

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No.78 of 2013

STATE

v

ABDUL MUKIM

Counsel: Mr M. Mataiva for the State
Ms . M. Tarai for the accused.

Dates of trial: 20, 21, August 2014

Date of Summing Up: 21 August 2014

SUMMING UP

Ladies and gentleman assessors.

1. 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 facts.
3. Counsel for the prosecution and the defence had made submissions to you about how you should find the facts of this case, They have the right to make these comments because it is part of their duties as counsel. 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 of 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.
4. 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.

5. 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.
6. Your opinions must be based only on the evidence you have heard in the courtroom and upon nothing else.
7. The accused faces one charge of rape. In our law and for the purposes of this trial, rape is committed when a person penetrates the vagina of another and where the person doing that does not have the consent of the victim or is reckless to whether she was consenting or not.
8. Now there is no dispute in this case that there was an act of sexual intercourse in the evening of the 2nd November last year but that is where agreement stops. She says that the accused forced himself on to her; he says that this was but another act of sexual intercourse that the two were having in the course of a relationship as boyfriend and girlfriend. It is your duty Ladies and Gentleman to tell me if the prosecution have proved their case to you beyond reasonable doubt. If you believe Susan then you will find the case against the accused proved. However if you think that there may have been a relationship between her

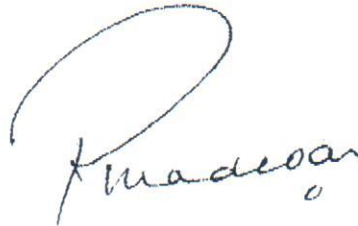
and Mukim or you are not sure then you may find that the sex was consensual. I ask you to be cautious here because even if they were in a relationship and they did have consensual sex before, it doesn't mean that she was not raped on the 2nd. Even wives can be raped. A woman is entitled to say no even to her lover.

9. If you think that there was "something going on" then that will reflect on the credibility of the victim and that is something you can surely take into account.
10. This has been a very brief case and I am sure that the evidence is still fresh in your minds. However it is my duty to remind you of the main points of it.
11. Susan told us that at about 6pm her Aunty sent her to the shop. On her way home she met the accused who engaged her in conversation, took her hand and pulled her down to where the guava trees are. He said he wanted sex; she told him she didn't want to. He forced her, tearing off her T-shirt and pants. He lay on top of her and forced his penis into her vagina. She tried to ward him off with her hands. She didn't scream because no-one would have heard her. She knew the accused because he used to come to Aunty's house to drink grog or bring food sometimes. She told the Police at Lekutu what the accused had done and she went for a medical examination.
12. In cross-examination she said that she never knew the accused but did say that he used to follow her home sometimes to the gate. He said he did this on many occasions and she would look back at him. She later contradicted this. She denied that she was having a secret affair with him and had had sex with him previously.

13. Susan's aunty told us that Susan would often be staying with her family. On the 2nd November she sent Susan to the shop. When she didn't return within the expected time, Aunty went to the shop to look for her. The shopkeeper said that she had been and gone so she went home. On the way back she saw the accused with two other young men. She identified the accused in Court as Mukim, a neighbor of hers.
14. When Aunty asked Susan where she had been, Susan said that she had met the accused who had got hold of her hand and pushed her down the slope where the guavas are. Aunty asked for more information but all Susan would say was that Mukim had "wanted her" so she didn't ask any more questions after that. She never got the full story because aunty said that she was a "bit slow and chops and changes about everything she says." Her mother came three days later and was shocked to hear of this partial story.
15. The final witness for the prosecution was the medical officer who examined Susan.
16. Susan related to the Doctor the history of the alleged abuse, telling her that she was pushed down the slope and had her pants and underwear taken off. The man had forceful sex with her and left. She saw blood on her private parts and went home to shower.
17. The doctor's examination revealed an abrasion on her leg, a partially damaged hymen and a slight redness around the vagina.

18. Her finding was injury due to possible penetrative force and was in the healing process. She agreed in cross-examination that there could be injuries even in consensual intercourse and she said that often in rape cases there would be more injuries. It is entirely a matter for you what you make of the medical evidence
19. Well, that was the end of the prosecution case.
20. You heard me explain to the accused what his rights in defence are and he elected to give sworn evidence. Now I must direct you that in giving evidence the accused does not have to prove anything. The fact that he gives evidence does not relieve the State from proving their case to you so that you are sure. Even if you don't believe a word he says does not make him guilty if the State have not proved their case beyond reasonable doubt.
21. The accused told us that Susan was his girlfriend but they have now split up. On the 2nd November he was on his way to a friend's house at about 6pm and on the way he ran into Susan. They talked for about 10 to 15 minutes and then he asked her if they could have sex. She said yes. So he walked to the bushes near the guava tree and she followed him. They each undressed themselves, she told him to hurry up because Aunty was waiting. He then lay on top of her and she accepted him willingly. She never yelled, pushed him away or told him to stop. When he had finished they dressed themselves and left. When he left he saw Roneel who tried to blackmail Susan into having sex with him.
22. Mukim said he would go to Susan's parents' house but only when they were not there and Susan was home alone. He has no idea why Susan would say he raped her because the sex that day was totally consensual.

23. 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. It would be better if you could all be agreed that is not strictly necessary we will be asked individually for your opinion and you will not give a reason for it. Let a Member of my staff know when you are ready and I will reconvene the Court.
24. Redirections counsel?
25. You may now retire.



P.K. Madigan
Judge



At Labasa
22 August 2014