

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: 222 OF 2011

STATE

-v-

KALI DASS

Counsels : Mr. F. Lacanivalu for the State
Mr. Roneel Kumar for the accused

Date of Trial : 20 February 2014 to 26 February 2014

Date of Summing Up : 26 January 2014

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

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 state counsel and the counsel for the defence made submissions to you about the facts of this case. That is their duty as the Prosecution Counsel and the defence 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, 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 courtroom. 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. Legal effect of such admissions is that they make sufficient proof of the facts admitted. Therefore, such facts need no further proof by way of evidence by prosecution. 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 agreed facts of this case are:
1. That the Accused in this matter is one Kali Dass of Uciwai in Nadi.
 2. That the Complainant in this matter is one DY of Nawaicoba in Nadi.
 3. That the Accused is the biological father of the Complainant.
 4. That the Complainant was born on the 3rd of September 2001.
 5. That the Complainant was medically examined on the 6th of September 2011.
 6. That the Accused was arrested on the 8th of September 2011.
 7. That the interview in the Hindi language was conducted by DC 3024 Shailend Sashi Krishna.
 8. That the Accused's interviewed was translated in the English language by DC 3024 Shailend Sashi Krishna.

9. That the Accused's formal charge statement was translated in the English language by DC 3260 Vishaal.

16. The information against accused is as follows:

Count 1
Statement of Offence

RAPE: Contrary to Sections 207 (1) and (2) (a) and (3) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

KALI DASS, between the 1st day of November 2010 and 31st day of December 2010 at Nadi in the Western Division inserted his penis into the vagina of **DY**, a 10 year old girl.

Count 2
Statement of Offence

RAPE: Contrary to Sections 207 (1) and (2) (a) and (3) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

KALI DASS, between the 1st day of June 2011 and 31st day of August 2011 at Nadi in the Western Division inserted his penis into the vagina of **DY**, a 10 year old girl.

Count 3
Statement of Offence

RAPE: Contrary to Sections 207 (1) and (2) (a) and (3) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

KALI DASS, between the 1st day of September 2011 and 05th day of September 2011 at Nadi in the Western Division inserted his penis into the vagina of **DY**, a 10 year old girl.

17. I will now deal with the elements of the offences.

18. 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 extent 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 extent with the person's penis without the other person's consent.
19. Carnal knowledge is to have sexual intercourse with penetration by the penis of a man of the vagina of a woman to any extent. So, that is rape under Section 207 (2) (a) of the Crimes Decree.
20. So, the elements of the offence of Rape in the charges are that the accused penetrated the vagina of victim to some extent with penis which means that the insertion of penis fully into vagina is not necessary.
21. 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. A woman under age of 13 years is considered by law as a person without necessary mental capacity to give consent. The girl in this case was 8 years of age and therefore, she did not have the capacity under the law to consent. So, the prosecution does not have to prove the absence of consent on the part of the girl because law says that she, in any event, cannot consent. This position will apply to all the charges.
22. Apart from the elements of the offence, the identity of the person who alleged to have committed the offence is very important. There must be positive evidence beyond reasonable doubt on identification of the accused-person and connect him to the offence that he alleged to have been committed.
23. 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 victim who saw, heard and felt the offence being committed. In this case, for example, the victim was witness who offered direct evidence, if you believe her as to what she saw, heard and felt.
24. Documentary evidence is also important in a case. Documentary evidence is the evidence presented in the form of a document. In this case, Medical Report is an example if you believe that such a record was made. Then you can act on such evidence. You can take into

account the contents of the document if you believe that contemporaneous recordings were made at the relevant time on the document upon examination of the victim.

25. Expert evidence is also important to borne in mind. Usually, witnesses are not allowed to express opinions. They are allowed to give evidence on what they have seen, heard or felt by physical senses only, as described earlier. The only exception to this rule is the opinions of experts. Experts are those who are learned in a particular science, subject or a field with experience in the field. They can come as witnesses and make their opinions express on a particular fact to aid court and you to decide the issue/s before court on the basis of their learning, skill and experience.
26. The doctor in this case, for example, came before court as an expert witness. The doctor, unlike any other witness, gives evidence and tells us her conclusion or opinion based on examination of the victim. That evidence is not accepted blindly. You will have to decide the issue of rape before you by yourself and you can make use of doctor's opinion if her reasons are convincing and acceptable to you; and, if such opinion is 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 in the case.
27. In assessing evidence of witnesses you need to consider a series of tests. They are for examples:

Test of means of opportunity: That is whether the witness had opportunity to see, hear or feel what he/she is talking of in his/her evidence. Or whether the witness is talking of something out of pace mechanically created just out of a case against the other party.

Probability and Improbability: That is whether what the witness was talking about in his or her evidence is probable in the circumstances of the case. Or, whether what the witness talked about in his/her evidence is improbable given the circumstances of the case.

Belatedness: That is whether there is delay in making a prompt complaint to someone or to an authority or to police on the first available opportunity about the incident that was 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 to such delay.

Spontaneity: This is another important factor that you should consider. That is whether a witness has behaved in a natural or rational way in the circumstances that he/she is talking of, whether he/she has shown spontaneous response as a sensible human being and acted accordingly as demanded by the occasion.

Consistency: That is whether a witness telling a story on the same lines without variations and contradictions. You must see whether a witness is shown to have given a different version elsewhere. If so, what the witness has told court contradicts with his/her earlier version.

You must consider whether such 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.

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 demeanor, the way he/she faced the questions etc. in deciding on a witness's credibility.

You must also consider the issue of omission to mention something that was adverted to in evidence on a previous occasion on the same lines. You must consider whether such omission is material to affect credibility and weight of the evidence. If the omission is so grave, you may even consider that to be a contradiction so as to affect the credibility or weight of the evidence or both.

In dealing with consistency you must see whether there is consistency *per se* and *inter se* that is whether the story is consistent within a witness himself or herself and whether the story is consistent between or among witnesses. In deciding that, you must bear in mind that the evidence comes from human beings. They cannot have photographic or videographic memory. All inherent weaknesses that you and I suffer, insofar as our memory is concerned, the memory of a witness also can be subject to same inherent weaknesses.

Please remember that there is no rule in law that credibility is indivisible. Therefore, you are free to accept one part of a witness's evidence, if you are convinced beyond doubt and reject the rest as being unacceptable.

28. You need to consider all those matters in evaluating the evidence of witnesses. You shall, of course, not limit to those alone and you are free to consider any other factors that you may

think fit and proper to assess the evidence of a witness. I have given only a few illustrations to help what to look for to evaluate evidence.

29. I will now deal with the summary of evidence in this case.
30. Prosecution called Karishma Devi as the first witness. She is the aunt of the complainant. On 5.9.2011 the complainant had come to her house with her grandmother. When complainant was asked what your father did to you, she had said that her father took off her panty. The grandmother was staring at her. Then she had taken the complainant to a room. Then complainant had told her that her father took her to sugar cane field and made her sleep on the ground. Then he had put his penis into her vagina. Lots of blood had come out and she was taken to hospital by the accused. She had told this to her husband and police complaint was made. This had happened twice.
31. Under cross examination she admitted that she was present when complainant made her statement to the police. She also admitted that she spoke to police officers before the complainant made the statement. But she said that she was asked to go out when the complainant started giving her statement. She admitted that she was present when doctor examined the complainant. She said she did not talk to the doctor before examination. She denied that complainant stayed at her house. There were no ill feelings between her husband and the accused.
32. You saw her giving evidence in Court. She had given prompt answers to questions put to her by the defence. It is up to you to decide whether you could accept her evidence beyond reasonable doubt. If you accept her evidence it corroborates the evidence of the victim regarding recent complaint about last incident of rape.
33. The next witness for the prosecution was DC Shailend Sashi Krishna. He is an officer with 14 years experience. On 9.9.2011 he had received instructions to caution interview the accused. DC Arif Khan was the witnessing officer. It was conducted at the Fraud office at the Nadi police station. It was commenced at 9.40 a.m. and concluded at 4.50 p.m. It was conducted in Hindi language in question and answer format. Accused was given his rights. The accused was not assaulted, threatened or forced to admit. No complaint was made by the accused. He had not seen any injury on the accused. The accused was given breaks and time to rest.
34. A reconstruction was done during the interview. No assault, threat or force was made by him or any other officer during the reconstruction. There was no inducement, threat or promise during the interview. At the conclusion content was read back to the accused. Opportunity was given to add, alter or delete. The accused signed the statement. He and

witnessing officer counter signed. He identified the original caution interview statement marked PE1 and tendered the same. He also read out and tendered the translation marked PE2. He identified the accused in Court.

35. Under cross examination he said that the accused was not beaten up by Arif with the piece of wood during the reconstruction. He further denied officer Arif asking the accused to sit on the ground cross legged and standing on his knees. He admitted that the interview was conducted in Hindi language. He denied threatening the accused with assault if he does not sign the interview. He denied fabricating the admissions in the interview.
36. It is up to you to decide whether the accused made a statement under caution voluntarily to this witness. If you are sure that the caution interview statement was made freely and not as a result of threats, assault or inducements made to the accused by persons in authority then you could consider the facts in the statement as evidence. Then you will have to further decide whether facts in this caution interview statement are truthful. If you are sure that the facts in the caution interview are truthful then you can use those to consider whether the elements of the charges are proved by this statement.
37. The next witness was DC Vishal Kumar. He is an officer with 10 years experience. He had gone in search of the accused with team of officers on 7.9.2011. When the police vehicle approached, the accused had run away. They had conducted a search. Later in the night he was informed by PC Sanjay that the accused was arrested. PC Sanjay had come in a police vehicle to pick him up. The accused was in the back seat of that vehicle. He had escorted the accused to the police station. There were no visible injuries on the accused.
38. He had charged the accused on 10.9.2011 at 8.30 hours at the charge room of the Nadi police station. It was concluded at 1050 hours. It was done in question and answer format in Hindi language. The accused was not assaulted or forced before or during the charge. The accused did not make a complaint before or during the charge. The accused was given his rights. There was no inducement, threat or promise. At the conclusion content was read back to the accused. Opportunity was given to add, alter or delete. He identified the original charge statement marked PE3 and tendered the same. He also read out and tendered the translation marked PE4. He identified the accused in Court.
39. When cross examined he denied Sanjay hitting the accused. He further denied that accused was assaulted by group of police officers when he was brought to Nadi police station. He denied accused never made a statement or fabricating a statement.
40. It is up to you to decide whether the accused made a charge statement voluntarily to this witness. If you are sure that the charge statement was made freely and not as a result of threats, assault or inducements made to the accused by persons in authority then you could consider the facts in the statement as evidence. Then you will have to further decide

whether facts in this charge statement are truthful. If you are sure that the facts in the charge statement are truthful then you can use those to consider whether the elements of the charges are proved by this statement.

41. Prosecution called victim DY as next witness. She is ten years old now. She stated that in sugarcane field her father (accused) took off her clothes and climbed on her. Then he put his penis (nuni) in her vagina (ponu). It was painful. This happened twice. Other incident was at home. She had told this to her aunt after the 2nd incident. She had gone there with her grandmother.
42. Under cross examination she admitted that she went with her step mother to Ba sometimes in June 2011. Then she had stayed there for some time. Then she had come to her aunt's place and stayed there for few days. Then she had told this to her aunt. When she made the statement to police, aunt was present there throughout. She was answering the questions put to her by the police officer. When she was taken to hospital aunt accompanied her. The aunt spoke to the doctor before she was examined. When it was put to her that Kali Dass did not put his penis into her vagina at the Sugarcane field, she said he did that. Further when it was put to her that Kali Dass did not put his penis into her vagina at home, she said he did that.
43. You watched her giving evidence in court. What was her demeanour like? How she react to being cross examined and re-examined? Was she evasive? How she conduct herself generally in Court? You must bear in mind the age of this witness at the time of the incident. Whether she has any reason to falsely implicate the accused? 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 DY beyond reasonable doubt then you have to decide whether that evidence is sufficient to establish elements of the charges.
44. The next witness for the prosecution was DC Arif Khan. He is an officer with 16 years experience. He is the witnessing officer of the caution interview of the accused. He corroborated the evidence of DC Shailend Sashi Krishna.
45. Under cross examination he admitted that he does not know how to read or write Hindi. However, he could very well understand Hindi language. He denied that DC Shailend threatened the accused during the interview. He denied assaulting the accused with a wooden stick at the time of reconstruction. He further denied asking the accused to sit on

the ground cross legged and then standing on the knees of the accused. He denied burning accused's penis with match stick in the police station.

46. It is up to you to decide whether you could accept this evidence beyond reasonable doubt. If you accept this evidence then it corroborates the evidence of DC Shalend Sashi Krishna.
47. The investigating officer DC Virisila was the next witness. She is an officer with 9 years experience. She was instructed to be the investigating officer on 6.9.2011. She had taken steps to collect information and record statements. The incidents of rape had happened once after crushing season in 2010 and twice during the crushing season in 2011. The victim was produced before a doctor at the Nadi hospital on 6.9.2011. She had received the original medical report. A copy was prepared and put to the docket with the original. When the docket was handed over to the prosecution unit the original medical report was available. She was informed last Friday that the original is missing. A search was conducted at the exhibit room in the Nadi police station. She could not find the original. She identified the copy of the medical report.
48. Under cross examination she said that she was going in and out of the room where the interview of the accused was conducted. She denied seeing the accused being assaulted or threatened during the interview.
49. It is up to you to decide whether you could accept this evidence beyond reasonable doubt. If you accept this evidence then it corroborates the evidence of other police officers.
50. Doctor was called as the last witness for the prosecution. She is a doctor with 5 years experience. She marked and tendered the medical report PE5. She had examined the victim on 6.9.2011 at 7.40 p.m. The victim through interpreter had told that her father had sexual intercourse with her twice on two days. She was calm. There was 0.5 cm superficial laceration on the vaginal opening. This was a fresh injury with little bleeding. No hymen was visible. The professional opinion was that patient had vaginal penetration recently. For hymen to be missing there has to be repeated penetration into vagina.
51. Under cross examination, she said it is not possible for the hymen not be present due to single penetration. According to history the two incidents were two dates before she came, one after other. She said if a child is taken to hospital with vaginal pain or bleeding she will be examined for rape.
52. The doctor is an independent witness. If you believe her evidence there is evidence of recent vaginal penetration. Further hymen is absent which is due to repeated penetration into vagina.

53. After the prosecution case was closed you heard me explaining the accused his rights in defence.
54. The Accused elected to give evidence. He stated that he came to know that police was looking for him on 8.9.2011. He had gone to his brother's house. Brother had called police to surrender him. Police officer Sanjay came lifted him and threw him to the police vehicle. Two other police officers got into the same vehicle at sea side. One of them was Vishal. He was assaulted by Sanjay on the way to the police station.
55. At the police station lot of officers were waiting for him. When he entered the station they started beating him. He was hit on the stomach, sides and up to the head by 8-9 police officers with fist. Vishal was there standing at the back. Then his clothes were taken off. He was hand cuffed and put into the cell naked. There were other four i-Taukei people in the cell. Following morning after breakfast his clothes were given and Shailend had interviewed him at a room close to the Nadi Court house.
56. He was informed about the allegation that he raped his daughter. He felt ashamed as he had looked after her without mother. Then he was taken to reconstruction.
57. At the reconstruction at his house he was beaten with a stick by Arif Khan. He was made to sit on the ground cross legged and Arif Khan stood on his knee. He was beaten on shoulders and calf muscle. When he was brought back to the police station he was made to sign the last paper. Vishal also came to get a paper signed. He can't recall what he told Vishal. Arif came after that and told him to unzip his pants and take out his penis. Then front of his penis was burnt with a lighted match by Arif Khan. He was kept in the cell for five days without clothes. He was taken to Court on Monday.
58. When he was taken to Magistrate he had not complained about assault or injuries. He was threatened by police, if he does so, he will be taken back to police station and beat him more. The lady who was living with him had taken the daughter away for two months and that lady is making these allegations. Satya Nand and Karishma were not in talking terms with him.
59. In cross examination by the prosecution he was shown the different positions taken up by him in questions and answers 89 & 90 regarding whether he was aware of the allegation earlier and questions and answers 95 & 96 regarding that he evaded the arrest. He said those positions are wrong. It was also put to him that he had taken earlier position that Sanjay assaulted him while driving. He said Sanjay stopped the vehicle to assault him. He

denied that he earlier took a position that Arif burnt his testicles. He firstly admitted that Arif burnt his penis after signing last paper. Then he changed his position and said that Arif did this before signing the papers.

60. He admitted that he was given lunch during the interview. He admitted that he had taken different positions regarding making a statement to Vishal. He said that he was kept in the cell naked for five days after Arif burnt his penis. He agreed that he was produced in Court on 12th Monday. He admitted that he never made a complaint to the Magistrate regarding police assault. When he was produced before a doctor at St. Giles although he had made a complaint he was asked to tell that to Court. He admitted that he never made a complaint to High Court Judge when he was produced in High Court.
61. In re-examination he said that he knew that he could make a complaint to High Court Judge. He said that on 9th, 10th and on 11th he was put into cell after taking off clothes. But after going to Court on 12th his clothes were not removed when he was put into the cell.
62. You watched the accused giving evidence in court. What was his demeanour like? How he react to being cross examined and re-examined? Was he evasive? How he conduct himself generally in Court? His position taken up in Court is different from his caution interview statement and the charge statement. Further he had given different versions in evidence given in this Court. In other words his evidence is inconsistent. It is up to you to decide whether you could accept his version and his version is sufficient to establish a reasonable doubt in the prosecution case. If you accept his version accused should be discharged. Even if you reject his version still the prosecution should prove it's case beyond reasonable doubt.
63. I must remind you that when an accused person has given evidence he assumes no onus of proof. That remains on the prosecution throughout. His evidence must be considered along with all the other evidence and you can attach such weight to it as you think appropriate.
64. You will generally find that an accused gives an innocent explanation and one of the three situations then arises:
- (i) You may believe him and, if you believe him, then your opinion must be Not Guilty. He did not commit the offences.
 - (ii) Alternatively without necessarily believing him you may say 'well that might be true'. If that is so, it means there is reasonable doubt in your minds and so again your opinion must be Not Guilty.

- (iii) The third possibility is that you reject his evidence as being untrue. That does not mean that he is automatically guilty of the offences. The situation then would be the same as if he had not given any evidence at all. He would not have discredited the evidence of the prosecution witnesses in any way. If prosecution evidence proves that he committed the offences then the proper opinion would be Guilty.

65. I have summarized all the evidence before you. But, still I might have missed some. That is not because they are unimportant. You heard every item of evidence and you should remind yourselves of all that evidence and from your opinions on facts. What I did was only to draw your attention to the salient items of evidence and help you in reminding yourselves of the evidence.

66. Please remember, there is no rule for you to look for corroboration of the victim's story to bring home an opinion of guilty in a rape case. The case can stand or fall on the testimony of the victim depending on how you are going to look at her evidence. You may, however, consider whether there are items of evidence to support the victim's evidence if you think that it is safe to look for such supporting evidence. Corroboration is, therefore, to have some independent evidence to support the victim's story of rape.

67. 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.

68. 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 each charge you must find him guilty for that 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 for that charge. You have to consider evidence against each charge separately. The fact that the accused is Guilty or Not Guilty of one charge does not necessarily mean that he is Guilty or Not Guilty of the other charges as well.

69. Your possible opinions are as follows:

- | | | |
|-------|-----------------------|------------------------------|
| (i) | First charge of Rape | Accused Guilty or Not Guilty |
| (ii) | Second charge of Rape | Accused Guilty or Not Guilty |
| (iii) | Third charge of Rape | Accused Guilty or Not Guilty |

70. 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.

71. Any re-directions?

Sudharshana De Silva
JUDGE

At Lautoka
17th February 2014

Solicitors : Office of the Director of Public Prosecution for State
Office of the Legal Aid Commission for Accused