i) PW1's Medical Report - Prosecution Exhibit No. 1.
- (ii) PW3's Medical Report - Prosecution Exhibit No. 2.
- (iii) PW4's Medical Report - Prosecution Exhibit No. 3.
- (iv) Accused's Caution Interview Statement - Prosecution Exhibit No. 4 (A) – itaukei
[2nd Complainant (PW1)] - Prosecution Exhibit No. 4 (B) – English.
- (v) Accused's Caution Interview Statement: Prosecution Exhibit No. 5 (A) – itaukei
[3rd Complainant (PW3)] - Prosecution Exhibit No. 5 (B) – English.
- (vi) Accused's Caution Interview Statement: Prosecution Exhibit No. 6 (A) – itaukei
[1st Complainant (PW4)] - Prosecution Exhibit No. 6 (B) – English.
- (vii) Booklet of Photos Prosecution Exhibit No. 7.
- (viii) Sketch Plan Prosecution Exhibit No. 8.

The Defence called only one witness:

- (i) Ms. Mere Tausokola (DW1).

45. You must consider the above evidence together. Compare and analyze them together. If I hadn't mentioned a piece of evidence you consider important, please take it on board in your deliberation. If you find a witness credible, you are entitled to accept the whole or some of his/her evidence in your deliberation. If you find a witness not credible, you are entitled to reject the whole or some of his/her evidence in your deliberation. You are the judges of fact.

I. SUMMARY

46. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies on the prosecution throughout the trial, and it never shifts to the accused, at any stage of the trial. The accused is not required to prove his innocence, or prove anything at all. In fact, he is presumed innocent until proven guilty beyond reasonable doubt. If you accept the

prosecution's version of events, and you are satisfied beyond reasonable doubt so that you are sure of the accused's guilt, you must find him guilty as charged. If you do not accept the prosecution's version of events, and you are not satisfied beyond reasonable doubt so that you are not sure of the accused's guilt, you must find him not guilty as charged.

47. Your possible opinions are as follows:

- | | | | |
|--------|-------------------------------|---|-----------------------|
| (i) | Count No. 1 – Rape | - | Guilty or Not Guilty. |
| (ii) | Count No. 2 – Attempted Rape | - | Guilty or Not Guilty. |
| (iii) | Count No. 3 – Attempted Rape | - | Guilty or Not Guilty. |
| (iv) | Count No. 4 – Rape | - | Guilty or Not Guilty. |
| (v) | Count No. 5 – Rape | - | Guilty or Not Guilty. |
| (vi) | Count No. 6 – Attempted Rape | - | Guilty or Not Guilty. |
| (vii) | Count No. 7 – Rape | - | Guilty or Not Guilty. |
| (viii) | Count No. 8 – Attempted Rape | - | Guilty or Not Guilty. |
| (ix) | Count No. 10 – Rape | - | Guilty or Not Guilty. |
| (x) | Count No. 11 – Attempted Rape | - | Guilty or Not Guilty. |
| (xi) | Count No. 12 – Rape | - | Guilty or Not Guilty. |
| (xii) | Count No. 13 – Sexual Assault | - | Guilty or Not Guilty. |

48. You may now retire to deliberate on the case, and once you've reached your decisions, you may inform our clerks, so that we could reconvene, to receive your decisions




Salesi Temo
JUDGE

Solicitor for the State : **Office of the Director of Public Prosecution, Nausori.**
Solicitor for the Accused : **Legal Aid Commission, Nausori.**