

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. 78 of 2013

STATE

V

SAMISONI RABAKA

Counsel: Ms A. Vavadakua for the State
Accused in person.

Dates of trial: 15,17 July 2014

Date of Summing Up: 18 July 2014

SUMMING UP

Ladies and gentleman assessors. It is now my duty to sum up to you. In doing so, I will direct you on matters of law which you must accept and act on. You must apply the law as I direct you in this case.

2. As far as the facts of this case are concerned, what evidence to accept, what weight to put on certain evidence, which witnesses are reliable, these are matters entirely for you to decide for

yourselves. So if I express any opinion on the facts, or if I appear to do so it is entirely a matter for you whether you accept what I say or form your own opinions. In other words you are masters and the judges of the facts.

3. Counsel for the prosecution and the accused have made submissions to you about how you should find the facts of this case. However you are not bound by what counsel for either side has told you about the facts of the case. If you think that their comments appeal to your common sense and judgment, you may use them as you think fit. You are the representatives of the community in this trial and it is for you to decide which version of the evidence to accept or reject.
4. You will not be asked to give reasons for your opinions, but merely your opinions themselves, and you need not be unanimous although it would be desirable if you could agree on them. Your opinions are not binding on me and I can assure you that I will give them great weight when I come to deliver my judgment.
5. On the issue of proof, I must direct you as a matter of law that the onus or burden of truth lies on the prosecution to prove the case against the accused. The burden remains on the prosecution throughout the trial and never shifts. There is no obligation upon the accused to prove his innocence. Under our system of criminal justice an accused person is presumed to be innocent until is proved guilty.
6. The standard of proof is one of proof beyond reasonable doubt. This means that before you can find the accused guilty of the offence charged, you must be satisfied so that you are sure of his guilt. If you have a reasonable doubt about the guilt of the accused, then it is your duty to express an opinion that the

accused is not guilty. It is only if you are satisfied so that you feel sure of the guilt of the accused that you can express an opinion that he is guilty.

7. Your opinions must be based only on the evidence you have heard in the courtroom and upon nothing else. Whatever you have read or heard about this case in the media or elsewhere you must totally disregard. Your duty is to apply the law to the evidence you have heard.
8. The accused faces one count of rape. In our law and for the purposes of this trial penetration of a vagina with a finger is rape. As the prosecutor told you in her opening address, rape is normally penetration without consent. Consent is not an issue in this case because the law says that anybody under the age of 13 is unable to give consent. All that needs to be proved by the prosecution in this case therefore is that the accused, Samisoni, did penetrate the vagina of the little girl either partially or fully with his finger: it matters not how much penetration there is but there must be some.
9. The evidence that the prosecution seeks to rely on in this case comes from the direct evidence of the little girl and circumstantial evidence given by her mother.
10. Circumstantial evidence can be powerful evidence, but it is important that you examine it with care, and consider whether the evidence upon which the prosecution relies in proof of its case is reliable and whether it does prove guilt. Furthermore, before convicting on circumstantial evidence you should consider whether it reveals any other circumstances which are or may be of sufficient reliability and strength to weaken or destroy the prosecution case. Finally you should be careful to distinguish between arriving at conclusions based on reliable

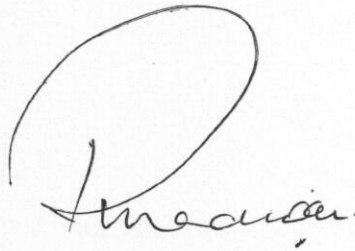
circumstantial evidence, or mere speculation. Speculating in a case amounts to no more than guessing, or making up theories without good evidence to support them, and neither the prosecution, the defence nor you should do that.

11. The little three year old girl was understandably a reluctant and withdrawn witness, however she did tell us that something happened to her when she woke up one day and the person who was there was the accused whom she identified in court. She said that he touched her and she continually pointed to her genitals and he used his hand, and when demonstrating what she meant by hand she continually showed the first forefinger of her right hand. She told the prosecutor that he had only put his hand outside her genitals but in answer to a question from me she seemed to suggest that he had put it inside her. It's a matter for you ladies and gentleman what you make of her evidence. You saw her demonstrations, you heard her reluctant words and it is for you to decide what you make of it. We are left however with the evidence that the accused did something to her genitals that caused her pain and seemingly made her reluctant to talk about it.
12. The next day the mother was bathing her when she noticed black or dark colouring at the top of her vagina. The following day she noticed that there was blood coming from the vagina. The mother asked the girl why there was blood on her vagina to which the girl replied that Sami had done "kaka" to it meaning caused pain in that region. The mother then took the girl to the police station to report it, and then took her to CWM hospital for a medical examination.
13. Mother described an incident in the early hours of 5 February 2013 in which the accused had come to her room and propositioned her. She then left the room leaving the accused in

the room with the two children and she sat outside for about an hour. The accused had come out for a few minutes to apologise an apology which she did not accept, and he then returned to the house. When she went back to the house he was again in the room with the children. This evidence ladies and gentleman is circumstantial evidence that the State seeks to rely on to prove that there was nobody else who could have done injury to Lucy that night apart from the accused. You will remember the circumstantial evidence warning I have given you earlier on in the summing up.

14. You heard from the Police witness who produced the interview the Police had with the accused. The answers in this interview are evidence to consider in the normal way. You will note that he admits in the interview that he was present in the room with the children when the mother was outside.
15. The final witness for the prosecution was the doctor. She told us that she examined Lucy on 7 February 2013. Lucy's mother told the doctor the history of the complaint and the doctor told us that there was a tear to Lucy's vaginal area that can only have been caused, the doctor said, by sexual abuse. It is not an injury that could have occurred naturally.
16. The doctor said that the blackish marks on the vagina could have been a bruise or dried blood.
17. The doctor's conclusion after the examination was that her findings were consistent with vaginal penetration.
18. After the doctor had finished her evidence the prosecution closed its case. You heard me explain to the accused what his rights in defence are and he elected to remain silent.

19. The accused has not given evidence, nor has he called any witnesses. That is his right. He is entitled to remain silent and to require the prosecution to make you sure of his guilt. You must not assume he is guilty because he has not given evidence. However you will appreciate that he has not said anything in this trial to undermine, contradict or explain the evidence put before you by the prosecution.
20. Well ladies and gentleman that is all I wish to say to you about the evidence. It is now time for you to retire and consider your opinions.
21. Redirection counsel?



P. K. Madigan
Judge

