

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 151 of 2014

STATE

V

ABDUL MANAN

Counsel : Ms. L. Latu for the State.
: Mr. M. Raratabu for the Accused.

Dates of Hearing : 5, 6, 7 June, 2017
Closing Speeches : 8 June, 2017
Date of Summing Up : 12 June, 2017

SUMMING UP

Madam and Gentlemen Assessors

[1] It is now my duty to sum up this case to you.

ROLE OF JUDGE AND ASSESSORS

[2] In doing so, I will direct you on matters of law, which you must accept and act upon. On matters of facts, however, which witness to accept as reliable, what evidence to accept and what evidence to reject, these are matters entirely for you to decide for yourselves. If I do not refer to a certain portion of evidence which you consider as important, you should still consider that evidence and give it such weight as you wish.

- [3] So, if I express an opinion on the facts of the case, or if I appear to do so, then it is entirely a matter for you whether you accept what I say or form your own opinions. You are the judges of facts.
- [4] You decide what facts are proved and what inferences you properly draw from those facts. You then apply the law as I explain it to you and form your own opinion as to whether the accused is guilty or not.
- [5] State and Defence Counsel have made submissions to you about how you should find the facts of this case. That is in accordance with their duties as State and Defence Counsel in this case. Their submissions were designed to assist you as judges of facts. However, you are not bound by what they said. You can act upon it if it coincides with your own opinion. As representatives of the community in this trial it is you who must decide what happened in this case and which version of the facts to accept or reject.
- [6] You will not be asked to give reasons for your opinions and your opinion need not be unanimous. Your opinions are not binding on me but it will assist me in reaching my judgment.
- [7] During the closing speeches the learned Defence Counsel asked you to draw an inference where the specimen extracted by the Doctor which was given to the Police had gone to and that the specimen was not favourable to the State that is why no Police Officer was called to adduce the evidence of the specimen taken. It is unfortunate that the learned counsel is asking you to speculate why the evidence of specimen analysis wasn't adduced in evidence in court. I direct you to disregard this submission since you are not required to speculate on anything but to concentrate on the evidence before you.

- [8] Furthermore the Defence Counsel also stated that the State had not called the interviewing Officer or any other Police Officers who were involved in this investigation and the charging Officer as part of their case. I also direct you to disregard this submission as well since there is no legal obligation on the State to tender any document or to call any witness should it not wish to do so.

BURDEN OF PROOF AND STANDARD OF PROOF

- [9] As a matter of law, the burden of proof rests on the prosecution throughout the trial and it never shifts to the accused. There is no obligation on 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 proven guilty.
- [10] The standard of proof in a criminal trial is one of proof beyond reasonable doubt. This means you must be satisfied so that you are sure of the accused person's guilt, before you can express an opinion that he is guilty. If you have any reasonable doubt about his guilt, then you must express an opinion that he is not guilty.
- [11] Your decision must be based exclusively upon the evidence which you have heard in this court and nothing else. You must disregard anything you must have heard about this case outside of this courtroom.
- [12] You must decide the facts without prejudice or sympathy to either the accused or the victim. Your duty is to find the facts based on the evidence without fear, favour or ill will.

- [13] Evidence is what the witnesses said from the witness box, documents or other materials tendered as exhibits. You have heard questions asked by the counsel and the court they are not evidence unless the witness accepts or has adopted the question asked.

INFORMATION

- [14] The accused is charged with the following offences: (a copy of the information is with you).

FIRST COUNT

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (a) of the Crimes Act 2009.

Particulars of Offence

ABDUL MANAN, on the 18th day of October 2014 at Sarava, Ba in the Western Division, had carnal knowledge of **FARIDA BEGUM**, without her consent.

SECOND COUNT

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (a) of the Crimes Act 2009

Particulars of Offence

ABDUL MANAN, on the 20th day of October 2014 at Sarava, Ba in the Western Division, had carnal knowledge of **FARIDA BEGUM**, without her consent.

THIRD COUNT

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (a) of the Crimes Act 2009

Particulars of Offence

ABDUL MANAN, on the 22nd day of October 2014 at Sarava, Ba in the Western Division, had carnal knowledge of **FARIDA BEGUM**, without her consent.

FOURTH COUNT

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (a) of the Crimes Act 2009

Particulars of Offence

ABDUL MANAN, on the 27th day of October 2014 at Sarava, Ba in the Western Division, had carnal knowledge of **FARIDA BEGUM**, without her consent.

- [15] Carnal knowledge means sexual intercourse that is the penetration of the penis into the vagina.
- [16] To prove counts one to four the prosecution must prove the following elements of the offence of rape beyond reasonable doubt:
- (a) The accused;
 - (b) Penetrated the vagina of the complainant Farida Begum with his penis;
 - (c) Without her consent;
 - (d) The accused knew or believed the complainant was not consenting or didn't care if she was not consenting at the time.
- [17] The slightest of penetration of the complainant's vagina by the accused penis is sufficient to satisfy the act of penetration.

AGREED FACTS

- [18] In this trial the prosecution and the defence have agreed to certain facts which have been made available to you.
- [19] The agreed facts are as follows:

1. *The Complainant in this matter is Farida Begum, 25 years old, Housewife and resides at Sarava, Ba.*
2. *The accused in this matter is Abdul Manan, 61 years old, Farmer also of Sarava, Ba.*
3. *The Complainant is the daughter in law of the Accused and they reside together at Sarava, Ba.*
4. *On the 28th October, 2014 the Accused was caution interviewed in the Hindi Language by DC 3874 Suraj Ravi Raj with D/SGT 735 Surendra Prasad as the Witnessing Officer.*

[20] From the agreed facts you will have no problems in accepting the above as proven beyond reasonable doubt and you can rely on it.

[21] In this trial the accused has denied committing the offences of rape. It is for the prosecution to prove beyond reasonable doubt that it was the accused who had penetrated the vagina of the complainant with his penis without her consent and the accused knew or believed the complainant was not consenting or didn't care if she was not consenting at the time that is on 18 October, 2014, 20 October, 2014, 22 October, 2014 and 27 October, 2014.

[22] The first element of the offences is concerned with the identity of the person who allegedly committed the offences.

[23] The second element is the act of penetration of the complainant's vagina by the penis.

[24] The third element is that of consent, you should bear in mind that consent means to agree freely and voluntarily and out of her own free

will. If consent was obtained by force, threat, intimidation or fear of bodily harm or by exercise of authority, then that consent is no consent at all.

- [25] If you are satisfied that the accused had penetrated the vagina of the complainant with his penis and she had not consented, you are then required to consider the last element of the offence that is whether the accused knew or believed that the complainant was not consenting or did not care if she was not consenting at the time.
- [26] You will have to look at the conduct of both the complainant and the accused at the time and the surrounding circumstances to decide this issue.
- [27] If you are satisfied beyond reasonable doubt that the prosecution has proven beyond reasonable doubt that the accused had inserted his penis into the complainant's vagina without her consent then you must find the accused guilty as charged.
- [28] If on the other hand you have a reasonable doubt with regard to any of those elements concerning the offence of rape, then you must find the accused not guilty of the offences he is charged with.
- [29] As a matter of law, I have to direct you that offences of sexual nature as in this case do not require the evidence of the complainant to be corroborated. This means if you are satisfied with the evidence given by the complainant and accept it as reliable and truthful you are not required to look for any other evidence to support the account given by the complainant.

PROSECUTION CASE

- [30] The prosecution called four (4) witnesses to prove its case against the accused.
- [31] The first witness was the complainant Farida Begum who informed the court that the accused was her father-in-law and she lived at her in-law's house at Sarava, Ba with her husband and two young children.
- [32] On 18th October, 2014 the complainant was getting ready to go to Town when the accused asked the complainant to get a hair dye for him. After the complainant returned from Town the accused asked her to dye his hair which she did.
- [33] The complainant then went into the kitchen to cook. After a while the accused went and brought his horse after putting the saddle on the horse he then got the complainant's children to ride the horse. After having his shower the accused went into his bedroom and came out wearing a sulu. The accused came into the kitchen where the complainant was and told her to accompany him to his bedroom.
- [34] When the complainant did not go with the accused he started forcing her by forcefully pulling her hand and took her to his bedroom and locked the door. The complainant's husband was at work and her mother-in-law was in New Zealand. The complainant was with the accused and her two young children.
- [35] In the bedroom the accused told the complainant to take off her clothes, she refused the accused then threatened her that he will kill her if she does not take off her clothes. The accused forcefully removed her clothes and then pushed her onto the bed. In the bed the accused started touching all over her body from top

to bottom, sucked her breast and thereafter started licking her vagina.

- [36] While the accused was doing all this, the complainant was shouting since the other houses were far away, no one came to save her. The complainant pushed the accused but he did not stop he came on top of her and inserted his penis inside her vagina, he was having sexual intercourse until he ejaculated.
- [37] After the accused ejaculated he then left her. The complainant did not complain to anyone because the accused had threatened her that if she told anyone he will kill her.
- [38] On 20th October, 2014 the complainant was resting on the bed which was in the front porch of the house. The accused came and told the complainant to accompany him to his bedroom but she refused. The accused then forcefully pulled her and took her to his bedroom. In the bedroom the accused removed all her clothes and pushed her onto the bed. He started to lick her vagina and then inserted his penis into her vagina he was doing this until he ejaculated.
- [39] The complainant did not tell anyone about what the accused had done to her because she was afraid, the accused had threatened her if she tells anyone he will kill her.
- [40] The third incident happened on 22nd October, 2014 at about 11.00am, the complainant was in her bedroom the accused came and sat on the bed and asked the complainant whether she was packing her clothes. The complainant replied that she was tidying her clothes which were in the drawer. At this time the accused started forcefully holding her hands and took her to his bedroom.

- [41] In the bedroom the accused removed her clothes forcefully and pushed her on the bed. The accused sucked her breast and started licking her vagina, the way in which the accused was licking her vagina it was very painful. The complainant tried to “free” herself but could not the accused came on top of her and inserted his penis into her vagina until he ejaculated.
- [42] The last incident happened on 27th October, 2014 at about 12 midday, the complainant was in the kitchen cutting potatoes and egg plants for lunch, the complainant’s youngest daughter was sleeping. After having his shower the accused went into his bedroom by this time the complainant was cooking. After a while the accused came in the kitchen the complainant was washing the utensils he held her from behind. The complainant tried to “free” herself the accused pulled her towards the window and then took her to his bedroom.
- [43] The accused locked the door after pushing her on the bed, removed all her clothes and started touching her body, sucking her breast then started licking her vagina. The way he was licking her vagina the complainant felt pain.
- [44] The complainant tried to “free” herself but she could not. After the accused finished licking her vagina he came on top of her and inserted his penis into her vagina until he ejaculated.
- [45] After the accused ejaculated he told the complainant to open the gate to let the goats out. Since the youngest daughter of the complainant was sleeping she went and woke her daughter.
- [46] Together with her daughter the complainant went and opened the gate to allow the goats to get out and ran to her aunt’s house who she calls “chachi” to tell her what had happened to her. At her aunt’s

house the complainant told her aunty whatever was happening to her.

- [47] The complainant's aunt Movina (chachi) called the complainant's husband who was in Rakiraki at the time and the matter was reported by the complainant's husband at the Rakiraki Police Station thereafter the matter was referred to the Ba Police Station.
- [48] The complainant did not complain to anyone in respect of what the accused had done to her on the previous three occasions because the accused had threatened her that if she tells anyone he will kill her.
- [49] The complainant felt bad about what the accused had done to her since she respected him like her father. After the matter was reported to the Police the complainant was examined by a Doctor at the Ba Hospital.
- [50] In cross examination the complainant stated that the day the first incident happened it was a Saturday. She never reported the accused to the Police prior to these incidents because he had not done anything wrong to her. The accused was nice to her when her mother-in-law was at home. The complainant disagreed that the accused respected her but she had no respect for him.
- [51] The complainant also disagreed that on 18th October her husband was at home when questioned that the children were riding a horse without supervision the complainant replied that her eldest daughter was smart in horse riding. The complainant informed the court that she always wears a dress and pants (kameez) at home and while she was standing the accused forcefully tried to take off her clothes.

- [52] The accused pulled off her dress first she tried to push him but could not. Thereafter the accused pushed her on the bed and then grabbed her elastic pants removed it and threw it on the floor followed by her panty. In further cross examination the complainant stated that when she landed on the bed she was facing upwards.
- [53] The complainant tried to push the accused with her hands and legs but she could not. The complainant disagreed that the accused would have got hurt in the process. Furthermore the door in the accused room had a sliding lock she did not open the door because the accused was holding her tightly.
- [54] The complainant maintained that the accused had sex with her by penetrating her vagina with his penis. She also maintained that the matter was not reported earlier because the accused had threatened her on the dates of the incidents that he will kill her if she told anyone.
- [55] The complainant also stated that she was unable to grab something from the kitchen or in the accused bedroom to defend herself since the accused was holding her hands and pulling her. In respect of the fourth incident when the accused grabbed the complainant in the kitchen she did not have the knife with her.
- [56] In further cross examination the complainant informed the court that she tried to hold on to the wooden window, then the kitchen door and also onto the wood in her room when she was taken to the accused's bedroom. When asked that she had not stated this to the Police the complainant told the court that she had informed the Police but it was not in her police statement. She denied the suggestions that the incidents she had described to the court did not happen or that she

was lying in court. The complainant stated that she told the court what the accused had done to her.

[57] The complainant went to her aunt's house which was far away and not to nearby houses since she had a close relationship and was more comfortable with her aunt and also she would be safe there.

[58] The complainant was referred to her police statement dated 27th October, 2014 to page 5, line 17.

"I picked my clothes and that cloths and went to the bedroom. I woke my daughter then went to put the cloth in the washing machine."

[59] The complainant explained that it was a cloth she had put in the washing tub and not in the washing machine since there was no washing machine in the house. The cloth was used by the accused which the Police took with them.

[60] The learned counsel for the accused in this regard was cross examining the complainant about some inconsistencies in the statement she gave to the Police immediately after the incident when the facts were fresh in her mind with her evidence in court. I will now explain to you the purpose of considering the previously made statement of the complainant with her evidence given in court. You are allowed to take into consideration the inconsistencies in such a statement when you consider whether the witness is believable and credible. However, the police statement itself is not evidence of the truth of its contents.

- [61] It is obvious that passage of time can affect one's accuracy of memory. Hence you might not expect every detail to be the same from one account to the next.
- [62] If there is any inconsistency, it is necessary to decide firstly whether it is significant and whether it affects adversely the reliability and credibility of the issue that you're considering. If it is significant, you will need to then consider whether there is an acceptable explanation for it. If there is an acceptable explanation, for the change, you may then conclude that the underlying reliability of the evidence is unaffected. If the inconsistency is so fundamental, then it is for you to decide as to what extent that influences your judgment of the reliability of such a witness.
- [63] The complainant also stated that during the last incident she had shouted and at that time her daughter was sleeping. The complainant denied the suggestion that she had made up the allegations because she did not want to live in the farm or live at her in-laws house. The complainant stated that if these incidents would not have happened she would have stayed at her in-law's house since she had lived there for the past 8 years prior to the incidents.
- [64] In re-examination the complainant clarified that the incidents had happened that was why she reported the matter to the Police and that she was not lying in court.
- [65] The second witness for the prosecution was Dr. Anaseini Tabua, who had examined the complainant on 27 October, 2014. Dr Tabua has about 10 years' experience as a Medical Practitioner having graduated with MBBS Degree from the Fiji School of Medicine in the year 2006. Dr Tabua is currently based at Navua Hospital as Sub-Divisional Medical Officer Serua/Namosi.

[66] The witness recognized and confirmed the Fiji Police Medical Examination Form which she had completed after physically examining the victim. This document is marked as Prosecution Exhibit No.1.

[67] The Doctor informed the court that the Medical Examination Form had three parts:

- (a) D (10) History as relayed by patient;
- (b) D (11) Observations;
- (c) D (12) Physical findings.

[68] The history relayed to the Doctor was that the patient was raped by her father-in-law at her residence and that she had also been raped three other times. The complainant went to the neighbour to seek help.

[69] The initial impression of the patient at D (11) was that the patient was calm and slightly angry when she was relating her story.

[70] The specific medical findings of the Doctor at D (12) were:-

- “(a) no visible injuries;*
- (b) on vaginal examination;*
 - externally no sign of any forceful penetration;*
 - cervix - appears bruised possibly from recent contact;*
 - also pooling of whitish liquid? semen.”*

[71] The Professional Opinion of the Doctor at D (14) was:

“No sign of forceful entry. However, cervix looked bruised which may suggest recent contact. Also noted whitish fluid at adnexa which is possibly semen (specimen taken).”

[72] At D (16) the Doctor noted:-

“A young Fijian Indian female who was raped today by father in law”

[73] The Doctor further informed the court that not every woman forcefully penetrated with a penis will show injuries. The bruised cervix was evidence of recent contact and sometimes deep penetration did not rule out that the patient was raped. The Doctor also stated that her findings were consistent with the history given. Furthermore the Doctor stated that the whitish liquid found below the cervix could be other things as well such as infection. The Doctor also informed the court that “Douching” was a term used whereby women wash or clean themselves reaching up to the vagina and possibly up to the cervix which can also cause injuries to the cervix. This is the reason why the Doctor took specimen to confirm whether it was semen or any other liquid.

[74] In cross examination the Doctor informed the court that the specimen taken at D (14) was given to the Police Officer accompanying the patient for forensic testing. In respect of D(16) the Doctor stated that the notations at D(16) was a summary of what the patient had told her whereby the allegation of rape was an assumption.

[75] In re-examination the Doctor clarified that D (16) was her summary about the patient and it did not include the conclusion of her medical findings.

Madam and Gentlemen Assessors

[76] You have heard the evidence of Dr Tabua who has been called as an expert on behalf of the prosecution. Expert evidence is permitted in a criminal trial to provide you with information and opinion which is

within the witness expertise. It is by no means unusual for evidence of this nature to be called and it is important that you should see it in its proper perspective. The Medical Report of the complainant is before you and what the Doctor said in her evidence as a whole is to assist you.

- [77] An expert witness is entitled to express an opinion in respect of his or her findings and you are entitled and would no doubt wish to have regard to this evidence and to the opinions expressed by the Doctor. When coming to your own conclusions about this aspect of the case you should bear in mind that if, having given the matter careful consideration, you do not accept the evidence of the expert you do not have to act upon it. Indeed, you do not have to accept even the unchallenged evidence of the Doctor.
- [78] You should remember that this evidence of the Doctor relates only to part of the case, and that whilst it may be of assistance to you in reaching your decisions, you must reach your decision having considered the whole of the evidence.
- [79] The third witness for the prosecution was Movina Khan who informed the court that on 27 October, 2014 the complainant came to her house crying, the witness asked her why she was crying the complainant told the witness that her father-in-law had raped her. The complainant told the witness she was cutting potatoes and egg plants in the kitchen the accused came and pulled her to the room and raped her.
- [80] The complainant further informed the witness that the accused had raped her on three earlier occasions. The witness gave the complainant her phone to call her husband. The complainant also informed her husband about what the accused had done to her.

Since the complainant's husband was in Rakiraki at that time he reported the matter at Rakiraki Police Station.

[81] The witness knows the accused since her husband and the accused were cousin brothers.

[82] In cross examination the witness confirmed that the complainant calls her "chachi". The witness maintained that when she came out of her bedroom she saw the complainant crying.

[83] The final witness for the prosecution was Abdul Shahid the complainant was his former wife. In 2014 he was a bus conductor the complainant used to stay home. On 27 October 2014 as he was about to reach Rakiraki Bus Station in the Bus he received a call from the complainant through Movina's phone. The complainant informed him that his father had raped her since the complainant had not reported the matter to the Police he reported the matter at Rakiraki Police Station.

Madam and Gentlemen Assessors

[84] Victims of sexual offences may react in different ways to what they may have gone through. As members of the community, it is for you to decide whether it was acceptable for the complainant not to complain to anyone in respect of the three alleged incidents of rape but complain to her aunt after the fourth incident. Some in distress or anger may complain to the first person they see. Some due to fear, shame or shock or confusion, may not complain for some time or may not complain at all.

[85] A victim's reluctance to complain in full as to what had happened could be due to shame or respect for an elder or shyness when

talking about matters of sexual nature. Here according to the complainant she did not complain to anyone in respect of the three earlier occasions of what the accused had done to her since she was threatened by the accused that he will kill her if she told anyone about what he had done to her.

[86] You are entitled to consider the evidence of recent complaint in order to decide whether the complainant is a credible witness. The Prosecution says the complainant complained to her aunt immediately after the fourth incident and therefore is more likely to be truthful. On the other hand, the defence says that the complainant did not complain to anyone in respect of the earlier three incidents since it did not happen and she lied about all the incidents and therefore should not be believed.

[87] It is for you to decide whether the evidence of recent complaint helps you to reach a decision. The question of consistency or inconsistency in the complainant's conduct goes to her credibility and reliability as a witness. This is a matter for you to decide whether you accept the complainant as reliable and credible. The real question is whether the witness was consistent and credible in her conduct and in her explanation of it.

[88] This was the prosecution's case.

DEFENCE CASE

Madam and Gentlemen Assessors

[89] At the end of the prosecution case you heard me explain options to the accused. He has those options because he does not have to prove anything. The burden of proving the accused guilty beyond reasonable

doubt remains on the prosecution at all times. The accused chose to remain silent and not call any witness that is his right and you should not draw any adverse inference from the fact that the accused decided to remain silent.

[90] According to the line of cross examination the accused takes up the position that he did not penetrate the vagina of the complainant as alleged and that the complainant had lied about the allegations against him.

[91] This was the defence case.

ANALYSIS

Madam and Gentlemen Assessors

[92] You heard the evidence of all the witnesses. If I did not mention a particular piece of evidence that does not mean it's unimportant. You should consider and evaluate all the evidence in reaching your opinion.

[93] The Prosecution alleges that the accused on four occasions that is 18 October 2014, 20 October, 2014, 22 October 2014 and 27 October, 2014 had penetrated the vagina of the complainant with his penis without her consent.

[94] The complainant informed the court of four occasions the accused had forcefully pulled her into his bedroom, forcefully removed her clothes and pushed her on the bed. After touching all over her body, sucking her breast, licking her vagina, forcefully inserted his penis into her vagina. The complainant tried to push the accused but she

could not. On all instances the accused after having sexual intercourse with the complainant ejaculated inside her.

- [95] In respect of the first three incidents the complainant did not complain to anyone of what the accused had done to her since she was threatened by the accused that if she tells anyone he will kill her. After the last incident on 27 October, 2014 the complainant after waking her youngest daughter ran from the house of the accused to her aunt's house to tell her what was happening to her. At her aunt's house the complainant told everything to her aunt about what the accused had been doing to her.
- [96] The complainant's aunt Movina called the complainant's husband who was in Rakiraki at the time. The matter was reported by the complainant's husband at the Rakiraki Police Station.
- [97] The complainant felt bad about what the accused had done to her since she respected the accused like her father.
- [98] In cross examination the complainant stated she never reported the accused to the Police prior to these incidents because he had not done anything wrong to her. The accused was nice to her when her mother-in-law was at home. The complainant disagreed that she had no respect for the accused.
- [99] The complainant denied the suggestion that she had made up the allegations because she did not want to live in the farm or live at her in-laws house. The complainant also stated that if these incidents had not happened she would have stayed since she was there for the past 8 years prior to the incidents.

[100] The complainant clarified that the incidents had happened to her that is why she reported the matter to the Police and that she was not lying in court.

[101] The second witness for the prosecution was Dr. Anaseini Tabua, who had examined the complainant on 27 October, 2014.

[102] The specific medical findings of the Doctor were:-

- “(a) no visible injuries;*
- (b) on vaginal examination;*
 - externally no sign of any forceful penetration;*
 - cervix - appears bruised possibly from recent contact;*
 - also pooling of whitish liquid ? semen.”*

[103] The Professional Opinion of the Doctor was:

“No sign of forceful entry. However, cervix looked bruised which may suggest recent contact. Also noted whitish fluid at adnexa which is possibly semen (specimen taken).”

[104] The Doctor further informed the court that not every woman forcefully penetrated with a penis will show injuries. The bruised cervix was evidence of recent contact and sometimes deep penetration which did not rule out that the patient was raped. The Doctor also stated that her findings were consistent with the history given. Furthermore the Doctor stated that the whitish liquid found below the cervix could be other things as well such as infection that is the reason why the Doctor took specimen to confirm whether it was semen or any other liquid.

[105] In cross examination the Doctor informed the court that the specimen taken was given to the Police Officer accompanying the patient for forensic testing.

[106] The third witness for the prosecution Movina Khan informed the court that on 27 October, 2014 the complainant came to her house crying the witness asked her why she was crying the complainant told the witness that her father-in-law had raped her and also on three earlier occasions.

[107] The witness gave the complainant her phone to call her husband, the complainant informed her husband about what the accused had done to her.

[108] In cross examination Movina maintained that when she came out of her bedroom she saw the complainant crying.

[109] The final witness for the prosecution was Abdul Shahid. On 27 October 2014 he received a call from the complainant through Movina's phone. The complainant informed him that his father had raped her. He reported the matter at Rakiraki Police Station.

Madam and Gentlemen Assessors

[110] You have seen the witnesses giving evidence keep in mind that some witnesses react differently when giving evidence. 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 leave no room for fabrication.

[111] 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 the complaint made to the complainant's aunt is genuine and what weight you attach to this.

- [112] Which version you are going to accept whether it is the prosecution version or the defence version is a matter for you. You must decide which witnesses are reliable and which are not. You observed all the witnesses giving evidence in court. You decide which witnesses were forthright and truthful and which were not. Which witnesses were straight forward? You may use your common sense when deciding on the facts. Assess the evidence of all the witnesses and their demeanour in arriving at your opinions.
- [113] In deciding the credibility of the witnesses and the reliability of their evidence it is for you to decide whether you accept the whole of what a witness says, or only part of it, or none of it. You may accept or reject such parts of the evidence as you think fit. It is for you to judge whether a witness is telling the truth and is correctly recalling the facts about which he or she has testified. You can accept part of a witness's evidence and reject other parts. A witness may tell the truth about one matter and lie about another, he or she may be accurate in saying one thing and not be accurate in another.
- [114] You will have to evaluate all the evidence and apply the law as I explained to you when you consider the charges against the accused have been proven beyond reasonable doubt. 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 the evidence was called for the prosecution or the defence. You must apply the same test and standards in applying that.

[115] It is up to you to decide whether you accept the version of the defence and it is sufficient to establish a reasonable doubt in the prosecution case.

[116] If you accept the version of the defence you must find the accused not guilty. Even if you reject the version of the defence still the prosecution must prove this case beyond reasonable doubt. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies with the prosecution throughout the trial and it never shifts to the accused at any stage of the trial.

[117] The accused is not required to prove his innocence or prove anything at all. He is presumed innocent until proven guilty.

[118] In this case the accused is charged with four (4) counts of rape, you should bear in mind that you are to consider each count separately from the other. You must not assume that because the accused is guilty on one count that he must be guilty of the other as well.

[119] Your possible opinions are:-

COUNT ONE: **RAPE** ACCUSED - GUILTY OR NOT GUILTY

COUNT TWO: **RAPE** ACCUSED - GUILTY OR NOT GUILTY

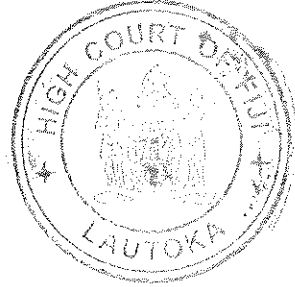
COUNT THREE: **RAPE** ACCUSED - GUILTY OR NOT GUILTY


COUNT FOUR: **RAPE** ACCUSED - GUILTY OR NOT GUILTY

Madam and Gentlemen Assessors

[120] This concludes my summing up you may now retire and deliberate together and once you have reached your individual opinions please inform a member of my staff so that the court can be reconvened.

[121] Before you do so, I would like to ask counsel if there is anything they might wish me to add or alter in my summing up.




Sunil Sharma
Judge

At Lautoka
9 June, 2017

Solicitors

Office of the Director of Public Prosecutions for the State.

Messrs Iqbal Khan & Associates for the Accused.