

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 182 OF 2016

STATE

v

SILAS SANJEEV MANI

Counsel: : Ms R. Uce with Ms S. Navia for the State

: Ms J. Singh for the Accused

Dates of Trial : 09, 10, 11, 12 of October 2018

Date of Summing Up : 15 October, 2018

(Name of the victim is suppressed. She is referred to as KR)

SUMMING UP

Ladies 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, which witness you consider reliable, which version of the facts to accept or reject, these are matters 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.
4. In other words you are the judges of facts. All matters of fact are for you to decide. It is for you to decide the credibility of the witnesses and what parts of their evidence you accept as true and what parts you reject.
5. The counsel for the Prosecution and the Accused made submissions to you about the facts of this case. That is their duty as the Counsel. But it is a matter for you to decide which version of the facts to accept, or reject.
6. 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 come to deliver my judgment.
7. 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.

8. 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.
9. 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.
10. Your duty is to find the facts based on the evidence and apply the law to those facts. You are free to draw inferences from proved facts if you find those inferences reasonable in the circumstances. Approach the evidence with detachment and objectivity. Do not get carried away by emotion.
11. 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 facts in the trial. You are expected and indeed required to use that common sense and experience in your deliberations and in deciding.
12. In assessing the evidence, you are at liberty to accept the whole of the witness's evidence or part of it and reject the other part or reject the whole. 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 gives evidence. Was he or she evasive? How did he or she stand up to cross examination? You are to ask yourselves, was the witness honest and reliable. But, please bear in mind that many witnesses are not used to giving evidence and may find Court environment distracting.
13. In evaluating evidence, you should see whether the story relayed in evidence is probable or improbable; whether witness is consistent in his or her own evidence

and with his or her previous statements or with other witnesses who have gave evidence in court. It does not matter whether that evidence was called for the Prosecution or for the Defence. You must apply the same test to evaluate evidence.

14. In testing the consistency of a witness you should see whether he or she is telling a story on the same lines without variations and contradictions. You should also see whether a witness is shown to have given a different version elsewhere and whether what the witness has told Court contradicts with his/her earlier version. You must however, be satisfied whether such contradiction is material and significant so as to affect the credibility or whether it is only in relation to some insignificant or peripheral matter.
15. When you evaluate evidence of witnesses, please bear in mind their intellectual capabilities, their personal circumstances, their level of education and maturity, and then try and look at things from their perspective. If it appears reasonable from their perspective, then you might think he or she is reliable and believable.
16. You can consider whether there is delay in making a prompt 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 there is a delay that may give room to make-up a story, which in turn could affect reliability of the story. 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 for such delay.
17. Bear in mind, a late complaint does not necessarily signify a false complaint, any more than an immediate complaint necessarily demonstrates a true complaint. Victims of sexual offences can react to the trauma in different ways. Some, in distress or anger, may complain to the first person they see. Others, who react with shame or fear or shock or confusion, do not complain or go to authority for some time. Victim's reluctance to report the incident could also be due to shame, coupled with the cultural taboos existing in her society, in relation to an open and frank discussion of matters relating to sex, with elders. It takes a while for self- confidence to reassert itself. There is, in other words, no classic or typical response by victims of Rape. It is a matter for you to determine whether, in this

case, complaint victim made to police is genuine and what weight you attach to the complaint she eventually made.

18. You may consider whether there is a reason or motive on the part of the witnesses to make up an allegation against the accused. If the witnesses had such a motive, then you may think that this allegation has been fabricated.
19. 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.
20. The agreed facts of this case are:
 1. That KR (hereinafter referred to as the 'victim') was born on 11th August, 2007 and was 9 years of age at the material time.
 2. That Silas Sanjeev Mani (hereinafter referred to as the 'accused') at the material time resided at Malaqereqere, Sigatoka and was 29 years of age.
 3. That the victim is the half-sister of the accused.
21. I have given you a copy of the information which contains the charges against the accused. Please refer to it. The information reads as follows:

FIRST COUNT

Statement of Offence

RAPE: Contrary to Section 207 (1) & (2) (a) & (3) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

SILAS SANJEEV MANI between the 30th day of April, 2016 to the 11th day of July, 2016 at Sigatoka in the Western Division, inserted his penis into the vagina of **KR**, a 9 year old girl.

22. I will now deal with the elements of the offence of Rape. A person rapes another person if:
- (a) The person has carnal knowledge with or of the other person without other person's consent; or
 - (b) The person penetrates the vulva, vagina or anus of other person to any extent with a thing or a part of the person's body that is not a penis without other person's consent; or
 - (c) The person penetrates the mouth of the other person to any extent with the person's penis without the other person's consent.
23. Consent as defined by Section 206 of the Crimes Act means the consent freely and voluntarily given by a person with a necessary mental capacity to give such consent. A person under age of 13 years is considered by law as a person without necessary mental capacity to give consent. The victim in this case was 9 years of age at the time of the alleged offence and therefore, she did not have the capacity under the law to consent. So, the Prosecution does not have to prove the absence of consent on the part of the victim because law says that she, in any event, cannot consent.
24. The elements of Rape in this case are that:
- a. the accused, Mr. Silas Sanjeev Mani
 - b. penetrated the vagina of the victim KR, with his penis.

Other parts of the offence are irrelevant to the facts of this case.

25. The information states that it is a representative count. That means the prosecution says that this offence has been committed more than once during the period mentioned in the information.
26. 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.
27. Proof can be established only through evidence. Evidence can be from direct evidence that is the evidence of a person who saw it or by a complainant who saw, heard and felt the offence being committed. In this case, for example, the victim was a witness who offered direct evidence, if you believe her as to what she saw, heard and felt.
28. You saw victim give evidence hiding behind a screen so she could not see the accused. The screen was put up and other special arrangements were put in place because the victim in this case is an underage vulnerable witness. By looking at those special arrangements, you must not draw any negative inference against the accused.
29. You will appreciate that children do not have the same life experience as adults. They do not have the same standards of logic and consistency, and their understanding may be severely limited for a number of reasons, such as their age and immaturity. Life viewed through the eyes and mind of a child may seem very different from life viewed by an adult. You have to be mindful about that.

30. Children may not fully understand what it is that they are describing, and they may not have the words to describe it. They may, however, have come to realize that what they are describing is, by adult standards, bad or, in their perception, naughty. They may be embarrassed about it, and about using words they think are naughty, and therefore find it difficult to speak. Bear in mind that they are being asked questions by an adult they see as being in a position of authority—the policeman in the interview, or a counsel in Court. That can make it difficult for them.

31. Please remember, there is no rule in Fiji for you to look for corroboration of victim'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 victim, depending on how you are going to look at her evidence.

32. I will now remind you of the Prosecution and Defence cases. It was a short trial and I am sure things are still fresh in your minds. I will refresh your memory and summarize the salient features. If I do not mention a particular piece of evidence that does not mean it is unimportant. You should consider and evaluate all the evidence in coming to your decision in this case.

Case for the Prosecution

PW 1 KR

33. KR was 11 years old when she was giving evidence. She is residing at Malolo, Nadi with her father Avinesh Reddy, sister Sanjani (Mona) and three brothers. Earlier, KR was staying at Kulukulu, Sigatoka with her mother, brothers Raju and Silas Sanjeev Mani, her sister Mona and other relatives. Accused Silas Sanjeev Mani is KR's half-brother and they shared the same father.

34. Her mother Sundhar Kaur went to prison for committing a murder. Silas's wife Gita Devi also went to prison. After they went to prison KR was living with her aunty Suman Kanta at Maro, Sigatoka for a short period in 2015 until she was

taken by her half brother to Malaqereqere. In July, 2016, her father went and brought her to Malolo, Nadi to live with him.

35. When the alleged incident happened, she was residing at her aunty Roselyn and uncle's house in Malaqereqere, Sigatoka with her half-brother Sanjeev, nephew Gaurav, niece Sanjeevni, aunty Roslyn, uncle Sanjay and their three daughters.
36. They were living in a two bedroomed house. Her aunty, uncle and their three daughters slept in one room and, in the second bedroom, she slept with her niece, nephew and half-brother. The bed they slept on was a double bunk. She slept on the top bunk and her half-brother, nephew and niece slept on the bottom bunk.
37. KR said that she came to give evidence about the bad stuffs her half-brother Silas did to her. She said that Silas touched her private part, the place she used to urinate from and did something. KR then said that Silas inserted his 'urinating thing' into her 'urinating thing'. When she was asked to point to the part of her body where he inserted his urinating thing, she pointed to where her vagina is. She described the urinating thing as the body part that is used to pass urine. She said that she did not know the English word for 'urinating thing'. She said that he inserted the bottom part of her urinating thing.
38. KR further said that she used to sleep on the top bunk, her half-brother Silas, her niece and nephews were sleeping at the bottom bunk. One night, Silas came and woke her up and told her to come down to the bottom bunk. Silas smelled of liquor and was drunk. She refused to come down. Then he slapped on her face and told her again to come down. Then she came down to the bottom bunk. Silas carried his both children up and put them on the top bunk.
39. KR said that she was wearing a long dress. Silas then lifted her dress, took off her panty and tights and inserted his 'urinating thing' into her 'urinating thing'. She said that it was painful. She said she screamed. Then she was slapped and told to keep quiet. She started crying. Silas stopped it when somebody was knocking the door. He wore his clothes and went to open the door. She went to the top bunk and went to sleep, letting the nephew and nieces come down to the bottom bed.

40. KR said that she informed aunty Roselyn the next morning of what happened. Aunty Roselyn slapped her and gave her a pad when she said that the place she used to urinate from was bleeding. Roselyn told her to put the pad on and go to school. Roselyn told her that she knew what was going on.
41. She said that Silas did the same thing to her many times after she moved to Malaqereqere. She complained to aunty Roselyn only to be slapped.
42. When she was taken to her dad's place in Malolo in July 2016 she told aunty Noelene of what happened to her. Noelene took her to the Nadi Police Station and then for a medical.
43. Under cross examination, KR said that she did not tell police that she was wearing a panty, tights and a long dress in her statement dated 29th August 2016. She also denied telling that she used to sleep at bottom bed with Silas.
44. She denied telling aunt Roselyn that her stomach was paining. She also denied telling Roselyn that she used a comb to scratch herself. She admitted telling aunt Roselyn that a boy from school had inserted a finger where she used to urinate from because Silas had taught her to say so. When Roselyn and Silas went to meet the Head Teacher she told that one of the boy from school had done bad stuff. But the boy was not brought in front of her by the Head Master.
45. She denied that her aunty and uncle used to sleep in the adjoining room. She denied using her finger on her urinating thing. She denied that she never wore a panty while she was staying either at Roselyn's or Suman's house. She denied making up this whole story against her brother because Silas had disciplined her after Roselyn had complained to Silas about her bad habits.

PW 2 Avinesh Reddy

46. Avinesh was residing at Malolo with his *defacto* wife Noelene, three boys and his biological daughter KR. His wife Sundhar Kaur is in prison having murdered her daughter Sanjini.

47. KR was residing at aunty Roselyn and uncle's house in Malaqereqere with her step brother Silas when the incident happened. He received some messages that something wrong was happening to KR inside Roselyn's house and took KR back to him in 2016. When he first received the message, the Police Officers had gone to see KR at school. He went to school and asked the Head Master about it. The Head Master informed him that something had happened and reported the matter to the Police. Then he applied for KR's custody and brought her home. He asked his wife to inquire from KR as to what had happened.

48. That is the case for the Prosecution. At the closure of the Prosecution case, you heard me explain to the accused what his rights were in defence and how he could remain silent and say that the Prosecution had not proved the case against him to the requisite standard or he could give evidence in which case he would be cross-examined.

49. You know that the accused elected to give evidence and call witnesses on his behalf. That is his right. By electing to give evidence accused has not assumed any burden to prove his innocence. He has nothing to prove and is under no obligation to prove his innocence. You should give such weight as you wish to the evidence presented by Defence. The counsel for Defence put her case to the Prosecution's witnesses in her cross examination. You must take into consideration the evidence presented for Defence and the version of the defence when evaluating evidence.

Case for Defence

DW 1 Silas Sanjeev Mani (Accused)

50. Silas said that KR was staying at aunt Suman Kant's place and she came to him in 2016 because aunty had some family disputes and also she had some issues with KR.
51. Describing the internal structure of his uncle's house where they lived, Silas said that the room they were occupying was located just beside uncle's room. There was one wall between his room and his uncle's room. In that room there was only a double bunk bed where KR slept on top and he and his children slept on the bottom.
52. Silas said that KR is his sister but he treated her like his small daughter. He said that when KR was with the mother, she was spoiled because she was the only daughter in the house, so from that time, she was really misbehaving and not listening to anyone. When KR was staying with aunt Suman Kant, he received complaints that KR was really misbehaving doing naughty things.
53. When KR came to live with him, aunt Roselyn always complained to him that KR didn't wear undergarments in the house. He said that he felt bad and tried to discipline her nicely and sometimes he had to slap her. Silas denied that he had inserted his urinating thing into KR's urinating thing.
54. Under Cross-examination Silas admitted that when KR was with her mother at Kulukulu, she had a sister by the name of Sanjini or Mona and KR was not the only child of his mother. He admitted that KR had to leave her house at Kulukulu and finally came to him because her mother went to prison. He admitted that KR finally came to live with him because aunt Suman Kanta had

some problems with her husband and also with her children. He then said Suman was having difficulties with KR too.

55. Silas admitted that he had told police that aunt Suman had requested him if he could look after KR because she (Suman) had a family problem. He then said that by the time he was interviewed, he was not aware that KR had been misbehaving at Suman's house. He learnt about it only when Suman informed him after he was released from remand. Silas denied all the allegations against him and said that he did not know why this serious allegation has been made by her sister. Silas admitted that he sometimes used to come home drunk during night when KR was home.
56. Under re-examination Silas said that he drank as much as he could but he knew whatever he was doing.

DW 2 Roselyn Nisha

57. Roselyn said that Silas is her husband's sister's son. KR come and resided with her because she had no other place to go. She treated KR as her own daughter. She gave them a spare room beside her room. She could not recall anything that had happened to KR but once she came back from school and told that she was bleeding. She gave a pad because she thought KR was having menses. She took KR to her sister-in-law's place to check. When inquired, KR informed that a stone or something had hit her when she was playing in school.
58. Under cross-examination, Roselyn said that RK had complained to her in the morning and she noticed blood in the morning. She admitted that she gave a pad and asked KR to go back to school. She admitted that KR was only 8 or 9 years old when she came to her. She denied slapping KR. She agreed that she could not say that there was no sign of KR losing her virginity although she had told so to police. She further said that KR was in the habit of playing with her finger at the private part whenever she used the washroom.

DW 3 Suman Kanta

59. Suman said that KR is her sister's daughter. She took KR to stay with her when her mother went to jail. After staying 4 to 5 months with her, KR had to be relocated at Silas's place because she had some family problems with her husband and because of KR's behavior. KR didn't know how to use the toilet and she didn't wear her undergarments. She used to scratch herself. When she was sending KR to Silas's place she did not tell Silas that the cause of the fights and quarrels was KR.
60. Under Cross-examination, Suman admitted that in her statement to Police she had told police that KR was sent to Silas's place because she (Suman) had problems with her husband. She admitted that she did not tell police that the cause of problems was KR and that KR's behavior was not good. She said she didn't want to tell Silas about KR's misbehavior because KR is his own sister.
61. Under re-examination, Suman said that she did not want to tell the police about KR's misbehavior because she didn't want her name to be spoiled. Then she said that if the police had asked, she would have told all these things.

Analysis

62. Ladies and gentleman assessor, the accused is charged with one count of Rape. To find the accused guilty of Rape in this case, you must be satisfied that the prosecution has proved beyond a reasonable doubt that the accused penetrated victim's vagina with his penis.
63. Prosecution called two witnesses, the victim KR and her father Avinesh. Prosecution's case is substantially based on the evidence of the victim.

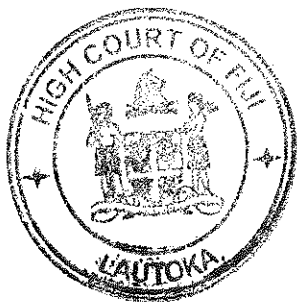
Prosecution says that the victim told the truth in court; that she is consistent in her story and her demeanor is consistent with her honesty.


64. If you are satisfied that the victim told the truth in court and if you can believe her story, then you can safely act upon her evidence in coming to your conclusion. No corroboration of her evidence is required.
65. The Defence case is one of complete denial. They say that the alleged incident never happened and it has been fabricated by the victim.
66. The victim said that she informed aunty Roselyn the next morning of what had happened. However, Roselyn denied having received such a complaint but admitted seeing blood in victim's vagina. She also admitted giving a pad to the victim when she received the complaint of bleeding. Roselyn was called by the Defence and the Prosecution says that she is not a reliable witness. You decide what weight you should give to her evidence and her denial.
67. Victim's father Avinesh said that he received information that something bad was happening to the victim at Roselyn's place and he took victim's custody and asked his wife Noelene to make inquiries. The victim said that she relayed the incidents to Noelene when she was taken by her father. The victim had then given a statement to police.
68. You will find that there is a delay in reporting the matter to police. You heard what the Prosecution witnesses had to tell about the delay. The victim said that she was slapped and told to keep quiet. She further said that when she reported the matter to Roselyn she was slapped. In light of the directions I have given in the Summing Up, you consider whether the complaint the victim eventually made to police is genuine.

69. There is no dispute that the victim was bleeding from her vagina when she complained to her aunty Roselyn about the injury in her vagina. Defence witnesses advanced several propositions in this regard and the Defence wants you to believe that the blood noted in victim's vagina had nothing to do with this rape allegation.
70. Roselyn said that she thought that the victim was having menses. She also said that the victim had informed her that something had hit her while playing at school. She also attributed injuries to scratching by a comb and self-fingering.
71. The victim rejected those propositions. She however admitted having told Roselyn and the Head Teacher that a boy from the school used his finger where she used to urinate from. She said that she told such a story because the accused had taught her to do so. It is up to you to form your own opinion as to whether the fact that blood was noted in victim's vagina is consistent with the rape allegation.
72. Prosecution says that the child victim had no reason to make up this serious allegation against her brother and that she told nothing but the truth. You had the opportunity to observe the demeanor of the victim. You decide if you could accept her evidence.
73. The Defence called the accused and his two aunties, Roselyn and Suman. You had the opportunity to hear Defence's side of the story. Defence says that it never happened and the victim did not tell the truth in court. They want you to believe that victim had made up this story and falsely implicated the accused because she disliked the accused. They called witnesses to support the evidence of the accused that the victim was misbehaving.
74. Prosecution on the other hand says that the witnesses called by the Defence are unreliable and that they contradicted in their evidence. They further say that the accused was making up a story to defend himself because some of the things he

has said in his evidence was never put to the victim when they had cross-examined. You've observed the conduct and demeanor of Defence 's witnesses when they were giving evidence. You decide whether they are reliable and what weight you should attach to their evidence.

75. If you believe that the victim is telling you the truth then you must be satisfied that all the elements of the offence of rape have been proved. The victim said that the accused inserted his 'urinating thing' into her 'urinating thing'. When she was asked, what do you use your urinating thing for? She said 'to urinate' or pass urine. She said that she does not know the English term for it. She also pointed to where her urinating is located.
76. If you are satisfied that the phrase "urinating thing" referred to the genital organs (penis of the accused and the vagina of the victim) you should find the accused guilty of Rape. But if you do not believe victim's evidence regarding the alleged offence, or if you have a reasonable doubt about the guilt of the accused, then you must find the accused not guilty. Your possible opinion is either guilty or not guilty on each count.
77. You may now retire to deliberate on your opinions. Once you have reached your decisions, you may inform our clerks, so that we could reconvene, to receive the same.
78. Any re-directions?




Aruna Aluthge
Judge

AT LAUTOKA

15th October, 2018

Solicitors: Office of the Director of Public Prosecution for State

Legal Aid Commission for Defence