

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 043 OF 2016 LAB

STATE

V

PAULA MUAYARA

Counsels : Mr. L. Fotofili for State
Ms. C. Choy and Ms. K. Marama for Accused

Hearings : 20 and 21 November, 2017

Summing Up : 21 November, 2017

SUMMING UP

A. ROLE OF JUDGE AND ASSESSORS

1. Madam and Gentlemen Assessors, it is my duty to sum up to you. In doing so, I will direct you on matters of law, which you must accept and act upon. On matters of fact however, what evidence to accept and what evidence to reject, these are matters entirely for you to decide for yourselves. So if I express my 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 fact.

2. State and Defence Counsels 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 Counsels, in this case. Their submissions were designed to assist you, as the judges of fact. However, you are not bound by what they said. It is you who are the representatives of the community at this trial, and it is you who must decide what happened in this case, and which version of the evidence is reliable.
3. You will not be asked to give reasons for your opinions, but merely your opinions themselves and they need not be unanimous. Your opinions are not binding on me, but I will give them the greatest weight, when I deliver my judgment.

B. THE BURDEN AND STANDARD OF PROOF

4. As a matter of law, the onus or burden of proof rest 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 is proved guilty.
5. The standard of proof in a criminal trial, is one of proof beyond reasonable doubt. This means that you must be satisfied, so that you are sure of the accused's guilt, before you can express an opinion that he is guilty. If you have any reasonable doubt so that you are not sure about his guilt, then you must express an opinion, that he is not guilty.
6. Your decision must be based exclusively upon the evidence which you have heard in this court, and upon nothing else. You must disregard anything you might have heard about this case outside of this courtroom. 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, and to apply the law to those facts, without fear, favour or ill will.

C. THE INFORMATION

7. You have a copy of the information with you, and I will now read the same to you:

"... [read from the information]..."

D. THE MAIN ISSUE

8. In this case, as assessors and judges of fact, each of you will have to answer the following question:

- (i) Did the accused, on 14 August, 2016, at Labasa, in the Northern Division, rape the complainant?

E. THE OFFENCE AND IT'S ELEMENTS

9. For the accused to be found guilty of "rape", the prosecution must prove beyond reasonable doubt, the following elements:

- (i) the accused's finger penetrated the complainant's vagina;
- (ii) without her consent; and
- (iii) the accused knew that she was not consenting to (i) above, at the time.

10. In law, the slightest penetration of the complainant's vagina by the accused's finger, is sufficient to satisfy element no. (i), as described in paragraph 9(i) hereof.

11. Consent is 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 to herself, that "consent" is deemed to be no consent. The consent must be freely and voluntarily given by the complainant. If the consent was induced by fear, it is no consent at all.

12. It must also be established by the prosecution beyond reasonable doubt that the accused knew the complainant was not consenting to her vagina been penetrated by his finger, at the time. You will have to look at the parties' conduct, at the time, and the surrounding circumstances, to decide this issue.

F. THE PROSECUTION'S CASE

13. The prosecution's case were as follows. The complainant (PW1) is a lawyer by profession. From 2008 to the date of the alleged offence, she was in a relationship with the accused (DW1). She is now 29 years old, while the accused is 32 years old. When they started going out in 2008, PW1

was 20 years old, while DW1 was 23 years old. From 2008 to 2010, PW1 kept her relationship with Paula a secret from everyone, including her parents.

14. From approximately 2010 to 2014, the complainant was studying law. She was in Vanuatu in 2011, 2012 and 2013. Despite this, her relationship with the accused continued. In 2016, PW1 was a qualified lawyer and in July 2016, came for a job interview in Labasa. She was offered a job in Labasa, and moved into a flat at Salusalu Street. Later, the accused, as her partner, joined her at the flat. They were living together as boyfriend and girlfriend.
15. On 14 August 2016, the accused arrived home at their flat after a night out. The complainant was at the flat alone. PW1 questioned the accused on his whereabouts the previous night. DW1 told PW1 he had been at a nightclub and had been drinking liquor with friends. An argument erupted between the two, and according to the prosecution, the accused assaulted PW1 and later inserted his finger into her vagina, without her consent. According to the prosecution, when the accused inserted his finger into PW1's vagina, at the time, he knew she was not consenting to the same.
16. PW1 later reported the matter to police. An investigation was carried out. The accused later appeared in the Magistrate and High Court, charged with raping the complainant on 14 August 2016. Because of the above, the prosecution is asking you, as assessors and judges of fact, to find the accused guilty as charged. That was the case for the prosecution.

G. THE ACCUSED'S CASE

17. On 20 November 2017, the first day of the trial, the information was put to the accused, in the presence of his counsel. He pleaded not guilty to the charge. In other words, he denied the rape allegation against him. When a prima facie case was found against him, at the end of the prosecution's case, wherein he was called upon to make his defence, he choose to give sworn evidence and called no witness. That was his right.
18. The accused's case was simple. On oath, he denied PW1's rape allegation against him. He said, he did not insert his finger into PW1's vagina, at the material time. He said, PW1's allegation

against him was a complete fabrication by her. Because of the above, he is asking you, as assessors and judges of fact, to find him not guilty as charged. That was the case for the accused.

H. ANALYSIS OF THE EVIDENCE

(a) Introduction:

19. In analyzing the evidence, please bear in mind the directions I gave you in paragraphs 4, 5 and 6 hereof on the burden and standard of proof. In the acceptance and/or rejection of the evidence presented at the trial and your role as assessors and judges of fact, please bear in mind the directions I gave you in paragraphs 1, 2 and 3 hereof. In analyzing the evidence, we will first discuss the State's case against the accused; then the accused's case and lastly, the need to consider all the evidence.

(b) The State's Case Against the Accused:

20. The State called only one witness, and that was the complainant (PW1) herself. The State's case against the accused was based fundamentally on the complainant's sworn evidence. You have seen her in court and heard her evidence in court. You have listened to her yesterday, and I am sure the details of her evidence are still fresh in your minds. I will not bore you with the details of her evidence. However, she explained to you the nature of her relationship with the accused from 2008 to the date of the alleged offence. Obviously they were boyfriend and girlfriend and went through the typical life of a boyfriend and girlfriend.
21. It appeared that, at times, the complainant and the accused were very much supportive of each other – for example, when the accused went to support her, while she was giving birth to her baby daughter at CWM Hospital in Suva. Also when the complainant came for a job interview in Labasa in July 2016, she asked the accused to come with her to Labasa. When she moved to Labasa in August 2016, the accused came and shared her flat at Salusalu Street. While she was having troubles with her parents in 2008, she often went to the accused's house, as her place of refuge.
22. On 14 August 2016, both the complainant and the accused agreed they were at their Salusalu Street flat early in the morning, between 6am and 7am. Both of them, in their evidence, agreed they had an early morning argument. The accused admitted he had been with friends throughout

the night, first at a nightclub, then at a friend's place drinking liquor. During the argument, the complainant said, the accused assaulted her and inserted a finger into her vagina, without her consent.

23. If you accept the complainant's (PW1) evidence, you will have to find the accused guilty as charged. If otherwise, you will have to find the accused not guilty as charged. It is a matter entirely for you.

(c) The Accused's Case:

24. In his sworn evidence, the accused denied the complainant's (PW1) rape allegation. He said, he did not insert his finger into PW1's vagina at the material time. He said, the allegation was a complete fabrication by PW1. You have heard his evidence yesterday and today in court. You have also observed his demeanour, while he was giving evidence in court. I will not bore you with the details of his evidence, as the same is still fresh in your minds. If you accept the accused's evidence and version of events, then you must find him not guilty as charged. If otherwise, and you accept the complainant's evidence, then you must find him guilty as charged. It is a matter entirely for you.

(d) The Need to Consider All the Evidence:

25. The prosecution called only one witness, that is, the complainant (PW1) herself. The defence called only one witness, that is, the accused (DW1) himself. Altogether, there are two witnesses, on whose evidence, you will have to make a decision. The defence tendered three exhibits. Defence Exhibit No. 1 was a copy of a hand written letter by the complainant to the Labasa High Court, dated 2 September 2016 – 19 days after the alleged rape. Defence Exhibit No. 2 was another typed letter from the complainant to the Director of Public Prosecution, which was undated but received by the DPP office on 4 November 2016 – 2 months 19 days after the alleged rape. Defence Exhibit No. 3 is the original version of Defence Exhibit No. 1.
26. You must consider all the evidence placed before you. You must carefully compare and analyze them. If I didn't mention a fact you consider important, please take it on board, in your deliberation. If you find a witness's evidence credible, you are entitled to accept the whole or some of it, in your

decision. If you find a witness's evidence not credible, you are entitled to reject the whole or some of it, in your decision. You are the judges of fact.

I. **SUMMARY**

27. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies on the prosecution throughout the trial, and it never shifts to the accused, at any stage of the trial. The accused is not required to prove his innocence, or prove anything at all. In fact, he is presumed innocent until proven guilty beyond reasonable doubt. If you accept the prosecution's version of events, and you are satisfied beyond reasonable doubt, so that you are sure of the accused's guilt, you must find him guilty as charged. If you do not accept the prosecution's version of events, and you are not satisfied beyond reasonable doubt, so that you are not sure of the accused's guilt, you must find him not guilty as charged.

28. Your possible opinions are as follows:

(i) Rape : Accused : Guilty or Not Guilty

29. You may now retire to deliberate on the case, and once you've reached your decisions, you may inform our clerks, so that we could reconvene, to receive the same.



Salesi Temo
JUDGE



Solicitor for the State : Office of the Director of Public Prosecution, Labasa
Solicitor for the Accused : Legal Aid Commission, Labasa