

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

**Criminal Case No.: HAC 06 of 2016**

**STATE**

**V**

**AMITESH VIKASH CHAND**

**Counsel** : Ms. R. Uce and Ms. S. Naibe for the State.  
: Mr. I. Khan and Mr. T. Kaloulasulasu for the  
Accused.

**Dates of Hearing** : 06, 07, 10 August, 2020  
**Closing Speeches** : 11 August, 2020  
**Date of Summing Up** : 11 August, 2020

---

**SUMMING UP**

---

*(The name of the complainant is suppressed she will be referred to as "AK").*

Madam and Gentleman 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 is 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.
6. 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.
7. 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.
8. During the closing submissions the defence counsel told you that the prosecution did not exhibit the tights and the panty of the complainant to show if there was any hole in these clothes and also the medical report of the complainant to show any injuries.

9. I direct you to disregard the above submissions since it is not for anyone to tell the prosecution what they have to adduce as evidence in court. It is the prerogative of the prosecution to tender and exhibit whatever they think is relevant to their case. You are not to speculate why the tights and the panty and the medical report of the complainant were not exhibited in court. You are to decide the matter on the evidence adduced and nothing else.

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

10. As a matter of law, the burden of proof rests 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 or she is proven guilty.
11. 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 the accused's guilt, before you can express an opinion that he is guilty. If you have any reasonable doubt about his guilt, then you must express an opinion that he is not guilty.
12. 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.
13. You must decide the facts without prejudice or sympathy for either the accused or the complainant. Your duty is to find the facts based on the evidence without fear, favour or ill will.
14. 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**

15. The accused is charged with one count of rape, one count of sexual assault and one count of indecent assault (a copy of the information is with you).

### **FIRST COUNT**

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

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

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

**AMITESH CHAND** on the 7<sup>th</sup> of December, 2015, at Sigatoka in the Western Division penetrated the vagina of “AK” with his fingers without her consent.

### **SECOND COUNT**

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

**SEXUAL ASSAULT:** Contrary to section 210 (1) (a) of the Crimes Act 2009.

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

**AMITESH CHAND** on the 7<sup>th</sup> of December, 2015, at Sigatoka in the Western Division unlawfully and indecently assaulted “AK” by sucking her breast.

### **THIRD COUNT**

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

**INDECENT ASSAULT:** Contrary to section 212(1) of the Crimes Act 2009.

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

**AMITESH CHAND** on the 7<sup>th</sup> of December, 2015 at Sigatoka in the Western Division, indecently and unlawfully assaulted “AK” by kissing and biting her stomach.

16. To prove count one the prosecution must prove the following elements of the offence of rape beyond reasonable doubt:
  - (a) The accused;
  - (b) Penetrated the vagina of the complainant "AK" with his finger;
  - (c) Without her consent;
  - (d) The accused knew or believed the complainant was not consenting or didn't care if she was not consenting at the time.
17. In this trial the accused has denied committing the offence of rape. It is for the prosecution to prove beyond reasonable doubt that it was the accused who had penetrated the vagina of the complainant with his finger without her consent and the accused knew or believed the complainant was not consenting or didn't care if she was not consenting at the time.
18. The first element of the offence is concerned with the identity of the person who allegedly committed this offence.
19. The second element is the act of penetration of the complainant's vagina by the finger.
20. The third element is that 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.
21. If you are satisfied that the accused had penetrated the vagina of the complainant with his finger and she had not consented, you are then required to consider the last element of the offence that is whether the accused knew or believed that the complainant was not consenting or did not care if she was not consenting at the time.

22. You will have to look at the conduct of both the complainant and the accused at the time and the surrounding circumstances to decide this issue.
23. If you are satisfied beyond reasonable doubt that the prosecution has proven beyond reasonable doubt that the accused had penetrated his finger into the complainant's vagina without her consent then you must find the accused guilty as charged.
24. 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 not guilty.
25. The slightest of penetration of the complainant's vagina by the accused finger is sufficient to satisfy the act of penetration.
26. As a matter of law I also direct you to consider the lesser offence of attempt to commit rape.
27. To prove the offence of attempt to commit rape the prosecution must prove the following elements of this offence beyond reasonable doubt:
  - a) The accused;
  - b) Attempted to penetrate the vagina of the complainant with his finger;
  - c) Without her consent;
  - d) The accused knew or believed the complainant was not consenting or didn't care if she was not consenting at the time.
28. In this trial the accused has denied committing the offence of attempt to commit rape. It is for the prosecution to prove beyond reasonable doubt that it was the accused who had attempted to penetrate the vagina of the complainant with his finger without her consent and the accused knew or

believed the complainant was not consenting or didn't care if she was not consenting at the time.

29. The first element of the offence is concerned with the identity of the person who allegedly committed the offence.
30. The second element is the attempt to penetrate the complainant's vagina by the finger. This element relates to the conduct of the accused. To engage in a conduct is to do an act which is the product of the will of a person and it was not accidental.
31. The prosecution has to prove beyond reasonable doubt that the conduct of the accused was deliberate and not accidental. For the accused to be guilty of attempted rape, the accused's conduct must be more than merely preparatory to the commission of the offence. The question whether a conduct is more than merely preparatory to the commission of the offence is one of fact.
32. This leaves you to consider the third element of consent, in respect of consent I ask that you consider the definition I had given earlier in this summing up. The same definition applies.
33. If you are satisfied that the accused had attempted to penetrate the vagina of the complainant with his finger and she had not consented, you are then required to consider whether the accused knew or believed that the complainant was not consenting or did not care if she was not consenting at the time.
34. You will have to look at the conduct of both the complainant and the accused at the time and the surrounding circumstances to decide this issue.

35. Before you can find the accused guilty you must be satisfied beyond reasonable doubt of two things:-
- a) Firstly, that the accused intended to penetrate the vagina of the complainant with his finger;
  - b) Secondly, with that intention the accused did something which was more than mere preparation for committing that offence.
36. The prosecution is alleging that the accused intended to penetrate the vagina of the complainant with his finger without her consent.
37. Intention is not something that can be easily proved it is something that has to be judged by the acts or words of a person or of the circumstances that surrounds what he or she does. The law says a person has intention with respect to a result if he or she means to bring it about or is aware that it will occur in the ordinary course of events. You decide intention by considering what the accused did, you should look at his actions before, at the time of, and after the act.
38. The accused has denied committing the offence of attempted rape. It is for the prosecution to prove beyond reasonable doubt that it was the accused who had intended to penetrate the complainant's vagina and with that intention he did something which was more than merely preparatory.
39. The prosecution says the accused pulled the complainant from where she was standing and forcefully brought her inside the office. He then lifted the skirt of the complainant and then from over her tights and panty tried to penetrate his finger into the vagina of the complainant.
40. If you accept the accused did this, then it is for you to decide whether what he did went beyond mere preparation. In other words, did he actually intend to commit the offence of rape, in which case he is guilty of attempting to



commit rape, or that he only got ready, or put himself in a position, or equipped himself, to do so, then he is not guilty.

41. If you are satisfied that the prosecution has proved all the above elements beyond reasonable doubt then you must find the accused guilty of attempt to commit rape.
42. If on the other hand, you find that the prosecution has failed to prove any of these elements beyond reasonable doubt then you must find the accused not guilty of attempt to commit rape.
43. To prove count two the prosecution must prove the following elements of the offence of sexual assault beyond reasonable doubt:
  - a) The accused;
  - b) Unlawfully and indecently;
  - c) Assaulted the complainant “AK” by sucking her breast.
44. The first element of the offence of sexual assault is concerned with the identity of the person who allegedly committed the offence. This element is not in dispute therefore you can accept this element as proven beyond reasonable doubt.
45. The words “unlawfully” and “indecently” in respect of the second element of the offence of sexual assault means without lawful excuse and that the act has some elements of indecency that any right minded person would consider such conduct indecent.
46. The final element of assault is the unlawful use of force on the complainant by sucking her breast. You should ask yourself:
  - a) whether you consider the force which was used in sucking her breast was sexual in nature; and

- b) if the answer is yes, whether, in view of the circumstances and/or the purpose in relation to the force used, was in fact sexual in nature.

- 47. In this trial, the accused has denied committing the offence of sexual assault he says that the complainant had consented for him to suck her breast. You will have to consider the definition I had given about consent earlier to consider whether the complainant had consented or not.
- 48. It is for the prosecution to prove beyond reasonable doubt that it was the accused, who had unlawfully and indecently assaulted the complainant by sucking her breast without the complainant's consent.
- 49. If you are satisfied beyond reasonable doubt that the prosecution has proved all the elements of sexual assault as explained above, then you must find the accused guilty of sexual assault. If on the other hand, you have a reasonable doubt with regard to any of those elements concerning the offence of sexual assault, then you must find the accused not guilty.
- 50. To prove count three the prosecution must prove the following elements of the offence of indecent assault beyond reasonable doubt:
  - a) The accused;
  - b) Unlawfully and indecently;
  - c) Assaulted the complainant "AK" by kissing and biting her stomach.
- 51. The first element of the offence of indecent assault is concerned with the identity of the person who allegedly committed this offence. This element is not in dispute.
- 52. The words "unlawfully" and "indecently" in respect of the second element of the offence simply means without lawful excuse and that the act has some

elements of indecency that any right minded person would consider such act indecent.

53. Assault is the unlawful use of force on the complainant "AK" by the act of kissing and biting her stomach.
54. In respect of the offence of indecent assault the accused has denied committing this offence he says that the complainant had consented for him to do what he did. You will have to consider the definition I had given about consent earlier to consider whether the complainant had consented or not.
55. It is for the prosecution to prove beyond reasonable doubt that it was the accused who had unlawfully and indecently assaulted the complainant "AK" by kissing and biting her stomach without her consent.
56. If you are satisfied that the prosecution has proved all the elements of the offence of indecent assault beyond reasonable doubt, then you must find the accused guilty. However, if you have a reasonable doubt in respect of any elements of the offence of indecent assault then you must find the accused not guilty.
57. As a matter of law, I have to direct you that offences of sexual nature as in this case do 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.
58. You must be satisfied that the prosecution has proved all the elements of all the offences beyond reasonable doubt in order for you to find the accused guilty of either or all the offences. If on the other hand, you have a reasonable doubt with regard to any of those elements concerning either or all the offences, then you must find the accused not guilty.

59. In this case, the accused is charged with more than one offence, you should bear in mind that you are to consider the evidence in respect of each offence separately from the other. You must not assume that because the accused is guilty of one that he must be guilty of the other as well.

### **ADMITTED FACTS**

60. In this trial the prosecution and the defence have agreed to certain facts which have been made available to you titled as amended admitted facts.
61. The amended admitted facts are part of the evidence and you should accept these admitted facts as accurate, truthful and proven beyond reasonable doubt. At this point, I wish to remind you of the directions I gave you before the trial began you are to consider the amended admitted facts that are before you. You are to completely disregard from your mind anything you may have read in the admitted facts which was given to you earlier. The previous admitted facts have no relevance now and have been replaced by the amended admitted facts. You are not to speculate about the reasons for the change.
62. 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**

63. The prosecution called one witness to prove the charges against the accused.

64. The complainant informed the court in 2015 she was employed by the Fiji Revenue and Customs Authority as an Attaché. On 7<sup>th</sup> December she was at work, at around 9am the other two officers namely Shelly and Neli left the office for banking.
65. The complainant was left with the accused both were serving the taxpayers at the office counter the accused kept asking the complainant when the taxpayers will be leaving the office. When the complainant asked why he was saying this, the accused did not respond.
66. From the silence of the accused the complainant sensed that the accused had some bad intentions. After a while all the taxpayers left the office, the complainant was left with the accused. At this time, the complainant stood up and went to the main door since she thought the accused might do something to her. She wanted to go outside, as soon as she reached the main door and tried to open it the accused came and grabbed her hand and pulled her into the office.
67. The accused held her tightly from behind and started kissing her neck, came in front kissed her lips and cheek. The complainant tried to push the accused but she could not. The accused then lifted the complainant's top and bra, sucked her breast and made a love bite on her stomach.
68. While the accused was doing all this, the complainant kept on telling the accused to stop and that she will report the matter to the police. The accused did not stop at this time he tried to insert his finger in her vagina from on top of her tights and panty after lifting her skirt. The complainant could feel the accused fingers in her vagina.
69. The complainant tried to push the accused and remove his hand but she could not. The complainant started to cry, the accused then left her. When Shelly and Neli came into the office the complainant was still crying, the accused told them that one taxpayer and scolded her. The complainant told

the accused to tell the truth that he had done something to her, at this time the accused left the office.

70. The complainant narrated the entire incident to Shelly and it was Shelly who wanted the matter to be reported to the police but the complainant stopped her since she was only an Attaché in the office and this was the first week of her attachment.
71. Next day Shelly took the complainant to the Sigatoka Police Station to report the matter. According to the complainant Shelly had forced her to report the matter. The reason why the complainant did not want to report the matter was because she did not want her parents to know since this was her first employment and she needed the money to support her family. If her parents knew about the incident they will ask her to stay home.
72. The complainant did not shout because there was no one in the office and the main door was closed so no one would have heard her.
73. Moreover, the complainant also informed the court that when the accused had seen her crying he offered her money. The complainant told the accused she will report the matter to the police or if he was willing to marry her after what he had done because he was the first person to have touched her without her consent.
74. The complainant did not consent to what the accused had done to her when he was doing all these things she was angry, she did not expect this from the accused who was an Assessor at the Fiji Revenue and Customs Authority.
75. In cross examination the complainant was referred to her police statement dated 8<sup>th</sup> December, 2015 which she had given to the police when facts were fresh in her mind.

76. The complainant agreed that she had not told the police in 2015 that she had told the accused if he was willing to marry her she will marry him. The reason why she did not tell this to the police was because she was not asked by the police.

Madam and Gentlemen Assessors

77. The learned counsel for the accused in this regard was cross examining the complainant about some inconsistencies in the statement she gave to the police when 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 inconsistency in such a statement when you consider whether the witness is believable and credible. However, the police statement itself is not evidence of the truth of its contents.
78. 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.
79. 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 about the reliability of the witness.
80. The complainant disagreed that prior to her employment being confirmed she had phoned and texted the accused on his mobile from her mobile which was also used by her sister, however, she did remember calling the accused on the landline inquiring about her application.

81. Before her employment was confirmed the complainant did not know the accused personally, the accused was with Orisi the office in charge when she handed over her application.
82. The complainant denied the suggestion that she had a relationship with the accused and that was the reason why she was calling and texting him.
83. The complainant denied on the day of the incident she had gone to the accused and started talking to him and both hugged each other and that she had kissed him. The complainant maintained that she did not consent for the accused to kiss her, suck her breast, or make love bite on her stomach.
84. The complainant also maintained that the accused had lifted her skirt up and tried to insert his finger from on top of her tights and panty, he had done this for 20 to 30 seconds and she could feel his finger a little bit.
85. The complainant stated that she didn't tell her mum and dad about the incident, next day she was forced by Shelly to report the matter to the police. When her parents came to know what had happened to her they were upset.
86. The complainant also stated that she had told Shelly and Neli that the accused had put his finger in her vagina and also about attempting to penetrate her vagina and also that he had offered her money.
87. The complainant maintained that she did not consent to what the accused had done to her and that the accused had done what she had told the court.
88. In re-examination the accused stated that she felt the accused fingers going into her vagina because he was doing it really hard.



89. This was the prosecution case.

Madam and Gentlemen Assessors

90. At the end of the prosecution case you heard me explain to the accused his options. He has these options because he does not have to prove anything. The burden to prove his guilt beyond reasonable doubt remains with the prosecution at all times.

91. He could have remained silent but he chose to give sworn evidence and be subjected to cross examination.

**DEFENCE CASE**

92. I now draw your attention to the evidence adduced by the defence during the course of the hearing. The accused elected to give evidence on oath which you must take into account when considering the issues of fact which you are determining.

93. The accused informed the court in 2015 there was an Attaché position available at the Fiji Revenue and Customs Authority, Sigatoka Branch. The complainant had applied for the position by hand delivering the application to the accused. The complainant had been in contact with the accused over mobile phone and landline, finally the complainant was accepted.

94. On 7<sup>th</sup> December when the office was empty the accused held the hand of the complainant from behind since this wasn't the first time they had physical contact in the office.

95. Both started talking the accused stood up and started to kiss the complainant who responded several times. The accused caressed her body,

sucked her breast and she was in his arms and he did make a love bite on her stomach. All these were done with the consent of the complainant.

96. The complainant lied to the court when she said that the accused had put his fingers in her vagina over her tights and panty. After the accused and the complainant had finished kissing each other he heard someone coming in the office so he quickly let her go and sat at his table. The complainant went and sat at Neli's desk.
97. The accused saw the complainant was embarrassed and she was taken to the kitchen by the two colleagues. The accused did not hear what they were talking about. The accused denied penetrating the vagina of the complainant with his fingers. He had only kissed her, sucked her breast or made a love bite on her stomach because she had consented.
98. The following week the accused was asked to go to the police station which was on the 15<sup>th</sup> December in between the complainant and the accused were talking to each other in the office and over the phone and that he told the truth in court.
99. In cross examination the accused stated that he was talking to the complainant over the phone but when she dropped off her application that was the first time he had seen her.
100. According to the accused he was talking with the complainant from the first day the complainant has applied to work as an Attaché. On the day of the incident at no time had the complainant and the accused talked about having sexual encounter in the office. From the time the complainant commenced work and until the day of the incidents he had hugged and kissed the complainant several times in the office which was the truth. Despite not being allowed to do touching or kissing in the office they did it.

101. The accused agreed that he had asked the complainant several times when the taxpayers would be leaving the office because he wanted to be alone with her.
102. The accused denied sucking the breast of the complainant, kissing and biting her stomach without her consent. The accused also denied lifting her skirt and penetrating his finger in the complainant's vagina. The accused further stated that when the complainant was seen to be crying by other staff he had to say that the complainant got a growling from the taxpayers.
103. According to the accused this was because the complainant was embarrassed when the other staff saw her so he had to make that excuse. The accused denied he had offered the complainant some money for her not to report the matter to the police.
104. The accused agreed that his counsel had not put to the complainant that during the week prior to the incident the complainant and the accused were kissing each other. The accused maintained that it was true that he and the complainant had kissed each other before the incident. The accused denied touching the private part of the complainant and putting his finger into her vagina.
105. The accused agreed that he was questioned by the police in respect of the allegations but he did not give his answers voluntarily he also agreed that he had told the police he had touched the complainant's private part but he didn't do that.
106. He said yes to the police because he was under pressure that is why he said yes. The accused also stated that when he was in the police cell the complainant had come to see him he had even spoken to her over the phone of a police officer and that she was feeling sorry. The accused did not agree that his counsel had not put this proposition to the complainant.

Madam and Gentlemen Assessors

107. The learned state counsel was cross examining the accused about some inconsistencies in his caution interview he gave to the police when facts were fresh in his mind with his evidence in court. Please consider the same principles as I had mentioned to you earlier in my summing up when some inconsistency was brought about by the defence counsel when cross examining the complainant.
108. This was the defence case.

**ANALYSIS**

109. The prosecution alleges that on 7<sup>th</sup> December, 2015 the accused and the complainant were alone in the office when he forcefully held the hand of the complainant from the main door of the office and pulled her inside the office. After holding the complainant tightly from behind the accused started kissing her and then from the front he lifted her top and bra and sucked her breast and made a love bite on her stomach. The complainant tried to push the accused but she could not.
110. At this time the accused lifted the skirt of the complainant and penetrated her vagina with his finger from on top of her tights and panty. The complainant felt the accused finger in her vagina. The complainant did not consent to what the accused had done to her. The complainant started to cry and told the accused that if he did not stop she will report him to the police. The accused stopped and left, the complainant was crying when the other officers came into the office.
111. On the other hand, the defence says the complainant did not tell the truth in court she made up a story against the accused. The accused denies all the allegations made against him. He says from one week prior to the

allegations he had been kissing the complainant and touching her with her consent. On the 7<sup>th</sup> after the taxpayers had left the office the accused had kissed, caressed the complainant's body, sucked her breast and made a love bite on her stomach with the consent of the complainant. The defence also says the accused did not penetrate the vagina of the complainant with his finger as alleged, the complainant has lied to the court.

#### Madam and Gentlemen Assessors

112. You have seen both the witnesses give evidence keep in mind that some witness react differently when giving evidence.
113. 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 witness is reliable and which one is not. You observed both the witnesses give evidence in court. You decide which witness was forthright and truthful and who was not. Which witness was straight forward? You may use your common sense when deciding on the facts. Assess the evidence of both the witnesses and their demeanour in arriving at your opinions.
114. 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 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.
115. 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 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 statement. 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.

116. 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.
117. If you accept the version of the defence you must find the accused not guilty. Even if you reject the version of the defence still the prosecution must prove this case beyond reasonable doubt. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies with the prosecution throughout the trial and it never shifts to the accused at any stage of the trial.
118. The accused is not required to prove his innocence or prove anything at all. He is presumed innocent until proven guilty.
119. As I have mentioned earlier, in this case the accused is charged with more than one offence you should bear in mind that you are to consider the evidence in respect of each offence separately from the other. You must not assume that because the accused is guilty of one that he must be guilty of the other as well.
120. Your possible opinions are:-

Count One:           **RAPE**: GUILTY OR NOT GUILTY.

If you find the accused not guilty of rape then you are to consider whether the accused is guilty or not guilty of the offence of attempt to commit rape.

Count Two:           **SEXUAL ASSAULT**: GUILTY OR NOT GUILTY.

Count Three: **INDECENT ASSAULT**: GUILTY OR NOT GUILTY.

Madam and Gentlemen Assessors

121. 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 the staff so that the court can be reconvened.
122. 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**

11 August, 2020

**Solicitors**

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

**Messrs Iqbal Khan & Associates for the Accused.**