

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 144 OF 2013

STATE

-v-

PRADEEP KUMAR

Counsel : Mr. J. Niudamu for the State

Mr. W. Nainima for Accused

Dates of Trial : 11th, 12th July 2016

Date of Summing Up : 13th July, 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 person.

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, 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 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.
6. You will not be asked to give reasons for your opinions, and 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 person is innocent until he is proved guilty. The burden of proving his guilt rests on the Prosecution and never shifts.
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 his guilt. If you have any reasonable doubt as to his guilt, you must find him not guilty.
9. Your decisions must be solely and exclusively upon the evidence, which you have heard in this Court and upon nothing else. You must disregard anything you might have heard or read about this case, outside of this Courtroom. Your duty is to apply the law as I explain to you to the evidence you have heard in the course of this trial. I will deal with

the law as it is applicable to the offences with which the accused-person is charged, in a short while.

10. Your duty is to find the facts based on the evidence and apply the law to those facts. Approach the evidence with detachment and objectivity. Do not get carried away by emotion.
11. 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.
12. 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.
13. An incident of rape would certainly shock the conscience and feelings of our hearts. It is quite natural given the inherent compassion and sympathy with which human-beings are blessed. You may, perhaps, have your own personal, cultural, spiritual and moral thoughts about such an incident. You may perhaps have your personal experience of such a thing, which undoubtedly would be bitter. You must not, however, be swayed away by such emotions and or emotive thinking. That is because you act as judges of facts in this case not to decide on moral or spiritual culpability of anyone but to decide on legal culpability as set down by law to which every one of us is subject to.
14. It would be understandable if one or more of you came to this trial with certain assumptions as to what constitute rape, what kind of person may be the victim of rape, what kind of person may be a rapist, or what a person who is being, or has been, raped will do or say. It is important that you should leave behind any such assumptions about the nature of the offence because experience tells the courts that there is no stereotype for a rape, or a rapist, or a victim of rape. The offence can take place in almost any circumstances between all kinds of different people who react in a variety of ways. Please

approach the case with open mind and dispassionately, putting aside any view as to what you might or might not have expected to hear, and form your opinion strictly on the evidence you have heard from the witnesses. .

15. In this case the Prosecution and the Defence have agreed on certain facts. The agreed facts are part of evidence. You should accept those agreed facts as accurate and truth. They are of course an important part of the case. The agreement of these facts has avoided the calling of number of witnesses and thereby saved a lot of time of this Court.
16. The agreed facts of this case are:
 1. That Pradeep Kumar aged 35 years Farmer of Rakiraki the Defendant in this case.
 2. That Poonam Sandhiya Lata, aged 16 years, student of Rakiraki is the Complainant in this case.
 3. That the Complainant is related to the accused person's wife, Keshni Lata.
 4. That the Complainant had been staying with Keshni Lata and her husband since 2012.
 5. That the Complainant was medically examined on 27.05.2013 at Rakiraki Hospital by Dr. Alumita Serutabua.
17. I have given a copy of the Information. There are four counts of Rape. You can refer to it.

COUNT 1

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

PRADEEP KUMAR between the 1st day of March 2013 to the 31st day of March 2013 at Rakiraki in the Western Division, penetrated the vagina of **POONAM SANDHYA LATA** with his penis, without the consent of the said **POONAM SANDHYA LATA**.

COUNT 2

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

PRADEEP KUMAR on the 26th day of May 2013 at Rakiraki in the Western Division, penetrated the vagina of **POONAM SANDHYA LATA** with his penis, without the consent of the said **POONAM SANDHYA LATA**.

COUNT 3

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

PRADEEP KUMAR on the 26th day of May 2013 at Rakiraki in the Western Division, on an occasion other than referred to in Count 2 and Count 4 of this Information, penetrated the vagina of **POONAM SANDHYA LATA** with his penis, without the consent of the said **POONAM SANDHYA LATA**.

COUNT 4

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

PRADEEP KUMAR on the 26th day of May 2013 at Rakiraki in the Western Division, on an occasion other than referred to in Count 2 and Count 3 of this Information, penetrated the vagina of **POONAM SANDHYA LATA** with his penis, without the consent of the said **POONAM SANDHYA LATA**.

18. I now turn to elements of the offence with which the accused is charged. A person rapes another person if the person has carnal knowledge with or of the other person without other person's consent.
19. Carnal knowledge is to have sexual intercourse with penetration by the penis of a man of the vagina of a woman to any extent. So, that is Rape under Section 207 (2) (a) of the Crimes Decree.
20. So, the elements of the offence of Rape in this case are that:
 - a. the Accused
 - b. penetrated the vagina of Complainant to some extent with his penis
 - c. without her consent
21. Consent as defined in Section 206 of the Crimes Decree, means the consent freely and voluntarily given by a woman with a necessary mental capacity to give such consent.
22. Documentary evidence is also important in a case. Documentary evidence is the evidence presented in the form of a document. In this case, medical report is an example if you

believe that such a record was made. You can take into account the contents of the document if you believe that contemporaneous recordings were made at the relevant time upon examination of the Complainant.

23. Expert evidence is also important. Usually, witnesses are not allowed to express opinions. They are allowed to give evidence on what they have seen, heard or felt by physical senses only. The only exception to this rule is the opinions of experts. Experts are those who are learned in a particular science, subject or a field with experience in the field. They can come as witnesses and make their opinions expressed on a particular fact to aid court to decide the issues/s before Court on the basis of their learning, skill and experience. In this case, the doctor gave evidence as an expert witness. Doctor's evidence is not accepted blindly. You will have to decide the issue of rape before you by yourself and you can make use of doctor's opinion if her reasons are convincing and acceptable to you; and, if their opinion had been reached by considering all necessary matters that you think fit. In accepting doctor's opinion, you are bound to take into account the rest of the evidence in the case.
24. Please bear in mind that history related to the doctor by the Complainant is not admissible as evidence in this case. Prosecution does not rely on the medical report as recent complaint evidence either. Therefore, just ignore what is stated under D.10 of the medical report.
25. In evaluating evidence, you should see whether the story related in evidence is probable or improbable; whether the witness is consistent in his or her own evidence or with his or her previous statements or with other witnesses who gave evidence. It does not matter whether that evidence was called for the Prosecution or for the Defence. You must apply the same tests and standards in applying them.
26. Another relevant aspect in assessing truthfulness of a witness is his or her manner of giving evidence in Court. You have seen how the witnesses' demeanor in the witness box when answering questions. How were they when they were being examined in chief, then being cross-examined and then re-examined? Were they forthright in their answers or

were they evasive? How did they conduct themselves in Court? In general, what was their demeanor in Court? But, please bear in mind that many witnesses are not used to giving evidence and may find Court environment distracting.

27. You must bear in mind that the evidence comes from human beings. They cannot have photographic or video graphic memory. The witness can be subjected to the same inherent weaknesses that you and I suffer insofar as our memory is concerned.
28. In testing the credibility of a witness, you can consider whether there is a delay in making a complaint to someone or to an authority or to police on the first available opportunity about the incident that is alleged to have occurred. If the complaint is prompt, that usually leaves no room for fabrication.
29. Bear in mind, a late complaint does not necessarily signify a false complaint, any more than an immediate complaint necessarily demonstrates a true complaint. It is a matter for you to determine whether, in this case, complaint Complainant made to police is genuine and what weight you attach to recent complaint evidence.
30. Please remember, there is no rule in Fiji for you to look for corroboration of Complainant's story to bring home an opinion of guilt in a case of sexual nature. The case can stand or fall on the testimony of Complainant, depending on how you are going to look at her evidence.
31. I will now deal with the summary of evidence in this case. In doing this I do not propose going through all the evidence. It should still be fresh in your minds. If I refer to only some aspects of a witness's evidence it does not mean that the rest is unimportant. You must weigh up and assess all the evidence in coming to your decision on this case.
32. Now I deal with the evidence of Prosecution and Defence witnesses.

Evidence of Complainant, Ms. Poonam Sandhiya Lata

33. Complainant, Poonam, (19) is now married and has a child by her marriage. In 2013, she was in Natunu, Rakiraki at accused, Pradeep Kumar's house. She was 16 years old student at that time.
34. Poonam's father passed away in 1996. Her mother was staying in Naria with another man in a *de facto* relationship. She moved to Natunu in December 2012, during a school holiday. She moved to Natunu because her brother wanted her to stay with Pradeep's family. Pradeep's wife is Poonam's cousin. Poonam's brother did not like her mother having a relationship with another man.
35. Between the 1st day of March 2013 and the 31st day of March 2013, the first incident happened. On the day of the first incident, Pradeep's wife had gone to Colasi. While Poonam was sleeping in a separate room in night, Pradeep entered her room and threatened her verbally. There was no one at home except Pradeep's small daughter who was sleeping in a separate room.
36. Pradeep told her not to tell anyone what he was going to do to her and threatened her verbally. He said if she were to tell anyone he will kill her, his wife and his kids and throw them in the jungle. After verbally threatening her, he removed her panty and inserted his erected penis into her vagina.
37. Poonam tried to shout. But he warned her not to shout. He warned that if she were to shout he'll just do what he had told her. She didn't do anything after that. He had sexual intercourse with her on that particular night for nearly 15 minutes and then left her.
38. She was bleeding. Bed sheet was soaked with blood and her vagina was paining. She could not understand what to do. She washed the bed sheet the next morning. She did not report the matter to anybody. She could not report to her mother because of the DVRO taken against her was in place. The DVRO was obtained jointly by her, Pradeep,

Pradeep's wife Keshni Lata and Poonam's brother Sumit Chand. Pradeep Kumar and Keshni Lata had advised her to file the DVRO against her mom.

39. She did not report the incident to anybody else because she feared that if she did Pradeep will kill her and his wife. There was no one to report to.
40. After the DVRO was obtained, Pradeep Kumar informed her that her mother had lodged a complaint at the Rakiraki Police Station alleging that she (complainant) was having an affair with him (Pradeep). Pradeep and his wife forced her to write a letter to the Magistrate denying the allegation. Pradeep asked her to write in the letter that he is innocent. The letter she wrote was later taken by Pradeep. This happened after the March rape incident.
41. Poonam tendered a copy of the letter dated 21st May 2013 she wrote.
42. On the 26th day of May 2013, Pradeep raped her three times. First attack took place around 4 – 5 p.m. when no one was home. First he verbally threatened her in the same way and took her to his room forcefully. Then he removed her panty and put his penis into her vagina. He had sexual intercourse for about 15 minutes. She could not do anything because he actually hurt her.
43. Then he left her and came back after one hour, around 6 p.m. He forced her to go to his bedroom. In his room, he did the same thing again. He removed her panty and penetrated her vagina. He had sexual intercourse for about 15 minutes.
44. After having dinner, she was resting. At about 9.30 p.m. Pradeep came to her room while she was asleep and started doing whatever he wanted to do. He pulled her clothes and put his penis in to her vagina for more than 10 minutes. He threatened her again and said that his wife is coming the next day and asked her not to tell anyone. He warned her that if she were to tell anyone, she will see what he will do to her. She started crying on the bed, and thought of leaving the house next day.

45. In the next morning (27), when she woke up, Poonam saw Pradeep's wife Keshni Lata had already come. She wanted to tell Keshni Lata what had happened. Poonam said that she won't stay there anymore. Then Pradeep started beating his wife causing injuries to her face. Then Poonam said 'okay I won't go'. She pretended going to school and left the house and never returned. She went straight to her mom, Sherine Lata's place in Naria.
46. Poonam's mother was home when she arrived in Naria. She hugged her mom and started crying. Her mother asked her what had happened. Then she told the whole story to her mom. Sherine Lata took her directly to the Rakiraki Police Station. Because of the DVRO, they were not supposed to talk to each other. At Rakiraki Police Station, she reported everything to police. One police officer Sharmil, took her to the hospital for the medical examination.
47. She felt bad and was afraid that Pradeep will kill her.
48. Under Cross-examination, Poonam admitted that her relationship with her mom was not good and she had to move to Pradeep's place because her mom was having an affair with another man. He was her mother's sixth or seventh partner.
49. Sherine Lata had lodged a report to Police stating that she and Pradeep were having an affair, a sexual relationship. On hearing this allegation, Pradeep and her wife took her to the Women's Crisis Centre and then to the Police Station. She told them and police that what her mother had stated to police was all false.
50. Poonam also wrote a letter to the Magistrate at Rakiraki saying that everything her mom had told police was a lie. She denied that the letter was written on her own free will. She was forced to write that letter. She did not have a phone to inform about this to her brother, Sumit. Sumit was still working in Vomo Island. Pradeep had threatened her not to tell anyone. It was also a shame to tell her brother. She finally went to her mom to Complain.

51. She admitted that the relationship between her mom and Pradeep's family was not good. She also admitted that Pradeep didn't like her staying with his family. Arguments arose with his wife and they fought each other because of her staying in that house. But she did not hate them. After fighting, they were just joking and kept her happy.
52. When questioned about the statement to police on the 27th of May 2013, Poonam said that she told police that Pradeep threatened to kill her, his wife and children. She said that Pradeep assaulted his wife twice; on the 26th as well as on the 27th. When he assaulted his wife on the 26th, she left the house and returned in the following morning. She was again assaulted on the 27th causing her to bleed.
53. She said that she could not scream whilst being raped but cried out by herself.
54. She denied making up a story because she was angry with Pradeep due to her previous experiences of having witnessed arguments with his wife not wanting her to stay in his house. Poonam also denied that she finally went to her mother and made up this story in the belief that anger for her taking a DVRO would go away, and her mother will accept her.

Evidence of Ms. Shareen Lata

55. On the 27th of May 2013, around 8.30 am, Poonam came to her house at Naria in school uniform, and started crying. She asked her what happened. Poonam informed her that she was being raped by one Robert, her brother's son in law. She was not able to keep Poonam at home because there was a DVRO against her. On the same day she took her to the Rakiraki Police Station. Police Officers wrote Poonam's statement and took her to the hospital for medical examination.
56. Under Cross-examination, she admitted that her relationship with Pradeep's family was not good prior to this alleged incident. For the past 6 years, they were not coming to each other's places.

Evidence of Dr. Alumita Serutabua

57. When she was based at Rakiraki Hospital, she examined Poonam on the 27th of May 2013, around 12.30 p.m. and made a report. Doctor gave evidence referring to the medical report PE.2. Poonam's hymen was not present. She noted a laceration of approximately 2 – 3 c.m. inside the right vaginal wall at 9 o'clock position. Clotted blood was noted on laceration. Tenderness and mild erythema noted around the laceration.
58. This kind of injury would normally be caused by forceful penetration when the vagina is dry. Laceration to be present on a *null-imperils* vaginal wall is an indication of forceful penetration. The inflammatory process indicated that injury was probably one-day old.
59. Doctor admitted, under Cross-examination, that such a laceration could also be caused by a forceful penetration by any object other than a penis. She could not confirm that it was accused's penile penetration that had caused the laceration.
60. After the Prosecution case was closed, you heard me explain accused's rights in defence and how he could remain silent and say that the Prosecution had not proved the case against him to the requisite standard or he could give evidence in which case he would be cross-examined.
61. You remember the accused elected to give evidence under oath and subject himself to cross examination although he had nothing to prove in this case. He also called his wife as a witness. You must analyze evidence called on his behalf the same way you analyze Prosecution evidence.

Case for Defence

Evidence of the Accused, Mr. Pradeep Kumar

62. Accused denied all rape allegations against him. He said that Poonam made up this story because she was angry that he didn't want her to stay with them. Poonam was always

against her mother and had even taken a DVRO against her. That was the reason he told his wife that, one day, she will also go against them. That is the reason why he didn't want her to be in his house.

63. Poonam's mother had a *de facto* partner. Poonam's brother requested his wife to keep Poonam with them. Poonam was always good with him. He was looking after her in a good way.
64. Her brother told him not to give Poonam the contact number of the guy whom Poonam later got married to. Poonam stole his phone and started talking to the guy whom she now married to. When he found out, he slapped her. She was very angry and threw the phone away.
65. On the 26th of day of May 2013, there was a wedding at his neighbour's place. The shed had been put up on his compound and people were sitting there around 3 o'clock.
66. On the 26th of May 2013 his wife Keshni, wanted to go to her family because her sister was missing. Keshni was forcing and demanding money. He had no money on that day. He just slapped her.
67. He denied that, when his wife Keshni returned home on the 27th of May, he assaulted her to the extent that she was bleeding.
68. The DVRO was taken against Poonam's mother to protect themselves. Poonam's mother had lodged a report with police alleging that there was a sexual relationship between him and Poonam. This happened way before these rape allegations occurred. At the Police Station, Poonam informed police that the allegation was false. Matter ended up there. He did not force Poonam to go and say that everything was false.
69. His relationship with Poonam's mother was not good. She didn't like them because there was a fight amongst Poonam's mother and his wife over a land dispute. He is Poonam's

mother's brother's son-in-law. Poonam's mother was leveling allegations against him because his wife had asked her to leave the house she was then occupying.

70. Under cross examination, accused denied threatening Poonam to write a letter to the Magistrate. He admitted that it was he who gave the letter to the legal Aid Counsel. He also admitted that he slapped his wife on the 26th but denied having punched her on the 27th May 2013. He also denied that his wife left for her parent's house after the slapping incident.
71. He also said that his wife was also attending the neighbor's wedding on the 26th May, 2013.

Keshni Lata's evidence

72. Defence called Accused's wife Keshni Lata to give evidence. She said that she was home right throughout in March 2013 and no such incident ever happened at her house. Then she said, in the night, she used to be at home and during the day time she went to work as a house girl in Rakiraki Town area.
73. Keshni said that Poonam had made up the allegation against her husband because she knew that he did not like her to be with them. She left the house for her family's place Colasi after the slapping incident and returned back on the following afternoon. She was not home to attend the neighbor's wedding on the 26th. She denied that she was assaulted on the 27th on her arrival at home.
74. Keshni said that Poonam's mother was not on good terms with them after she was asked to leave her house in 2006. That is the reason she made up this allegation against her husband.
75. Keshni said that Poonam herself gave the letter she wrote to the Legal Aid Commission. Then she said she gave it to her husband and he gave it to his Legal Aid counsel.

76. Under cross examination, she denied having told police in her statement on 28th May, 2013 that, sometimes in March 2013, she was staying for a week at Colasi working for one Nadan while Poonam was at home with her mother-in-law and children.
77. That was the case for the Defence.

ANALYSIS

78. In this case, identity of the accused is not disputed. Prosecution says that accused penetrated Complainant's vagina on four occasions without her consent. It is alleged that the first incident occurred between 1st March 2013 and 31st March, 2103 and the 2nd 3rd and 4th on the 26th May, 2013. Accused denies the allegation. He says that allegation against him was made up by the Complainant and her mother Shereen Lata.
79. The Prosecution called the Complainant, her mother Shereen Lata and a doctor Alumita to prove the charges. Prosecution based its case substantially on the evidence of the Complainant. It also relies on the medical evidence and recent complaint evidence.
80. First, you have to be satisfied that the evidence Complainant gave is truthful and believable. If you are satisfied that the evidence she gave in court is truthful and believable then you can safely act upon her evidence in coming to your conclusion.
81. Please remember, there is no rule for you to look for corroboration of Complainant's story to bring home an opinion of guilt in a case of sexual nature. The case can stand or fall on the testimony of Complainant alone depending on how you are going to look at her evidence. You may, however, consider whether there are items of evidence to support the complainant's evidence if you think that it is safe to look for such supporting evidence.
82. In evaluating Complainant's evidence, you consider whether what she was talking about in her evidence is probable in the circumstances of this case.

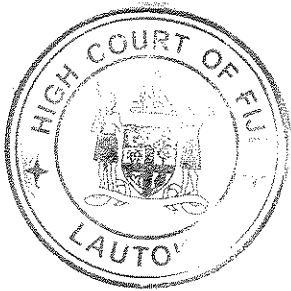
83. Alleged first incident took place in March, 2013. Complainant did not inform the incident to anybody until she informed her mother on the 27th May, 2013. She gave a statement to police thereafter on the same day.
84. Contention of the Defence is that she did not report what had happened to her as soon as possible makes it less likely that the complaint she eventually made was true.
85. You heard what Poonam had to say about it. You have to see whether she had given an acceptable and legitimate explanation for her failure to complain at the first available opportunity.
86. Apart from the explanations she had given, you may consider the general direction I give with regard to late complaints by rape victims, and see whether it is probable for her in all the circumstances of this case to complain at the earliest opportunity.
87. It would be wrong to assume that every person who has been the victim of a rape will report it as soon as possible. The experience of the Courts is that victims of sexual offences can react to the trauma in different ways. Some, in distress or anger, may complain to the first person they see. Others would react with shame, or fear or shock or confusion, do not complain or go to Police or any other authority for some time. It takes a while for self confidence to re-assert itself. There is, in other words no classic or typical response.
88. A late complaint does not necessarily signify a false complaint, any more than an immediate complaint necessarily demonstrates a true complain. It's a matter for you to determine whether, in the case of this particular Complainant, the lateness of the complaint, such as it is, assist you at all and, if so, what weight you attach to it. You need to consider what the Complainant herself said about her experience and her reaction to it.

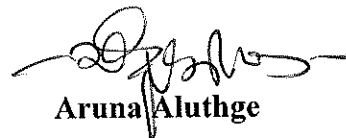
89. You have to consider whether Complainant was telling a story on the same lines without variations and contradictions and whether she is shown to have given a different version elsewhere.
90. Prosecution says that the complaint she made on the 27th of May, 2013 to her mother and thereafter to police soon after the alleged second incidents strengthened the consistency of the version of Prosecution. Poonam had told her mother and police that she was raped by the accused. Her mother gave evidence and said she received the complaint from Poonam on the 27th May, 2013.
91. There is no dispute that Poonam had made a complaint to police on the 27th. Defence Counsel, however, highlighted certain inconsistencies in her previous statement to police with her evidence in court. You consider if alleged contradictions or omissions are material enough so as to discredit her.
92. Please remember, what she had told police is not evidence. You can consider her previous statements only to test the consistency and credibility of her evidence. It is up to you to decide what weight you should give to recent complaint evidence adduced by the Prosecution.
93. You heard what doctor had to say about the medical examination conducted on the Complainant soon after the incident. You decide what weight you should attaché to her evidence.
94. Complainant had not screamed. She said she only cried. You might wonder why she did not scream or yell if she was taken forcibly and raped without her consent. Her explanation was that she was threatened not to shout. According to her evidence, no one was present at the time of the incidents. I must emphasize that the assessment is for you to make. However, it is of paramount importance that you do not bring to that assessment any preconceived views or stereotypes as to how a victim in a trial such as this should react to the experience. Any person who has been raped, will have undergone trauma

whether the accused were known to her or not. It is impossible to predict how that individual will react, either in the days following, or when speaking publically about it in Court or at the Police Station. The experience of the Courts is that those who have been victims of rape react differently to the task of speaking about it in evidence.

95. You also consider if the Complainant had any motive to make up a case against the accused who is his close relative and guardian. You heard what accused and his wife had to say about this. You see if their evidence is consistent and believable.
96. You watched Complainant giving evidence in court. What was her demeanor like? How she reacts to being cross examined and re-examined? Was she evasive? How she conducted herself generally in Court? It is up to you to decide whether you could accept her version.
97. You consider whether version of the Defence had been adequately put to the prosecution witnesses when they were in the witness box and whether Defence had maintained the consistency of their version right throughout the trial or whether they had come up with new evidence in the defence case.
98. You should also consider if the version of the accused is consistent with his wife's evidence or they contradicted each other. The witness called by the defence is the wife of the accused. It up to you to decide whether she is an independent witness and what weight you should give to her evidence.
99. You should consider the version of the Defence and evaluate the evidence in the same way you evaluate the evidence of the Prosecution and consider whether the version of the Defence is consistent and believable. You watched accused and witness called on his behalf giving evidence in court. It is up to you to decide whether you could accept the version of the Defence and whether it is sufficient to establish a reasonable doubt in the prosecution case.

100. If you accept the version of the Defence you must find the accused not guilty. Even if you reject the version of the Defence and do not believe a single word accused and his witness told in Court, still the Prosecution should prove its case beyond reasonable doubt.
101. 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 is not required to prove his innocence, or prove anything at all. In fact, he is presumed innocent until proven guilty.
102. If you accept the Prosecutions' version of events, and you are satisfied that the Prosecution has proved the case beyond reasonable doubt, so that you are sure of accused's guilt you must find him guilty of the charges.
103. You may now retire to deliberate the case, and once you have reached your decisions, you may inform our clerks so that we could reconvene to receive the same.
104. Any re-directions?




Aruna Aluthge
Judge

AT LAUTOKA

13th July, 2016

Solicitors for State:

Office of the Director of Public Prosecution for State

Solicitors for Accused:

Office of the Legal Aid Commission for Accused