

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC. 160 of 2012

STATE

v.

JOSEVA VUETI

Counsel: Mr. Y. Prasad and Ms. V. Prasad for State
Mr. W. Nainima and Mr. P. Tawake for Accused

Dates of Hearing: 13th and 14th July 2015

Date of Summing Up: 15th July 2015

SUMMING UP

Lady and Gentlemen Assessors.

[1] It is now my duty to sum up this case to you. I will direct you on matters of Law which you must accept and act upon. On matters of fact however, which witnesses to accept as reliable, which version of the evidence to accept, these are matters for you to decide for yourselves. So if I express my opinion to you about the facts of the case, or if I appear to do so it is a matter for you whether you accept what I say, or form your own opinions. 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.

- [2] You decide what facts are proved and what inferences you properly draw from those facts. You then apply the Law as I explain it to you and form your opinion as to whether the accused is guilty or not guilty.
- [3] The Counsel for the Prosecution and Defence made submissions to you about the facts of this case. That is their duty as State Counsel and Defence Counsel. But it is a matter for you to decide which version of the facts to accept, or reject.
- [4] You will not be asked to give reasons for your opinions, but merely your opinion themselves, and your opinions need not be unanimous but it would be desirable if you could agree on them. Your opinions are not binding on me but I can tell you, that they will carry great weight with me when I deliver my judgment.
- [5] On the question of proof, I must direct you as a matter of law that the burden of proof lies on the prosecution throughout the trial and never shifts. There is no obligation on the accused person to prove his innocence. Under our criminal justice system, accused person is presumed to be innocent until he is proved guilty.
- [6] The standard of proof in a criminal trial is one of proof beyond reasonable doubt. This means you must be satisfied so that you are sure of the accused's guilt, before you can express an opinion that he is guilty. If you have any reasonable doubt about his guilt, then you must express an opinion that he is not guilty.

- [7] 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 about this case, outside of this courtroom.
- [8] Your duty is to find the facts based on the evidence apply the Law to those facts. Approach the evidence with detachment and objectivity. Do not get carried away by emotion.
- [9] You have a copy of the information with you. The accused is charged with one count of Rape.
- [10] Offence of rape is defined by Law. A person rapes another person if the person has carnal knowledge of a woman or girl without her consent. According to the particulars of the offence given in the information the accused is alleged to have had carnal knowledge of Sisilia Ledua between 17th December 2011 and 18th December 2011. The elements of the offence that the prosecution has to prove beyond reasonable doubt are;
- 1 The accused had carnal knowledge of the complainant,
 - 2 Without her consent,
 - 3 He knew or believed that she was not consenting or did not care if she was not consenting.
- [11] For the accused to be found guilty of Rape the prosecution must prove all these elements beyond reasonable doubt. If you find that any of those elements are not proved beyond reasonable doubt, then you must find the accused not guilty.

[12] Carnal Knowledge is the penetration of the vagina by the penis. It is not necessary for the prosecution to prove that there was ejaculation, or even that there was full penetration.

[13] On the element of consent, where the consent is obtained through fear or by threat, then that is not consent. However it is not enough for you to be satisfied that the complainant was not consenting. You must be satisfied beyond reasonable doubt that the accused knew or believed that she was not consenting and was determined to have sexual intercourse with her anyway.

The Evidence

[14] Complainant Sisilia Ledua was called to give evidence by the prosecution first. She had been staying with the accused at Natogadravu. On the day of the incident she had been sleeping with her daughter. Daughter had been 1 year and 2 months old. Accused had woken her up to have sex, she said. She had told him 'No' as she was feeling weak. Then the accused had forcefully removed her 'sulu' and undergarment and they had sex, she said. She said that when they were having sex he was heavy and very forceful.

[15] Accused's mother and niece also had been sleeping in the other room. She said that when he was forcefully having sex she was feeling weak. She had been bleeding from her vagina. She said that she told the accused not to do it when he was having sex. She had fallen unconscious. She became aware of it only at the Nausori hospital. She said that she recall reporting

the matter to the police station. She was operated and had a miscarriage, she said. She did not consent to sex, she said.

[16] In cross examination she said that prior to the accused having sex she was already bleeding. She said that she was 2 – 3 months pregnant. She denied having consented to sex. She denied that she removed her clothes on her own, and said that the accused forcefully removed the clothes. She said that the accused knew that she was pregnant.

[17] She said that she cannot recall making a statement to police. However after showing the statement she admitted her signature and that it was recorded by WPC 2571 Sereima. She said that she was shocked when she saw the doctors and nurses at Nausori hospital. She denied that she was embarrassed. She denied that she was embarrassed because she had consensual sex. She denied fabricating a story against the accused. She said that she told the doctors and nurses at Nausori hospital what happened. In her statement to the police she had told that at Nausori hospital when doctors and nurses asked her she told them that she could not recall what happened until she was taken to CWM hospital. Then she said that she could not recall what happened when the doctors and nurses of Nausori hospital asked her. She again said that she told them that the accused forced her to have sex and she fell unconscious. She said that the accused had taken her to hospital. It was put to her by the defence that she fabricated this story after she found that she had a miscarriage as a result of having consensual sex. She denied the suggestion put to her.

[18] The next witness was D/Inspector Savou. He had conducted the caution interview of the accused. He said that the accused was given his rights.

Caution interview statement was produced in evidence and was read before you.

[19] In cross examination he said that the accused in his statement has not mentioned that he forced the complainant to have sex. Also he has not mentioned that Sisilia refused to have sex. He said when Sisilia became unconscious the accused had looked for a car and had taken her to hospital.

[20] The last witness for the prosecution was Doctor Unaisi Tabua who examined the complainant at CWM hospital on 18/12/2011. Medical report was submitted in evidence. Contents of the columns D12, D14, D15 and D16 were read out to you. She said that there had been an ectopic pregnancy which means pregnancy outside the uterus. She said she does not rule out sexual assault.

That was the evidence for the prosecution.

Lady and Gentlemen assessors.

[21] At the end of the prosecution case you heard me explain several options to the accused. He has these options because he does not have to prove anything. The burden to prove his guilt beyond reasonable doubt remains on the prosecution at all times. He chose to remain silent. That is his right to do so. I direct you not to hold his failure to give evidence against him. This means that such failure cannot, by itself, provide any additional support for the prosecution case.

- [22] You heard the evidence of many witnesses. If I did not mention a particular witness or a particular piece of evidence that does not mean it's unimportant. You should consider and evaluate all the evidence in coming to your decision.
- [23] The written agreed facts are before you. Also the two agreed documents, the caution interview statement and the charge statement of the accused are before you. Parties have agreed to those facts and agreed to tender those documents by consent. You may accept them as if you have heard them led in evidence from the witness box unchallenged.
- [24] I must direct you some of the things you heard in this courtroom are not evidence. My summing up is not evidence. Opening and final addresses of the counsel are not evidence. The facts suggested by the counsel during cross examination of the witnesses are not evidence unless the witness accepted the suggestion as true. However you may take those into account when evaluating the evidence that you heard in this courtroom.
- [25] You may have observed that when the complainant gave evidence there were some inconsistencies between the evidence before this court and the statement given to the police. For example, she said in evidence that she told the doctors and nurses at Nausori hospital about what happened to her. However in her statement to the police she had said she told them that she could not recall what happened. What you should take into consideration is only the evidence given by the witness in court and not any other previous statement given by the witness. However you should also take into consideration the fact that such inconsistencies between the

evidence before court and statement to police can affect the credibility of the witness.

- [26] A witness can give evidence on his observations, like what he heard, what he saw, and what he perceived. Only on certain circumstances court would allow witnesses to give their opinion on a matter. Those witnesses should be experts on that particular subject. For example you get experts on medical field, experts on finger prints, experts on fire arms, drug analysis etc. Now in this case the medical doctor Unaisi Tabua gave evidence. You heard her evidence on her qualifications and experience in the medical field. Her expertise on the relevant field was not challenged by the defence. Therefore the opinions she gave on her examination of Sisilia is admissible.
- [27] In this case the complainant has made her complaint to the police after she was operated and the miscarriage occurred, according to her evidence. The defence says that she did not tell the doctors and the nurses at Nausori hospital and that she complained only after the miscarriage occurred because she was embarrassed to tell that the miscarriage occurred due to consensual sex and therefore the complainant fabricated the complaint against the accused. The complainant denied that suggestion. You decide whether there was a delay in complaining and if so whether the delay is explained.
- [28] Complainant says that the accused had sex with her forcefully and without her consent. Complainant says that the accused knew that she was pregnant and that she said "no" to the accused when he wanted to have sex as she felt weak. Defence suggests that the accused had sex with

the complainant with consent. In the caution interview statement the accused had said that after pulling the wrap around and her panty he started having sex and that he did not know that she was pregnant. In the charge statement the accused had admitted having sexual intercourse with the complainant and said that he did not know that she was sick. You decide which version you are going to accept whether the prosecution version or the defence version.

- [29] The caution interview statement and the charge statement of the accused were tendered by consent of the parties as the parties have agreed to tender those statements by consent as per the agreed facts no. 4 and 5. You decide whether the statements made by the accused were true and what weight you give to those statements.
- [30] Therefore after considering all the evidence, you decide whether the accused inserted his penis into Sisilia's vagina as alleged. If he has done so, then you decide whether Sisilia consented to that or not and whether the accused knew or believed that she was not consenting or did not care if she was not consenting.
- [31] Which version you are going to accept, whether the prosecution version or the defence version is a matter for you. You decide which witnesses are reliable and which are not. Observe and assess the evidence of witnesses and their demeanour in arriving at your opinions.
- [32] I have explained the legal principles to you. You will have to evaluate all the evidence and apply the law as I explained to you, when you consider

the charge against the accused have been proved beyond reasonable doubt.

[33] Your opinions on the charge will be either guilty or not guilty.

Lady Assessor and Gentlemen Assessors,

[34] This concludes my summing up of the Law. Now you may retire and deliberate together and may form your individual opinions on the charge against the accused. You may peruse any of the exhibits you like to consider. When you have reached your separate opinions you will come back to court and you will be asked to state your separate opinion.



Priyantha Fernando
Judge

At Suva

Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission for Accused.

Redirection

Madam and Gentlemen assessors.

I will now tell you a portion of evidence that I missed when I summarised the evidence.

The medical doctor who gave evidence said in cross examination that from her findings of Sisilia she cannot say that there was forceful sex.



A handwritten signature in blue ink, appearing to be "Priyantha Fernando".

Priyantha Fernando

Judge

15/07/2015