

IN THE HIGH COURT OF FIJI  
CRIMINAL JURISDICTION  
AT LAUTOKA

CRIMINAL CASE: HAC 099 OF 2012

BETWEEN : STATE

AND : REVONI RASILA

Counsel : S. Babitu for State  
Mr Kumar for the Accused

Date of Hearing : 23th and 24<sup>th</sup> of June 2015

Date of Summing Up: 25<sup>th</sup> of June 2015

SUMMING UP

Madam Assessors and Gentleman Assessor.

1. The hearing of this case has now reached to its conclusion. It is my duty to sum up the case to you. You will then retire to consider your respective opinions.
2. Our functions are different. It is my task to ensure that the trial is conducted according to law. As part of that, I will direct you on the law that applies in this action. You must accept the law from me and apply all directions I give you on matters of law.
3. You are to determine the facts of the case, based on the evidence that has been placed before you in this courtroom. That involves deciding what evidence

you accept or refuse. You will then apply the law, as I shall explain it to you, to the facts as you find them to be, and in that way arrive at your opinion.

4. I may comment on the facts if I think it will assist you in considering the facts. While you are bound by directions I give as to the law, you are not obliged to accept any comment I make about the facts. Hence, it is entirely upon you to accept or disregard it unless it coincides with your own independent opinion. I say so because you are the sole judges of the facts.
5. You must reach your opinion on the evidence, and only on the evidence itself. The evidence is what the witnesses said from the witness box, and the documents and other materials received as exhibits. A few things you have heard during the course of the hearing are not evidence. This summing up is not evidence, and statements, arguments, questions and comments made by the counsel or accused person are not evidence either. The purpose of the opening address by the learned counsel for the prosecution was to outline the nature of evidence intended to be put before you. The closing addresses of the counsel of the prosecution and the defence are not evidence too. They were their arguments, which you may properly take into account when you evaluating the evidence, but the extent to which you do so are entirely a matter for you.
6. If you heard, or read, or otherwise learned anything about this case outside of this courtroom, you must exclude that information or opinions from your consideration. Have regard only to the testimony and the exhibits put before you in this courtroom during the course of this trial. Ensure that no external influence plays a part in your deliberation. As judges of facts you are allowed to talk, discuss and deliberate of facts of this case among yourselves only. However, each one of you must reach your own conclusion or form your own

opinion. You are not required to give reason for your opinion, but merely your opinions themselves. Your opinion need not be unanimous. I must emphasise you that I am not bound by your opinion, but I assure you that I will give the greatest possible weight on your opinions when I form and deliver my judgment.

7. Moreover, I must caution you that you should dismiss all feelings of sympathy or prejudice, whether it is sympathy for or prejudice against the accused or anyone else. No such emotion has any part to play in your decision, nor should you allow public opinion to influence you. You must approach your duty dispassionately; deciding the facts upon the whole of the evidence. It is your duty as judges of facts to decide the legal culpability as set down by law and not the emotional or moral culpability of the action.
8. Matters which will concern to you are the credibility of the witnesses, and the reliability of their evidence. It is for you to decide whether you accept the whole of what a witness says, or only part of it, or none of it. You may accept or reject such parts of the evidence as you think fit. It is for you to judge whether a witness is telling the truth and correctly recalls the facts about which he or she has testified.
9. You have seen how the witnesses presented in the witness box when answering questions. Bear in mind that many witnesses are not used to giving evidence and may find the different environment distracting. Consider the likelihood of the witness's account. Does the evidence of a particular witness seem reliable when compared with other evidence you accept? Did the witness seem to have a good memory? You may also consider the ability, and the opportunity, the witness had to see, hear, or know the things that the witness testified about. Another point may be; has the witness said something

different at an earlier time? These are only few general considerations which I assumed will assist you in your deliberation. It is, as I have said, up to you to assess the evidence and what weight, if any, you give to a witness's evidence or to an exhibit.

### **Burden and Standard of Proof**

10. I now draw your attention to the issue of burden and standard of proof. The accused is presumed to be innocent until he is proven guilty. The presumption of innocent is in force until you form your own opinion that the accused is guilty for the offence based on the evidence presented during the course of this hearing.
11. The burden of proof of the charge against the accused person is on the prosecution. It is because the accused person is presumed to be innocent until he is proven guilty. Accordingly, the burden of proof rest on the prosecution throughout the trial and it never shifts to the accused person. In other word, there is no burden on the accused person to prove his innocence, as his innocence is presumed by law.
12. The standard of proof in criminal trial is "proof beyond reasonable doubt". It means that you must be satisfied in your mind that you are sure of the accused person's guilt. If there is a riddle in your mind as to the guilt of the accused person after deliberating facts based on the evidence presented, that means, that the prosecution has failed to satisfy you the guilt of the accused person beyond reasonable doubt. If you found any reasonable doubt as to the commission of the offence as charged or any other offence by the accused, such doubt should always be given in favour of the accused person.

## The Information

13. The accused is being charged with one count of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Decree. The particulars of the offence are that;

*“Revoni Rasila on the 9<sup>th</sup> day of August 2012, at Lautoka in the Western Division, inserted his penis into the vagina of Torika Yamuna without her consent”.*

14. Sections 207 (1) and 207 (2) (a) states that;

*“Any person who rapes another person commits an indictable offence.*

*A person rapes another person if-*

- (a) the person has carnal knowledge with or of the other person without the other person’s consent,*

15. Accordingly, the main elements of the offence of rape are that;

- i. The accused,
- ii. Inserted his penis into the vagina of the complainant,
- iii. Without the consent of the complainant, and
- iv. The accused knew the complainant was not consenting for him to insert his penis in that manner.

16. At this point, I must emphasize you that the offences of sexual nature do not require evidence of corroboration.

17. I now kindly request you to draw your attention to the agreed facts which are before you. I do not wish to reproduce them in my summing up. You are allowed to consider these agreed facts as proven facts beyond reasonable doubt against the accused by the prosecution.

18. It is important to note that proof can be established only through evidence. Evidence can be presented in the forms of:
- i. Direct evidence,
  - ii. Circumstantial evidence,
  - iii. Documentary evidence,
  - iv. Expert evidence.
19. I now draw your attention to summarise the evidence presented by the prosecution during the hearing.
20. The first witness of the prosecution is the Victim, Torika Yamuna. She stated in her evidence that she went to the town in the evening on 8<sup>th</sup> of August 2012 with her cousin Makereta Sorowaqa. They were in the Hunter's Night Club. They met Revoni, the accused outside the night club. He asked them out for a drink. They first went to the ATM machine of the Westpac Bank, where Revoni withdrew some money. They then went to Dark Angel's night club.
21. She stated that Makereta went inside the club to fill a bottle of water when they reached to Dark Angel' night club. At that time, Revoni punched her and asked her to walk down the passage towards the back of the night club. He threatened her not to scream or shout. She walked down to the back of the night club. Revoni punched her and tore her top and removed her short. He then pushed her on the floor and forcefully inserted his penis into her vagina. He did it for few minutes. He then asked her to change the position and go on top of him. At that time, she ran away towards the front side of the night club. She found a couple, and got a blanket from the lady and covered her body as she ran away naked from the accused.

22. During her cross examination, she stated that the night club was closing and people were coming out when they reached there. Therefore she stayed outside with Revoni while Makereta went inside to fill a bottle of water. She further stated that the bouncers were at the entrance of the club.
23. The witness further stated in her cross examination that she did not scream or call for help when she was punched because she was threatened not to do so. She admitted that she walked down to the backside of the club. She was pushed down by the accused and she fell backward on a hard surface on the ground. She stated that her elbow and backside got scratches and bruises when she fell down. According to her evidence it was a forceful penetration and she got cuts on her vagina.
24. The second witness of the prosecution is Makereta Sorowaqa. She stated in her evidence that she went to Hunter's night club with Torika on 8<sup>th</sup> of August 2012. After having few drinks, they came out and met Revoni. He offered them a drink and said he will buy a bottle of rum from the corner shop. They first went to the ATM of Westpac where he withdrew some money. Revoni then asked them to go to Dark Angele's night club with him. He further told them that he has hid a bottle of rum at the back of the night club and they can drink it. Once they reached Dark Angel's night club, she asked them to stay outside and went into the club looking for an empty bottle to mix the drink.
25. While she was looking for an empty bottle inside the club, she was informed by one of the security officers that Torika was standing outside and naked. She ran to her. Torika told her that she was raped and assaulted by Revoni. She found Revoni was also standing outside. She then took Torika to the police post.

26. At the conclusion of the prosecution case, the accused was explained of his rights in his defence. The accused gave evidence on oath and did not call any other witness for the defence.
27. The accused person stated in his evidence that he was approached by Makereta and Torika while he was drinking inside the Hunter's night club. Makereta asked him to pay for their drinks. She has told him that if he paid for the drinks, he can talk to Torika. Revoni further stated that Makereta asked for \$50 for Torika. He then went to ATM of Westpac with them and withdrew the said money. While he was withdrawing the money, he noticed that Torika saw the PIN number of his ATM card.
28. They asked him to go to Dark Angel's night club. Once they reached there, Makereta went inside, leaving Revoni and Torika outside the club. Torika then told him to go to back side of the club near the Palm tree and have sex there. When they went to the backside of the club, she asked him to take off his cloths. She too took off her clothes. She asked him to lie down. She then came on top of him. While doing so, she took his pants and tried to take his wallet, in which he had kept his bank cards. Once he saw it, and asked her what she was doing with his pants. She then took his wallet and ran away. He managed to grab her clothes but could not get hold of her. She ran naked towards the front side of the club, where she met a couple and got a blanket to cover her body. Revoni too followed her and asked her to give back his wallet, which she refused. He was then taken to the police post.
29. I have summarised the evidence adduced during the course of this hearing. However, I might have missed some. It is not because they are not important. You have heard every details of evidence and recalled yourselves of all of



them. What I did only draw your attention to the main items of evidence and helped you in recalling yourselves of the evidence.

30. The prosecution presented direct evidence of the victim and Makereta and tendered the copy of the medical report as documentary evidence. In view of the evidence presented by the prosecution, the Victim, Torika and Makereta stated that they met Revoni at the outside of the Hunter's night club. However, the fourth item in the agreed fact, the prosecution and the defence has agreed that Torika and Makereta met the accused inside the Hunters' night club.
31. Moreover, the Victim said that Makereta proposed to go to Dark Angel's night club. When they reached there, Revoni asked her to fill a bottle of water, for which she went inside the night club. She admitted that there were bouncers at the entrance of the club. The people were coming out as the club was closing. She did not scream and asked for help when she was punched. She stated in her evidence that she was threatened not to scream. She then walked down the passage toward the backside of the club. There is no evidence that Revoni got hold of her or dragged her down there. When he removed her top and short, she cried. However, she only ran away when she was asked to change the position, coming on top of Revoni when he was raping her. During her cross examination she stated that she was threatened by Revoni saying that he will stab her. However, there is no evidence adduced by the prosecution that Revoni was armed with a knife or any weapon.
32. Makereta in her evidence stated that they met Revoni when they came out of the Hunters' night club. He offered them to buy drinks. He told them that he will buy a bottle of rum from the corner shop. He went with them to


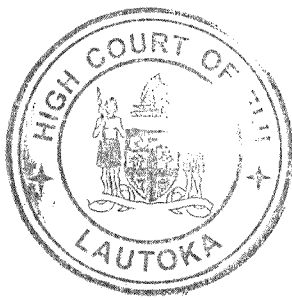
withdraw money at the ATM Westpac. He then told them that he has hid a bottle of rum at the backside of the Dark Angele' night club. They then proceeded to the Dark Angel's night club, where she went inside the club to look for an empty bottle to mix the drink.

33. When the victim managed to run away from the accused towards the front side of the night club, the accused too came after her. He did not flee away in the dark when his victim of rape ran away asking for help. Instead he too ran after her towards the direction she went asking for help. The Victim admitted in her evidence that Revoni came after her and told the couple who were standing outside the night club that she stole his wallet.
34. In view of the evidence given by the accused, it appears that the defence is founded on the claim that the Victim and her friend approached him while he was drinking at the Hunters' night club. He was told by Makereta that if he paid for their drink and \$ 50, he can talk to Torika. He then went with them to Dark Angeles' night club, where Makereta went inside the club leaving him and Torika outside. Torika then suggested and told him that he can have sex with her at the backside of the club. When he lied naked, the victim came on top of him, then grabbed his wallet from his pants and ran away. He vehemently denies this allegation.
35. The prosecution tendered the medical report of the victim as an agreed fact during the course of the hearing. As I directed above, you are allowed to consider the contents of the medical report. It contains the victim's injuries and her condition after this alleged incident.
36. You watched that all the witnesses gave evidence in court. It is your duty as judges of facts to consider the demeanour of the witnesses, how they react to being cross examined and re- examined, were they evasive, in order to decide

the credibility of the witness and the evidence. Moreover, you must consider the witness had the opportunity to see, hear and or feel what the witness is talking in the evidence. You should then consider whether the evidence presented by the witness is probable or improbable considering the circumstances of the case. Apart from that you are required to consider the consistency of the witness, not only with his/her evidence, but also with other evidence presented in the case. It will assist you in assessing the evidence presented in the case and forming your decision to accept or refuse the evidence or witnesses or part of them.

37. You have heard the evidence presented by the accused, where he denied this allegation. If you accepted the version of the accused person that he did not commit this offence, then the case of the prosecution fails. You must then acquit the accused from this charge.
38. If you neither believe nor disbelieve the version of the accused, yet, it creates a reasonable doubt in your mind about the prosecution case. You must then acquit the accused from this charge.
39. Even if you reject the version of the accused person that does not mean that the prosecution has established that the accused is guilty for this offence. Still you have to satisfy that the prosecution has established on its own evidence beyond reasonable doubt that the accused has committed this offence as charged in the information.
40. Upon consideration of all evidence, if you believe that the count of rape is proved beyond reasonable doubt, you can find the accused is guilty of the charge. If you believe that that charge is not proved beyond reasonable doubt, then you must find the accused not guilty.

41. Madam and gentleman assessors, I now conclude my summing up. It is the time for you to retire and deliberate in order to form your individual opinions on the charge against the accused person. You will be asked individually for your opinion and are not required to give reasons for your opinion. Once you have reached your opinion, you may please inform the clerks, so that the court could be reconvened.
42. Learned counsel of the prosecution and the accused, do you have any redirections to the assessors?



R. D. R. Thushara Rajasinghe  
Judge

At Lautoka  
25<sup>th</sup> June 2015

Solicitors : Office of the Director of Public Prosecutions for Respondent  
Office of the Legal Aide Commission