

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

**Criminal Case No. 035 of 2016**

**STATE**

**v**

**THOMAS BULL**

**Counsel:** Ms A. Vavadakua for the State.  
Ms S. Nasedra for the Accused

**Date of Trial** : 8, 9 May 2017  
**Date of Summing Up** : 10 May 2017

**SUMMING UP**

1. Madam 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. It is at this stage that I must tell you to put aside Ms Nasedra's submission that the State should have called the Aunty to give evidence. Counsel should not have said that because in every case the facts have to be decided on the evidence adduced in the trial .Neither you nor Counsel must speculate on what evidence there should have been or might have been.
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.



9. However the law says that when the victim is under the age of 13 years, she is unable to consent. That means that although Sara (not her real name) says that she was unwilling for this to happen, it is irrelevant. All you have to find proved in this case is whether this particular accused penetrated her that night with his penis. If you do find that then you will find him guilty.
10. 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.
11. Sara tells us that she was born on the 19 December 2003, which would make her only 12 on the 22 June 2016. She says that at the time she was going to primary school and living in Bua with her mother and stepfather (the accused).

There were also two brothers and a sister there too. On the night of the 22<sup>nd</sup> June, her mother had gone to Nabuowalu for the week to see her sick brother. She had taken her little sister with her. There was only her stepfather her and her two little brothers sleeping in the house.
12. She woke up in the night feeling something heavy on top of her. The light was off but she knew it was her step father, Because of his size and she recognized his voice. He told her not to scream or say anything. He



undressed her and “put his male organ inside her female organ”. It was painful and she felt blood coming out. When he had finished he got up, turned the light on and sat on the step. With the light on, she could see that her brothers were still asleep. Sara got up and tried to go outside but the step father told her not to.

13. She said that she didn't scream or ask for help because he had told her not to and she was afraid.
14. The next day she went to school but didn't tell any of the teachers because she was afraid and ashamed.
15. She didn't tell the neighbours for the same reason.
16. She then said that after a day or two, her father gave her \$100 and she went to Labasa to stay with her aunty. She told her aunty about the rape. Aunty said to wait until Mum got home from Nabuowalu and then go back and tell her. She did that, telling her Mum and Mum said that she would give her the fare to go to Dreketi to report it to the Police. Her Mother wasn't very supportive of her complaint and she went to Dreketi to report on her own. Even when she was in Suva awaiting this trial her mother tried to get her to withdraw the complaint



reasonable doubt that her step father had full penetrative sex with her that night.

22. You might want to put yourselves in the shoes of a 12 year old village girl living in very simple and unsophisticated circumstances. She said she was scared and ashamed and not being mature enough to deal with the situation is it possible she may not want to tell any strangers about what had happened to her? You will appreciate better than I what the Fijian culture would expect of her. It is a matter for you.
23. It is also a matter for you what you make of her trips between Labasa and Nabuowalu and whether they lead to you to conclude that they mean this rape never occurred.
24. The State suggests that the \$100 her stepfather gave her was a "sweetener" and the defence says that it was for fares and dental treatment. Maybe it was both? Another factual issue for you to decide.
25. At the end of the prosecution case you heard me tell the accused what his rights are in defence. He could give evidence or he could remain silent and say to the court that the case has not been proved beyond reasonable doubt. In either case he could call witnesses.



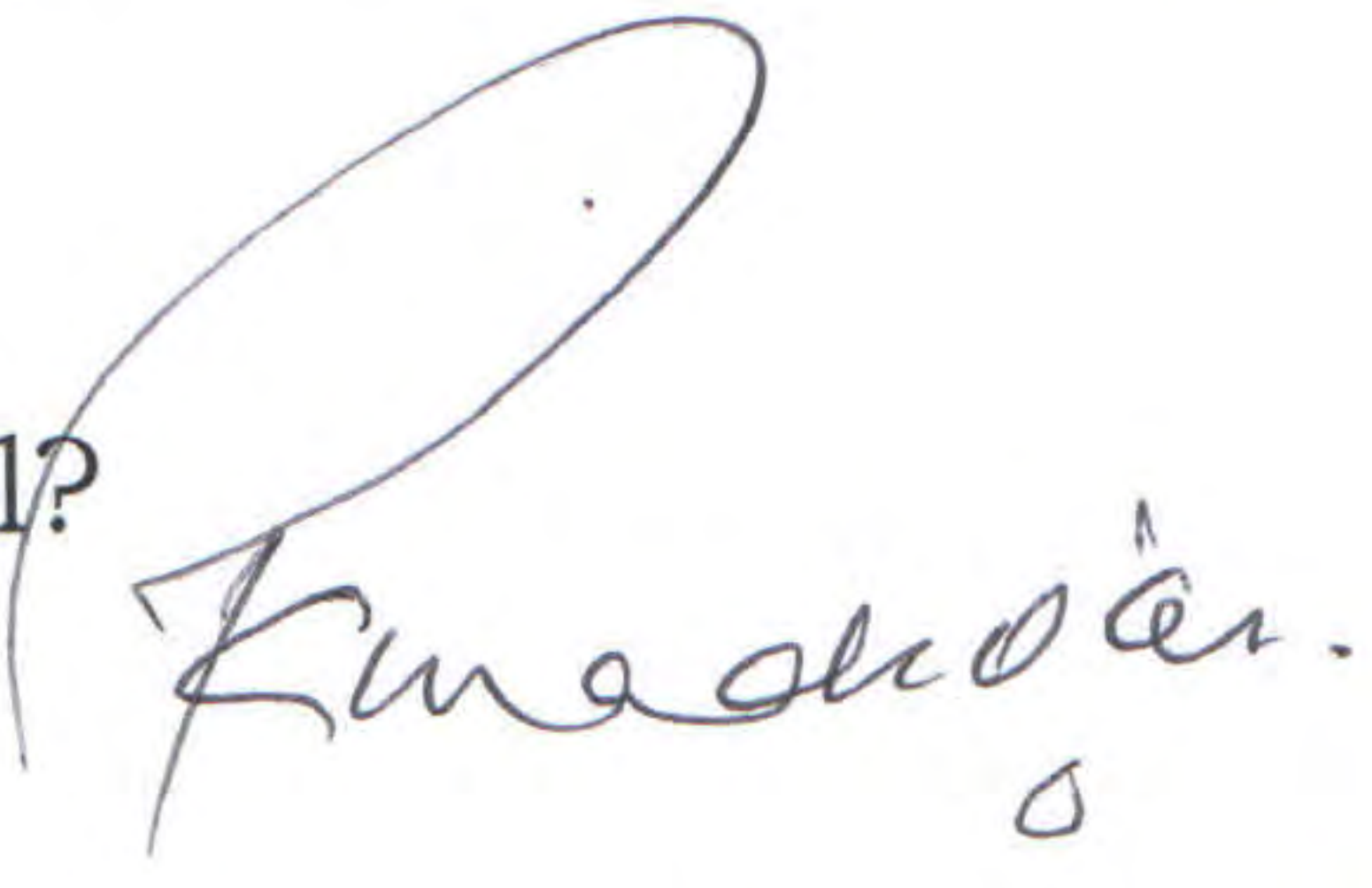
26. The accused chose to give evidence but call no witnesses.
27. There is no obligation on the accused to say anything because he has nothing to prove. The State must prove its case to you so that you are sure. Even if you don't believe a single word he says it doesn't mean that he is guilty. But if you think what he says is true or may be true then you will find him not guilty.
28. Mr. Bull told us that he is married to Sara's mother. Sara is the child of his wife and another so she is his stepdaughter. There are three younger children issue of this second marriage. In June 2016, he had been living in Nasarawaqa for 15 years. He said that before 2016 Tara had been living with relatives in Labasa but she was sent back to the village because she was disobedient.
29. On the 22<sup>nd</sup> June he was home with the children. His wife and the youngest daughter had gone to Nabuowalu for 10 days or so to look after her sick brother. There were 2 neighbouring houses which were both occupied by families at the time.
30. Sara's allegation of rape is simply not true. One day that week Sara asked him for money to pay a dentist in Labasa to take a tooth out so he gave her \$100 for the dentist, for her fare and for some pocket money. From time to time he would give all the children \$100.



The money for Sara came from money the local Pastor owed him so he sent her to collect it from him the day before she went up to Labasa.

Sara went up to Labasa on the 27<sup>th</sup> June and was meant to return on the 28<sup>th</sup>. However she did not return. So he went up himself on the 1<sup>st</sup> July to get her and bring her home.

31. He finished his evidence by saying that he did not commit this offence.
32. Well Madam and Gentlemen, that was the end of all the evidence. There will be no more and you must Judge this case on the evidence that is before you.
33. Remember all you have to decide is whether the accused had full penetrative sex with Sara that night. If so he is guilty. If not he is not guilty.
34. It is now time for you to retire and consider your opinions.  
Let my staff know when you are ready and I will reconvene the court.
35. Any redirections Counsel?

  
**P. K. Madigan**  
**Judge**



At Labasa  
10 May 2017