

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 100 OF 2014

STATE

v

RATU MELI SUGUTA

Counsel: Mr. S. Seruvatu with Ms. Kiran for State

Accused tried in absentia

Date of Trial: 25th October, 2017

Date of Summing Up: 26th October, 2017

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, whether the Complainant is a credible witness is a matter 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. In other words you are the judges of fact. All matters of fact are for you to decide.
4. The Counsel for Prosecution made submissions to you about the facts of this case. That is his duty as the Counsel. You are not bound by her submission. However, you may properly take her submission into account when evaluating Complainant's evidence.
5. You will not be asked to give reasons for your opinions. 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 deliver my judgment.
6. 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.
7. 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. Remember if you have any doubt, it must be reasonable. You cannot speculate. These doubts must be based solely on the evidence or lack of evidence that you have seen and heard in this Court room.
8. Your opinions 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.
9. 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.
10. An incident of rape 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 an incident. You may perhaps have your personal experience of such a thing, which undoubtedly would be

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.

11. It would be understandable if one or more of you came to this trial with certain assumptions as to what constitute rape, what kind of person may be the victim of rape, what kind of person may be a rapist, or what a person who is being, or has been, raped will do or say. It is important that you should leave behind any such assumptions about the nature of the offence because experience tells the courts that there is no stereotype for a rape, or a rapist, or a victim of rape. The offence can take place in almost any circumstances between all kinds of different people who react in a variety of ways. Please approach the case with open mind and dispassionately, putting aside any view as to what you might or might not have expected to hear, and form your opinion strictly on the evidence you have heard from the witness.
12. 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 Complainant in a rape case such as this should react to the experience. Any person, who has been raped, will have undergone trauma whether the accused was 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.
13. 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 a trial. You are expected and indeed required to use that common sense and experience in your deliberations and in deciding.
14. 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 the witness gave evidence. Was she evasive? You are to ask yourselves, was the witness honest and reliable.
15. 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. The agreed facts of this case are:

accurate and truth. They are of course an important part of the case. The agreed facts of this case are:

- I. It is agreed that the Complainant in this matter is "Diula Burutabua Koroï" and the Accused is "Ratu Meli Suguta".
- II. It is agreed that the Complainant is the step daughter of the Accused.
- III. It is agreed that on Thursday, the 12th of June 2014, the Complainant went to the Accused's home located at Lot 6 Vunaviavia Estate, Goundar Road, Martintar, Nadi to have some drinks.
- IV. It is agreed that the Complainant was accompanied by her boyfriend, Josaia Vularewa, and her other cousins and they consumed two (2) 26 oz Rum and one (1) carton of Fiji Gold including the accused.
- V. It is agreed that during this time, the Complainant's mother was away in America and the Accused was alone at their place.
- VI. It is agreed that they were all drinking in the verandah (porch) and at about 12.15 am the Complainant excused herself to go and sleep in the living room.
- VII. It is agreed that the Complainant went and slept on the mattress which was on the floor in the living room.

16. The charges against Accused are as follows:

COUNT 1

Statement of Offence

SEXUAL ASSAULT: Contrary to Section 210 (1) (a) and (2) (a) of the Crimes Decree 44 of 2009.

Particulars of Offence

RATU MELI SUGUTA, on 13th day of June 2014 at Nadi in the Western Division, unlawfully and indecently assaulted **DIULA BURUTABUA KOROI** by licking the vagina of the said **DIULA BURUTABUA KOROI** with his tongue.

COUNT 2

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (a) of the Crimes Decree 44 of 2009.

Particulars of Offence

RATU MELI SUGUTA, on 13th day of June 2014 at Nadi in the Western Division, penetrated the vagina of **DIULA BURUTABUA KOROI** with his penis without the consent of the said **DIULA BURUTABUA KOROI**

17. Accused is charged with Sexual Assault on 1st count. Prosecution must prove that the Accused unlawfully and indecently assaulted the Complainant. The word "unlawfully" simply means without lawful excuse. The assault becomes indecent when it is committed in circumstances of indecency. A circumstance of indecency is what right minded people would consider indecent. Assault can be defined as an application of unlawful force on another's body.
18. I will now deal with the elements of the offence of Rape. In order to prove the charge of rape in this case, the Prosecution must prove beyond reasonable doubt that the Accused penetrated Complainant's vagina with his penis. Slightest penetration is sufficient to satisfy this element.
19. Consent means consent freely and voluntarily given by a person with the necessary mental capacity to give the consent, and the submission without physical resistance by a person to an act of another person shall not alone constitute consent. Simply put, if somebody does not resist physically it does not necessarily mean that she or he had given consent. Different people react differently to situations. You don't necessarily need violence, kicking, and shouting etc. to show that one is not consenting.
20. 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.
21. In the circumstance of this case, I must warn you of the special need for caution before convicting the Accused on the correctness of this identification. The reason for this is the danger that a wrong identification will cause a miscarriage of justice and there have been cases where this has happened. It is not a question of a witness being untruthful but mistakenly believing the person seen at the crime scene was the accused. With this genuine belief a mistaken witness can nevertheless be a convincing one. I am not saying that is necessarily the case here. I am explaining the reason for the special care with which you must approach this issue.

22. You must closely examine the circumstances in which the identifications came to be made. Generally, this will include such matters as:
- How long did the witness have the person under observation? Was it a significant period or just a fleeting glimpse?
 - At what distance?
 - In what light?
 - Was the view impeded or obstructed in any way?
 - Was the accused a person known to the witness?
 - Had the witness ever seen the accused before and, if so, how often?
23. Proof can be established only through evidence. Evidence can be 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 as to what she saw, heard or felt.
24. In testing the credibility of the 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. If there is a delay, you should look whether there is a reasonable explanation to such delay.
25. 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.
26. Accused is not present in Court to face his trial and not represented by a Counsel. You must not hold his absence against him. Accused is not required to prove anything. You must not think that Accused is not present in court to face trial because he is guilty. His absence will not relieve the burden on the Prosecution to prove their case beyond a reasonable doubt.
27. Accused did not have the opportunity to cross examine the Complainant. That does not mean that evidence against him should be rejected. I only caution you and remind that evidence against him was not tested by cross examination.

Diula Burutabua Koroi (Complainant)

29. In 2014, Complainant was living in a hostel at Namaka. Her mother was married and had divorced. When the incident happened, her was away in the States. The Accused Ratu Meli Suguta is her stepfather. He stayed alone at Martintar, Nadi.
30. On the 12th of June, 2014 she went to step father's place with her boyfriend Josaia and her cousin Jone and friends Nikita, Julian and Neomai. They started drinking at around 6 in the afternoon. Her step father came late and joined them in drinking on the porch. They consumed two 26 oz Rum and one carton of Fiji Gold beer.
31. At around 12.15 am which would be the 13th of June, 2014, she excused herself and went to sleep on the mattress which was on the floor of the living room. Whilst sleeping, she felt someone licking her vagina. She woke up. She thought it was her boyfriend. When he reached down to touch his head he felt it was bald. She realized that it wasn't her boyfriend but someone else.
32. When she realized that it wasn't her boyfriend, she tried to push him away. At that moment, so many things were running through her head. She felt threatened and thought that he would do something to her if she screamed.
33. It was dark. The lights were all off. There was light coming from the door that was open. The light from the neighbors were shinning in. She saw him and recognized that it was her stepfather, Ratu Meli Suguta. Light wasn't that bright but it was bright enough to recognize him. He was wearing the same camouflage t-shirt he was wearing while drinking. None of her friends who were present in that night was bold headed. She had known Meli Suguta ever since he had started living together with her mother in 2005.
34. After he licked her vagina, he lifted her legs in the air on to his shoulders and inserted his penis into her vagina. She felt his penis coming to her vagina. She was moving back and forth. As he was doing this she tried to stop him but she was scared. She didn't know what to do. She wanted to scream and looked around. There was no one beside her. When he realized that she was awake. He stood up and went back to his room. She felt betrayed. She didn't think that her stepfather would do something like that.
35. When all these happened, all her friends had left except for her boyfriend, her cousin and his girlfriend who were sleeping in the room. She didn't know where

around. There was no one beside her. When he realized that she was awake. He stood up and went back to his room. She felt betrayed. She didn't think that her stepfather would do something like that.

35. When all these happened, all her friends had left except for her boyfriend, her cousin and his girlfriend who were sleeping in the room. She didn't know where her boyfriend was. After everything had happened her step father went outside and brought her boyfriend in and laid him next to her. He was drunk. She started waking him up and asked why he left her alone. Then her cousin Jone and the girlfriend woke up and came in the sitting room where she was. They were asking what had happened.
36. She was crying and told her cousin why he wasn't there to look after her. She told his cousin what had happened. Then her cousin tried to do something to her stepfather. His girlfriend came out and stopped him. While they were having a conversation outside, she ran out and came straight to the Namaka Police Station.
37. She said that she never gave consent to her stepfather to lick her vagina or insert his penis into her vagina.

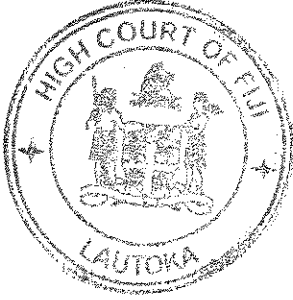
Analysis

38. The Accused is charged with one count of Sexual Assault and one count of Rape. Before you could find the Accused guilty, you must be satisfied beyond reasonable doubt that he committed these offences.
39. Ladies and gentleman assessor, you heard evidence of the Complainant. she is the only witness called in this short trial. First, you have to be satisfied that the evidence Complainant gave is truthful and believable. If you are satisfied that she told the truth, you can safely act upon his evidence in coming to your conclusion. No corroboration is required from an independent source.
40. You must be sure that it was the Accused and no one else had committed these crimes. There is no dispute that Accused was present in that house drinking with the Complainant and her cousin and friends that night unto the early morning. According to the Complainant, by the time the incident had happened, her boyfriend, her cousin and her girlfriend were the only people present in the house apart from her stepfather. Complainant said that the person on her was none other than the Accused Ratu Meli Suguta, her step father.

camouflaged t-shirt he was wearing at the drinking party. Applying the directions I have given to you, you consider whether the Prosecution has proved the identity of the Accused beyond reasonable doubt.

42. 1st count is about a sexual assault. The indecent act the Prosecution alleges in this case is licking of the vagina. She told you when she woke up she saw and felt the Accused licking her vagina. She told you that she did not give consent to the Accused to lick her vagina. If you are satisfied beyond reasonable doubt that Accused licked her vagina without her consent you can find him guilty on 1st count.
43. Regarding the 2nd count of Rape, the Complainant told you that the Accused had put her leg on his shoulder and then he inserted his penis into her vagina. She told you that she felt his penis in her vagina and that she was moving back and forth during the process.
44. Complainant told you she did not consent or allow the Accused to have sexual intercourse with her. She told you she felt betrayed and was scared. She said that, at that time, other people who were drinking with her were not around her. She said she did not have the courage to scream, but still tried to push him. After the alleged incident, she had gone to the Namaka Police Station and reported the matter.
45. Prosecution is submitting to you ladies and gentleman Assessor that she was a credible witness. If you can believe in what she said and if you are satisfied that each element of the offence of Rape and Indecent Assault has been proved beyond a reasonable doubt, then you can find the Accused guilty on both counts. Please consider each count separately.
46. If you do not accept the Prosecution's version of events, and you are not satisfied, so that you are not sure of the Accused's guilt, you must find him not guilty.
47. You may now retire to deliberate on the case, and once you have formed your opinions, you may inform our clerks, so that we could reconvene, to receive the same.
48. Any re-directions?

47. You may now retire to deliberate on the case, and once you have formed your opinions, you may inform our clerks, so that we could reconvene, to receive the same.
48. Any re-directions?



Aruna Aluthge

Judge

AT LAUTOKA

26th October, 2017

Solicitors: Office of the Director of Public Prosecution for State
Accused tried in absentia