

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 184 OF 2013

STATE

-v-

FUATIA MONISE

Counsel: Ms. R. Uce for State
Accused in Person

Dates of Hearing : 30th, 31st of August, 2016
Date of Summing Up : 1st of September, 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 Accused 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 it to you to the evidence you have heard in the course of this trial.

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. 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 a witness gives evidence. Was he/she evasive? How did he/she stand up to cross examination? You are to ask yourselves, was the witness honest and reliable.
13. Incidents of sexual assaults 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 incidents. 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. 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.
15. The agreed facts of this case are:

- I. It is agreed that FUATIA MONISE is the Defendant in this case.
 - II. It is agreed that OLIVIA DRAUNA is the Complainant in this case.
 - III. Between the 1st of January 2012 and the 31st of January 2012, the defendant together with the complainant and her mother were at Grand Melanesian Hotel in Nadi.
 - IV. Between the 1st of February 2012 and the 28th of February 2012, the complainant, her mother and the defendant had been living in the same house.
 - V. The defendant was arrested on the 6th of September 2013 after he had surrendered himself.
 - VI. The defendant was interviewed and also charged by the police after he was arrested.
16. The counts against the Accused as per the amended Information are as follows:

Count 1
Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Decree, 2009.

Particulars of Offence

FUATIA MONISE, on the 22nd day of October 2010, at Lautoka in the Western Division, unlawfully and indecently used his hand to touch the breasts of **OLIVIA DRAUNA**.

Count 2
Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Decree, 2009.

Particulars of Offence

FUATIA MONISE, on the 22nd day of October 2010, at Lautoka in the Western Division, unlawfully and indecently used his hand to touch the vagina of **OLIVIA DRAUNA**.

Count 3
Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Decree, 2009.

Particulars of Offence

FUATIA MONISE, on the 02st day of January 2012 and the 31st day of January 2012, at Nadi in the Western Division, unlawfully and indecently assaulted **OLIVIA DRAUNA**.

Count 4

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (a) of the Crimes Decree, 2009.

Particulars of Offence

FUATIA MONISE, on the 01st day of February 2012 and the 28th day of February 2012 at Lautoka in the Western Division, inserted his penis into the vagina of **OLIVIA DRAUNA**, without her consent.

17. Accused is charged with the offence of Indecent Assault on the 1st, 2nd and 3rd Counts. I will now deal with the elements of the offence of Indecent Assault. The offence of Indecent Assault is defined under Section 212 of the Crimes Decree:
- Accordingly, a person commits the offence of Indecent Assault if he
- (b). Unlawfully and indecently,
 - (c). Assaults another person.
18. For the assault to be indecent it must be accompanied by a circumstance of indecency. A conduct is unlawful when it is done without a lawful excuse. A conduct is indecent when it is as such that ordinary people would so describe it, in light of prevailing standards of morality and, more specifically, in light of whether the victim has consented to the conduct in question. However, Prosecution is under no burden to prove that the particular assault took place without the consent of the victim so long as it constitutes an unlawful and indecent act.
19. In this case, the Complainant said she was only 15 years old at the time of the 1st incident. It is no defence for the Accused to prove that he did the particular act with her consent as she was under 16 years at the time of the 1st incident.

20. The 3rd count is a representative count. In that, Prosecution alleges that the assault took place more than one occasion during the period mentioned in the information.
21. I will now deal with the elements of the offence of Rape which is the 4th count in this case. A person rapes another person if the person has carnal knowledge with or of the other person without other person's consent.
22. 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.
23. 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.
24. 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.
25. 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.
26. Proof can be established only through evidence. Evidence can be from direct evidence that 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 complainant was a witness who offered direct evidence, if you believe her as to what she saw, heard and felt.

27. You must bear in mind that the evidence comes from human beings. They cannot have photographic or video graphic memory. A 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 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 the complaint.
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.

I will now deal with the summary of evidence in this case.

Case for the Prosecution

Evidence of Olivia Michelle Drauna (The Complainant)

31. Complainant Olivia had been residing in Simla, Lautoka with her mother and brother. Her house was a small one with just one room.
32. Her mother worked at Sofitel, Denarau. Accused, Fuatia Monise, was in a *de-facto* relationship with her mother.

33. Complainant said that she was sexually assaulted and raped during her stay in Simla.
34. First incident occurred at her home in Simla in 2010 when she was 15 years old and attending Natabua High School. At that time Accused was not living with them.
35. On that particular day, Complainant's mother was at work. Complainant was alone at home. Accused came in night to visit her when she was lying on top of the bunk. He came and touched her breast and private area and asked 'if he could enter her'. She said 'no'. Then, he just walked away.
36. It was Accused's first attempt. He made several attempts later. The next incident happened on 22nd, October 2011 in the wedding night of her namesake/cousin. In this particular night, she was home and her mother was attending the wedding in Votualevu, Nadi. She was sleeping on her bunk. The bottom bunk is a double bed. Monise stood on the bottom bunk and touched her breast and private area. He again asked her if he could 'enter her'. She told him to think about his children because he had children younger than her. Then he stopped. Nothing else happened that day.
37. Complainant felt insecure and unsafe in her own home. She did not tell anyone about this incident because her dad had recently passed away in 2010 and after that her mother was depressed. She also thought how that incident would make her look in front of others and the community. After this incident, she was sitting on her bed awaiting her mother. Mother arrived around 11p.m. She didn't tell her mother what had just transpired. She was also scared of the Accused because he was living with them.
38. Accused's next attempt was in January, 2012. They were staying together in a hotel in Namaka, Nadi. Her mom got drunk and was in the swimming pool. Complainant was in a room upstairs. Accused came up to the room to get something. She was sleeping on the bed. He woke her up. She just turned her back to him. Then he reached over and touched her private area and breasts and asked her the same thing. He asked her if he could 'enter

her'. She yelled at him. He stopped and went back down to bring her mother up to the room because she was drunk.

39. Complainant's mother had come to the room and gone to the bathroom. He again asked her if he could 'enter her' quickly. Her mother peeped out of the bathroom and saw Accused touching her private area. Her mother got angry on him for doing that. She was angry on her too. Her mother thought she was letting it happen and thought it was her fault. But he apologized to her mother. Her mother was okay with it. This incident happened around 4 a.m.
40. She told her mother of what had transpired earlier. Her mother just brushed it off and got angry on her and said it was her fault.
41. The next incident happened in February 2012. Complainant's mother had gone to work. Complainant was alone at home in Simla. Accused came around 9 pm. up to the top bunk where she was sleeping and held her down. He held her hands and knelt on the bunk to hold her thighs apart. She was wearing a *sulu vakatoga* and a t-shirt. He pulled down her underwear and inserted his penis into her vagina. She tried to scream but he punched her thigh. Then he told her to think about her mother and her depression if she wanted her mother to be happy.
42. Whilst they were in the process of sexual intercourse, Accused heard a car on the road. He stopped and jumped down from the bunk. Her mother had arrived. When her mother came into the house she called the Complainant. But Complainant pretended to be asleep because she didn't want to face her mother. She did not confide with her mother because she knew the way her mother had reacted to the previous incident in the hotel. Complainant was angry with her mother, so she kept quiet.
43. Her mother had dinner and went off to sleep. When she went to the toilet, she saw blood stains on her underwear.

44. Complainant did not inform anyone about this incident until she informed it to her sister-in-law Asena Drauna in May 2012. Asena Drauna advised her to report the matter. Complainant was too scared because Accused was still living with them.
45. Complainant then shared this information with her cousin (namesake), Olivia Tavakai. Tavakai encouraged Complainant to report the matter to police. Complainant begged her not to report because she was still in high school and was worried about how people will look at her. She was also worried that Accused was staying with her mother and her mother was still angry with her for what had happened. She eventually reported the matter to police in July 2013.
46. When Accused touched her body she was wearing clothes. Touching took place over her clothes.
47. Under Cross Examination, Complainant admitted that her mother started the *de facto* relationship with the Accused in November 2011 and that her namesake's wedding took place on the 22nd of October, 2011. She said that Police had written the date wrongly.
48. Complainant also admitted that her namesake/cousin encouraged her to report the matter to police. She told her cousin what had happened. Then her cousin told the Police. Complainant didn't want to report it because she was worried of how people will look at her. Eventually she did report it anyway because she knew it was the right thing to do.
49. Complainant agreed with the Accused that reconciliation after the hotel incident took place not in Melanesian Hotel but at the Marine drive. When they talked it over Accused apologized to her mother and requested to move out of the house but her mother didn't want him to move out. Her mother said it was okay. She just agreed her mother's proposal. She was worried more about her mom's happiness and about the people who will look at her.

50. Complainant denied that everything from the first incident to the last incident happened with her consent. She said that she was a minor of 15 and when he touched, she told him not to do it. It was his will.
51. She said that what is contained in her statement to police is correct apart from the date of the wedding night.
52. Complainant did not deny that she may have relayed the matter to her sister-in-law between 2010 and 2011 and not in May 2012. She was not quite sure of the dates she relayed the matter to her sister-in-law and her cousin/namesake. Complainant did not dispute the statement of her cousin to police that she (Complainant) had revealed this matter to her in 6th of June 2013.
53. Complainant explained why an incident happened in 2012 came to light as late as 11th of July 2013. She was staying with her mother and Accused was staying around at home. She was scared of the Accused and even worried about her mom's happiness. She was also in high school so she was worried about how people look at her specially in school and in the community.
54. Complainant also explained what made her change her mind in 2013 to report the matter. Her namesake/cousin encouraged her to report it. Eventually, she thought it was the right thing to do. By that time, she didn't really care what people think. Her namesake even assured her that the report will be confidential. With that assurance, her namesake pushed her to report the matter to Police.
55. Under re-examination, Complainant said that she did not recall the exact dates she relayed the matter to her cousin or the police because the incidents had happened a long time ago, when she was still schooling.

Evidence of Olivia Tavakai

56. Witness Tavakai testified of what her namesake (Complainant) had shared with her. Complainant had shared the information as to how she was sexually assaulted and raped by her mother's partner. Complainant informed these incidents when the witness visited her at her Simla house sometime in 2013. By that time, Complainant was in Form 6. Complainant informed the witness how her mother's partner would forcefully have sex with her on four occasions. He had tried 3 times to sexually assault her by trying to push himself over her and, in one incident, he punched her thighs trying to get her pants off. One incident had happened on her wedding day, on 22nd October 2011 when her mother had come over to attend the wedding.
57. The witness explained to us in detail what the Complainant had informed her about the incidents.
58. The witness described what had prompted the Complainant to relay the information to her. In that particular afternoon she had a clinic at the hospital and had gone to visit the Complainant. Complainant was alone at home. Complainant said that she wanted to share something confidential with her. Complainant just opened up and shared what was going on. When the witness asked her if her mother knew about the previous incidents, she said 'yes'. But they had done some kind of reconciliation. At that time Complainant was in high school and was embarrassed to go out reporting.
59. The witness explained to the Complainant that it was okay for her to report and that there was nothing wrong with it because the harm was done to her. But the Complainant cried begging her not to say anything else because she was more worried about her mother who had just lost her husband.
60. When the Complainant told this, witness asked her to stand up and go down to the police station. Witness wanted the matter reported regardless of the reconciliation they had done. But the Complainant begged her not to report because she was doing her exams;

she was in Form 6; she was frightened because she lived in her mother's house and was already having some issues with her mother.

61. The witness returned back to Nadi and kept on calling the Complainant asking her what she was going to do about it. She said she was going to think hard about it. One day, Complainant had come to her dad's house sometimes in 2013. She talked and discussed about it. Complainant eventually agreed to go to police. She accompanied the Complainant to the police station where both of them relayed the story.
62. Under cross examination, witness admitted that she did not see anything and her evidence was based on what she gathered or what she was told by the Complainant.
63. The witness denied that she was lying when the Accused suggested that her evidence is contradictory to Complainant's evidence.
64. That was the case for Prosecution. You heard me explain to the Accused what his rights were 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.
65. You are aware that the Accused elected to give evidence and call witnesses on his behalf. That is his right. Now I must tell you that the fact that Accused adduced evidence in his defence does not relieve the Prosecution of its burden to prove the case beyond reasonable doubt. Burden of proof remains with the Prosecution throughout.

Case for Defence

Evidence of Fuatia Monise (The Accused)

66. Accused said that everything that transpired in evidence with regard to the allegation was all through Complainant's consent. He had written that in his statement and in his

interview. He said that he disagreed with Complainant's evidence. Before he wanted something from her, he did ask for her consent first.

67. Accused disagreed with the Complainant that she was scared of him. Even in the middle of the night if he happened to go down to town, she always came and asked if she could accompany him. He always asked her to go and ask from her mother first. He moved out from her place in 2012. If Complainant was really scared of him she could have reported the matter when he shifted out from her place. Instead, she kept on coming to his place alone.
68. So many times he had shifted out of their house and gone to stay with his cousin sister. Still they kept on coming and persuaded him to come back.
69. One day, Complainant had come to his place when he was still at work and only his daughter was home. Complainant had come to see if she could spend the weekend at his place. His daughter did not allow her to come inside the house. Then she had left.
70. She came to his place more than one occasion. On one occasion, she came after the Sunday church service, complaining of a headache. He gave her his bed and room for her to rest.
71. Also in November 2012, Complainant came to his house. During that time his wife had come home to see the daughter as she was sitting for her Form 7 exam. His wife had a fight with the Complainant and his wife had chased her away from there.
72. In April or March, 2013 he reconciled and moved back with his wife. When Complainant heard that he had moved back to his family she knew that she couldn't come and visit him again. Then she reported the matter to the Police.

73. Under cross examination, Accused admitted that he became involved with the Complainant's mother, Navina, and moved to her place in Simla sometimes in November 2010.
74. Accused said that, before he eventually moved to Complainant's house, he had not visited her place. Then he said he had gone there a few times but not occasionally.
75. Accused denied that he had visited Complainant's place when she was alone before he moved in there. On the wedding day, Complainant's mother had called him to come and stay and babysit her daughter because she's leaving for the wedding. He wouldn't go there by himself before he moved in.
76. Accused admitted that he had visited the Complainant's house before the wedding day and touched her breast and private part with her consent but he was not sure about the date.
77. Accused then admitted that, before the wedding day, 22nd October, 2011, he had already been living with the Complainant and her mother.
78. Accused admitted having touched Complainant's breast and private area only once that is with her consent. He was not sure whether it happened on the wedding day or not.
79. Accused also admitted that, in January 2012, he touched Complainant's breast and her private part with her consent when they were staying in a hotel in Nadi. He also admitted that he had a confrontation with Complainant's mother when she saw him touching the Complainant.
80. Accused also admitted that, in February 2012, when Complainant's mother was not home, he climbed up the bunk and inserted his penis into Complainant's vagina. But he denied that he removed her *sulu* and panty and that he forcefully penetrated her.

81. Accused also admitted that, whilst putting his penis into her vagina, he heard a taxi and quickly came down from the bunk and checked outside. Accused, however, denied having punched the Complainant.
82. Accused denied that he made up a story that Complainant visited him several times at his place and she had a fight with his wife.

Evidence of Susana Monise

83. Witness Susana is the wife of the Accused. In 2012, her two daughters were living with their father in a rented flat in Lautoka. In, July 2012, on a Friday, she was waiting at home for her two daughters to come for a stay in the weekend. By 6.30 pm daughters had not arrived so she called her husband and inquired about the girls. Then she went to pick the two girls by herself because the husband was late. When she reached there, her elder daughter told her that Olivia Drauna had just left. Olivia had come to see if she could spend the weekend with them.
84. In the first week of November, 2012, she went to her husband's place to give her daughter's breakfast as she was sitting for the exam. To her surprise, she met Olivia there. Then she asked her what she was doing there. Olivia told her 'your husband has left you who are you to be there? She asked Olivia to leave the compound. As she refused, the landlord came and told her to leave the premises.
85. Witness also said that, in 2010, this same Olivia had an affair with her eldest son.
86. Under cross examination, she admitted that, in November, 2010, her husband had left her and became involved with the complainant's mother and he then moved to complainant's house to live with the complainant's mother.
87. They had been separated for a few months. When these incidents happened her husband was there with Olivia's mother.

88. Witness then agreed that, from November 2010 up until April or May 2012, her husband had been living in Olivia's residence.
89. Under cross examination, she denied that her evidence that Olivia visited her husband's house and had a fight with her was made up.

Evidence of Selepa Monise

90. Witness Selepa is a daughter of the Accused. On a Friday in 2012, she was at home after school. It was round 7.00 pm that Olive came home that night. Olivia inquired about her dad and sought permission to stay the weekend over with them. She refused her request saying that her mom would be coming over that afternoon to pick them up. After a while she was heading back home. Just after 10 or 15 minutes, her mom arrived. She honestly told her mom about Olivia
91. That is the case for the Defence.

Analysis

92. There is no dispute in this case with regard to the identity of the Accused. It is admitted that the Accused is Complainant's mother's former *de facto* partner.
93. The Prosecution based its case substantially on the evidence of the Complainant. Prosecution says that, on four occasions, the Accused unlawfully touched the Complainant's breasts and private area. It also alleges on the 4th count that Accused penetrated the Complainant's vagina with his penis without her consent. Accused does not deny that he was engaged in those conducts. He says that all those incidents took place with the consent of the Complainant. Accused further says that allegations were made up by the Complainant after he reconciled with his wife.

94. 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 trustworthy you can safely act upon her evidence in coming to your conclusion.
95. If you are satisfied that Complainant told the truth and her evidence is believable, then you have to consider whether the Prosecution had discharged its burden and proved, each element of counts 1 to 4, in the Information. You have to consider each charge separately. If you find the Accused guilty of one count it does not mean that he is automatically guilty of other counts too.
96. In evaluating Complainant's evidence, you consider whether what she was talking about in her evidence is probable and believable in all the circumstances of the case.
97. First alleged incident occurred in 2011 and the last alleged rape incident occurred in February 2013. These incidents were reported to police on 11th July 2013. Accused says that the fact that Complainant did not report what had happened as soon as possible makes it less likely that the complaint she eventually made to police was true.
98. You have to see whether Complainant had given an acceptable and legitimate explanation for not complaining at the first available opportunity. Complainant said that she thought about her depressed mother's condition and did not want to hurt her mother's feelings; that she was scared of the accused as he was around; that she was still schooling and concerned about how people would look at her.
99. Complainant had informed her cousin Olivia Tavakai about the alleged incidents sometime in June 2013. Olivia Tavakai gave evidence and said that she received the information from the complainant in 2013 and that she encouraged the Complainant to go to police.
100. Accused says Complainant made up this case against him after he reconciled with his wife in 2013. He also says if he had forcefully done those acts, Complainant had ample

opportunity and could have gone to police much earlier when he had moved out of her place.

101. You decide what weight you attach to the evidence of the Prosecution and the Defence.
102. It would be wrong to assume that every person who has been the victim of a sexual assault 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. 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, assists 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.
103. You 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.
104. Accused says that Complainant's evidence is not consistent with her statement to police. You consider whether there is a contradiction between her statement to police and her evidence in court and, if that is so, the contradiction is material so as to affect the credibility of her evidence.
105. Please remember, what the Complainant told police is not evidence. However, you can use her previous statement to police to test the consistency and credibility of her evidence.
106. Accused also says that her evidence is not consistent with that of her cousin Olivia Tavakai. Please remember, Tavakai talked about what she had heard from the

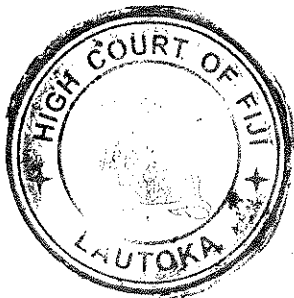
Complainant. Her evidence is admissible only to test the consistency and credibility of the Complainant's evidence.

107. You watched Complainant giving evidence in court. But, please bear in mind that many witnesses are not used to giving evidence and may find Court environment distracting. 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.
108. Accused took up the position that the whole story was made up by the Complainant. Complainant completely denied having made up a story. You consider whether the complaint is honestly made and what weight you attach to the version of the Defence.
109. If you accept the evidence presented by the Prosecution, you must also be satisfied that each element of each count had been proved beyond reasonable doubt.
110. Complainant said that Accused touched (over the clothes) her breasts and private part on four occasions. If you are satisfied that the complainant told the truth, then you decide whether touching of a girl's private part and breasts constitutes an indecent assault. She also said that Accused having pulled her panty forcefully penetrated his penis into her vagina. If you are satisfied that Accused penetrated her vagina with his penis without her consent, then you can find Accused guilty of Rape.
111. 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.


112. 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 of each charge you must find him guilty of each charge. Please treat each charge separately.
113. If you do not accept the Prosecutions' version of events, and you are not satisfied beyond reasonable doubt, so that you are not sure of the Accused's guilt, you must find him not guilty as charged.
114. Your possible opinions are as follows:
- (i) First count of Indecent Assault Accused 'Guilty' or 'Not Guilty'?
 - (ii) Second count of Indecent Assault Accused 'Guilty' or 'Not Guilty'?
 - (iii) Third count of Indecent Assault Accused 'Guilty' or 'Not Guilty'?
 - (iv) Fourth Count of Rape Accused 'Guilty or not Guilty'?
115. You may now retire to deliberate on the case, and once you have reached your decisions, you may inform our clerks, so that we could reconvene, to receive the same.

Any re-directions?



AT LAUTOKA

On 1st September, 2016


Aruna Aluthge
Judge

**Solicitors: Office of the Director of Public Prosecution for State
Accused in Person**