

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 01 of 2015

STATE

V

ADONI TUVUKI

Counsels: Ms. A. Vavadakua for the State

Mr. A. Paka with Ms. S. Devi (L.A.C.) for the Accused

Date of Trial : 21 September 2016

Date of Summing Up : 22 September 2016

SUMMING UP

[1] Ladies and Sir Assessors. It is now my duty to sum up to you. In doing so, I will direct you on matters of law which you must accept and act on. You must apply the law as I direct you in this case.

[2] As far as the facts of this case are concerned, what evidence to accept, what weight to put on certain evidence, which witnesses are reliable, these are matters entirely for you to decide for yourselves. So if I express any opinion on the facts, or if I

appear to do so it is entirely a matter for you whether you accept what I say or form your own opinions. In other words you are masters and the judges of facts.

- [3] Counsel for the prosecution and the defence have made submissions to you about how you should find the facts of this case. They have the right to make these comments because it is part of their duties as counsel. However you are not bound by what counsel for either side has told you about the facts of the case. If you think that their comments appeal to your common sense and judgment, you may use them as you think fit. You are the representatives of the community in this trial and it is for you to decide which version of the evidence to accept or reject.
- [4] You will not be asked to give reasons for your opinions, but merely your opinions themselves, and you need not be unanimous although it would be desirable if you could agree on them. Your opinions are not binding on me and I can assure you that I will give them great weight when I come to deliver my judgment.
- [5] On the issue of proof, I must direct you as a matter of law that the onus or burden of proof lies on the prosecution to prove the case against the accused. The burden remains on the prosecution throughout the trial and never shifts. There is no obligation upon the accused to prove his innocence. Under our system of criminal justice an accused person is presumed to be innocent until he or she is proved guilty.
- [6] The standard of proof is one of proof beyond reasonable doubt. This means that before you can find the accused guilty of the offence charged, you must be satisfied so that you are sure of

his guilt. If you have a reasonable doubt about the guilt of the accused, then it is your duty to express an opinion that the accused is not guilty. It is only if you are satisfied so that you feel sure of the guilt of the accused that you can express an opinion that he is guilty.

[7] Your opinions must be based only on the evidence you have heard in the courtroom and upon nothing else.

[8] The accused faces one charge of rape. In our law and for the purposes of this trial, rape is committed when a person penetrates the vagina of another and where the person doing that does not have the consent of the victim or is reckless to whether she was consenting or not. You must be sure that it was indeed this accused, who penetrated Vilimaina and that she was not willing for this to happen. It can also be a factor that her will is taken away from her by somebody in authority over her; that can then be regarded as lack of consent. I do not think you will have any difficulty with consent in this case, because Adoni is not saying that she consented but that it didn't happen at all.

[9] He is also charged with one count of indecent assault. In law and for the purposes of this case indecent assault is an assault on another which the average person would consider morally reprehensible. So if you believe one or either of the girls that he fondled her breasts without her consent then I am sure that you will have little trouble in finding that that is an indecent assault.

[10] I turn now to the evidence which you only heard yesterday and will be fresh in your minds. I will be brief but it is my judicial duty to sum up the evidence for you. There was a lot of evidence

in this case that was irrelevant so I am going to remind you of the important evidence. If you think I haven't mentioned something that you think is important then you will give it the weight you think it deserves. Remember that you are masters of the facts.

- [11] Vilimaina was the first witness. She was a boarder at Duavata School in November 2013 where the accused was one of the cooks. She told us that she went one evening to the accused's rooms to visit his daughter Paulini. Paulini wasn't there but the accused was and he pulled her into his room, made her lie on the bed, took off her clothes and lay on top of her. He was pinning her hands down with his hands. She tried to stand up but he scolded her and told her to lie down. She was afraid. He took his own clothes off and inserted his penis into her vagina. He told her not to tell anybody. She told one of the teachers at school about it the next day.
- [12] Melania told us that she was a boarder at the Duavata School in November 2013. The accused was one of the cooks. On the 18th November, the accused who was also acting as the handyman, came to the dormitory to check the lanterns that were running out of kerosene. She told him she was hungry and he said he had some rice and a bun in the kitchen. He told her to go alone. She went but her friend Alumita followed them. When she was retrieving the bun from the kitchen window, he pulled her inside and kissed her. He fondled her breasts. She was afraid. Alumita was hiding outside waiting for her. She later reported the matter to the Head Girl Vasiti.
- [13] The feisty third girl Luisa was also a boarder at the school.

- [14] She and a few other girls were sent to clean Mr. Kele's house. Mr. Kele was the Assistant Head Teacher. In the course of the cleaning, Mr. Kele asked Luisa to go to the accused's rooms and get the pliers. She went and he was there with his wife. The accused told his wife to hurry up and go and serve the lunch for the students. When the wife had left the accused stood up and pushing her down onto the bed fondled her breasts. Luisa was shocked because he is her Uncle. He got the pliers and gave them to her with a bun and told her not to tell anybody because he will give her money. She said she will never forget that episode and she is still afraid.
- [15] That was the end of the prosecution case and you heard me explain to the accused what his rights are in defence. He could give evidence and say that the State had not proved the case beyond reasonable doubt or he could give sworn evidence from the witness stand. In either case he was entitled to call witnesses. You must consider his evidence in the normal way and give it the weight that you think fit. If you don't believe him it doesn't necessarily make him guilty. The prosecution must still prove to you so that you are sure that he committed the crimes. But if you think that he is telling the truth or might be telling the truth then you will find that person not guilty.
- [16] Adoni Tuvuki told us that he is 66 years old and that he had worked at Duavata School for about 7 years as a cook with his wife. He had one daughter who lived in the cooks quarters with them along with Maciu and Vitoga. The primary children are all related to him and they used to come and be around him and he would hug them and kiss them. He is very close to Vilimaina and he didn't take her clothes off, his clothes off or rape her. He couldn't do that to her.

- [17] He is also related to Melania. They had been together a long time and he would hug her and kiss her on the cheek. He never touched her breasts. His wife was in the kitchen but Melania could not see that.
- [18] Luisa is his niece. He never pushed her on the bed. He couldn't find the pliers and he left the room and she followed. He disagrees with her allegations.
- [19] The accused called two character witnesses; the young man Maciu who lived with him at Duavatu for a little while and Losani, his niece. They both said that he is a kind and generous man who loves children and is frequently hugging them. He treated everybody like a father would.
- [20] Well Ladies and Sir, that is all I wish to say about the evidence. It is now time for you to retire and consider your opinions. Please let a Member of my staff know when you are ready and I will reconvene the Court. Your possible opinions are "guilty" or "not guilty" on each count.
- [21] Just before you leave I will ask counsel if they wish me to add anything or change anything in the Summing Up.

[22] Counsel?



P. K. Madigan

Judge

At Labasa

22 September 2016

