

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 30 OF 2015

STATE

-v-

1. MANASA TALALA
2. SERUVI CAQUSAU
3. KELEVI SEWATU
4. PENAIA DRAUNA
5. FILISE VERE
6. VILIAME VEREIVALU
7. JONA DAVONU
8. PITA MATAIRAVULA
9. SENITIKI NATAKASAVU

Counsel: : Mr. Lee Burney with Ms. J. Fatiaki for the State
: Mr. I. Khan with Ms. Baleilevuka for Accused

Dates of Trial : 17th October to 2nd November, 2016
Date of Summing Up: 08th November 2016

SUMMING UP

Madam Assessors and Gentleman Assessor:

1. We have now reached the final phase of this case. The law requires me, as the Judge who presided over this trial to sum up the case to you. Each one of you will then be called upon to deliver your separate opinion, which will in turn be recorded. As you listened to the evidence in this case, you must also listen to my summing up of the

case very carefully and attentively. This will enable you to form your individual opinion as to the facts in accordance with the law with regard to the innocence or guilt of the accused persons.

2. I will direct you on matters of law which you must accept and act upon.
3. On matters of facts however, which witness you consider reliable, which version of the facts to accept or reject, what weight to put on certain evidence, these are matters entirely for you to decide for yourselves. So if I express any opinion on the facts of the case, or if I appear to do so, it is entirely a matter for you whether to accept what I say, or form your own opinions.
4. 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.
5. The counsel for Prosecution and the Defence made submissions to you about how you should find the facts of this case. That is their duty as the Counsel. But it is a matter for you to decide which version of the facts to accept, or reject. If you think those comments appeal to your common sense and judgment, you may use them as you see fit. In the same way, the questions, suggestions put to a witness by Counsel is not evidence unless they are adopted or admitted by the witness as being true.
6. You will not be asked to give reasons for your opinions. Your opinions need not be unanimous although it is desirable if you could agree on them. I am not bound by your opinions. But I will give them the greatest weight when I come to deliver my judgment.
7. On the matter of proof, I must direct you as a matter of law, that the accused persons are innocent until they are proved guilty. The burden of proving their guilt rests on the Prosecution and never shifts. There is no obligation upon the accused to prove their innocence.

8. The standard of proof is that of proof beyond reasonable doubt. This means that before you can find the accused guilty, you must be satisfied so that you are sure of their guilt. If you have any reasonable doubt as to their guilt, you must find them not guilty.
9. You apply that test to the case against each accused. That is an important matter. As you are aware, nine accused are jointly charged with Rape and Sexual Assault on first four counts. The law recognizes that more than one person may be charged together committing a crime. Since these offences are alleged to have been committed in a single transaction it is convenient to deal with their cases together in one trial.
10. However, they are still entitled to have their charges considered separately. In doing this you must carefully distinguish between the evidence against one accused and the evidence against the other. You must not for instance, supplement the evidence against one accused by taking into account evidence referable only to another. You must not assume that because you find there is enough evidence to convict one, that the others must be guilty. This case comes within a small compass and I do not think you will have any difficulty in keeping distinct in your minds evidence which properly and fairly relates to all of them and that which relates to one of them alone. I will refer to this when I discuss the evidence with you.
11. Your opinions must be solely and exclusively upon the evidence which you have heard in this Court and upon nothing else. You must have heard or watched news about this incident on media. You must disregard anything you might have heard or read about this case outside of this Court room. You may have personal convictions about rapes, robbers and police brutality. Please do not bring your personal convictions into consideration in deliberating and deciding. Your duty is to apply the law as I explain it to you to the evidence you have heard in the course of this trial. Approach the evidence with detachment and objectivity. Do not get carried away by emotion.
12. As Assessors you were chosen from the community. You, individually and collectively, represent a pool of common sense and experience of human affairs in our community which qualifies you to be judges of the facts in the trial. You are expected

and indeed required to use that common sense and experience in your deliberations and in deciding.

13. In assessing the evidence, you are at liberty to accept the whole of the witness's evidence or part of it and reject the other part or reject the whole. I will further deal with this direction when analyzing Boila's evidence. In deciding on the credibility of any witness, you should take into account not only what you heard but what you saw. You must take into account the manner in which the witness gave evidence. Was he or she evasive? How did he or she stand up to cross examination? You are to ask yourselves, was the witness honest and reliable.
14. In testing the credibility of a witness, you are to consider whether there is delay in making a statement or complaint to an authority or whether his or her previous statement is inconsistent with his evidence in Court in material particular. When there is delay there is room for fabrication. When there are inconsistencies or contradictions or omissions you have to consider whether they are material and whether there is a reasonable explanation for such inconsistencies, omissions or contradictions. If you are satisfied that there is a reasonable explanation, then you can act upon the evidence.
15. When there are two contradictory versions between the evidence of two witnesses, you have to take a holistic approach and consider all the evidence led in the trial and come to a decision as to who is telling the truth.
16. In this case the Prosecution and the Defence have agreed on certain facts. The agreed facts are part of evidence. I have given you a copy of set of agreed facts. You should accept those agreed facts as accurate and truth. They are of course an important part of the case.
17. The charges against the accused are as follows:

COUNT 1 [All Accused]

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (b) read with Sections 45 and 46 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

MANASA TALALA, SERUVI CAQUSAU, KELEVI SEWATU, PENAI A DRAUNA, FILISE VERE, VILIAME VEREIVALU, JONA DAVONU, PITA MATAIRAVULA and SENITIKI NAKATASAVU on the 15th day of August 2014 at Malevu, in the Western Division, penetrated the anus of VILIKESA RATU SOKO with a stick without his consent.

COUNT 2 [All Accused]

Statement of Offence

SEXUAL ASSAULT: Contrary to Section 210 (1) (a) read with Sections 45 and 46 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

MANASA TALALA, SERUVI CAQUSAU, KELEVI SEWATU, PENAI A DRAUNA, FILISE VERE, VILIAME VEREIVALU, JONA DAVONU, PITA MATAIRAVULA and SENITIKI NAKATASAVU on the 15th day of August 2014 at Malevu, in the Western Division, unlawfully and indecently assaulted VILIKESA RATU SOKO by rubbing chilies to the anus of the said VILIKESA RATU SOKO.

COUNT 3 [All Accused]

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (b) read with Sections 45 and 46 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

MANASA TALALA, SERUVI CAQUSAU, KELEVI SEWATU, PENAIA DRAUNA, FILISE VERE, VILIAME VEREIVALU, JONA DAVONU, PITA MATAIRAVULA and SENITIKI NAKATASAVU on the 15th day of August 2014 at Malevu, in the Western Division, penetrated the anus of SENIJELI BOILA with a stick without his consent.

COUNT 4 [All Accused]

Statement of Offence

RAPE: Contrary to Section 210 (1) (a) read with Sections 45 and 46 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

MANASA TALALA, SERUVI CAQUSAU, KELEVI SEWATU, PENAIA DRAUNA, FILISE VERE, VILIAME VEREIVALU, JONA DAVONU, PITA MATAIRAVULA and SENITIKI NAKATASAVU on the 15th day of August 2014 at Malevu, in the Western Division, unlawfully and indecently assaulted SENIJELI BOILA by rubbing chilies to the anus of the said SENIJELI BOILA.

COUNT 5 [1ST Accused]

Statement of Offence

DEFEATING THE COURSE OF JUSTICE: Contrary to Section 190 (e) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

MANASA TALALA, on or about the 21st day of August 2014 at Sigatoka, in the Western Division attempted to obstruct, prevent, pervert or defeat the course of justice by instructing SC SEMI RAVUIWASA, SC MACIU TEMO and PC

USAIA NATAKURU to make false statements in connection with a Police Internal Affairs Investigation into alleged misconduct on 15th day of August 2014.

COUNT 6 [6TH Accused]

Statement of Offence

DEFEATING THE COURSE OF JUSTICE: Contrary to Section 190 (e) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

VILIAME VEREIVALU on or about the 26th day of August 2014 at Suva, in the Central Division attempted to obstruct, prevent, pervert or defeat the course of justice by instructing **SC KEPONI PAUL** and **SC APETE NAIKOLO** to make false statements in connection with a Police Internal Affairs Investigation into alleged misconduct on 15th day of August 2014.

18. I will now deal with the elements of the offences. A person rapes another person if:
- [a] The person has carnal knowledge with or of the other person without other person's consent; or
 - [b] The person penetrates the vulva, vagina or anus of other person to any extent with a thing or a part of the person's body that is not a penis without other person's consent; or
 - [c] The person penetrates the mouth of the other person to any extent with the person's penis without the other person's consent.
19. All the accused persons are charged with Rape. The elements of the offence of Rape in respect of the 1st Count in this case are that:
- [a]. The accused,
 - [b]. penetrated the anus of Soko with a stick.
 - [c]. without Soko's consent

20. The elements of the offence of Rape in respect of the 3rd Count in this case are that:
- [a]. The accused,
 - [b]. penetrated the anus of Boila with a stick.
 - [c]. without Boila's consent
21. Other parts of the offence are irrelevant to the facts of this case.
22. All the accused persons are charged with Sexual Assault on 2nd and 4th counts. Elements of the offence of Sexual Assault are that:
- [a]. The accused,
 - [b]. Unlawfully and Indecently
 - [c]. Assaulted the Complainant.
23. The Accused is guilty of Sexual Assault, if he unlawfully and indecently assaulted the victims. The word "unlawfully" simply means without lawful excuse. An act is an indecent act if right-minded persons would consider the act indecent. Assault can be defined as an application of unlawful force on another's body.
24. The 1st and the 6th accused are charged with the offence of Defeating the Course of Justice. The crime of defeating or obstructing the course of justice consists of unlawfully and intentionally engaging in conduct which defeats or obstructs the course or administration of justice.
25. Elements of the offence are that:
- [a] Accused did any act or made any omission;
 - [b] With intent in any way to pervert or prevent the course of justice.
26. Perverting the course of justice is a reference to obstructing, preventing, perverting or defeating the course of justice or the administration of the law. In order for there to be an intention to pervert the course of justice, accused must either knew that judicial proceedings are on foot or that they are imminent or might occur. Examples of times

that an act has occurred intending to pervert the course of justice include: During police investigations where proceedings are imminent or where the investigations could or might bring about proceedings.

27. Apart from the elements of the offence, the identity of the person who is alleged to have committed the offence is very important. There must be positive evidence beyond reasonable doubt on identification of the accused-person that connects him to the offence that he is alleged to have committed.
28. Proof can be established only through evidence. Documents tendered including the photographs are evidence in this case. Evidence can be direct or circumstantial. Direct evidence is the evidence of a person who saw it or by a victim who saw, heard and felt the offence being committed. In this case, for example, the victim Boila is a witness who offered direct evidence as to what he saw, heard or felt.

Circumstantial Evidence

29. The Prosecution relies on circumstantial evidence to prove that the accused persons were engaged in a joint enterprise or common design to torture the suspects for the purpose of interrogation. Prosecution also relies on circumstantial evidence to prove that it is these accused persons and no one else was responsible for the crimes committed on the victims and that there is no other reasonable explanation for the rapes and sexual assaults that took place at Malevu hillside.
30. The law on circumstantial evidence is that if, on considering a series of pieces of evidence, you are satisfied beyond reasonable doubt that the only reasonable inference to be drawn is the guilt of the accused persons, and there is no other reasonable explanation for the circumstances which is consistent with the accused's innocence, then you may convict the accused of the offence charged.
31. Let me give you an example to explain the nature and effect of circumstantial evidence. If you one day find that your wallet is missing and the only person who could have entered your house is your neighbor, and you find your credit cards hidden in his desk in his home, then you are entitled to accept that it was your neighbor who

stole your wallet. This is because the circumstances lead you to the only reasonable inference that your neighbor committed the theft in your house because there is no other reasonable inference that you can draw from the evidence which is consistent with his innocence. However, if other people have access to your house and the credit card is not found in his house, then there are other possible explanations which are also consistent with his innocence.

Ladies and gentleman that is the law on circumstantial evidence.

Aiding and abetting and Joint Enterprise

32. I must explain to you the two important legal principles that the Prosecution relies in this case which attribute criminal liability when an offence is committed jointly by two or more people, namely, Complicity and Common Purpose described in Section 45 of the Crimes Decree 2009 and the legal concept which is broadly known as Joint Enterprise described in section 46 of the Crimes Decree 2009.
33. Law says that anyone who abets or aids the principle offender, anyone who counsels or procures or advises the principle offender is also guilty of the offence. Pursuant to Section 45 of the Crimes Decree, it is not necessary for the Prosecution to prove in respect of each accused whether he is a principle or secondary offender. All that is required is proof that the respective offences were committed and that the conduct of each accused must have aided or abetted (assisted or encouraged) with the intention of assisting or encouraging the commission of those offences with knowledge of what the principal offender is doing. The essence of aiding and abetting is intentional help.
34. When two or more persons get together and form a common intention to do something unlawful together and in the course of doing that unlawful act, another offence is committed which is a probable consequence of the planned unlawful purpose, then each of those who are a part of the plan is also guilty of the resulting offence, even if he or she did not do the act which actually constitutes the offence. This principle would not apply where one party departed completely from the common purpose and acted in a way that no other party to that purpose could have suspected.

35. Let me give an example. If a group of men plan to commit a robbery carrying firearms, and in the course of the robbery the security guard guarding the premises gets shot by one robber, all the robbers are guilty of his murder even if they did nothing to actively contribute to the murder. So the robber standing guard outside and who never enters the premises is guilty of murder as well as the robber who actually fired the shot. This is because when you commit an armed robbery, it is a probable consequence of that common intention that someone will get shot and be seriously injured or killed.

This, ladies and gentleman, is the doctrine of joint enterprise.

36. The Prosecution tendered caution statements of the 1st, 2nd, 4th, 5th and 9th accused persons. You must not speculate why caution statements for other accused persons have not been tendered. The caution interview of a particular accused can only be used in the case relating to him and not evidence against the others. As a matter of law, nothing in that caution interview can be regarded as evidence against other accused persons.
37. You have before you the caution statements of the 1st, 2nd, 4th, 5th and 9th accused persons. I now direct you as to how you should approach caution statement evidence. Defence says except for the caution statement of the 1st accused, other caution statements were obtained by police officers using illegal means such as giving promises and using unfair practices and threats, and therefore, they should not be relied upon as true statements. Prosecution on the other hand denied threatening or having given any promise or using any kind of unfair practices to obtain those statements. It is for you to assess what weight should be given to those caution statements. If you are not sure, for whatever reason, that those admissions are true, you must disregard them. If, on the other hand, you are sure that they are true, you may rely on them.
38. I will now direct you as to how you should approach 'out of court mixed statements' containing both exculpatory and exculpatory assertions. 1st, 2nd, 4th, 5th and 9th accused in their caution statements while admitting their presence at the crime scene denied any involvement in sexual assaults. Exercising their right to remain silent, they

elected not to give evidence and therefore their excuses and denials in their caution statements were not supported by evidence under oath. Therefore, their excuses and denials do not have the same weight that you may attach to admissions in their caution statements. You have to consider each caution statement as a whole in deciding where the truth lay.

39. I will now summarise evidence led in the trial. I will summarise in a greater detail because the trial lasted for a considerable period of time. After the closing addresses one accused fell ill and one of you had to be away from Court to attend to an important family commitment. Still I hope the things are fresh in your memory. My summary might have missed some parts of evidence. That is not because they are unimportant. You heard every item of evidence and you should be reminded yourselves of all that evidence and from your opinions on facts. What I did was only to draw your attention to the salient items of evidence and help you in reminding yourselves of the evidence.

Case for Prosecution

Evidence of Jeremaia Nadavo Soko

40. Prosecution called Jeremaia Nadavo Soko who is the father of victim Vilikesa as its first witness. He, on Sunday the 17th August, 2014, received information that his son Vilikesa was receiving treatment at the ICU Unit of the Lautoka Hospital with serious injuries after being brutally assaulted. He came down to the Lautoka Hospital on Tuesday 19th August 2014. At the ICU, he was permitted to see his son who was unconscious and on a life support. There were no dealings whatsoever with the Police. They never inform him anything at all. He reported the matter to the Police Headquarters.

Evidence of Inspector Epeli Senitiri

41. In August of 2014, when Inspector Senitiri was attached to the Major Crime Unit, he assisted the investigation and interviewed two accused persons, **Seruvi and Filise**. Seruvi's interview took place in the Crime Office at the Namaka Police Station. Sgt.

Mereseini Tabaki witnessed the interview as the witnessing officer. She also recorded the interview on a desktop. The record was signed by him, the accused, and the witnessing officer Sgt. Mereseini on the 28th of August 2014, the day the interview was recorded. The record of interview of Seruvi Caqusau was tendered marked as PE.1.

42. Interview lasted for two days. After the interview was suspended on the day one, Seruvi was released to go home. Seruvi was never induced or threatened by him or any other officer at any point in time.
43. Officer Senitiri also interviewed Filise under caution at the Crime Office at the Namaka Police station. Interview was recorded by the witnessing officer Sgt. Mereseini on a desktop. The record of interview was signed by him, the accused Filise and the witnessing officer.
44. The interview of Filise commenced on the 27th of August 2014 and concluded on the 28th August 2014. After the interview was suspended on the 27th, accused was released to go home. Witness or any other officer did not threaten or force the accused in any way. Record of interview of Filise was tendered marked as PE 2.
45. Witness accompanied Filise and Seruvi to the crime scene for reconstruction. Because of the limited resources and the distance from Namaka Police Station to the crime scene, he took both the accused at one time for scene reconstruction. Both the accused persons were treated with respect and were given all the rights that they were entitled to.
46. Under cross examination, witness admitted that the two accused persons were interviewed at the same time. Witness denied the proposition that all the answers in both the caution interviews were not given by 2nd and 5th accused persons. Witness denied that his questioning was based on information gathered from the other accused. Witness also denied that he induced the accused persons and told them just to admit. He said that the accused persons knew that he did not have the power to make them State witnesses even though he was a superior officer.

47. Witness said that he signed the record of interview at the end of the interview. Accused persons read the interview and signed. He did not put rape or sexual assault allegations to the accused persons. 2nd accused Seruvi denied all the allegations.

Evidence of Mereseini Tabaki

48. Stg. Mereseini Tabaki played a dual role as the witnessing officer as well as the recorder of the caution interviews of **Cpl. Seruvi and DC Filise** that were conducted by Epeli Senitiri. She recorded both the interviews and signed them soon after the interviews were concluded. Accused were afforded their rights and treated well. They were not threatened or forced and no promises were given to them.
49. Under cross examination, witness admitted that she wore two hats at the interview, one for recording and one for witnessing. She said that such a procedure was not incorrect under the Police Force Standing Orders.
50. Interviewer first asked some questions from Filise. She typed the questions and the answers on a laptop. Then the interview was suspended to start the interview of Seruvi. Witness said that the interviews of Filise and Seruvi were not conducted contemporaneously. She further said that the information obtained from one accused was not used to question the other. Accused were not given a promise that they will be made State witnesses.
51. Witness rejected the assertion that she did not sign any of the interviews on the day they were completed. She only signed the original. She doesn't know anything about the copies disclosed to the Defence. Witness admitted that she went to obtain the signature of the 9th accused Senitiki during night time.

Evidence of Laisenia Fifita

52. In August of 2014, the witness was attached to the Human Trafficking Unit at the Police Head Quarters. He was the interviewing officer for the 9th accused Senitiki's interview. Interview was started at the Namaka Police Station and was concluded in

Lautoka Police Station. Witnessing Officer, Constable Josaia Vakaloloma, was present during the interview.

53. The interview was recorded on a Laptop. Record of interview was signed by him, the accused and the witnessing officer. Whilst the accused was in his presence no officer threatened or forced the accused in any way for the purpose of the interview. Accused was treated as a colleague. After the interview was suspended on the 27th accused was released to go home. Witness tendered the record of interview marked as PE3.
54. Under Cross-examination, witness denied the proposition that the accused did not sign the record of interview when it was concluded and that it was signed somewhere else during night time when it was taken to him by Mereseini. He said that he signed the record immediately after the interview. Witness admitted that the accused was not given an opportunity to edit, alter, or change anything in his statement on the 27th because the interview was only suspended and not concluded on that day. For the same reason, accused was not asked if he gave the interview on his own free will. Witness further said that he took a statement from the 9th accused after he received instruction that the accused Senitiki will be made a State witness.
55. Under re-examination, witness said that the directive that the accused will be made a State witness was received only after the interview was suspended on the 28th August, 2014.

Evidence of Josaia Vakalala

56. Constable Josaia was the witnessing officer for the caution interview of the 9th accused Senitiki Nakatasavu which was conducted by Laisenia. Record of the interview was signed by him. Accused was not forced or threatened for the purpose of this interview. Accused was not given an inducement. Accused was treated fairly.
57. Under cross-examination, the witness said that, apart from being the witnessing officer, he was keeping the Internal Affairs Diary. He said that he could not recall if the record of interview was signed by the accused soon after the interview was concluded.

Evidence of SC Semi Ravasa

58. Semi was attached to the K9 Unit at the Lautoka Police Station. On the 15th August 2014, he was assigned to escort prisoners from Natabua to Sigatoka with SC Temo and driver PC Usaia. He dropped the prisoners at the Sigatoka Police Station around 11 a.m. where he heard the news of a robbery. As soon as they heard the news, they went to look for the suspects in a police truck. PC Apakuki also joined in their team.
59. They proceeded towards the Total Service Station in Sigatoka town where they were informed by the residents that two suspects who had got off from the abandoned vehicle that was parked at the Total Service Station had gone in a mini bus heading for Suva. Then they set off in pursuit of this mini bus. They managed to catch up with this mini bus at Tagaqe Village. He went to question the driver and opened the mini bus. One of the suspects punched him his face from inside. Suspect was dark in complexion and was wearing a black T shirt and a ¾ trouser. One knapsack bag was in his possession. He ran away from them. With the help of Usaia and Temo, he managed, after a chase at a close distance, to apprehend the suspect. Temo handcuffed the suspect and took him to the truck. Usaia recovered the bag. He came to know later that the suspect he apprehended was Boila.
60. The other suspect Soko was arrested by Apakuki from inside the van. Soko was also handcuffed. Both suspects were arrested and brought to the police truck. Usaia took the bag recovered and put it inside the police truck.
61. Having loaded two arrested persons on the back of the truck, they headed towards Sigatoka. Two other police officers also arrived at the scene in a vehicle. Apakuki briefed those two officers who had arrived. Instead of going to the Sigatoka Police Station, the truck went up to one hill before Tagaqe Village. He did not know why the truck deviated as he was in the back of the truck with Temo, two suspects and the dog. The truck eventually stopped at the top of the hill.
62. When they arrived at the hill side, he saw another police vehicle also. He saw Inspector Talala and the driver inside the vehicle. Talala's vehicle was parked about 12 to 15 metres away from the truck. Talala was standing beside his vehicle.

63. Shortly afterwards, three other police vehicles arrived at the hill top. He recognised PC Pena, PC Seruvi, PC Kelevi and PC Filise in one of the vehicles. When the vehicles arrived, suspects, Boila and Soko, were told to get out of the vehicle. When the suspects got off, he boarded the truck with Temo. Usaia drove the truck to the Sigatoka Police Station leaving the suspects behind. He was not worried about these prisoners escaping because more senior officers were present there at that time. Officers including Seruvi, Filise and Kelevi took custody of the prisoners who were still handcuffed. Witness saw Talala and other officers including Seruvi, Filise, Penaia and Kelevi as he left the hillside with Temo and Usaia.
64. Witness said that the police officers from the Internal Affairs Unit took a statement from him. Before that PC Seruvi took a statement from him at the Lautoka Crime Office.
65. Under cross-examination witness admitted that the statement recorded by officer Jona in April 2014 (dated 16/2/15) (DE.1) was given by him. He also admitted that he had never mentioned the names of inspector Talala, Seruvi, Filise, Penaia and Kelevi in that statement.
66. Corporal Petero recorded his 2nd statement. When the witness was asked if Petero threatened him, he answered in the affirmative. He said that Petero provided the names of those officers to which he agreed. Petero threatened to lock him up in the cell and sack him from the Police Force, if he didn't agree. To save himself, he agreed to give the statement. He admitted that the statement dated 16th of February 2015 (DE1) is the true version of what happened. Witness admitted that Boila suffered injuries when he was arrested at Tagaqa Village.
67. Under re-examination, the witness reiterated that he saw Talala, Kelevi, Filise, Pena, Seruvi at the hillside. Corporal Jona recorded this statement (DE1) in relation to Boila's robbery trial in his capacity as the interviewing officer in that case. Corporal Jona did not ask anything about what happened at the hillside.

Evidence of Sgt. Petero Tupici

68. Officer Petero said that he recorded a witness statement on 27th August 2014 from Semi Ravasa in regards to the incident involving Boila and Soko at the Namaka Police Station as part of the Internal Affairs Unit investigation. He denied having threatened to lock up or sack Semi from his job. Semi gave the statement on his own free will. He did not feed the names to make up a statement.
69. Under cross-examination, witness admitted that Semi was caution interviewed. He had to record the statement on the 27th August 2014 because it was revealed that the statement Semi had recorded earlier was not true. However, under re-examination, witness said that he was not quite sure if Semi was caution interviewed.

Evidence of Special Constable Maciu Temo

70. On the 15th of August 2014, Temo was involved in prisoner transfer with the driver Usaia and dog handler Semi. When they dropped the prisoners at the Sigatoka Police Station they were provided with information in connection with a robbery at Nadi. On the instructions of Apakuki in relation to that matter, they went off in pursuit of a mini bus and managed to catch up the same at Tagaqe village.
71. He got off with SP Semi and searched the mini bus, while inspecting the luggage at the back of the mini bus, he saw an iTaukei man throwing a punch on SP Semi. After throwing the punch, suspect ran towards the church. He chased him with SP Semi. They managed to apprehend the suspect in front of the church. Suspect resisted and started throwing punches on them but they managed to arrest him. Suspect was then handcuffed. Whilst they were trying to arrest the suspect, he threw a bag which he was carrying. He found some clothes and money in the bag which he handed over to Usaia. He came to know that the suspect he arrested was Senijeli Boila.
72. Apakuki was standing beside the mini bus with the other suspect. Suspects were handcuffed and loaded onto the truck. Before they left the scene of the arrest, another Police vehicle arrived at the scene with Inspector Bari. PC Usaia and DC Apakuki briefed IP Bari about what had happened and handed the bag of money over to him.

From there they went to Malevu, a few metres away from the main road, where the prisoners were handed over to CID personnel Seruvi and Senitiki without any paper work. Briefing was done by Apakuki and Usaia before the handing over.

73. On the 21st of August 2014, a few days after the incident, he was asked by Sargent Suliano to make a statement in relation to the incident at the Sigatoka Police station. He was taken to Sigatoka Police Station in a police vehicle around 7 in the morning.
74. Under Cross Examination, witness admitted that he was caution interviewed by the police on the 26th August 2014 concerning the allegation that he had assaulted Soko. He gave his first statement on the 18th of August 2014 (DE 2). Again on 21st August 2014 he gave another statement. He admitted that, in the first statement, he never mentioned names of Seruvi and Sentiki. When he gave a statement later, Inspector Cula gave those names. He said that he noticed blood on the suspect's body and the suspect was walking badly. Witness said that what he had said in the statement of 18th August 2014 that the Crime Officer, Sigatoka came and escorted suspects to the Police station is not true.
75. Under re-examination, witness reiterated that the handover took place at Malevu, less than 100 meters away from the main road. When he was shown photograph 9, he confirmed that it depicts the junction on the Queens Road, and photographs 10, 11 and 12, as the place where the handover took place. Witness admitted that he himself recorded the August 18th statement. He also admitted that, when he was examined in chief, he never mentioned about a statement made on 18th August 2014.

Evidence of Constable Apakuki Tuitavua

76. On the 15th of August, 2014, when Apakuki was doing a day shift at Sigatoka Police Station he heard of a serious armed robbery at Nadi. He was asked to mount a road block at Vatudradra. He accompanied Usaia and the two special constables and came in a Police truck to check the vehicle abandoned in Pacific Service Station where they received information that two suspects were heading toward Suva in a minibus. Then they went directly to Tagaqe where the minibus was caught up. Special constables searched the bus and found two suspected Fijian boys. Fijian boys refused to get

down and a struggle ensued between one suspect Boila and the constables where the suspect was subdued. Then suspects were handcuffed. He informed the Crime Officer, Sigatoka, Inspector Esira Bari who arrived at the scene shortly. The money recovered from Boila was given to IP Bari who instructed them to escort the suspects to Sigatoka Police Station.

77. Without going all the way right down to Sigatoka they stopped at Malevu Bridge because he received a call from the Divisional Crime Officer, SP Manasa Talala asking them to wait for them at that bridge. Witness briefed Manasa about these two suspects who were in the back of the truck and the fact that money had been recovered.
78. While they were waiting near the bridge, they spotted a suspicious taxi and followed the taxi in IP Esira Bari's vehicle. They gave up the pursuit at the Outrigger main gate where they saw Manasa and his party coming in the opposite direction heading towards Malevu. They turned around and followed Manasa's vehicle up till Malevu Bridge where the Police truck with two suspects was parked. He was instructed to follow Manasa to the top of the hill, for about 5-minute inside the Feeder Road. The truck was parked eventually right behind Manasa's vehicle. He saw Manasa and Constable Jone Sauqaqa inside the vehicle.
79. IP Bari also followed the Police truck to the hill side. Witness got off and briefed Manasa regarding the arrest and the recovery done at Tagaqe Village. Crime Officer Esira Bari handed the money over to Manasa. Another two Police vehicles, carrying operation teams from Suva and Lautoka also arrived at the hill side. He recognized Seruvi from Lautoka and Viliame and Jona from Suva. Witness left the hillside as Inspector Esira Bari told him to go to Korolevu to put up a road block.
80. Under Cross-examination, witness denied having made the statement dated 17th of August, 2014 that was shown to him by the Defence Counsel. Witness made his first statement on 22nd of August 2014 to Inspector Samisoni. Witness said that the statement was written by Samisoni and he just signed though it was not a true statement. He signed because he respected his senior officer. While giving that

statement, he never said that suspects were taken directly to the Sigatoka Police Station.

81. Witness admitted that there was no mention of the names of Manasa, Seruvi, Senitiki, Viliame and Jone in his previous statement. Samisoni wrote the statement and asked him to sign it on 27th August 2014. He denied that the names came out in evidence were given by his police colleagues.
82. Witness also denied that he was a suspect in this case. However, he admitted having been interviewed by the police. He saw only Boila getting injured during the arrest. He never told Samisoni that Soko also got injured.
83. Under re-examination, he admitted that he did not make up the names of the officers although they do not appear in his statement of the 27th. In his record of interview dated 27th August, 2014 he gave some names to the interviewing officer.

Evidence of Constable Usaia

84. Constable Usaia was a police driver attached to the Western Division. On the 15th of August 2014, he was driving a big truck transferring prisoners to the Sigatoka Police Station. Whilst in Sigatoka they heard the news that there had been a big robbery in Nadi. Having received instructions from Apakuki they went to Sigatoka town and proceeded towards Suva in pursuit of a mini bus. The mini bus was stopped at Tagaqa village and his crew got off and checked the mini bus. He saw suspect Boila, having punched Semi, running out with a small back pack. Semi chased the suspect and got hold of him. Apakuki arrested Soko. Both suspects were handcuffed and loaded in the truck. Recovered black knapsack was handed over to inspector Bari.
85. PC Apakuki first instructed him to go to the Sigatoka Police Station. Then he changed his mind when he received a call on the phone and asked him to stop the truck at the Malevu junction. Then Apakuki told him to go on a gravel feeder road towards Yalavou. They stopped after a one and a half k.m. drive right behind the Police vehicle that had come from Lautoka. He saw driver Jone Sauqaqa and Manasa inside the vehicle.

86. IP Bari's vehicle was parked right behind the truck. Bari handed the recovered money over to SP Manasa. Another two vehicles arrived, one from the Western Division and the other from Suva. He recognised two of the officers Pita Matairavula and Jona who had come from Suva. In the Lautoka team, he recognised Penaia, Seruvi, Jone Sauqaqa, Senitiki and PC Marika. By that time Boila and Soko were out of the truck. When he turned the truck around he saw the suspects, Boila and Soko lying naked on the road side and Jona and Pita Matairavula were standing beside them. He left the scene with two special constables. Then he came back without stopping at the scene.
87. A few days later, Sargent Nagata asked him to give a statement. He came to Lautoka Police station and Seruvi recorded his statement. He never gave some parts of the statement. Seruvi wrote it on his own. Witness wanted to make some changes to it but Seruvi said 'it's okay'. He had to sign a wrong statement. Drauna and Seruvi told him that Soko passed away.
88. He, on the instructions given to him after a briefing in Sigatoka, gave another statement. Soko died on a Wednesday and the statement was recorded on the following day. PC Drauna called him and arranged a police vehicle to go to Sigatoka. He was picked from home at 4 a.m.. Inspector Samisoni and SP Manasa talked to them early in the morning and briefed on the August 15th incident before his 2nd statement was recorded on the 21st August, 2014.
89. When the witness was shown the 2nd statement, he recognised it and DS Suliano's hand writing. Witness told the investigation officers that he was briefed and all the information given to him at the briefing was recorded in the statement dated 21st August 2014 and he just placed his signature. It's not a complete and accurate picture of what actually happened on the 15th. Briefing was attended by offices of the Western Division, dog handlers and Apakuki. Witness recognised the statement dated 21st August 2014 which he said was not totally accurate of what actually happened.
90. Witness told that full and accurate story was given in his 3rd statement recorded by acting Inspector Senitiri. He was interviewed under caution but there was no allegation against him.

91. Before coming to the briefing, Inspector Samisoni took them for a scene visit. Samisoni and SP Manasa briefed them at Samisoni's house located near the Sigatoka Police Station before his statement was recorded on the 21st August, 2014. He signed the statement because he trusted his superior officers. The statement was tendered marked as PE.4
92. On the 26th of August 2014, witness was again interviewed by Inspector Epeli Senitiri of the Internal Affairs. He also went for a scene visit. Witness recognized the places depicted in photographs No. 2, 4 and 9.
93. Under cross-examination, the witness admitted that he gave four statements to the Police; one on the 18th of August 2014, one on the 21st of August 2014, one on the 27th of August 2014 and the last statement on the 16th of October 2014. The statement dated 16th October 2014 was written by Suliano which he said was a false statement.
94. The first statement dated 18th of August 2014 was typed by PC Seruvi. Seruvi had included in that statement that people from Tagaqe were also involved in this case. But nobody else was there but the arresting team and the two suspects. He had to sign the statement knowing that it was a false statement. He trusted seniors who worked together. He informed the investigating team about this. He also told the same story in Boila's robbery trial. In 18th August statement, he never mentioned the names of Seruvi, Senitiki, Penaia, Pita, Viliame and Jona, because they never asked about them. He did not tell that the two suspects were taken directly to the Sigatoka Police Station.
95. In the 2nd statement (21st of August) (PE4) he only mentioned the name of Seruvi and Senitiki, because he was briefed at Samisoni's house what to tell in that statement. He admitted that he never mentioned the name of Manasa in the first two statements of 18th of August 2014 and the 21st of August 2014 because, the 1st statement was typed by Seruvi and the second one was given on the instructions of senior officers. He did not know what an *alibi* means; those senior officers wanted to set up an *alibi*. Witness reiterated that SP Manasa and Samisoni were present in the meeting that lasted for ½ hour.

96. Under Re-examination, the witness said that he mentioned the names of Pita Matairavula and Jona when he was interviewed on the 16th of October, 2014. He further said that he, in his statement dated 27th August, 2014, complained as to why he had to lie in his previous statements. Witness read the particular portion of his 27th August statement to show that he had complained to the investigating officer about lying.

Evidence of Detective Sargent Esira Bari

97. DS Bari said that, in 2014, he was an acting inspector at the Sigatoka Police Station under OIC Samisoni. Talala was the Divisional Crime Officer at that time. About 11 a.m. on the 15 of August, he was informed by the station officer that there had been a big robbery at Nadi. Having instructed to mount a road blocks he went with some of the officers to Korolevu to be at the road block. Constable Apakuki informed him that an arrest had been made and he rushed to Tagaqe where constable Apakuki was.
98. When he arrived at the scene, Apakuki told him that 2 suspects had been arrested and stolen money recovered. The bag of money was given to him by Usaia, the driver of the vehicle. Following the normal procedure, he instructed Apakuki and Usaia to escort the suspects to the Sigatoka Police Station. He saw the suspects Soko and Boila at Tagaqe village.
99. He left for the scene at Tagaqe with Apakuki and the driver. He informed the Divisional Crime Officer-West that an arrest had been made. Apakuki was in direct contact with the Divisional Crime Officer. He received instructions from Divisional Crime Officer to handover the suspects and money to the Divisional Crime Officer's party that was coming from Lautoka.
100. Divisional Crime Officer came in the opposite direction just past Malevu and they just followed him for 5 to 10 minutes' right up to the top of the mountains. He recognised the junction depicted in Photograph 9 as the driveway that goes up to the mountains from the Queens Highway.

101. He saw the suspects still in the truck. When he went up the hill there were 3 vehicles, including Divisional Crime Officer's vehicle. His vehicle was stopped on top of that hill right behind Divisional Crime Officer's vehicle. Immediately after his vehicle was stopped, he handed over the bag of money to the Divisional Crime Officer and left the scene with Apakuki and Mario in search of suspects who were still at large after 5 to 10 minutes. Apakuki handed over the suspects.
102. The Police truck followed on later. As he was leaving, two other vehicles were arriving. One from Lautoka Police station and the other, according to Apakuki, belonged to the Strike Back Team from Suva.
103. A few days later, inspector Samisoni informed him that one of the suspects had passed away and that the Divisional Crime Officer, Western wanted to talk to them. So, he went to attend the meeting that took place at Inspector Samisoni's house. Manasa, and some officers from Nadi, Lautoka and Sigatoka were in attendance including Inspector Samisoni, Apakuki, Constable Usaia, Constable Seruvi and Constable Penaia.
104. Manasa told them to change their statements in regards to the handing over of suspects. Handover actually took place up in the hill. But they got instructions to change it to say that the handover took place in the Police station.
105. Under cross-examination, witness said that he obeyed the instructions and changed his statement. He admitted however that none of the three statements shown to him by the Defence Counsel had been changed. He also admitted that in his 2nd statement dated 28th August 2014, he had never mentioned that Manasa told him to change the story. He however noted it in his note book.
106. Under re-examination, witness said that, in his 3rd statement made on the 30th August, 2014, he mentioned about the briefing and the instructions received from Manasa to change the statements in regards to handing over of suspects. The first statement was recorded on 18th August, even before Soko died, in relation to the arrest of the suspects of the robbery. In the statement made after the briefing on the 28th August, he did not mention that handover happened in the hillside.

Evidence of Senijeli Boila

107. Boila is one of the victims in this case. He said that he is serving a 11 year prison term having been convicted of the robbery that took place at Nadi on the 15th August 2014. On that day he was taking a mini bus to Suva. The bus was stopped at Tagaqa by uniformed special constables.
108. As soon as he got off from the van, one officer started searching him while the other officer searching Soko's bag. As soon as they found a bag from Soko's possession, they enquired from Soko 'who were with you'? Soko pointed at him. As soon as he pointed at him, police officers sprayed something on his eyes and assaulted him.
109. He never ran away. He was standing behind the van. He was handcuffed and thrown in the back of the Police truck. Same thing happened to Soko. One dog was licking the blood on his face and Soko. Constables told him to lay face down and started assaulting and kicking. He was fully naked. Truck was driven somewhere for 1-2 minutes and stopped. They were thrown away from the truck and got beaten up by four officers who arrested them. Chillies were rubbed on the whole body, his private part and anus. They did the same thing to Soko.
110. Officers were asking who were with him while stealing the money. He told them he never went with them. Juicy chillies were put into his anus using fingers and a stick while he was resisting. They put the stick inside his anus. He became unconscious. He suffered injuries in his anus from this stick that went inside. They did the same thing to Soko. Doctor saw some injuries inside his anus when he was examined. Officers who arrested him, Semi, Maciu, Apakuki and Usaia were doing this to him. Some other officers were also there, but the officers present in Court were not the guys who were there at the hillside.
111. He made a complaint to the Judge and the Police Internal Affairs officers and told the full story. At the interview, he recognised the vest he was wearing at the time of arrest. He made three statements and one of which was given to Tevita on the 20th September, 2016 of what happened at the hospital and told the whole truth. The vest was tendered marked as PE 5.

112. Witness denied having told in his statement dated 20th September 2016 that at one point he could see Pita and the other officers from the Strikeback Team Suva and officers from Lautoka assaulting Soko. Witness admitted having told Tevita that Pita with the assistance of other officers was inserting a piece of stick into Soko's anus. Witness said that he just signed this statement that had already been written. However, he admitted that he read the statement and the declaration before signing.
113. He admitted having told the story contained in the statement dated 25th of August 2014. In that he had stated that he knew the officers from the Strikeback Unit and one Pita who was a Military officer. He identified in Court the 8th accused as Pita. Boila's three statements were tendered marked as PE 6, 7 and 8 in reverse chronological order.
114. Under Cross Examination, the witness said he did not know Pita before. The Police officers informed him that he was a military officer. He admitted that he informed Pita's name to Police and that he was a military officer. Only Semi, Maciu Temo, Apakuki and Usaia assaulted him.

Evidence of Auka Natnivalu

115. Auka was an army officer since 1987. When he was based at the army camp in Suva he was engaged as a driver in the Strike Back Unit operations. On the 15th of August 2014, about 11.00 he received orders from Colonel Suliano to drive the Strike Back Team because there had been a big robbery in Nadi. He went towards Sigatoka with the Warrant Officer Pita and some other officers. They went as far as Outrigger and then, on the instructions of Pita, did a U-turn and went to interior of Malevu. They stopped where the suspects were with a police truck. Pita and other officers got off the truck. After that he fell off asleep. He saw the two suspects lying down. They were bleeding all over their body.
116. Under Cross-examination, the witness gave a statement four months later to the Police on the 09th of December 2014. He could not explain why in that statement he did not mention that Pita was in the vehicle. The statement of the witness was tendered as a

Defence exhibit. Witness admitted that when Pita got out of the van, suspects were already injured and bleeding.

Evidence of Timoci Nasilasila (Jim)

117. In August 2014, Timoci was based at the Lautoka Police Station. He was a driver of the Strikeback Unit in Lautoka. On the 15th of August 2014, he received a telephone call from Seruvi asking him to report for duty in regards to a robbery in Nadi.
118. He came to the Lautoka Police Station, picked Seruvi, Kelevi and Senitiki and drove the Hilux twin cab to Nadi town looking for suspects. They were informed that the suspects were heading towards Sigatoka, so they headed towards Sigatoka and went past Sigatoka town to Malevu Village and turned left up the gravel feeder road as directed by Seruvi, and drove about 10 minutes to the place where suspects were detained. Three police officers and a big truck were parked on the side.
119. Having dropped his teammates, he went to turn the vehicle and came back about 5 minutes' time. When he got back to the scene, his teammates were there with the two suspects. Suspects were helped to get into the back tray of the vehicle and he headed back to the Sigatoka Police Station with his team. Suspects were bruised at that time. He gave a statement in September 2014 when he was called and he just signed it without reading. Upon arrival at the Sigatoka Police Station, he left the suspects with Kelevi and Senitiki.

Evidence of Apete Nakolo

120. In August 2014, witness Nakolo was based at the Strikeback Team, Suva. On the 15th of August 2014, Cpl. Vili who was his boss in the Strike back Unit briefed him about a big robbery that happened in Nadi and wanted him to join SC Keponi, 7th accused DC Jona, 6th accused Cpl. Vili and 8th accused Pita who was a military officer.
121. They were informed that two suspects had been arrested. Before Malevu, they turned to one gravel feeder road going inside and travelled roughly about 15 minutes. When they parked the vehicle at the hill top, he saw two suspects and three vehicles from the

Western Division. He recognized only Timoci Nasilasila from the Western team. Suspects were in the police truck. Everybody in his vehicle got off. He and Keponi just stood beside their twin cab while others proceeded to have a conversation with the Western Officers.

122. His team mates jumped inside the Police truck. All of them, Jona, Vili and Pita were kicking and punching Soko's stomach while asking questions. He heard Soko shouting in pain. The other suspect was on the ground beside the big truck. He saw injuries on him. When his crew was inside the truck, he saw two Western officers pounding chillies outside in a coke bottle. Two or three Western Officers jumped inside the Police truck and brought Soko out of the Police truck, took off his clothes and rubbed chillies on his whole body, his face, his private part, his legs, hands, stomach and mouth. About 5 officers were doing this wearing hand gloves. Soko was crying in pain.
123. After they had finished with Soko they went to the other suspect. Soko was fully naked at that time. What they did to Soko was done to the other suspect also. They were rubbing chillies all over his body including his private part and anus.
124. Once they have finished, suspects were made to wear their clothes again by 'Western Officers'. Suspects then went to the blue twin cab driven by Jim and got in. Suva crew got back inside their vehicle and left. His vehicle was the last one to leave the place.
125. A few days later, he came to know that Soko had passed away. Once it was known, he was asked to make a statement by his team leader, Cpl. Vili in relation to the incident at Malevu hill. Cpl. Vili also gave instructions as to how he should record the statement. His admin officer W/Cpl. Tima recorded the statement. He read through the statement to find that it was not a fully accurate statement. It lacked some information. He made another fully accurate statement later and that is the third statement he made.
126. Under Cross-examination, witness said that he knew one suspect named Soko. He mentioned the name of Senijeli Boila in his statement as he later came to know his

name from other Police officers. Witness admitted having given the content of the statement dated 26th of August 2014 to Cpl. Tima when it was read back to the witness by the Defence Counsel.

127. Witness said that he did not record the full story in the statement of 26th August 2014 because he was informed by his team leader not to mention some of the things in the statement. The next statement was taken by Taufu. It is dated the 21st of August 2014 but the date is wrong. Witness admitted that his second statement is different from his first statement.
128. In his third statement recorded on the 09th of December 2014, he gave details of all the officers as he was informed to tell what truly happened. When he was called upon to give the first statement, he was told to give only some information. In the 2nd statement, he was told to lie and in the 3rd statement he was informed to tell the truth of what happened. The 3rd statement was given on his own free will.
129. In his 2nd statement, he did not fully inform of what really happened and that was the lie he told in that statement. On the instructions of his team leader, he did not mention anything about the hillside incident. His team leader was present when the statement was being recorded.
130. He did not tell Tima or anybody that his team leader had told him not to tell the truth. Witness denied that the statement dated the 26th of August 2014 is the true picture of what exactly happened on the day in question because he was told not to mention some of the things in his statement. Witness also denied that he was under pressure by senior officers to give the third statement.
131. Under Re-examination, witness said that the first two statements were not fully truthful because, on the instructions of his team leader Cpl. Vili, he did not inform some of the things that happened. In his 3rd statement, he told the Internal Affairs Unit officer as to why his first two statements were not truthful.

Evidence of D/Sgt. Tomasi Tukana

132. Witness Tukana who was based at the Internal Affairs Unit in Suva interviewed Constable Penaia Drauna at the Lautoka Police Station. SP Semisi was present and Const. Nacani was the witnessing officer. He recorded the interview on a laptop computer. Record was signed by him, the accused and the witnessing officer straight after the interview was completed. Record of interview of Drauna was tendered marked as PE 9 and the content of which was read out in Court.
133. Under Cross-examination, the witness admitted that he interviewed the accused 4 months after of the incident. Accused came voluntarily to the place where the interview was conducted. He was never arrested. Accused was afforded the right to legal representation after the first question was put. Other Constitutional rights were also afforded. Accused was explained the allegation against him but not specifically the rape or sexual assault allegations. Accused denied the allegations of assaulting the suspects. Witness denied the proposition that the accused was not taken for a reconstruction of the scene because he was given a promise that he will be a state witness.

Evidence of D/Cpl. Nacani Bolabiu

134. Witness Nacani witnessed the interview of Penaia Drauna which was conducted by Tomasi Tukana. He was present throughout the interview and signed the record. No one in his presence threatened the accused for the purposes of that interview. Accused was not offered any promise.

Evidence of Epeli Rokoborabora

135. Epeli was an army corporal and was attached to the Operation Unit at Suva. On the instructions of Colonel Suliano he traveled on the 15th of August 2014 to the West with Matairavula and two other officers. Matairavula was the leader of the crew. On their way towards Sigatoka, the vehicle took a right turn before Sigatoka and went up the hill. He saw one big truck and some people and some small vehicles. Two people were lying on the ground.
136. Under Cross-examination, the witness said that, in his presence, anyone from his vehicle did not assault those two persons who were lying down.

D/Const. Jone Sauqaqa

137. In 2014, Jone was part of the Strike Back Team based at Lautoka. Seruvi, Penaia Drauna, Senitiki, Kelevi and Mosese Volavola were in his team. On the 15th of August 2014, he was assigned to driving duties for SP Manasa Talala.
138. Penaia Drauna informed of a robbery at Nadi when they were having their morning tea at the Fisheries Wharf at Lautoka. He was supposed to convey Manasa to Nadi. He set off for Nadi with SP Manasa and Drauna. After visiting the scene at Nadi, they proceeded down to Sigatoka when they received the information that suspects had been arrested from somewhere between Sigatoka and Korolevu. Apakuki gave the information on his mobile phone. Then the witness said Apakuki did not mention about the arrest of suspects but only stated about a suspicious black taxi. Apakuki wanted them to be vigilant on the taxi that was supposedly heading in the opposite direction. Manasa was seated next to him in the front seat while Drauna and Filise in the rear seat at that time.
139. Since they did not meet that black car on their way to Korolevu, they thought of checking on all feeder roads between Sigatoka and Korolevu Police Post. In search of the suspicious taxi, they took a turn at the first feeder road just past Malevu Village. He stopped at some distance from the Queens Road and got off from the vehicle. He started searching for that black private car. At some point other vehicles arrived at the hillside. A big police truck came first. He did not know why it was on the hillside. He recognized only Usaia, the driver of the truck. Two suspects that were involve in that robbery were seen on board the truck.
140. Witness got out of the vehicle while Talala and the rest of his passengers remained inside. He made enquiries from Usaia about the suspects who were in the back of the truck with escorting officers. Suspects were covered with blood with injuries on their faces. He did not ask Usaia why he had driven suspects to the hillside against regulations. He did not report to Manasa that the suspects onboard were injured. Manasa did not get out of the vehicle to look at these injured suspects. After sometimes, Manasa called him. He found out that the recovered money was inside the

vehicle in Manasa's possession. He could not recall how the money came into Mansa's possession. There were 25-30 police officers and several vehicles at the hillside. He did not see inspector Bari or his other colleagues from Lautoka Strike Back Unit. Then they proceeded back to Nadi with Manasa, Drauna and Filise. They had been at the hillside for 5-6 minutes.

141. He made a statement on the 24th of August 2014. Witness said that what he said in evidence is the truth and not what he had stated in his previous statement. He gave another statement to the Internal Affairs Unit officer on the 28th of August 2014.
142. Under Cross-examination, the witness said that he did not see the suspects being assaulted by officers at the hill side. Suspects were already injured when they arrived. Witness said that he could remember the record of caution interview of Senitiki being brought for signing during a night party in Lautoka.

Evidence of DC Mario Daurewa

143. Witness Mario was attached to the Sigatoka Police Station in August 2014. On the 15th of August 2014, he was briefed about a big robbery at Nadi and received instructions from Inspector Bari to drive the police vehicle to Korolevu to mount a road block. On their way, they received a call from an officer that two suspects had been arrested. They proceeded to Tagaqe village where they met the Police truck with two suspects and three officers.
144. The money recovered was handed over to them by constable Usaia. Bari gave instructions to Usaia to proceed to Sigatoka Police Station. He was instructed to follow the truck, escorting them from behind.
145. When they were following in the direction of Sigatoka, the truck stopped at Sovi Bay. His vehicle was also stopped for a while and left the truck to follow a suspicious black taxi. At the Outrigger Hotel junction, they met Manasa's vehicle coming down in the opposite direction. Then they followed DCO Manasa's vehicle which had turned off the Queens Road towards interior. The police truck with the suspects was ahead of them following DCO'S vehicle up the hill side. They stopped directly behind

DCO's vehicle. Inspector Bari went to brief Manasa and handed the sealed bag of money over to him. They were granted permission to leave the hillside. Suspects were still at the back of the police truck when they left.

146. Under cross examination, witness admitted that he gave a statement to police on the 14th of April 2015, 8 months after the incident.

Evidence of Inspector Samisoni Naqica

147. IP Samisoni was the officer-in-charge of the Sigatoka Police Station in August 2014. When the witness was attending a workshop in Lautoka, he was informed of a big robbery in Nadi. He gave instructions to constable Apakuki and Inspector Esira Bari to mount a road block at Korolevu. Bari then informed him that two of the suspects had been arrested at Tagaqe.
148. In the afternoon, he saw the suspects in front of the police station when they were being escorted to the police vehicle by Sergeant Nagata and the crime officer Nadi Inspector Maciu. Suspects were walking normal. He saw an injury on the forehead of Boila.
149. Under Cross-examination, witness said that, on the 23rd of August 2014, he received a call from DCO West regarding this matter and got instructions to convene a meeting at the Sigatoka Police Station for those who were involved. It was informed that the Director of Ethical Standard SP Luke Navela was coming to Sigatoka to meet all the police officers. Police officers had arrived at the Sigatoka Police Station early in the morning. Witness invited all officers to have breakfast at his house. SP Manasa Talala was not present in that meeting.
150. Under re-examination, witness admitted that he failed to mention about the breakfast in his evidence-in-chief. He could remember Penaia, Kelevi, Senitiki were in attendance. Apakuki came sometimes later. He was not aware for what purpose the meeting was convened. DCO Manasa never made arrangements with him to convene the meeting. He did not keep any record of the meeting. He did not mention about the breakfast in his statement made on 21st of August 2014.

Evidence of Acting Superintendent Kushi Ram

151. In August 2014, witness was attached to the Internal Affairs Unit. He interviewed Manasa at the Namaka Police Station. Suliano Tevita was the witnessing officer. He himself recorded the interview and then he made a typed version. Record of interview was tendered as PE I0 and read in evidence.
152. Under Cross-examination, witness admitted that none of the charges Manasa is facing in Court had been put to him during the caution interview. Manasa denied the allegations of assaulting the suspects. Manasa said in his caution interview that both suspects were already injured when he saw them for the first time. Apakuki had told Manasa that suspects resisted arrest at Tagaqe and Police officers and villagers had chased them; that's how they had received injuries. Witness briefed his Director on the version that Manasa had given at the interview as to how the suspects received injuries.

Evidence of Acting Inspector Suliano Tevita

153. Tevita was attached to the Internal Affairs Unit in Suva. He was the investigating officer of this case and also the witnessing officer for the record of interview of SP Manasa Talala. Manasa gave the interview voluntarily. As the investigating officer, he took four statements from Boila and two of which were taken in September, 2016 just to get certain issues clarified. Other two statements were taken in August, 2014. He personally wrote the statements on the basis of answers given by Boila as to what actually happened. Having read the statement and the declaration of truth, Boila signed those statements.
154. Under cross examination, witness said that he did not personally forward the file to the DPP but his Director Internal Affairs did it. He denied that there was evidence that some villages were present at Tagaqe village when the suspects were arrested. His investigation revealed that there were no villages present at the scene and what SP Manasa had told at the interview was a lie.

155. He did not record a statement from the driver of the minibus because there were enough witnesses to testify to the arrest of the suspects. The file was submitted to the DPP with available evidence and the DPP eventually decided to charge only 9 officers. Witness admitted that no specific offences were put to the accused during the interview.
156. He denied that the statements he recorded from Apakuki, Usaia and Timoci Nasilasila were false. He also denied that all the statements were written by him and not by the persons who signed those statements. Witness said that the names appeared in Boila's statement were given by Boila himself.
157. He did not hold identification parades because Boila knew certain accused very well and also there were other witnesses who had identified the accused.

Caution Interviews

1st Accused Manasa Talala

158. Manasa said that on the 15th August 2014, he received a report of a Robbery at Nadi and proceeded to the crime scene with his driver Jone and another officer. From there they headed towards Sigatoka with two officers as he was informed that suspected vehicle had gone towards Sigatoka. He was informed in Sigatoka that two suspects had been apprehended at Tagaqe village. Constable Apakuki had conveyed the message. He also directed another fleet from the Lautoka Crime Intelligence Unit to follow up with the robbery. He met the fleet driven by Nasilasila at Malevu. Nasilasila's vehicle also followed him looking for suspected vehicles. When they went past Malevu, Constable Apakuki informed him that a black taxi had gone up the hill. They went up interior about 2-3 km. Apakuki's team and the truck with two suspects driven by Usaia also followed his vehicle. When the truck stopped at the hill top, IP Bari's twin cab also arrived. He directed his two officers to ask from two suspects Soko and Boila about other accomplices and where they had gone. Suspects were inside the truck which was parked about 5-10m. away. One officer came with the names of accomplices revealed by the suspects. IP Bari handed over the recovered money to him. Another two fleets also arrived. He saw both the suspects in the truck

handcuffed and also blood on their faces. He questioned Constable Apakuki about blood seen on their faces and was told that suspects resisted arrest at Tagaqe and police officers and villagers had to chase them, that's how they received injuries. He directed one of the officers to take the suspects to Sigatoka. Then he left for Korolevu Police Post and then to Nadi Police station.

2nd Accused Seruvi

159. 2nd accused Seruvi said that he, with two other officers from the Lautoka Police Station, headed towards Sigatoka in a twin cab driven by Jim in search of suspects of the robbery at Nadi. When they reached Sigatoka, he received a call from another officer and was informed that two of the suspects had been arrested at Tagaqe village and was asked to meet them at the hill past Malevu village. Then he instructed the driver to drive his fleet to the said hill past Malevu village. When they arrived at the hill side, he saw a truck, and two other police vehicles and two Fijian men handcuffed lying down inside the truck with two dog handlers inside with them. Boila had injuries on his face. He spoke to Apakuki and CO Sigatoka and inquired as to how the arrest was effected. Another twin cab arrived carrying officers. Four officers got off and climbed on the back of the truck and started kicking and punching Boila asking him about the robbery case in Maqbool, Suva. They threw Boila out of the truck. Then they went to Soko and kicked and assaulted him while he was lying down inside the truck. Soko was then told to jump out of the truck with his hands still handcuffed.
160. He saw two officers pounding chilies in a plastic container. They put on hand gloves and rubbed chilies on Boila's face and anus while he was being kicked on his ribs by other officers. When he was interrogating Boila, other officers were interrogating Soko. He could see one officer with hand gloves rubbing chilies on Soko's face, ears, nose and anus while he was being kicked on his stomach by other officers. One officer pulled Soko's leg and hitting it with a stick. When Soko turned upside down in pain, a stick was poked inside Soko's anus. Both suspects were naked at that time. One officer requested them to drop the two suspects in Sigatoka Police Station. Then they loaded the suspects and came to the Sigatoka Police Station in the twin cab driven by Jim.

4th Accused Drauna

161. 4th Accused said that he was informed of a robbery at Nadi and in turn he informed other officers including Jone, the driver of the DCO, and the Strike Back Unit in Lautoka. Jone and other officer picked him up and proceeded straight to Nadi. Apakuki called him and informed that suspected people had gone to a minibus stand abandoning their car. Upon receiving this information, he was directed by the other officer in the vehicle to proceed straight to Sigatoka. Before they reached Sigatoka, he received another call from Apakuki and was informed that two suspects had been apprehended at Tagaqe village. Then they proceeded to Tagaqe as was directed by the other officer. On their way Apakuki called again and told that a suspicious taxi was heading in the opposite direction. Since they didn't meet the taxi, his officer told them to go up a feeder road near the Malevu Bridge. The other vehicle was also informed to follow them. Upon reaching the top of the hill, the police truck driven by Usaia also arrived with two suspects and stopped behind his vehicle. He, with Jone and another officer went to see the suspects. He saw both suspects lying on the floor of the truck only in their three quarter pants. When they were questioning the suspects, the Suva Strike back team arrived. They got off and three of them jumped into the back tray of the truck and started questioning about Suva cases. Then they brought the suspects out of the truck. Lautoka Crime Intelligence team also arrived before the suspects were taken out of the truck. Suspects were lying on the ground handcuffed with their faces down. He saw three Suva Strike Back officers kicking and taking turns in questioning Soko and Boila. One officer from the same team was hitting Soko with a stick. He did not assault any of the suspects. He turned Soko's face just to identify him. He walked over to where Soko was to tell the officers to stop kicking him. Then he came to his vehicle with Jone.

5th Accused Filise

162. 5th Accused Filise said that he was asked to join the fleet of three other officers that was heading to apprehend the suspects of the robbery case at Nadi. Before reaching Sigatoka, one of the officers in his fleet received a call and was informed that two suspects had been apprehended at Malevu. On their way, another call received and was told that a suspicious taxi was heading in the opposite direction. They went

passed Malevu village and, on the instructions of his officer, turned left towards a gravel road that went up the hill in search of the black taxi. When they stopped he saw other vehicles following them including the truck with the suspects. Suspects were dragged out of the truck and officers started questioning them.

163. He saw a plastic container with small chilies. He picked chilies and squashed it on injuries on Soko's face. Soko was yelling on top of his voice in pain and started giving the names of others involved in the robbery. He saw one officer beating Soko with a stick about one 12 inches long. Soko was yelling on top of his voice. As soon as he got the names, the officer who came with him told him to board the vehicle to go to Korolevu Police Post.
164. On the following day, 28th August 2014, he said that he wore hand gloves before rubbing chilies. He picked four pairs of hand gloves from the vehicle. He rubbed chilies on Soko's anus too when he turned upside down. On the 12th November, 2014, Filise said he saw one officer beating Soko as they were leaving the hillside.

9th Accused Senitiki

165. He joined the fleet driven by Jim Nasilasila. On their way towards Sigatoka, they received information that two suspects had been arrested at Tagaqe. Someone brought chilies from the Sigatoka Market when they were sweeping around the Sigatoka Town. The vehicle turned at Malevu to a road going up the hill as one officer received information that the arrested suspects were in the hill. When they reached the hillside he saw the two suspects, the truck driven by Usaia, vehicles driven by Jone and Mario and another Toyota Hilux that had come from Suva. Soko was sitting in the back of the truck and Boila was lying on the ground. Someone started to 'siliboro' or rub the chilies on the eyes, ears and anus of Boila and Soko whilst they were being interrogated. The arresting officers had left in the truck leaving the prisoners behind. After they left, only his team and the Suva team were there. He got instructions to put the suspects in the truck. He came with his team and the suspects to the Sigatoka Police Station.

166. That is the case for the Prosecution. At the close of the Prosecution case, you heard me explain to the accused persons what their rights were in defence and how they could remain silent and say that the Prosecution had not proved the case against them to the requisite standard or they could give evidence in which case they would be cross-examined.
167. As you are aware, all the accused persons elected to exercise their right to remain silent. That is their right guaranteed under the Constitution. Now I must tell you that the fact that accused person's election to remain silent does not give rise to the inference that they did so because they were guilty. They had nothing to prove in this case. Burden of proof remains with the Prosecution throughout.
168. Even though the Defence refrained from calling any witnesses, they challenged the evidence of the Prosecution in their cross examination in order to impeach the credibility of the Prosecution's version. The Counsel for the Defence in his closing address highlighted certain points that the accused persons wish to raise in their defence. I will discuss those issues in my analysis which you must take into account in your deliberation and deciding.

Analysis

169. The Prosecution and the Defence have agreed on certain facts in this case and, therefore, those facts are not in dispute. It is agreed by the Defence that Soko, one of the victims in this case, had told the doctor when he was taken to the Nadi hospital that he was assaulted by police and chilies were put in his anus and a stick was inserted into his anus.
170. It is also an admitted fact that both Soko and Boila had been anally penetrated on the 15th of August 2014.
171. On first four counts (Rape and Sexual Assault), all accused persons are jointly charged. In regards to those counts, you have to determine whether any or all of these accused persons are criminally responsible for those sexual assaults and rapes.

172. Prosecution says that all accused persons were part of a joint enterprise or common design to bring Boila and Soko to Malevu hill to torture them for the purpose of interrogation. The Prosecution's case is that all the accused either actively assisted in this plan or did nothing to stop the torture or assaults which, as police/ military officers, they had a duty to do in law, and that the perpetration of rapes and sexual assaults on the two victims were probable consequences of the planned enterprise for which each accused must be responsible for.
173. The Defence, on the other hand, submits that the evidence adduced by the Prosecution is highly unreliable and that there is no evidence that the accused persons were involved in the commission of alleged offences; that the suspects were already injured when they went to the hillside either being assaulted by arresting officers or villagers; that there is no evidence of a joint enterprise and the accused had gone to the hillside in pursuit of a suspicious black taxi; that these accused were handpicked from 25-30 people and that the indictment is nothing but a 'blame game' of the Police Internal Affairs Unit to save others. They also say that except for the 1st accused's' caution statement, caution interview statements of other accused were obtained involuntarily and therefore they are not truthful statements to be acted upon.
174. When you apply the legal principles to the facts produced in evidence, you have to be fully satisfied that the version of the Prosecution is truthful and reliable and no reasonable doubt has been created by the Defence.
175. Defence says that the witnesses called by the Prosecution are highly unreliable because:
- a. The evidence they gave in Court is inconsistent with their previous statements made to police.
 - b. Some of them had given several contradictory statements to police.
 - c. Some of the statements have been fabricated by investigators.
 - d. Some of them have been evasive.
 - e. Some of them contradicted each other in their evidence.
 - f. Except Boila, all other witnesses are police or military officers and no independent laymen were called to support Prosecutions' version.

- g. Witnesses have been pressurized by Police Internal Affairs Unit officers to make up a case against the accused persons as part of a 'blame game'.
176. The Counsel for Defence did not highlight the so called inconsistencies in his closing address. You heard some of the Prosecution witnesses giving evidence inconsistent with their previous statements to police. They gave certain explanations for omissions and inconsistencies. They also gave certain explanations for giving several statements and also for giving them belatedly. Some of them were evasive and had apparently lost their memory in an astonishingly strange manner.
177. Prosecution says that this case is the culmination of truth seeking exercise of the Police Internal Affairs Unit officers who intervened to spoil a cover up plan orchestrated by some senior police officers of their own Police Force including the accused persons where an attempt had been made to sweep police brutality under the carpet. It also asserts that some of the police and military witnesses called by the Prosecution were reluctant to give evidence against their own colleagues and former superior officers out of loyalty. You have to consider all these aspects in assessing the reliability and credibility of the witnesses.
178. Defence claims that there was no inquest held in respect of the death of Soko. You should remember that this case is not concerned with Soko's death and the question of not holding an inquest does not arise in this case as a fact in issue. You may however consider the evidence in this respect to test the credibility of witnesses.
179. Defence also claims that there was no identification parade held to identify the accused persons, in particular, to identify the 9th accused, calling the victim cum eye witness- Boila. The investigating officer Tevita said that Boila knew the 9th accused beforehand and also the other witnesses knew the accused persons as their colleagues. Except for identification evidence given by Boila in respect of the 9th accused, identification evidence given by other witnesses was not in dispute in this case. Having considered the direction I give shortly, you attach such weight as you may wish to Bola's evidence.

180. I will now direct you as to how you should approach the evidence of Boila. Boila said that chilies were rubbed on his whole body, his private part and anus and the same thing was done to Soko. Juicy chilies were put into his anus using fingers and a stick while he was resisting. They put the stick inside his anus. He suffered injuries in his anus from this stick that went inside. They did the same thing to Soko. Doctor saw some injuries inside his anus when he was examined. This part of Boila's evidence was never disputed either by the Prosecution or the Defence.
181. Boila then said that officers who arrested him, namely, Semi, Maciu, Apakuki and Usaia were the guys who were doing this to him. Some other officers were also there, but none of the accused was involved in rapes or sexual assaults.
182. At this stage you will remember you were asked to go out of the Court room. The Counsel for Prosecution made an application in your absence and complained that Boila was giving evidence contrary to his previous statements made to police and that he had turned hostile to the Prosecution. Considering the application made by the Counsel for Prosecution the Prosecution was allowed to treat Boila as a hostile witness and to cross examine him on the previous statement to police.
183. Boila had told the police on 20th September 2014, nearly one month after the incident that Pita with the assistant of other officers was inserting a piece of stick into Soko's anus. He denied in Court having told in his statement that at one point he could see Pita and the other officers from the Suva Strike back team and officers from Lautoka assaulting Soko.
184. However, he identified his signature in the statements to the police and admitted that he read the statements and the declaration of truth before signing. He then said that he just signed this statement that had already been written. He admitted having told the story contained in that statement he made to police on 25th of August 2014, a few days after the incident. In that he had stated that he knew the officers from the Strike back Unit and one Pita who was a Military officer. He then said that he did not know Pita before and it was the Police officers that informed him that he was a military officer. Boila later admitted that he told Investigating Officer Tevita that Pita, with the

assistant of other officers, was inserting a piece of stick into Soko's anus. He identified in Court the 8th accused as Pita.

185. You heard the evidence of the other witnesses on the incident and what Soko had told the Doctor which is an agreed fact. Boila gave evidence and confirmed the agreed fact that a stick was inserted into his anus. You can be satisfied that Boila told the truth under examination-in-chief in this regard. In the latter part of his evidence under cross examination by the Prosecuting Counsel is controversial. Prosecuting Counsel submitted that Boila told half-truth in court out of fear of the accused who assaulted him. You may form your own opinion on that. However, you have to accept what I say about evidence of a hostile witness.
186. The evidence of a hostile witness would not be totally rejected, but it should be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the Prosecution may be accepted. You decide what weight you give to the Boila's evidence, what parts of his evidence you accept and what parts you reject. Please remember that a statement made to police is not evidence unless it is adopted and accepted by the witness under oath as being true.
187. Now I turn to the notion of joint enterprise. In order to establish a joint enterprise in this case, the Prosecution must prove in respect of each accused that;
- I. The accused person was engaged in a joint enterprise or formed a common intention to bring the victims to Malevu hill to subject them to torture and humiliation for the purpose interrogation.
 - II. As part of that joint enterprise or common design,
 - a) The accused either shared a common intention to sexually assault and /or rape the suspects. OR
 - b) The accused person foresaw that offences in the nature of rape and sexual assault would be probable consequences of their enterprise.

188. In considering these issues, you have to look at all the circumstances of the case as led in the evidence. You have to be satisfied beyond reasonable doubt that each accused was part of the joint enterprise or common plan and that each accused shared the common intention to torture by interrogation. Prosecution relies on following pieces of evidence to prove the circumstances of a joint enterprise, namely, interrogation by torture.

- After the arrest of Boila and Soko (suspects), instead of them being taken to the nearest police station (Sigatoka), they were taken to remote Malevu hillside, violating accepted police procedures.
- Custody of arrested suspects was obtained from the arresting officers at the hillside by some accused persons violating police procedures.
- Some of the accused persons were engaged in telephone conversations with the arresting officers whereby they came to know that two suspects had already been arrested at Tagaqe village.
- With knowledge that two suspects had been arrested at Tagaqe village, some accused persons proceeded to Malevu hillside where the suspects had been detained.
- Someone got chilies from the Sigatoka market.
- Hand gloves that were used to rub chilies on the suspects were readily available at the crime scene.
- 9th accused used the word 'Siliboro' to describe the practice of rubbing chilies on eyes, ears and anus.
- 5th accused took four pairs of hand gloves from his vehicle.
- Both suspects were interrogated by the officers of Lautoka police team to get information as regards the Nadi robbery and as a result of which some valuable information including names of accomplices was obtained.
- Both suspects were interrogated by Suva Strike back team about several robberies that had taken place in Suva and some important information was obtained.

189. Prosecution says that all this evidence compels you to conclude beyond reasonable doubt that two suspects were brought to Malevu hillside to be tortured to get information and acts of rubbing chilies on their anus and insertion of a stick into their

anus were either part of their plan or they were probable consequences of that humiliating interrogation process.

190. Defence on the other hand takes up the position that there was no evidence of joint enterprise and that the accused persons went accidentally to the Malevu hillside in pursuit of a suspected taxi. Driver Jone in his evidence and the 1st accused and other officers who travelled together with the 1st accused namely the 4th and 5th accused in their respective caution statements supported the version advanced by the defence. However, 1st, 4th, and 5th accused did not give evidence in Court to support their version. Prosecution says that the evidence of the 1st accused's driver Jone's evidence is highly unreliable even though he was called by them.
191. On the other hand, arresting officers', namely, Semi, Usaia, Temo and Apakuki's and Bari's evidence is in contrast with the version of the Defence. Inspector Bari and Apakuki said that the suspects and recovered money were taken to the hillside on the instruction of the 1st accused. You heard evidence of all the witnesses, what the accused had told in their respective caution statements and observed photographs tendered. Bearing in mind the mixed statement direction I have given, you decide whether you accept the version of the Defence and it has created a reasonable doubt in the claim of the Prosecution that accused were on a joint enterprise at the hillside.
192. Prosecution relies on circumstantial evidence also to prove that it is these accused persons and no one else perpetrated these offences on the victims. Prosecution says that there were only 21 police and military officers including 9 accused persons were present at the hillside and out of which 11 of them including the arresting officers gave evidence; it was not put to any of the Prosecution's witnesses that they were responsible for rapes and sexual assaults. Nor was there any assertion by the Defence that officers who did not give evidence were responsible for those assaults. Therefore, Prosecution invites you to draw the only inference that it is the accused and no one else committed those offences.
193. Defence on the other hand says that there were 25-30 officers were present at the hillside and hand picking of nine officers is nothing but a 'blame game' on the part of

the Police Internal Affairs Unit to cover up some other officers. However, they did not disclose to Court who were those people who were responsible.

194. 1st Accused's driver Jone said that there were 25-30 people were present at the hillside. Prosecution asserts that Jone was highly unreliable witness given that his manifest loyalty to the accused persons and also his highly unnatural forgetfulness of the events. Investigating officer Tevita said that decision to indict only these 9 accused was eventually taken by the DPP on the basis of evidence placed before him. You, having heard evidence of all the witnesses should be able to come to a conclusion as to which version is true. Having done that you must be sure, before forming an opinion of guilt in respect of each accused, that the only inference you can draw from evidence available is that it is the accused and no one else committed these offences.

Ladies and gentleman, I now turn to 'aiding and abetting'

195. There is no dispute that both Soko and Boila had been anally penetrated on the 15th of August 2014. 5th accused admitted in his caution interview that he rubbed chilies on the anus of Soko and that of Boila. Boila himself gave evidence and said chilies were rubbed on his anus and that of Soko. If you accept this evidence, you can be satisfied that those acts were in fact committed on the victims.
196. 1st, 2nd, 4th 5th and 9th accused persons in their respective caution statements concede that they were present at Malevu hillside at the material time. Some other eye witnesses you heard had seen all the accused persons at the crime scene at the material time. Prosecution says that all the accused were responsible for rapes and sexual assaults either as the principle offender or offenders or for aiding and abetting the principal offender or offenders.
197. You have to be satisfied that each accused aided or abetted (assisted or encouraged) in the commission of those offences with knowledge of what the principal offender/s were doing with the intention of assisting or encouraging the principal offender/s in that activity.

198. You have to bear in mind that mere presence at the scene of crime does not constitute aiding and abetting. Prosecution however asserts that the presence of the 1st accused as the Divisional Crime Officer and the 2nd accused as the leader of the Lautoka Strike back Unit had controlling power over other accused and their continued presence at the crime scene at the material time provided positive encouragement to commit the offences and therefore constitutes aiding and abetting the commission of the offences.
199. Prosecution also asserts that all the accused persons were law enforcement officers by virtue of their office as police and military officers and they were duty bound to prevent crimes and their inaction or passivity with knowledge of alleged crimes being committed constituted aiding and abetting.
200. As a matter of law, two things must be proved before an accused can be held to be guilty of aiding and abetting the commission of the offence;
- He must have full knowledge of the facts which constitute the offence.
 - There must be some form of voluntary assistance or ‘encouragement’ in the commission of the offence.
201. The real question here is how far inaction, passive tolerance, can amount to assistance so as to make the accused guilty of aiding and abetting. The law says that mere passive acquiescence is sufficient only where the alleged aider and abettor has the power to control the offender and is actually present when the offence is committed with the knowledge of the facts which constitute the offence.
202. There may be circumstances in which mere presence is *prima facie* evidence of aiding and abetting. Police officers have a special role given to them by the law. Section 17(3) of the Police Act says that “*It shall be the duty of every police officer... to prevent the commission of offences, and public nuisance, to detect and bring offenders to justice...*” so police officers cannot stand by and allow offences to be committed in front of them. They must prevent the commission of offences, and bring the offenders to justice. In the Fijian context, military officers who do police duties are also covered by this law.

203. Law says that where a person has a duty to intervene to prevent the commission of a crime by another, his failure to intervene may be a positive encouragement to the other to commit, or to persist in the commission of, an illegal act. If a person's inactivity is a positive encouragement to another, and he knows it is a positive encouragement to that other, to commit an offence, then the inactivity amounts to aiding and abetting. Every police officer obviously has a duty to intervene to prevent the commission of a crime, such as an assault, by whomsoever it may be committed, including his fellow officers. If one police officer or military officer engaged in police duty stands by and watches his colleague beat up a suspected person, it may well be that the first officer encourages, and knows that he encourages, the second to commit the offence.
204. In light of these legal principles you are required to analyse evidence led in the Prosecution case in respect of each accused.

1st Accused Manasa

205. 1st accused was in overall command of the Western Police Crime Division. He admits seeing the suspects inside the truck which was parked at hillside about 5-10 m. away from him. He directed two of his officers to question them about other accomplices and their whereabouts. He heard a loud questioning. One officer came with the names of accomplices revealed by the suspects. He saw both the suspects in the truck handcuffed and also blood on their faces.
206. Manasa denied assaulting or seeing any of the suspects getting beaten up or being sexually assaulted. He however did not give evidence to support his denial. Bearing in mind the mixed statement direction I have given to you, you have to satisfy yourselves as to whether the 1st accused had the full knowledge of the facts which constitute the offences and his presence and his passivity encouraged his subordinates to commit the crimes so as to make him guilty of aiding and abetting.
207. You may also consider whether he was part of a joint enterprise to bring the suspects to the hill side to subject them to torture for the purpose of interrogation and he must have foreseen that rape and /or sexual assault as probable consequences of the alleged joint enterprise.

2nd Accused Seruvi

208. Seruvi was the team leader of the Lautoka Strike Back Unit. He admitted seeing two officers pounding chilies in a plastic container and rubbing chilies on Boila's face and anus. He saw somebody with hand gloves rubbing chilies on Soko's anus. He saw somebody poking a wooden stick inside Soko's anus. He interrogated Boila. He however denied any involvement in rapes and sexual assaults.
209. Bearing in mind the mixed statement direction I have given to you and if you accept what Seruvi told police is true, you decide if his conduct encouraged his subordinates to commit the offences so as to make him guilty of aiding and abetting. You may also consider whether he was part of a joint enterprise to bring the suspects to the hill side to subject them to torture for the purpose of interrogation and he must have foreseen that rape and /or sexual assault as probable consequences of the alleged joint enterprise.

3rd Accused Kelevi

210. Witness Nasilasila said that Kelevi was a member of the fleet that was driven to the Malevu hillside. He got off from his vehicle at the hillside and later boarded the vehicle with the suspects who were then escorted to the Sigatoka Police Station.
211. Witness Semi said that he handed over the suspects to 2nd 3rd and 5th accused at the hillside. If you accept the evidence of the Prosecution, you decide whether his presence at the crime scene as a police officer constituted positive encouragement so as to make him liable for aiding and abetting the commission of offences. You may also consider whether he was part of a joint enterprise to bring the suspects to the hill side to subject them to torture for the purpose of interrogation and he must have foreseen that rape and sexual assault as probable consequences of the alleged joint enterprise.

4th Accused - Penaia

212. 4th accused admitted under caution that he was questioning the two suspects in the back of the truck when another two teams arrived and got in the back of the truck. He was standing nearby and heard them being interrogated. He saw Soko's pants removed. He saw Soko being beaten and he touched Soko by turning his face as he was facing downwards. He went to Soko to tell the officers to stop kiking the suspects. He denied any involvement in rapes and sexual assaults.
213. Bearing in mind the mixed statement direction I have given to you, if you accept that Penaia told the truth to the police, you decide whether his presence at the crime scene constituted aiding and abetting the commission of offences. You may also consider whether he was part of a joint enterprise to bring the suspects to the hill side to subject them to torture for the purpose of interrogation and he must have foreseen that rape and sexual assault as probable consequences of the alleged joint enterprise.

5th Accused Filise Vera

214. Filise admitted wearing white gloves taken from his vehicle in order to rub chilies on the two suspects. He admits rubbing chilies on Boila's face and Soko's anus.
215. If you accept that he told the truth in his caution statement you may conclude that he was one of the principal offenders in the sexual assaults. You may also consider whether he was part of a joint enterprise to bring the suspects to the hill side to subject them to torture for the purpose of interrogation and he must have foreseen that rape and/ or sexual assault as probable consequences of the alleged joint enterprise.

6th Accused Viliame

216. DC Apakuki said that he recognized the 6th accused as one of the officers arrived at the hillside as part of the Suva Strike back fleet.
217. SC Apete said that the 6th accused was the team leader of the Suva team. He got off at Malevu hillside and proceeded to have a conversation with the Western Officers. 6th accused jumped inside the Police truck with 7th and 8th accused and were kicking and punching Soko's stomach while asking questions. He heard Soko shouting in pain.

When his crew was inside the truck, he saw two Western officers pounding chilies in a coke bottle.

218. If you accept the evidence adduced by the Prosecution, you decide whether he committed any of the offences as the principle offender or his presence at the crime scene constituted aiding and abetting the commission of offences. You may also consider whether he was part of a joint enterprise to bring the suspects to the hill side to subject them to torture for the purpose of interrogation and he must have foreseen that rape and/or sexual assault as probable consequences of the alleged joint enterprise.

7th Accused Jona

219. PC Usaia recognized the 7th accused as one of the members of the Suva Strike back team. He saw the 7th accused standing beside Soko who was naked and lying on the ground.
220. SC Apaté said that he got off at Malevu hillside and proceeded to have a conversation with 'Western Officers'. 7th accused jumped inside the Police truck with 6th and 8th accused and were kicking and punching Soko's stomach while asking questions. He heard Soko shouting in pain and saw 6th, 7th and 8th accused standing beside the truck as Soko and Boila were rubbed with chilies. When his crew was inside the truck, he saw two 'Western Officers' pounding chilies in a coke bottle.
221. If you accept the evidence adduced by the Prosecution, you decide whether Jona committed any of the offences as the principle offender or his presence at the crime scene constituted aiding and abetting the commission of offences. You may also consider whether he was part of a joint enterprise to bring the suspects to the hill side to subject them to torture for the purpose of interrogation and he must have foreseen that rape and/or sexual assault as probable consequences of the alleged joint enterprise.

8th Accused Pita

222. SC Apete gave evidence that he saw 6th, 7th and 8th accused speaking to officers from the West before getting into the back of the truck. He heard Soko shouting in pain and saw 6th 7th and 8th accused standing beside the truck as Soko and Boila were rubbed with chilies. After which 6th 7th and 8th accused resumed the assault on Soko as the 'Western Officers' stood around.
223. You have to consider Boila's evidence in light of the direction I have already given in respect of the 8th accused. If you accept the evidence adduced by the Prosecution, you decide whether Pita committed any of the offences as the principle offender or his presence at the crime scene constituted aiding and abetting the commission of any of the offences. You may also consider whether he was part of a joint enterprise to bring the suspects to the hill side to subject them to torture for the purpose of interrogation and he must have foreseen that rape and/or sexual assault as probable consequences of the alleged joint enterprise.
224. If you accept the evidence adduced by the Prosecution, you decide whether Pita committed any of the offences as the principle offender or his presence at the crime scene constituted aiding and abetting the commission of offences. You may also consider whether he was part of a joint enterprise to bring the suspects to the hill side to subject them to torture for the purpose of interrogation and he must have foreseen that rape and/or sexual assault as probable consequences of the alleged joint enterprise.

9th Accused Senitiki

225. 9th accused admitted under caution that he saw someone wearing gloves just about to 'siliboro' Boila. He explained 'siliboro' to mean rubbing chilies into the eyes, ears and anus. He admitted to standing in the middle of the road writing down names provided by Soko and Boila as they were being rubbed with chilies. 9th accused admitted slapping Boila's head to extract the names of accomplices.
226. Bearing in mind the mixed statement direction I have given to you, if you accept what Senitiki told police is true, you decide if his conduct and his presence at the crime scene positively encouraged other accused to commit the offences so as to make him

guilty of aiding and abetting. You may also consider whether he was part of a joint enterprise to bring the suspects to the hill side to subject them to torture for the purpose of interrogation and he must have foreseen that rape and/or sexual assault as probable consequences of the alleged joint enterprise.

Defeating the Course of Justice (5th and 6th Counts)

227. In order to establish the guilt of the 1st and 6th accused on counts 5 and 6 respectively, the Prosecution must prove that the 1st and 6th accused did an act or omitted to do an act with an intention to pervert the course of justice.
228. Now I look at the evidence adduced in respect of 5th and 6th counts.

1st Accused – Count 5

229. PC Usaia gave evidence that he was collected from his home at 4 am on 21st August 2014 and driven to Sigatoka. He was present at a meeting together with many officers from Western Division including the two dog handlers (SC Semi and SC Temo). 1st accused Manasa briefed them about an Internal Affairs investigation arising from the death of Soko. Usaia gave a statement on 21st August 2014 which was false as a result of what the 1st accused had briefed him to say about the incident on 15th August 2014.
230. SC Temo said that on the 21st of August 2014, he was asked by Sargent Suliano to make a statement at the Sigatoka Police station in relation to the incident. He was taken to Sigatoka Police Station in a police vehicle around 7 in the morning.
231. D/Sgt Bari gave evidence that he was present at the briefing at Samisoni's house at which 1st accused instructed those present to make statements in connection with the Internal Affairs investigation that the handover of the two suspects was taken place at the Sigatoka Police Station.
232. Samisoni on the hand said in the later part of his evidence that Manasa was not involved in arranging the meeting in his house and Manasa was not present on that day. Prosecution says Samisoni is highly unreliable witness. You have to consider

what other witnesses said about Samisoni and the event that took place at his house to determine as to who told the truth.

6th Accused – Count 6

233. SC Apete gave evidence that after Soko passed away his team leader, 6th accused, instructed him to provide a witness statement as to what he saw. This statement was recorded by WPC Tima in the presence of the 6th accused. It was not a full account of what actually happened because 6th accused informed him to leave out certain details. A second statement recorded by WDC Taufua was also not the full truth as a result of what he was instructed by the 6th accused.
234. If you accept the evidence adduced by the Prosecution you decide whether 1st and 6th accused as superior officers influenced their subordinates to change witness statements and it was done with the intention of preventing course of justice.
235. It is up to you to decide whether you could accept the version of the Defence and that version is sufficient to establish a reasonable doubt in the prosecution case. If you accept the version of the Defence, then you must not find the accused guilty. Even if you reject the version of the Defence still the Prosecution should prove its case beyond reasonable doubt.
236. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies with the Prosecution throughout the trial, and never shifts to the accused, at any stage of the trial. The accused are not required to prove their innocence, or prove anything at all. In fact, they are presumed innocent until proven guilty.
237. Ladies and gentleman assessor it is for you to determine the case of each accused separately against each count on a consideration of all the evidence and applying the directions that I have given to you.
238. That concludes my summing up of the law and the evidence in this particular trial. We have now reached the stage where you must deliberate together and form your individual opinions on whether the charges have been proved against each accused. I

remind you that you must consider the case against each accused separately. On your return you will be asked to separately state in Court your opinion in respect of each accused whether they are guilty or not guilty of the charges with which they are charged with.

239. Would you please now retire to consider your opinions. When you have made your decisions would you please advise the Court clerk and the Court will reconvene to receive your opinions.

Your possible opinion would be as follows:

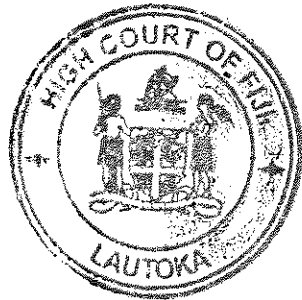
- 1st Count - 1st accused guilty or not guilty?
2nd accused guilty or not guilty?
3rd accused guilty or not guilty?
4th accused guilty or not guilty?
5th accused guilty or not guilty?
6th accused guilty or not guilty?
7th accused guilty or not guilty?
8th accused guilty or not guilty?
9th accused guilty or not guilty?
- 2nd Count - 1st accused guilty or not guilty?
2nd accused guilty or not guilty?
3rd accused guilty or not guilty?
4th accused guilty or not guilty?
5th accused guilty or not guilty?
6th accused guilty or not guilty?
7th accused guilty or not guilty?
8th accused guilty or not guilty?
9th accused guilty or not guilty?
- 3rd Count - 1st accused guilty or not guilty?
2nd accused guilty or not guilty?
3rd accused guilty or not guilty?

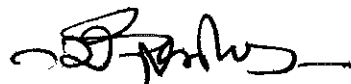
4th accused guilty or not guilty?
5th accused guilty or not guilty?
6th accused guilty or not guilty?
7th accused guilty or not guilty?
8th accused guilty or not guilty?
9th accused guilty or not guilty?

4th Count – 1st accused guilty or not guilty?
2nd accused guilty or not guilty?
3rd accused guilty or not guilty?
4th accused guilty or not guilty?
5th accused guilty or not guilty?
6th accused guilty or not guilty?
7th accused guilty or not guilty?
8th accused guilty or not guilty?
9th accused guilty or not guilty?

5th Count - 1st accused guilty or not guilty?

6th Count - 6th accused guilty or not guilty?




Arund Aluthge
Judge

AT LAUTOKA
8th November, 2016

**Counsel: Office of the Director of Public Prosecution for Prosecution
Iqbal Khan & Associates for the Accused**