

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

**Criminal Case No.417 of 2012**

**STATE**

**v**

**SANDEEP KUMAR SINGH**

Counsel: Ms S. Kant with Ms V. Kumar for the State  
Ms .V. Tamanisau for the accused.

Date of trial: 1 December 2014,  
Date of Summing Up: 2 December 2014

**SUMMING UP**

Madame and Sir 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 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.
5. On the issue of proof, I must direct you as a matter of law that the onus or burden of true 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.
8. 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.
9. The State has charged the accused with one representative count of rape. This means that within the period specified in the charge the accused committed not just one but several rapes. Instead of loading up the Information with counts relating to many separate offences, they have charged him with one as a sample charge for those offences – this they are entitled to do . To convict Sandeep of rape you must be sure that he committed at least one rape during the <sup>time</sup> ~~offence~~ concerned + whether or not you are sure that he also committed other rapes.
10. Now there is no dispute in this case that there were acts of sexual intercourse in the period between 20<sup>th</sup> October 2012 and the 12<sup>th</sup> November 2012 but that is where agreement stops. She says that the accused forced himself on to her; he says that



these were but acts of sexual intercourse that some of the time she instigated but in any event acts which she agreed to in the course of an odd relationship as flatmates with an understanding to be sexual partners. It is your duty Madam and Sir to tell me if the prosecution have proved their case to you beyond reasonable doubt. If you believe Irene then you will find the case against the accused proved. However if you think that there may have been a consensual sexual relationship between her and Sandeep or you are not sure then you may find that the sex was consensual and find Sandeep not guilty. I ask you to be cautious here because even if they were in a relationship and they did have consensual sex at times, it doesn't mean that there was not one occasion in this period that she was not raped. Even wives can be raped. A woman is entitled to say no even to her lover.

11. So if you are not sure, you will find Sandeep not guilty, but if you are sure that on one of these occasions that Irene has told us about she was forced to have sex against her will then you will find him guilty
12. 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.
13. This has been an extremely 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.
14. Irene told us that in 2011 she came to Suva from Lautoka to work in a garment factory. She was with a girlfriend, that friend's baby and they found themselves sharing a flat with Sandeep the accused. Her girlfriend couldn't afford to pay her

share of the rent so she and the baby moved out leaving Irene and Sandeep together. They moved to a cheaper flat. It was an old dilapidated flat where the floor in one of the two bedrooms was rotten so there was only one serviceable bedroom. After some degree of haggling it was decided that they would share this one bedroom and sleep in the same bed. The period that they lived there was in October and November 2012. After she moved into his bed that next morning he forced her to have sex with him. He told her that if she wanted to stay she had to make herself available to him sexually. She said, OK we will have sex but only when I want it. However it transpired, she says that he forced her to have sex on a daily basis and that he would assault her on a daily basis. She could not afford to leave because she had nowhere else to go so she put up with it. She told her supervisor at work and once when he used a knife to assault her she went to the Police to report the matter. That night they had been drinking beer together and the accused had smoked marijuana. Later there was a violent episode of sex she says and he used first a dagger to slap her on the shoulder and then a kitchen knife, he punched her on the head and she finally fainted. This happened over a period of about two hours from 10pm to midnight. She then ran away to the taxi stand outside and he followed her asking her to go back to him. He broke her phone up; she was able to call her cousin using the taxi driver's phone. She reported her plight to the Police.

15. She put up with all of this because rents were so high. There were Fijian neighbours close by but she didn't report to them. The sex they had was full penetrative sex and she didn't like it. She would always try to push him away.
16. In cross examination she agreed that she had family members in Lautoka that she could have gone to but she stayed thinking



that Sandeep might become a better person. She didn't complain to the Police any earlier because she thought that might make him assault her more.

17. We heard from the Police Investigating Officer who produced by consent the record of interview of the accused, the formal answer to charge, and the medical Certificate.
18. The female officer read us the record of interview in which Sandeep said that he did share a house with Irene and yes they did have sex but it was with her consent every time. He said that he had got the wooden knife on one occasion because she was yelling for some reason. Because of the yelling neighbours were throwing stones at the house so he tried to quieten her down.
19. This record of interview is before you by agreement. There has been no objection from the defence as to the truth or willingness of the answers so it is evidence for you to analyse in the usual way – you can either accept it or reject it; or you can accept parts or reject parts. It is all a matter for you.
20. In a similar way the medical certificate is before you. It is the report of a medical examination of Irene the day after she left Sandeep. The doctor concluded that as a patient with previous sexual history the sexual organs are not relevant but he did find evidence of a struggle and physical injury to the head and to her hands. He found it difficult to pass comment on the allegation of rape
21. Well, that was the end of the prosecution case.

22. 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. He was not obliged to give evidence nor was he obliged to call a witness. However he has chose to give evidence and to call one witness. You must take what he has said and what his witness has said into account when considering the issues of fact that you are to consider.
23. It is for you to decide whether you believe the evidence of the accused and his witness or whether it may be true. If you think it is true or maybe true then you must find him not guilty. But even if you entirely reject the account given by the accused that would not relieve the prosecution of its burden of making you sure by their evidence that he is guilty.
24. Sandeep told us a very detailed and rambling story. I will try to summarise the main points but if I miss anything that you might think is important you must give it the weight that you think fit. It was only yesterday afternoon that you heard his evidence.
25. He told us that Irene was his flat-mate in Cunningham Stage 2. They were not that close but they did have a sexual relationship. They used to have sex on a daily basis at first but then later it was 2 to 3 times a week. He never forced her to have sex, nor did she ever complain about it to anybody. He admitted that one day he slapped her in bed over an argument when they had both been out and she had made him come home with the key to let her in. On the night that she reported him to the Police they had had sex and then she was yelling. It disturbed the neighbours and so he got a knife and hit her with it. He had no idea how she got the injuries to her head or arms.

He never punched her. She had never refused to have sex with him.

26. The accused's witness was Mr Gulzaar Ali. He was an old acquaintance of the accused and he used to visit Sandeep and Irene. They seemed to be happy and he saw them in one bed together. Irene had never complained to him but he did say that Sandeep complained that Irene forced him to have sex with her.
27. Well Madame 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 both be agreed that is not strictly necessary. You will be asked individually for your opinion and you will not have to give a reason for it. Let a Member of my staff know when you are ready and I will reconvene the Court.
28. Redirections Counsel?
29. You may now retire.



At Suva

2 December 2014

**P.K. Madigan**  
**Judge**