

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**Criminal Case No.: HAC 214 of 2013**

**STATE**

vs.

**VIJAY PRASAD**

**Counsel** : Mr. J. Niudamu for the State  
Mr. S. F. Koya for the Accused

**Dates of Trial** : 24 & 25 January, 2017

**Date of Summing Up** : 26 January, 2017

---

**SUMMING UP**

---

1. Madame and Gentlemen 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. In this regard I would ask you to put aside Mr. Koya's references to lack of medical evidence and lack of evidence from Navneeta's neighbours. We have no idea if that would help us or not.
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.

9. This has been a very brief case and I am sure that the evidence is still fresh in your minds. However it is my duty to remind you of the main points of it.
10. The first witness, Navneeta, told us that on a day in May 2012, when she was alone in the house, the accused came to the house at about 8 to 8,30pm. He came she said to buy chicken meal. He came into the house, and told her to turn the lights off. She did that on which he pushed her and raped her. He threatened her by saying he would kill her. She said she didn't want to be raped. He told her to take off her clothes and he took his off. She described the "rape" after much questioning as him putting his penis into her vagina for about 2 to 3 minutes. He then told her not to tell anybody or he would kill her. He then left. He had held her down by the hands and had pressed her neck. She didn't like it. She was emotionally disturbed about it. Her husband came home about an hour later but she didn't tell him anything because of the threats. She did however tell him everything on June 16, because she was afraid. As a result they both went to the Police to report the matter.
11. The lady's husband was the second witness. He told us that in June his wife had told him the whole story of the "rape" and he told of going with her to the Police Station where she made her first statement. After about a month when nothing had happened they went back to the Police Station and saw Officer Anoop. Anoop showed the husband the first statement which the husband regarded as unsatisfactory and therefore another statement was taken. He identified the accused in Court as "Vijay".
12. We heard from Ram Naresh who attempted, unsuccessfully to mediate in this matter. You might think that his evidence is unhelpful but it is a matter for you.
13. The last witness was Officer Anoop from the Rakiraki Police Station. He was at the time a detective officer at the Rakiraki Police Station. He was on duty in the morning of the 17<sup>th</sup> June 2012 when he was detailed to carry out investigation of this case. The husband and wife came to him to enquire why no arrest had been made. He retrieved the file and read the first victim statement to them. The wife said that there were more things to be added to that statement. He then recorded a second more detailed statement in the presence of the husband.

14. In cross examination he said that the first statement contained no mention of threats nor did it contain any ingredients of the charge.
15. Well, that was the end of the prosecution case.
16. You heard me explain to the accused what his rights in defence are and he elected to give sworn evidence. Now I must direct you that in giving evidence the accused does not have to prove anything. The fact that he gives evidence does not relieve the State from proving their case to you so that you are sure. Even if you don't believe a word he says it does not make him guilty if the State have not proved their case beyond reasonable doubt.
17. Vijay Prasad told us that he works as a bus driver 6 days a week and he usually finishes work at about 6 or 7pm. He was seen by the Police in April or May 2012 in connection with an allegation of rape. He told them he knew nothing about it. He only knew Navneeta from seeing her in the market over the years and had never been to her house. He had never threatened her, never assaulted her and never raped her.
18. The only conversation he had with her was once at the Ba bus stand when she asked him if it was possible to send a parcel by bus from Rakiraki to Ba. He said yes so she took his mobile phone number so she could call him when she had the parcel. After that he used to get phone calls from a woman who wouldn't say who she was.
19. The entire story about the rape was a false allegation.
20. The accused called as his witness Mr. Jai Kumar Singh who is a neighbour of the accused and a fellow member of the same Hindu prayer group. He said that for the first two weeks of March 2012 he was doing construction work at the accused's brother's house and in those two weeks he would see the accused drive his bus home between 4pm and 6pm. He came home every night.
21. Well Members of the Panel, you might wonder at the value of that evidence. But you will put weight on it as you think fit.
22. Well ladies and gentleman that is all I wish to say to you about the evidence. It is now time for you to retire and consider your opinions. It would be better if you could all be agreed; that is not

strictly necessary. You will be asked individually for your opinion and you will not give a reason for it. Let a Member of my staff know when you are ready and I will reconvene the Court.

23. Redirections Counsel?

24. You may now retire.



At Lautoka  
26<sup>th</sup> January 2017

P. Madigan  
JUDGE