

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 20 OF 2012

STATE

-v-

SERUPEPELI RAMAKITA

Counsels : Mr. Filimoni Lacanivalu for the State
Accused in Person

Date of Trial : 01 July 2013– 02 July 2013

Date of Summing Up : 03 July 2013

(Name of the victim is suppressed. She is referred to as 'N')

SUMMING UP

Madam Assessors 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 on law and evidence. 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 opinion 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 fact. 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 Prosecution and the accused made submissions to you about the facts of this case. That is their duty as the Prosecution Counsel and the accused. 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, and 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 decisions 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 court room. Your duty is to apply the law as I explain to you to the evidence you have heard in the course of this trial.
10. Your duty is to find the facts based on the evidence and apply the law to those facts. Approach the evidence with detachment and objectivity. Do not get carried away by emotion.
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 the facts in the trial. You are expected and indeed required to use that common sense and experience in your deliberations and in deciding.

12. In accessing 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. In deciding on the credibility of any 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 gave evidence. Was he/she evasive? How did he/she stand up to cross examination? You are to ask yourselves, was the witness honest and reliable.
13. I must give each one of you a word of caution. This caution should be borne in mind right throughout until you reach your own opinions. That is – as you could hear from evidence – this case involved an alleged incident of rape. An incident of rape would certainly shock the conscience and feelings of our hearts. It is quite natural given the inherent compassion and sympathy with which human-beings are blessed. You may, perhaps, have your own personal, cultural, spiritual and moral thoughts about such an incident. You may perhaps have your personal experience of such a thing, which undoubtedly would be bitter. You must not, however, be swayed away by such emotions and or emotive thinking. That is because you act as judges of facts in this case not to decide on moral or spiritual culpability of anyone but to decide on legal culpability as set down by law, to which every one of us is subject to. I will deal with the law as it is applicable to the offence with which the accused-person is charged, in a short while.
14. 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. They are of course an important part of the case. The agreement of these facts has avoided the calling of number of witnesses and thereby saved a lot of court time.
15. The charge against the accused is a charge of rape under Section 207(1) (2) (b) of the Crimes Decree No.44 of 2009. The particulars of the offence, as alleged by the prosecution, are:

Statement of Offence

RAPE: *Contrary to Section 207 (1) (2) (a) of the Crimes Decree No. 44 of 2009.*

Particulars of Offence

SERUPEPELI RAMAKITA on the 2nd day of November 2011 at Yadua in Sigatoka in the Western Division, had carnal knowledge with a woman namely **N** without her consent.

16. I will now deal with the elements of the offence. The offence of rape is defined under Section 207 of the Crimes Decree. Section 207(1) of the Decree makes the offence of rape an offence triable before this court. Section 207 (2) states as follows:

A person rapes another person if:

- (a) The person has carnal knowledge with or of the other person without other person's consent; or
- (b) The person penetrates the vulva, vagina or anus of other person to any extend with a thing or a part of the person's body that is not a penis without other person's consent; or
- (c) The person penetrates the mouth of the other person to any extend with the person's penis without the other person's consent.

17. Carnal knowledge is to have sexual intercourse with penetration by the penis of a man of the vagina of a woman to any extend. So, that is rape under Section 207 (2) (a) of the Crimes Decree.

18. Other parts of the offence are irrelevant to the facts of this case.

19. Consent as defined by Section 206 of the Crimes Decree, means the consent freely and voluntarily given by a woman with a necessary mental capacity to give such consent.

20. So, the elements of the offence in this case are that the accused **penetrated the vagina of the victim to some extend with penis**, which means that the insertion of a penis fully into vagina is not necessary.

21. I will now deal with the summary of evidence in this case.

22. Prosecution called N as the first witness. She is a deaf and mute person. She gave evidence with the assistance of an interpreter. She stated that while she was sleeping in her house on 2nd November 2011 someone called her. When she went out, the accused pulled her and took her towards the bushes. There they had 'boy girl sex resulting baby'. She had not consented to this. In cross examination it was put to the victim that accused did not pull her. She said that accused pulled her. It was also suggested that accused had sex with consent. She said no.

23. You watched her giving evidence in court. What was her demeanor like? How she react to being cross examined and re-examined? Was she evasive? How she conduct herself generally in Court? Given the above, my directions on law, your life experiences and common sense, you should be able to decide whether witness's evidence, or part of a witness's evidence is reliable, and therefore to accept and whether witness's evidence, or part of evidence, is unreliable, and therefore to reject, in your deliberation. If you accept the evidence of N beyond reasonable doubt then you have to decide whether that evidence is sufficient to establish all elements of the charge.
24. The second witness for the prosecution was Pauliasi Kunawawa. On the date in question he was watching TV at the victim's house. When he went out to pass urine, he had met the accused. The accused had asked him to call N to get the money due to him. Viliame's daughter Nanise had gone and called N. When N came, accused pulled her and dragged her towards the bushes. Thereafter, they looked for them but could not find them. Later N had come home from the village. In cross examination, he stated that he did not see the place where the accused and the victim had sex.
25. This witness's evidence is not challenged by the accused. He had corroborated the events on 2nd November 2011 as given by the victim.
26. The third witness for the prosecution was Doctor Abhitesh Raj. He had examined the victim on 3rd November 2011. In short history, she had stated that she was woken up by a boy and another person had forcibly taken her to nearby bush and had forceful sexual intercourse with her. There was an abrasion on the interior aspect of her labia minora and another abrasion on her left knee. The abrasion on the labia minora could have been caused by sexual penetration through forceful sexual intercourse and the injury was sustained within 24 hours. He was of the opinion that there is possibility of forceful sexual intercourse within last 24 hours.
27. The Doctor is an independent witness. His evidence further corroborated the evidence of the victim regarding recent sexual intercourse. The injuries as described by the doctor are indicative of forcible sexual intercourse.
28. The next witness for the prosecution was victim's sister, Ruci Mocolutu. According to her, there was a Church service at their house that night followed by a Grog session. Around 9.00 p.m, Nanise had told her that N had been dragged out by a Fijian boy. They have searched for N till 12.00 p.m. After they came back home, N came and told them that she was raped.

29. The last witness for the prosecution was Viliame Mocolutu. He is the brother of the victim. He gave a similar version to Ruci Mocolutu. In cross examination he admitted that he met the accused while he was in the police cell and shook hands with him. In re examination he stated that he went to police station with the elder brother of the accused who is his best friend.
30. After the prosecution's case was closed, you heard me explaining the accused his rights in defence. Accused elected to give evidence. His position was that he had sexual intercourse with the victim with consent on the date in question. Further for two years, they have lived together. The victim comes to his village almost every week. In cross examination, he admitted that he had sexual intercourse with the victim on the date in question. He had lied to Pauliasi in order to call the victim out of her house. He admitted he was drunk that night. But he denied that he used any force. He also admitted that there is no reason for the victim to make a complaint.
31. It is up to you to decide whether you could accept the evidence of the accused. The accused does not have to prove anything. If the accused had raised a reasonable doubt, then the benefit of that doubt should be given to him and he should be found not guilty.
32. The simple matter for you to decide in this case is, whether the victim consented for sexual intercourse on the date in question.
33. Remember, the burden to prove, the accused's guilt beyond reasonable doubt, lies with the prosecution throughout the trial, and never shifts to the accused, at any stage of the trial. The accused is not required to prove his innocence, or prove anything at all. In fact, he is presumed innocent until proven guilty beyond reasonable doubt.
34. If you accept the prosecution's version of events, and you are satisfied beyond reasonable doubt so that you are sure of accused's guilt of the charge you must find him guilty for the charge. If you do not accept the prosecution's version of events, and you are not satisfied beyond reasonable doubt, so that you are not sure of the accused's guilt, you must find him not guilty as charged.
35. Your possible opinions are as follows:
- Charge of Rape - Accused Guilty or Not Guilty.

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

Sudharshana De Silva
JUDGE

AT LAUTOKA
03 July 2013

Solicitors for the State: Office of the Director of Public Prosecution, Lautoka
Solicitors for the Accused: Accused in Person