

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 62 OF 2019

STATE

V

MALELI KOROIVALU

Counsel : Ms. K. Semisi for State
: Mr. I. Romanu for Defence

Dates of Trial : 10, 11, 12 August 2020
Date of Summing Up : 13 August 2020

(Name of the Complainant is suppressed)

SUMMING-UP

Ladies and Gentleman Assessor:

1. We have now reached the final phase of this case. The law requires me, as the Judge who presided over this trial to sum up the case to you. Each one of you will then be called upon to deliver your separate opinion, which will in turn be recorded. As you listened to the evidence in this case, you must also listen to my summing-up of the case very carefully and attentively. This will enable you to form your individual opinions as to the facts in accordance with the law with regard to the innocence or guilt of the accused person.
2. I will direct you on matters of law which you must accept and act upon.
3. On matters of facts however, which witness you consider reliable, which version of the facts to accept or reject, these are matters entirely for you to decide for yourselves. So, if I express any opinion on the facts of the case, or if I appear to do so, it is entirely a matter for you whether to accept what I say, or form your own opinions.

4. In other words you are the judges of facts. All matters of fact are for you to decide. It is for you to decide the credibility of the witnesses and what parts of their evidence you accept as true and what parts you reject.
5. The counsel for the Prosecution and the Defence made submissions to you about the facts of this case. That is their duty as the Counsel. But it is a matter for you to decide which version of the facts to accept, or reject.
6. You will not be asked to give reasons for your opinions. Your opinions need not be unanimous although it is desirable if you could agree on them. I am not bound by your opinions. But I will give them the greatest weight when I come to deliver my judgment.
7. On the matter of proof, I must direct you as a matter of law, that the accused person is innocent until he is proved guilty. The burden of proving his guilt rests on the Prosecution and never shifts.
8. The standard of proof is that of proof beyond reasonable doubt. This means that before you can find the accused guilty, you must be satisfied so that you are sure of his guilt. If you have any reasonable doubt as to his guilt, you must find him not guilty.
9. Your opinions must be solely and exclusively upon the evidence which you have heard in this Court and upon nothing else. You must disregard anything you might have heard or read about this case outside of this courtroom. Your duty is to apply the law as I explain it to you to the evidence you have heard in the course of this trial. Approach the evidence with detachment and objectivity. Do not get carried away by emotion.
10. Your duty is to find the facts based on the evidence and apply the law to those facts. You are free to draw inferences from proved facts if you find those inferences reasonable in the circumstances.
11. As assessors you were chosen from the community. You, individually and collectively, represent a pool of common sense and experience of human affairs in our community which qualifies you to be judges of facts in a trial. You are expected and indeed required to use that common sense and experience in your deliberations and in deciding.
12. In assessing the evidence, you are at liberty to accept the whole of the witness's evidence or part of it and reject the other part or reject the whole.
13. In deciding on the credibility of a witness, you should take into account not only what you heard but what you saw. You must take into account the manner in which the witness gives evidence. Was he or she evasive? How did he or she stand up to cross examination? You are

to ask yourselves, was the witness honest and reliable. But, please bear in mind that many witnesses are not used to giving evidence and may find court environment distracting.

14. In evaluating evidence, you should see whether the story relayed in evidence is probable or improbable: whether witness is consistent in his or her own evidence and with his or her previous statements or with other witnesses who have given evidence in court. It does not matter whether that evidence was called for the Prosecution or for the Defence. You must apply the same test to evaluate evidence.
15. You must however, be satisfied whether such inconsistency or contradiction is material and significant so as to affect the credibility or whether it is only in relation to some insignificant or peripheral matter. If it is shown to you that a witness has made a different statement or given a different version on some point, you must then consider whether such variation was due to loss of memory, faulty observation or due to some incapacitation of noticing such points given the mental status of the witness at a particular point of time or whether such variation has been created by the involvement of some another, for example by a police officer, in recording the statement where the witness is alleged to have given that version.
16. You must remember that merely because there is a difference, a variation or a contradiction or an omission in the evidence on a particular point or points that would not make witness a liar. You must consider overall evidence of the witness, the demeanour, the way he/she faced the questions etc. in deciding on a witness's credibility.
17. When you evaluate evidence of a witness, you should take into account his or her intellectual capabilities, personal circumstances, level of education and maturity. Try to look at things from his or her perspective. Some people do not have the same standards of logic and consistency, and their understanding may be severely limited for a number of reasons, such as immaturity.
18. You should consider whether there is a delay in making a complaint to someone or to an authority or to police on the first available opportunity about the incident that is alleged to have occurred. If there is a delay that may give room to make-up a story, which in turn could affect reliability of the story. If the complaint is prompt, that usually leaves no room for fabrication. If there is a delay, you should look whether there is a reasonable explanation for such delay.
19. Please bear in mind, a late complaint does not necessarily signify a false complaint, any more than an immediate complaint necessarily demonstrates a true complaint. There can be a reasonable explanation for the delay. It is a matter for you to determine whether, in this case, the lateness of the complaint and what weight you attach to it. It is also for you to decide, when complainant did eventually complain, whether it was genuine.
20. In evaluating evidence, you should consider whether there is a motive on the part of the complainant to make up an allegation against the accused. If the complainant had such a motive,

then you may think that this allegation has been fabricated. If there is no such motive, you might think that the allegation is truthful.

21. Victims of sexual offences, can react to the trauma in different ways. Some, in distress or anger, may complain to the first person they see. Others, who react with shame or fear or shock or confusion, do not complain or go to authority for some time. Victim's reluctance to report the incident could also be due to shame, coupled with the cultural taboos existing in her society, in relation to an open and frank discussion of matters relating to sex, with elders. It takes a while for self- confidence to reassert itself. There is, in other words, no classic or typical response by victims of Rape.
22. Proof can be established only through evidence. Evidence can be from direct evidence that is the evidence of a person who saw it or by a complainant who saw, heard and felt the offence being committed. In this case, for example, the complainant was a witness who offered direct evidence as to what she saw, heard or felt.
23. Documentary evidence is evidence presented in the form of a document. In this case, the medical report is an example if you believe that such a record was made. You can take into account the contents of the document if you believe that contemporaneous recordings were made at the relevant time upon examination of the complainant.
24. You heard the complainant say that she relayed the incident to her sister Alanieta a day after the incident. Alanieta was called by the Defence and she testified that she received the complaint from the complainant. However, Alanieta was not present when the alleged incident happened and therefore, she is not in a position to give evidence as to what actually happened between the complainant and the accused. What she heard from the complainant is not evidence as to what actually happened between the complainant and the accused and it does not implicate the accused. You should only use complainant's previous statements to test the consistency and credibility of her version.
25. In this case, the doctor gave evidence as an expert witness. He tendered the medical examination form prepared after the examination of the complainant. Expert evidence should not be accepted blindly. You will have to decide the issues before you by yourself and you can make use of doctor's opinion if his reasons are convincing and acceptable to you; and, if his opinion had been reached by considering all necessary matters that you think fit. In accepting doctor's opinion, you are bound to take into account the rest of the evidence led in the case. You have to bear in mind that the doctor's medical report does not implicate the accused or link him to the alleged offences even if you decide to rely on it. The doctor was not present when the alleged offences were committed and therefore you should only use doctor's evidence to test the consistency and credibility of complainant's evidence.
26. A screen was put up in front of the accused so that the complainant, while being in the witness box, could not see the accused. The screen was put up because the complainant in this case is a vulnerable witness. You must not draw any negative inference against the accused from that.

27. In this case the Prosecution and the Defence have agreed on certain facts. The agreed facts are part of evidence. You should accept those agreed facts as accurate and truth. The agreed facts are as follows:
1. The child complainant is MB, 15 years old student of AOG Primary School and the accused is Maleli Koroivalu, 49 years old, employed male of Lot 2, Salumi Road, Laucala Beach Estate, Suva in the Central Division.
 2. The child complainant and the accused are not related.
 3. The child complainant was medically examined by Dr. Ashneel Singh at the CWM Hospital on the 12th February 2019.
28. I have given you a copy of the information which contains the charges against the accused. Please refer to it. The information reads as follows:

COUNT 1

Statement of Offence

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

Particulars of Offence

MALELI KOROIVALU on the 9th day of February 2019 at Laucala Beach Estate in the Central Division had carnal knowledge of MB without her consent.

COUNT 2

Statement of Offence

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

Particulars of Offence

MALELI KOROIVALU on the 9th day of February 2019 at Laucala Beach Estate in the Central Division unlawfully and indecently assaulted MB by pressing her breasts.

COUNT 3

Statement of offence

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

Particulars of Offence

MAILELI KOROIVALU on the 9th day of February 2019 at Laucala Beach Estate in the Central Division unlawfully and indecently assaulted MB by licking her vagina.

29. At the end of the Prosecution's case, the court found no evidence to maintain count 3. The accused was acquitted of count 3 accordingly. Therefore, you are not supposed to express any opinion on count 3.
30. To prove count 1, 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 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.
31. A slightest penetration is sufficient to satisfy the element of penetration.
32. On the issue of consent, it must be proved that the accused either knew that the complainant did not consent or was reckless as to whether she was consenting.
33. Consent as defined in the Crimes Act, means consent freely and voluntarily given by a person with the necessary mental capacity to give the consent, and the submission without physical resistance by a person to an act of another person shall not alone constitute consent. Simply put, if somebody does not resist physically it does not necessarily mean that she or he had given consent. The complainant is a child in this case and you observed what type of a witness she is. You should consider all the aspects to decide if the complainant had given the consent to the alleged sexual acts.
34. I will now deal with the elements of the offence of Sexual Assault. The Prosecution must prove the following elements beyond reasonable doubt:
- (a). The Accused,
 - (b). Unlawfully and Indecently
 - (c). Assaulted the Complainant
35. The word "*unlawfully*" simply means without lawful excuse. For the assault to be indecent it must be accompanied by a circumstance of indecency. Conduct is indecent when it is as such that ordinary people would so describe it, in light of prevailing standards of morality and,

more specifically, in light of whether the complainant has consented to the conduct in question.

36. Apart from the elements of the offence, the identity of the person who is alleged to have committed the offence is very important. There must be positive evidence beyond reasonable doubt on identification of the accused-person that connects him to the offence that he is alleged to have committed.
37. Please remember, there is no rule in Fiji for you to look for corroboration of complainant's story to bring home an opinion of guilt in a case of sexual nature. The case can stand or fall on the testimony of the complainant, depending on how you are going to look at her evidence.
38. I will now remind you of the Prosecution and Defence cases. It was a short trial and I am sure things are still fresh in your minds. I will refresh your memory and summarise the salient features. If I do not mention a particular piece of evidence that does not mean it is unimportant. You should consider and evaluate all the evidence in coming to your decision in this case.

Case for Prosecution

PW1 - MB (The Complainant)

39. MB is 17 years of age. She has been a student at FVTTCPD vocational school since 2019. She has 9 siblings and she is the youngest. Her parents are separated. Her mother resides in Nausori and her father in Australia.
40. On the 7 February 2019, she was staying in Tovata with her mother and her sister. From there, she moved to her friend Loata's house. She then moved to another friend Mere's house in Laucala. When she was staying at Mere's house, she met with her sister Adi Alanieta Marama and went to Maleli's house in Laucala where her sister Alanieta was staying. It was a five roomed house. She and her sister occupied one room and the other rooms were occupied by one couple, one man, one woman and Maleli.
41. On the 9 February 2019 about 7pm, she was at Maleli's house. Her sister Alanieta had gone to work at Chand's Clothing. Maleli was in the house and a lady who was not known to her. She had dinner with that lady. After having dinner, she went to her room and the lady went to her room. She found a story book in the room. She picked it up and started reading it inside the room, having laid herself on the mattress that was on the floor. While she was reading the book, Maleli entered the room. She was surprised and shocked. Maleli closed the door and the window and he put the curtain down. Maleli asked her if she had a boyfriend. She replied in the negative. Then Maleli asked her whether she had sex with a taxi driver and she said 'No'.

42. He was looking at her. She was thinking of what he is going to do, so she pulled up the blanket to cover herself. Then he pulled over the blanket. He put the blanket away and sat beside her. Then she stood up. He pulled down the zip of her trousers. She then turned her back on him and pulled up the zip again. He told her to face him. She refused. He took her hand and pushed her onto the bed. Then he pulled down the zip of her trousers again and started touching her body. He pushed her to the mattress and forced her to take off her clothes.
43. She was wearing a mini shorts, and a T-shirt. She did not take it off. He pulled down her pants and the undergarment. He took off his pants and got hold of his penis. He forced her to touch his penis, but she did not touch it. He got hold of her hand and made her touch his penis. Then he pressed on her breast and sucked her breast inside her t-shirt. She did not agree to it. She asked him to stop. He forced her. He did not stop.
44. Then he inserted his penis into her vagina. She did not agree for him to insert his penis into her vagina. She was weak. She told him to stop but he forcefully inserted his penis into her vagina. She could not say anything, she was exhausted. Her thighs were paining. It was hurtful when he was penetrating her vagina. She said it was hurting, but he kept on doing it. When he had finished, he got up and informed her to go to the kitchen and eat, he had prepared a meal for her. He got up and went to his room. She got up and went to have her meal.
45. When she was having dinner, the lady was present. When the incident happened at about 7pm, that lady was in her room. She shouted out for help but he got hold of a pillow and pressed it against her mouth. She did not inform that lady about what had happened because she was scared to tell her. After having dinner, she went into her room, locked the door and slept.
46. On the 11 February 2019, she went to school and returned home at 4pm. Upon her return, she went to Cunningham with her sister. On her way back to Laucala, she informed her sister that her private part was painful. Her sister asked if she was having her menstruation. She said 'no'. When they reached Max Value Supermarket, she informed her sister that she did not want to go back home. Her sister asked her the reasons why she did not want to go home. She then informed her sister what had transpired between her and Maleli. She informed that her thighs were painful and had a headache. She also informed that Maleli fondled her, touched her breasts, and inserted his penis into her private part. They were walking along with her sister's friend who is a security officer. The security officer then called the police and informed what had happened.
47. She went to the Police Station and gave a statement about what had happened. She was scared at that time. After giving a statement to police, she went for a medical examination at the CWM Hospital.
48. Under cross examination, MB said that her evidence that she lived with her mom in Tovata is not correct. She said that on 9 February 2019, her sister went to work at 6.30 am. She admitted that her evidence that her sister went to work at 7 pm on that day is not correct. She agreed that her sister left home at 6.30am and didn't return home until 8.30 pm.

49. She said that, after the alleged incident, Maleli had offered food but she did not eat. Later, she admitted that she ate the food Maleli had offered. She did not answer the question why she did eat the food that Maleli had offered if she was scared of him. She admitted that the lady was having dinner with her after the incident but she did not tell the lady what had happened to her.
50. MB said that after the incident, Maleli was in his room and she was scared of him. She went to open the door to tell her friend Mere but the door was locked. She admitted that she did not tell her sister what had happened, when her sister returned home that night. Her explanation was that 'she forgot'. She admitted that she was not crying when she met her sister that night.
51. To explain the reason why she did not relay the incident to the lady and her sister, MB used the word 'weleca'. The interpreter translated it to mean 'forgot'. The Defence Counsel submitted that 'Weleca' doesn't mean refuse and it doesn't mean forget, it is a totally different word. According to the Fijian- English dictionary (R.Gatty) the word 'wele' means; idle, inactive; quiet, unconcerned, have the mind at ease (usually after tension), unmotivated or tranquil, pacified.
52. MB admitted that when she returned home from school on Monday, 11 February 2019, she was sitting in the sitting room with the lady and Maleli when her sister arrived at around 5.30 pm. She admitted that she had informed her sister the same day that Maleli penetrated her vagina with his penis. She also admitted having told her sister that Maleli had forced her when she came back from the bathroom and was dragged to his room on Sunday evening. She then said that everything happened on Saturday and nothing abnormal thing like this had happened on Sunday. She admitted that she told about the alleged incident to her sister only on Monday.
53. Under re-examination MB explained why she did not tell her sister about the incident on Sunday. She said when she went to the church she met her mum and step dad and she was scared that, if the step dad heard about it, he will really get mad on her.

PW 2 Dr. Ashneel Singh

54. Dr. Singh had medically examined the complainant on 12 February 2019 at the CWM Hospital. He tendered in evidence the Fiji Police Medical Examination Form he had prepared after the medical examination of the complainant.
55. His initial impression of patient was that the patient was medically stable and sane. The patient had no injuries but she was a bit shaken up and very quiet. Doctor then described his specific medical findings from the perineum examination. He found that the hymen was not intact. The hymen is usually broken upon sexual intercourse. There were no bruises or trauma seen in posterior forchette which is the bottom of the entrance of the vagina. No discharges noted. No injuries at the anal area were present.

56. In his summary and conclusion, the doctor had stated that the history and the physical examination findings are suggestive of a sexual intercourse. The patient had had sexual intercourse or had sexual penetration as her hymen was not intact. Penetration causes could have been penile penetration, finger penetration or penetration by any other object. There was a time difference of 3 days between the alleged incident and his examination, so in any case, the hymen, which is a membranes tissue in the vagina, will never regrow. But any bruises, tears or small lacerations would normally heal up within 24 to 48 hours.
57. Under cross-examination, the doctor said that the posterior forchette is not intact in sexual intercourse, or rough intercourse and usually some bruises and tears can be present during childbirth. If the vagina is penetrated with a handle of a hammer, or three fingers of an adult, a tear in the posterior forchette is possible. A rough penile penetration by an adult would cause some abrasions at posterior forchette. If a male had ejaculated inside the vagina, whether he could have found a discharge after two days depends on the amount of ejaculation.
58. That, is the case for the Prosecution.
59. At the close of the Prosecution's case, you heard me explain to the accused what his rights were in defence and how he could remain silent and say that the Prosecution had not proved the case against him to the requisite standard or he could give evidence in which case he would be cross-examined.
60. The accused elected to give evidence under oath. He also called two witnesses on his behalf. That is his right. By electing to give evidence, accused has not assumed any burden to prove his innocence. He has nothing to prove in this case. You must take into consideration the evidence presented by the Defence and its version when evaluating evidence.

The Case for Defence

DW 1- Maleli Koroivalu (The Accused)

61. Maleli said that he has been residing at Laucala Beach Estate for more than 20 years. The Chands Clothing Shop is very close to his 6 bedroomed house.
62. On 9 February 2019, he and the lady Salome were at home. Alanieta had gone to work. In the afternoon, Alanieta's sister, the complainant, came home. He allowed the complainant to come in as he was told that she is the sister of Alanieta. At around 7pm, he was watching TV. The complainant was in the room that Alanieta was to rent. He was watching TV until 8 pm and told the complainant to go and have some meals. The complainant ate the food he offered. She went straight to her room after having dinner. At around 10- 11pm Alanieta entered the house and went to her room. Then he went off to sleep.

63. On 11 February 2019, at around 4pm, the complainant came back from school. Her sister Alanieta also came back after work at around 5pm. When Alanieta arrived, he was in the sitting room talking to the lady and the complainant. They were sitting close to each other. In a short while, the complainant and her sister left for Cunningham.
64. On 13 February 2019, the police officers took him to Valelevu Police Station and was interviewed. At the interview, he denied all the allegations leveled against him.
65. Under cross examination, Maleli said that on the evening of 9 February 2019, only Salome and the complainant remained home with him. Alanieta had gone for work. He admitted that the rooms that these people were occupying, had doors.
66. He denied entering complainant's room and denied all the allegations against him. He admitted that, after the 11 February 2019, the complainant did not return to his house. He denied that the reason why the complainant did not return was because of what he had done to her.
67. Under re-examination, Maleli said that Alanieta had not paid her bond for one month and that could be the reason why they never returned after the 11th.

DW-2 Adi Alanieta Marama

68. Alanieta said that MB is her biological sister. On 9 February 2019, she was at work place, Chand's Clothing, at Laucala Beach. On the 9 February 2019, she came to work from Cunningham and in the evening she went to Maleli house as a tenant. It was the first time she went to stay there. Maleli's house had 5 bedrooms and a sitting room.
69. On the 9 February, she finished work at 6pm and went back to work again at 7pm. MB was in the room at Maleli's house. She returned home from the workplace at 9pm. When she came back from work, MB was sleeping in the room. She just entered the room as it didn't have a door. When she returned to the room from a shower, MB woke up. She asked MB about the young girl who opened the door and MB said she did not know. MB did not tell her anything else.
70. The next day, Sunday the 10 February 2019, she went to work and returned home at 5pm in the afternoon. MB was at home with Maleli and the lady. MB did not tell her about anything. The Monday, the 11 February 2019, she came home at 6pm. When she arrived, she saw the lady, Maleli and MB sitting in the sitting room. They were sitting separately. MB and the lady were sitting together and Maleli was away from them.

71. At around 10 pm on the 11 February 2019, when she was returning home from Cunningham with MB, MB told her what Maleli had done to her. MB said that on 9 February 2019, Maleli grabbed her hand and kissed her neck without her consent. MB also told her that on 10 February 2019, when she went to the shop at around 7 pm, she went to the bathroom with her towel rapped around, Maleli grabbed her hand and told her to go to his room. When she refused, Maleli grabbed her into his room, closed the door, window and put the curtain down. Maleli told her if she shouts he will bring a knife and kill her. So she sat quietly when he forcefully removed her clothes and had sexual intercourse with her. He then put \$20 in her pocket when she was asleep. He threatened with a knife saying, if she told anyone, he will kill her.
72. Alanieta further said that MB did not tell her anything like that happened on Saturday the 9 February 2019. She told the security officer about this incident and he reported the matter to the police. She went to Maleli's house after this incident when MB was in the Totogo Police Station.
73. Under cross examination, Alanieta said that MB was complaining about pains in the thighs and she refused to go back to Maleli's house. She said that MB refused to go back home because of what had happened to her at Maleli's house.
74. That, is the case for Defence.

Analysis

75. Ladies and Gentleman assessor, you are call upon to express your opinion only on Count 1 and Count 2. You must consider evidence against each count separately.
76. The accused denies all the allegations. The Defence's case is that the complainant is not telling the truth.
77. Prosecution called two witnesses. The Defence also called two witnesses.
78. Prosecution's case is substantially based on the evidence of the complainant. The resolution of the dispute depends on whether you could accept the evidence of the complainant as being credible and believable. Prosecution says that the child complainant told the truth in court. It called the gynecologist to support complainant's version that she was raped on the 9 February 2019. If you are satisfied that the complainant told the truth in court, you can safely act upon her evidence in coming to your conclusion. No corroboration of her evidence is required.
79. Prosecution says that the complainant is consistent and reliable. It relies on distress evidence and medical evidence to prove the complainant's consistency.

80. Prosecution says that the complainant's subsequent conduct and her demeanour are consistent with her evidence that she was sexually assaulted and raped. Prosecution relies on the medical evidence to prove consistency of the complainant. It says that the findings of the doctor on 12 March 2019 are consistent with complainant's evidence that she was raped on 9 February 2019. Having taken into consideration the directions I have given, you decide what weight you should attach to the medical evidence and if it is consistent with that of the complainant.
81. The complainant was 15 years old at the time of the alleged incident. Having considered the evidence led and, observed her demeanour, you decide if she is telling the truth in court.
82. You had the opportunity to hear Defence's side of the story. The Defence called the accused and Alanieta, the sister of the complainant. The accused denies all the charges. He says that the complainant did not tell the truth in court. You decide if you could believe the evidence of the accused.
83. The Defence argues that the complainant did not complain at the first available opportunity to the lady Salome, and her sister Alanieta because no such incident occurred.
84. Alanieta was called by the Defence to discredit the version of the complainant. The Defence highlighted certain inconsistencies between the complainant's evidence and what she had allegedly told her sister a day after the alleged incident. Alanieta confirmed that she had received a complaint from the complainant on the 11 February 2019 that she was raped. The Defence says that the complainant has given two different version of events, one to her sister and the other to the court and you should not believe her evidence. The State Counsel on the other hand says that irrespective of the inconsistencies highlighted by the Defence, the complainant maintained her position that she was raped and sexually assaulted by the accused. You decide if those inconsistencies are material enough to reject the version of the complainant.
85. If you believe that the complainant is telling you the truth, then you must be satisfied that all the elements of each offence have been proved beyond reasonable doubt. If you are sure that the accused penetrated the vagina of the complainant with his penis, at least slightly, without her consent, you should find the accused guilty on count 1. If you are sure the accused pressed the breasts of the complainant, without her consent, you should find the accused guilty on count 2.
86. If you do not believe complainant's evidence regarding the alleged offences, or if you have a reasonable doubt about the guilt of the accused, then you must find the accused not guilty.
87. Your possible opinion is either guilty or not guilty on each count.

88. You may now retire to deliberate on your opinions. Once you have reached your decisions, you may inform our clerks, so that we could reconvene, to receive the same.
89. Any re-directions?



A handwritten signature in black ink, appearing to read "Aruna Aluthge".

Aruna Aluthge
Judge

At Suva

13 August 2020

**Solicitors: Director of Public Prosecution for State
MIQ lawyers for Defence**