

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

**Criminal Case No.: HAC 232 of 2017**

**STATE**

**V**

**OVAOVA ROKOTAKALA**

**Counsel** : Ms. S. Naibe for the State.  
: Ms. V. Diroi for the Accused.

**Dates of Hearing** : 19, 20 and 21 August, 2020  
**Closing Speeches** : 24 August, 2020  
**Date of Summing Up** : 24 August, 2020

---

**SUMMING UP**

---

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

Madam and Gentlemen Assessors

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

**ROLE OF JUDGE AND ASSESSORS**

2. In doing so, I will direct you on matters of law, which you must accept and act upon. On matters of facts, however, which witness to accept as reliable, what evidence to accept and what evidence to reject, these are matters entirely for you to decide for yourselves. If I do not refer to a certain portion

of evidence which you consider as important, you should still consider that evidence and give it such weight as you wish.

3. So, if I express an opinion on the facts of the case, or if I appear to do so, then it is entirely a matter for you whether you accept what I say or form your own opinions. You are the judges of facts.
4. You decide what facts are proved and what inferences you properly draw from those facts. You then apply the law as I explain it to you and form your own opinion as to whether the accused 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.

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

8. 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.

9. 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.
10. 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.
11. 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.
12. 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**

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

### **FIRST COUNT**

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

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

*Particulars of Offence*

**OVAOVA ROKOTAKALA** between the 1<sup>st</sup> day of January, 2016 and 31<sup>st</sup> day of December 2016, at Lautoka in the Western Division, unlawfully and indecently assaulted “RT” by forcefully kissing her on the lips.

**SECOND COUNT**

*Statement of Offence*

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

*Particulars of Offence*

**OVAOVA ROKOTAKALA** on the 7<sup>th</sup> of October, 2017, at Lautoka in the Western Division penetrated the vagina of “RT” with his finger without her consent.

14. To prove count one 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 “RT” by forcefully kissing her on the lips.
  
15. The first element of the offence of indecent assault is concerned with the identity of the person who allegedly committed this offence.
  
16. 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.
  
17. Assault is the unlawful use of force on the complainant “RT” by the act of forcefully kissing her on the lips.

18. 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. In respect 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.
19. It is for the prosecution to prove beyond reasonable doubt that it was the accused who had unlawfully and indecently assaulted the complainant "RT" by forcefully kissing her on the lips without her consent.
20. 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.
21. To prove count two 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 "RT" 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.
22. 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.

23. The first element of the offence is concerned with the identity of the person who allegedly committed this offence.
24. The second element is the act of penetration of the complainant's vagina by the finger.
25. In respect of the third element of consent. You will have to consider the definition I have given earlier about consent to consider whether the complainant had consented or not.
26. 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.
27. 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.
28. 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.
29. 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.

30. The slightest of penetration of the complainant's vagina by the accused finger is sufficient to satisfy the act of penetration.
31. 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.
32. 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 both the offences. If on the other hand, you have a reasonable doubt with regard to any of those elements concerning either or both the offences, then you must find the accused not guilty.
33. In this case, the accused is charged with two offences, 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 count that he must be guilty of the other as well.

### **ADMITTED FACTS**

34. In this trial the prosecution and the defence have agreed to certain facts which have been made available to you titled as admitted facts.
35. The admitted facts are part of the evidence and you should accept these admitted facts as accurate, truthful and proven beyond reasonable doubt.
36. 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**

37. The prosecution called two witnesses to prove the charges against the accused.
38. The complainant informed the court in 2016 she had gone to visit her sister Latileta at Vio Island to spend her weekend. During the night her sister and brother in law went to drink grog since she was alone at home she went to the house of her sister in law after midnight.
39. At the house of her sister in law the complainant was lying down in the sitting room without a blanket, at this time she did not know that the accused was in the bedroom. When she was lying down the accused called the complainant to come in the bedroom since the blankets were there. The complainant and the accused are cousins.
40. The complainant went into the bedroom and lay down on the bed with her back turned towards the accused after a while the accused who was lying on the bed turned towards the complainant, hugged and kissed her. The complainant pushed the accused away and told him that she cannot kiss him since he was a married man. However, the accused kept on kissing her suddenly the complainant's sister came inside the bedroom and asked the complainant whether she was coming over to her home or staying there. The complainant left with her sister.
41. According to the complainant she had pushed the accused away when he was kissing her because he was a married man and she did not like what the accused was doing to her.



42. On the same night the complainant told her sister Latileta about what the accused had done to her and she was scared. The incident happened on Saturday night and she left the Island on Monday. During the same year the complainant met the accused and they spoke just like the incident never happened.
43. On 7<sup>th</sup> October, 2017 in the evening the complainant was drinking at the Ashiki nightclub when she saw the accused drinking as well. The accused kissed the complainant in the nightclub.
44. After a while the accused asked the complainant to go with him to pick something he pulled her outside the nightclub and both went in the car towards Nadovu Park.
45. At the Nadovu Park the accused stopped the vehicle and pushed the car seat down on which the complainant was sitting. He then came on top of the complainant and started kissing her, fondling her breast and then forcefully put his finger inside her vagina. The complainant was scared the window of the car was up the complainant was kicking the steering wheel to sound the horn.
46. The complainant felt pain when the accused forcefully poked his finger inside her vagina. As this was happening, the complainant consented for the accused to kiss her upper body and also gave him her phone number in order to get out of the situation and told him that she will meet him again.
47. The accused then released the complainant and dropped her to where her friends were waiting. Next day the complainant told her sister Latileta about what the accused had done to her.
48. Latileta then told Karalaini the wife of the accused about what the accused had done. Thereafter, on one occasion the accused, his wife Karalaini,

Latileta and the complainant met. At this time Latileta told the complainant to tell Karalaini that she had an affair with the accused.

49. The complainant did not allow the accused to kiss her or insert his finger into her vagina she then reported the matter to the police.
50. In cross examination the complainant agreed that before going to her sister in law's house she was sitting at the beach with the accused and her cousins for about 4 to 5 hours. During this time, the accused and the complainant were joking with each other but she was not flirting with him.
51. When it was suggested to the complainant that she had planned with the accused to meet later that night the complainant stated she did not think so and upon further questioning she denied planning to meet the accused that night at her sister in law's house. The accused took the lead to the complainant's sister in law's house and after 15 minutes she followed.
52. The complainant agreed she went and sat in the sitting room until the accused called her from the bedroom. In the bedroom she laid beside the accused on the bed but she was concerned about her sister coming to look for her.
53. The complainant stated that when the accused was kissing her she was also kissing him for about 3 minutes. When her sister called, the complainant left and went to her sister's house.
54. The complainant enjoyed kissing the accused but her only concern was that the accused was a married man. She also knew that the accused being married and she being a student they could not be in a relationship, but she was attracted to the accused.

55. The complainant stated that on the next day the complainant, her sister and brother in law with the accused had breakfast together at her sister's house and there was no talks about what had happened the previous night.
56. On 7<sup>th</sup> October the complainant was happy to see the accused at the Ashiki nightclub and both kissed each other before leaving the night club. The complainant told her friends she was going with the accused. They again kissed each other when they sat in the car.
57. At Nadovu Park both were kissing each other the accused laid on top of her since the complainant was sitting in the passenger's seat the accused had reclined the seat to allow her to lie down, the accused kissed her neck, chest and breast while his hand had reached her pants. At this time, the complainant's one leg was beside the car window and the other leg was next to the steering wheel. The complainant also agreed that the accused was fondling her vagina with his finger and in the heat of the moment she did not offer any resistance.
58. The complainant had no reason to be afraid of the accused that night in the car, however, she was only scared of being involved with a married man. According to the complainant the accused did not force himself on her at the Nadovu Park and also the accused had not forcefully kissed her in 2016 at Vio Island.
59. The only reason why the complainant alleged the accused had indecently assaulted and raped her was to save herself and her reputation in her family and the community.
60. The complainant agreed she did not tell the police during the time of giving her police statement that her sister Latileta had asked her to tell Karalaini that she was having an affair with the accused. The complainant agreed this was not a case of indecent assault and rape as she had alleged.

61. In re-examination the complainant stated she did not provide any resistance when the accused kissed and penetrated her vagina with his finger at the Nadovu Park because the accused had forced her when he laid on top of her without asking her. There was no forceful penetration of her vagina after both had kissed each other.
62. The final prosecution witness Latileta Lewavuluma the elder sister of the complainant informed the court that in the year 2016 the complainant had come to visit her at the Vio Island. At around 10pm the witness with her husband went to drink grog after 1 am the witness whilst returning from the grog session went to the house of her sister in law where the complainant was.
63. Upon reaching the house the witness saw the complainant standing at the door she called the complainant to accompany her home, on the way the complainant told the witness that the accused had touched her breast and her vagina. When the witness heard this she felt pity on the complainant and she wanted to report the matter.
64. In respect of the October incident the witness was told by the complainant that instead of dropping the complainant at her home the accused took her to the Nadovu Park where he harassed her by touching her breast and he used his hand on her vagina. The complainant was sad when she relayed the information.

#### Madam and Gentlemen Assessors

65. Victims of sexual offences may react in different ways to what they may have gone through. Some in distress or anger may complain to the first person they see. Some due to fear, shame or shock or confusion, may not complain for some time or may not complain at all. A victim's reluctance to complain in full as to what had happened could be due to shame or shyness or cultural taboo when talking about matters of sexual nature.

66. A late complaint does not necessarily signify a false complaint and on the other hand an immediate complaint does not necessarily demonstrate a true complaint. It is a matter for you to determine what weight you would give to the fact that the complainant told her elder sister Latileta immediately after the first incident in 2016 that the accused had touched her breast and her vagina. In respect of the second incident in October, 2017 the complainant told her sister the next day of the incident that the accused had harassed her by touching her breast and had used his hand on her vagina.
67. This is commonly known as recent complaint evidence. The evidence given by Latileta is not evidence of what actually happened between the complainant and the accused since Latileta was not present and did not see what had happened between the complainant and the accused.
68. You are, however, entitled to consider the evidence of recent complaint in order to decide whether the complainant is a credible witness. The prosecution says the complainant had told her sister Latileta in respect of the first incident in 2016 about what the accused had done to her immediately after she left her sister in law's house that is the accused had touched her breast and her vagina.
69. Furthermore, the prosecution says in respect of the second incident the complainant told her sister, the very next day that the accused had harassed her by touching her breast and had used his hand on her vagina. The prosecution also says that although the complainant did not tell everything in detail to her sister she did relay important information about what had happened to her and therefore she should be believed.
70. On the other hand, the defence says the complainant did not tell everything correctly to her sister. The complainant did not tell her sister that the accused had kissed her with her consent in respect of the first incident. For the second incident the complainant did not tell her sister that she had

consented for the accused to penetrate her vagina with his finger. The defence is asking you not to believe the complainant.

71. It is for you to decide whether the evidence of recent complaint helps you to reach a decision. The question of consistency or inconsistency in the complainant's conduct goes to her credibility and reliability as a witness. This is a matter for you to decide whether you accept the complainant as reliable and credible. The real question is whether the complainant was consistent and credible in her conduct and in her explanation of it.
72. In further cross examination the witness agreed that she knew that the complainant, the accused and her cousins were sitting at the beach sharing jokes before the complainant went to the house of her sister in law. The witness denied that the complainant, the witness, her husband and the accused had breakfast at her home the next day after the incident at Vio Island.
73. The witness was not told by the complainant that she had shared a passionate kiss with the accused in her sister in law's house or that the complainant was at the nightclub with the accused. According to the witness any news of a secret love affair between the complainant and the accused will affect their family relationship and cause problems because the accused is a married man and the complainant was a student.
74. The witness denied calling Karalaini the wife of the accused after she was told by the complainant about what the accused had done to her. The witness was referred to her police statement dated 17<sup>th</sup> November 2017, line 39, page 2 which was read as:  
*"She told me and I personally rang Ovaova's wife namely Kara."*
75. The witness agreed that she had informed Karalaini the wife of the accused about what the complainant had told her. She also agreed that what she told the court in this regard was not correct.



Madam and Gentlemen Assessors

76. The learned counsel for the accused in this regard was cross examining the complainant about some inconsistency 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 witness 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.
77. 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.
78. 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.
79. The witness also agreed that she had met Karalaini in the presence of the complainant, during discussions Karalaini had asked the complainant if she had been having an affair with her husband. The complainant admitted having an affair with the accused. Moreover, the witness also knew that the complainant was having a secret affair with the accused.
80. This was the prosecution case.



## **DEFENCE CASE**

### Madam and Gentlemen Assessors

81. At the end of the prosecution case you heard me explain options to the accused he has those options because he does not have to prove anything. The burden of proving the accused guilt beyond reasonable doubt remains on the prosecution at all times.
82. The accused chose to remain silent but he called a witness that is his right and you should not draw any adverse inference from the fact that the accused decided to remain silent.
83. I now draw your attention to the evidence adduced by the defence during the course of the hearing. You are to consider the evidence of this defence witness when considering the issues of fact which you are determining.
84. The wife of the accused Karalaini Nabora informed the court that the complainant is the cousin of the accused. At family gatherings the witness used to see the complainant and the accused joke with each other and sometimes they did cross their limits suggesting that they were having an affair.
85. The witness had spoken to the complainant's elder sister Latileta over the phone whereby she was informed that the accused has sexually assaulted her sister at Nadovu Park and Vio Island.
86. After hearing this, the same afternoon the witness confronted the accused about the allegation, but he did not speak much. Thereafter, on one occasion the complainant and her sister came to meet the witness at her work place. Latileta spoke on behalf of the complainant saying that the complainant and the accused were having an affair.

87. The witness questioned the complainant who admitted it was an affair and not an assault. The witness was shocked to hear this.
88. In cross examination, the witness agreed the accused did not admit anything when questioned by her but she could see from his expression that he was guilty of something when questioned about the affair.
89. The complainant and her sister Latileta had come to see Karalaini because the accused had called them to come.
90. The witness maintained that Latileta had told her the complainant had an affair with the accused. The complainant was referred to her police statement dated 29<sup>th</sup> November, 2017 to line 30 which was read as:
- “Latileta then told me that they don’t wish to report the matter if her father finds out she will be stopped from school.”*
91. When it was put to the witness that this was what Latileta had told her that day the witness agreed, she also agreed that she told something different in her evidence.
92. The witness also maintained that when she had confronted the accused, he did not say much.
93. Again the witness was referred to her police statement to line 35 which was read as:
- “Ovaova had told me that he did not sexually assaulted Repeka and that he and Repeka had an affair.”*
94. The witness explained that it was after she had confronted the complainant that the accused admitted that it was an affair and never an assault.

95. The witness was referred to line 37 which was read as:

*“Repeka had an affair and then questioned Repeka again on that to which she said yes I did not say anything else and left them.”*

96. The witness agreed the accused had told her about the affair first and then she had asked the complainant. The witness stated what she told the court was correct.

Madam and Gentlemen Assessors

97. The learned state counsel was cross examining the defence witness about some inconsistencies in her police statement she gave to the police when facts were fresh in her mind with her 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’s sister Latileta.

98. The witness agreed that she would have believed what the accused had told her about him having an affair with the complainant even if he had lied about it. She did not see the accused and the complainant having an affair.

99. In re-examination, the complainant had sought forgiveness and the witness believed what the complainant and her sister had told her and she also believed the accused that they had an affair and that he did not sexually abuse the complainant. The witness stated that she could actually see on the face of the accused that he was into something that he was not supposed to be doing.

100. This was the defence case.

**ANALYSIS**

101. The prosecution alleges that between the 1<sup>st</sup> day of January, 2016 and 31<sup>st</sup> day of December 2016, the accused at the Vio Island had unlawfully and

indecently assaulted the complainant by kissing her lips without her consent. This alleged incident happened when the complainant was at the house of her sister in law. The accused had asked the complainant to come and sleep in the bedroom where he was sleeping since there were no blankets in the sitting room where she was sleeping.

102. In the bedroom the complainant slept beside the accused on the bed after a while the accused turned around and starting kissing the complainant on her lips. The complainant did not like what the accused was dong to her she was a student and the accused was a married man. After the incident the complainant immediately informed her sister Latileta about what the accused had done to her.
103. In respect of the second incident the accused had driven the complainant to the Nadovu Park where he stopped the car lowered the passenger's seat and went on top of her, he kissed her, touched her breast and then penetrated her vagina with his finger. Since the situation was getting out of hand the complainant at one stage consented for the accused to kiss the upper part of her body only to get out of the situation and also gave her mobile number telling him that she will meet him again so that the accused stops what he was doing. Eventually, the accused stopped and dropped the complainant to where her friends were waiting. Next morning the complainant told her sister Latileta about what the accused had done to her.
104. The prosecution finally submits that in respect of both the alleged incidents the complainant did not consent to what the accused had done to her and she reported the matter to the police.
105. On the other hand, the defence says the accused did not do anything to the complainant forcefully. The complainant had consented on both the occasions. In respect of the first incident the complainant on her own accord had gone into the bedroom where the accused was sleeping and had

slept beside him. The accused had kissed the complainant and she had responded by kissing him.

106. The complainant consented to the kissing which was a normal reaction of a person who was having a secret relationship with a married cousin. The complainant did not tell the complete truth to Latileta when she did not say that she had consented for the accused to kiss her. The defence also says if the accused had forced the complainant during the first alleged incident she would not have gone with the accused after kissing him at the nightclub and in the car on the way to Nadovu Park.
107. In respect of the second alleged incident the defence says the complainant had accompanied the accused to the Nadovu Park and both had engaged in kissing each other and then during the heat of the moment the accused penetrated his finger in the complainant's vagina with her consent. The complainant had described in detail how she was positioned in the car with her legs spread in such a manner which allowed the accused to do what he did.
108. The complainant cried indecent assault and rape to protect herself, her reputation from her family and the community because she was a student and the accused was a married man and most importantly both were cousins. The defence is also asking you to consider the fact that the complainant had admitted in the presence of her sister Latileta and the wife of the accused that she was having an affair with the accused.
109. The defence finally submits that the complainant did not tell the complete truth when she alleged the accused had kissed her lips and penetrated the vagina with his finger without her consent. The conduct of the complainant does not suggest that she had not consented, the allegations are not probable in the circumstances of this case.

Madam and Gentlemen Assessors

110. You have seen all the witnesses give evidence keep in mind that some witness react differently when giving evidence.
111. 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 all 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 all the witnesses and their demeanour in arriving at your opinions.
112. 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.
113. 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.

114. 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.
115. 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.
116. The accused is not required to prove his innocence or prove anything at all. He is presumed innocent until proven guilty.
117. As I have mentioned earlier, in this case the accused is charged with two offences 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.
118. Your possible opinions are:-

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

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

Madam and Gentlemen Assessors

119. 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.

120. 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**  
24 August, 2020

**Solicitors**

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

**Office of the Legal Aid Commission for the Accused.**