

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION
CRIMINAL CASE NO.: HAC 58 OF 2014

STATE

v

MIRA SAMI

Counsel: Mr. Alvin Singh for State
Ms. K. Vulimainadave for Accused

Date of Trial: 27th February, to 1st March, 2018

Date of Summing Up: 5th March, 2018

SUMMING UP

Madam Assessor and Gentlemen Assessors:

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. Matters of facts however, are 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 and Defence made submissions to you about the facts of this case. That is their duty as Counsel. You are not bound by their submissions. However, you may properly take their submissions into account when evaluating 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 based 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 court room. 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. You are free to draw reasonable inferences from facts proved by evidence. 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 bitter. You must not, however, be swayed away by such emotions and 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 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:
 - I. It is agreed that Mira Sami is the Accused in this case.
 - II. It is agreed that Kritika Sharma is the victim in this case.

- III. It is agreed that the Accused is the victim's uncle.
 - IV. It is agreed that the victim was living with the Accused in 2013 and also worked with the accused person in an Upholstery shop.
 - V. It is agreed that the accused lived at Lovu in Lautoka with his wife.
 - VI. It is agreed that in 2013 while the victim was living with the accused, the accused used to have sexual intercourse with the victim.
15. I have given you the Information which contains three counts of Rape. The charges against Accused are as follows:

First Count

Statement of Offence

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

Particulars of Offence

MIRA SAMI on the 21st day of August, 2013 at Lautoka in the Western Division penetrated the vagina of **KRITIKA SHARMA** with his penis, without her consent.

Second Count

(Representative Count)

Statement of Offence

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

Particulars of Offence

MIRA SAMI between the 22nd day of August, 2013 and the 6th day of November 2013 at Lautoka in the Western Division penetrated the vagina of **KRITIKA SHARMA** with his penis, without her consent.

Third Count

(Representative Count)

Statement of Offence

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

Particulars of Offence

MIRA SAMI between the 07th day of November, 2013 and the 8th day of November, 2013 at Lautoka in the Western Division, penetrated the vagina of **KRITIKA SHARMA** with his penis, without her consent.

16. I will now deal with the elements of the offence of Rape. In order to prove the charge of Rape, the prosecution must prove beyond reasonable doubt that the accused penetrated complainant's vagina, with his penis.
17. On the issue of consent, the prosecution must prove that accused knew or believed that the complainant was not consenting, or he was reckless as to whether or not she was consenting. Accused is reckless if he was aware of the substantial risk that complainant was not consenting but carried on anyway, when the circumstances known to him, it was unjustifiable to take that risk.
18. Insertion of penis fully into vagina is not necessary. A slightest penetration is sufficient to satisfy this element.
19. Consent as defined in Section 206 of the Crimes Act, 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. The second count is a representative count. It simply means this. Prosecution says that the alleged incident happened on several occasions during the period mentioned in the charge.
21. 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 Complainant was a witness who offered direct evidence as to what she saw, heard or felt.
22. Documentary evidence is evidence presented in the form of a document. In this case, photographs tendered by Prosecution are examples if you believe them to be authentic.

23. 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 gave evidence. 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.
24. While cross-examining Prosecution witnesses, Defence Counsel referred to previous witness statements recorded by police. A previous statement made by a witness is not evidence in itself unless it is adopted and accepted by the witness under oath as being true. You can of course use those statements to test the credibility of the witness.
25. In testing the consistency and credibility of a witness you should see whether the witness is telling a story on the same lines without variations and contradictions. 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. If it is shown to you that a witness has made a different statement or given a different version on some point, you must then consider whether such variation was due to loss of memory, faulty observation or due to some incapacitation of noticing such points given the mental status of the witness at a particular point of time or whether such variation has been created by the involvement of some another, for example by a police officer, in recording the statement where the witness is alleged to have given that version.
26. You must remember that merely because there is a difference, a variation or a contradiction or an omission in the evidence on a particular point or points that would not make witness a liar. You must consider overall evidence of the witness, the demeanor, the way he/she faced the questions etc. in deciding on a witness's credibility.
27. Another relevant aspect in assessing truthfulness of a witness is his or her manner of giving evidence in court. You have seen how the witnesses' demeanor in the witness box when answering questions. How were they when they were being examined in chief, then being cross-examined and then re-examined? Were they forthright in their answers or were they evasive? But, please bear in mind that many witnesses are not used to giving evidence and may find court environment distracting.
28. You must bear in mind that the evidence comes from human beings. They cannot have photographic or video graphic memory. The witness can be subjected to the

same inherent weaknesses that you and I suffer insofar as our memory is concerned.

29. In testing the credibility of a witness, you may 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.
30. Bear in mind, a late complaint does not necessarily signify a false complaint, any more than an immediate complaint necessarily demonstrates a true complaint. There can be a reasonable explanation for the delay. It is a matter for you to determine whether, in this case, the lateness of the complaint and what weight you attach to it. It is also for you to decide, when complainant did eventually complain, whether it was genuine.
31. You may also consider whether there is a reason or motive on the part of the witness to make up an allegation against the accused. If he or she had such a motive, then you may think that this allegation has been fabricated.
32. 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.
33. The offence of Rape requires proof that the complainant did not consent. The offence may or may not be accompanied by violence, force or the threat of force, but please note that it is no part of the prosecution's obligation to prove that the accused used force or the threat of force.
34. During the course of closing address of the Defence it was suggested that Complainant could have yelled or otherwise objected to what the Accused were doing. It was also suggested that she could have reported to her aunty, step mother or police. In her closing argument, Defence Counsel submitted to you that Complainant is not consistent in her version. This is an argument which you should consider with care. You should not assume that there is any classic or

typical response to an unwelcome demand for sexual activity. The experience of the courts is that people who are being subjected to nonconsensual sexual activity will respond in variety of different ways.

35. 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.
36. 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.
37. I will now remind you evidence led in the trial. I will only summarize the salient features. If I do not mention a particular piece of evidence that does not mean it is unimportant.

Case for Prosecution

PW 1 Kritika Sharma (Complainant)

38. Kritika, the Complainant, in her evidence said she was residing in Suva with her father and step mother. In August 2013, Kritika's step mother and father sent her to her uncle, Mira Sami's place at Lovu Seaside, Lautoka, just for a visit. She was 17 years old at that time. Mira Sami was residing with his wife Ashni and her two sons. He was working at 'New Look Upholstery' in Lautoka.
39. Kritika too had to work with Mira Sami at 'New Look Upholstery' because Mira Sami and aunty insisted that she go and help Mira Sami in his work. On the 20th August, on the first day of her work, Mira Sami started touching her breast. She felt bad. She told Mira Sami that she did not like it. She did not say to her aunty or anybody about this. On the second day, 21st August 2013, when she went to work with Mira Sami, he talked unnecessary things to her. In the afternoon around 4.00 pm, Mira Sami pushed her to the ground and forcefully took off all her clothes. After that he also took off his clothes. He then forcefully inserted his erected penis inside her vagina and had sex with her for about 10 minutes. She did not consent to Mira Sami having sexual intercourse with her.
40. All the shops located nearby had been closed by the time incident took place. She tried her best to save herself but she was alone and couldn't do anything. She wanted to stand up and run away. She could not shout for help because Mira Sami covered her mouth with his hands.

41. Mira Sami threatened her that if she told anything to anybody then he would kill her. After work, she went back to Mira Sami's house but she did not tell aunty about this incident because he had threatened her.
42. Kritika went to work with Mira Sami on 22nd August also. He did the same thing to her. Mira Sami had forceful sexual intercourse with her at 'New Look Upholstery' on 21st, 22nd, 23rd, 26th, 27th, 28th, 29th and on the 30th. She never told anyone about this incident because she was scared that Mira Sami would kill her. She was not given a chance to talk to her father and step mother. In 2013, she did not have a mobile phone.
43. She stopped going to 'New Look Upholstery' after 30th August because she felt bad after Mira Sami had forcefully had sex with her.
44. Mira Sami had forceful sexual intercourse with her again when her aunty went to visit her grandparents on 7th and 8th of November 2013. When aunty returned on the 10th she did not tell aunty about what happened. She was sick and started vomiting. Her aunty took her to a lady in the village who massaged her stomach. She was still not well. She was then taken to Lautoka Hospital. Finally her aunty took her to Dr. Bhaggat's clinic in Mira Sami's van for a scan. The scan revealed that she was pregnant. Aunty questioned her as to how she became pregnant. She lied to aunty and said that she was involved with a boy in Nadi. Then aunty hit her. Mira Sami was standing beside and was staring at them when this incident happened.
45. Then aunty went to her neighbour Maureen's place and told her that she was pregnant. She asked for some money from Maureen, and took her to Dr. Michael's surgery where an abortion was done. Neither she nor her aunty informed about this to her parents.
46. After abortion, aunty and Mira Sami took her and dropped her at her parent's place at Ba. When she reached home, uncle and aunty did not tell anything about the abortion.
47. After two days of her return home, she told everything to her step mother Kulsham Bano. Kritika did not tell anything to her father because he was suffering from a heart attack. Step mother took her to Women's Crisis Centre and then to the Ba Police Station and reported the matter. She was referred to Lautoka Police Station because the incident took place in Lautoka. Her parents contacted Mira Sami about this. Mira admitted.

48. Under cross examination, Kirtika said that Mira Sami's wife Ashni is her father's sister. She denied that she was misbehaving whilst living with her parents in Suva and that's the reason why she was sent over to her aunty and Mira Sami.
49. Kritika admitted that throughout the entire stay with her aunty and Mira Sami, she maintained a good relationship with them until Mira Sami did all these things to her. At no time she used Mira Sami's mobile phone to call her friends or mother. She did not go to work on her own free will. It was her aunty who requested her to work with Mira.
50. Kritika admitted that she continued to live with her aunty and uncle even after she stopped working on 30th August. She admitted that, after having sexual intercourse on 21st August, 2013 she went home with Mira in his van.
51. Kritika denied that she had consented to having sexual intercourse with Mira Sami. Kritika said that she protested and wanted to yell but Mira Sami prevented her by covering her mouth. She admitted that she did not tell police that Mira Sami covered her mouth. She said she received injuries on her thighs. She did not go to hospital but she told police that she received injuries, although it does not reflect in her statement.
52. Kritika admitted that when her aunty visited her family in Ba on 6th and 7th of November, she could not accompany aunty although she was scared of Mira Sami. She said that aunty was the one who left her alone.
53. She denied having had consensual sexual intercourse with Mira on 6th in his room. She admitted that she had not complained to her aunty or police at the earliest opportunity. She admitted that she had lied to her aunty when she became pregnant.
54. Kritika said that she wanted to complain to Dr. Bhaggat but Mira Sami's presence prevented her from doing that. When she returned home she told everything to her step mother, not only about the abortion. She denied that she and her parents had demanded \$500.00, his van and his house from Mira Sami before going to police station to lodge the report. She also denied receiving \$400.00 cash and a car which could be sold as spare parts.

PW 2 Kulsum Bano

55. Kulsum Bano is Kritika's stepmother. Bano said that in August 2013, Kritika was sent to Lovu, Lautoka to stay with his uncle Mira Sami and her aunty because an ex-St. Giles patient used to come home and bother Kritika during day time.

56. Bano described Kritika as a good girl. She did not have a boyfriend back in 2013.
57. After sending Kritika to Mira's place, after two weeks, she managed to speak to Kritika over the phone when her aunty gave her phone to Kritika. She noticed that Kritika was not talking in a normal way. She gave only 'yes' or 'no', answers. She realised that something was wrong with Kritika and called her again. Every time she called, she called on aunt's phone. When aunty gave the phone to Kritika, she asked Kritika if she wants to come back and stay with them. Kritika answered in the negative and said that she was okay living with them. Once again she called Kritika. She said she's okay.
58. Aunty or Mira never complained about any misbehaviour of Kritika or that Kritika had a boyfriend.
59. When she moved to Ba, Kritika returned home on 19th of November 2013. Mira Sami and his son came to drop Kritika at her place. They stayed overnight, and left next day in the morning. Mira did not tell anything unusual that had happened with Kritika during her stay at his house. Kritika had gone so slim and she did not feel like eating food.
60. Kritika was very close to her. After two to three days of her arrival, Kritika informed her everything. At first, Kritika talked only about the abortion. She said that the baby belonged to one person from Nadi. Kritika further said that the abortion was done at Dr. Michael's surgery and the money for this was given by Maureen. Then she rang Maureen. Maureen denied giving money for an abortion. In a short while, Mira Sami his wife, in-laws, Maureen and her husband came to her place and started a conversation. Kritika then opened up and implicated Mira Sami. Mira Sami begged her husband and said, *'brother, I have done a mistake and please forgive me'*. She said *'no, if you have done something wrong then I will take this matter to Court'*. Then, after two days, she went and reported the matter to Women's Crisis Centre, Police and also Social Welfare.
61. Bano denied having solicited or receiving money or anything from Mira at any point in time before reporting the matter to police. When asked Kritika as to why she never informed her earlier about what was happening with her, Kritika said that Mira Sami had threatened her that he would kill her. She first reported to Ba Police Station on 5th of December and later they were referred to Lautoka Police Station. Kritika's statement was recorded at Ba Police Station as well as at Lautoka Police Station.
62. Under Cross-examination, the witness Bano said that Kritika was sent to Mira's place on 13th August and not 20th August. One neighbour called and informed

her that Kritika was working with the uncle at one upholstery shop. Then she called her sister-in-law and told her to send Kritika back. Kritika said that she doesn't want to go back home.

63. Bano said that she had informed police about the forceful sexual intercourse being relayed to her by Kritika although they (Police) have not recorded it in her statement. She denied that the matter was reported to police only when Mira Sami and his family refused to give the house and money.

PW 3 Cpl. 3692 Asenaca Taufu

64. Cpl. Taufu said that Kritika Sharma's complaint was referred to Lautoka Police Station on 12th of December 2013 from Ba Police Station. After receiving the documents from Ba Police Station, she re-recorded a detailed statement from the victim in February 2014. First report had been made to Ba Police Station sometimes in December, 2013.
65. That is the case for the Prosecution. At the close 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.
66. As you are aware, Accused elected to give evidence. That is his right. Now I must tell you that the fact that an accused gives evidence in his own defence does not relieve the Prosecution of the burden to prove their case to you beyond reasonable doubt. Burden of proof remains with the prosecution throughout. Accused's evidence must be considered along with all the other evidence and you can attach such weight to it as you think appropriate. Even if you don't believe a single word accused person says, you must still be sure that he is guilty of the crime that he is charged with.

DW1 Mira Sami

67. Mira Sami said that, in August 2013, Kritika came to live with them in Lovu, Lautoka. He did know how Kritika came to his house. It was his wife that was in contact with Kritika's family.
68. Kritika started to work with Mira Sami at 'New Look Upholstery' when his wife asked him to take Kritika to work as Kritika wanted to work with him. On the first day of work for Kritika, nothing unusual happened at the shop. He denied making nasty comments to her. She was only using his phone.

69. On the next day, around 5.00 p.m., Kritika was playing on the phone. She said that her boyfriend was calling her. He then asked her how many boyfriends she is having. She said: '*I have many boyfriends*'. Then he asked whether he also can be her boyfriend. She said yes. Then after a talk, they kissed each other and, as they went towards the toilet, she was getting crazy. She was holding her tightly and she wanted to have sex with him. She opened the zip of his pants, then he also opened her zip but she opened her pants by herself and bent in front. Then he inserted his penis inside her vagina for about 1 to 2 minutes. There was no resistance from Kritika. She willingly participated. The shop was open when this was happening. Then they closed the shop together and came back home together.
70. He denied using force, pushing her on the floor, covering her mouth and threatening her that he will kill her if she said to anybody.
71. There are many shops and restaurants around 'New Look Upholstery'. Most of the time, he worked inside the shop. Kritika used to go to the bank and buy her own recharge for his phone.
72. On the second day also the same thing happened with her consent. This thing happened only for three days in the shop and that's it. One day, it happened on top of the table.
73. On 7th November 2013, his wife went to Ba to visit her family. His wife wanted to take Kritika with her but she didn't go with her. The day his wife went to Ba, he was sleeping inside his bedroom. Kritika came inside his room and kissed on his lips and asked him for how long she can have sex with him. Kritika then sucked his penis and came on top of him and had sex with him. After having sex they both had a shower together. He never used force. She did it by herself.
74. When his wife returned from Ba, Kritika said that her stomach is paining. He took her to a doctor in his van. After that his wife took her to Lautoka Hospital. He drove the van but did not go inside to see the doctor. After that, they went together to Dr. Bhaggat. Before Kritika went to Ba, she went to Dr. Michael as well with his wife.
75. He took Kritika to Ba on the 19th of November 2013. He could not take her earlier because he was busy. He attended the meeting where Kulsum Bano and her husband blamed him for doing something to Kritika. When he was named, he challenged them to report the matter to police. He denied that he had apologized.

76. After the meeting they demanded money, van and house. He gave them \$400.00. They also demanded his red car for spare parts. He gave that too. Then after one week or two they demand money again. He refused to give money. Then they went and reported the matter to police.
77. He denied the allegation that he penetrated Kritika without her consent on any of the dates mentioned in the Information. Kritika is related to his second wife's family but he did not know much about them. He denied that Kritika is his niece.
78. Under cross-examination, Mira Sami said that he had no connection with his in-laws and Kritika's stay at his house was arranged by his wife without seeking his permission. He agreed that he was a fatherly figure to 17 year old Kritika. He also admitted that on the day he had suggested to her that if he can be her boyfriend, she agreed to sleep with him.
79. Kritika did not say that she's pregnant. Doctor said that she had a clot. He denied paying \$300.00 from his pocket for her medical expenses. He said that Kritika and her parents fabricated this allegation to demand money from him. He admitted that he is not a propertied man.
80. Mira Sami admitted that he took Kritika to several doctors and to her parent's house and stayed there and had grog with them although he had nothing to do with Kritika. He was not aware that Kritika had an abortion. He admitted that he did not inform Kritika's parents that Kritika was taken to several doctors.
81. He denied that he had had sexual intercourse with Kritika on 24th, 25, 26th 27th, 28th 29th and 30th of August. He said that he had a beautiful wife and did not want to sleep with Kritika. He had maintained a good record before this incident. It was Kritika who lured him into this practice when he did not have any feeling towards her.

Analysis


82. Lady and gentlemen Assessors, the Accused Mira Sami is charged with three counts of Rape. You should be fully satisfied that Mira Sami penetrated Kritika without her consent before you can find him guilty of Rape. You are supposed to consider evidence against each count separately.
83. There is no dispute as to the identity of the Accused. It was agreed that Mira Sami is Kritika's uncle.
84. Mira Sami admits to having sexual intercourse with Kritika as alleged in the information. Therefore, only dispute in this case is with regard to consent. You

are to decide whether the sexual intercourse on all three occasions took place without Kritika's consent.

85. Prosecution called three witnesses and based its case substantially on the evidence of the Complainant. If you are satisfied that the evidence she gave in court is truthful and trustworthy you can safely act upon her evidence in coming to your conclusion. No corroboration is required.
86. You must decide whether Kritika did not consent to sexual intercourse with Mira Sami as alleged in the information. That will require an assessment by you of the Complainant's evidence.
87. Prosecution took up the position that Mira Sami used force and the sexual intercourse on each occasion took place without Kritika's consent. Kritika in her evidence said that Mira Sami used force and everything happened without her consent. Prosecution says that Kritika is a trustworthy witness whose evidence was never shaken throughout her entire evidence. They further say that it is highly unlikely that a 17 year girl would give herself up to a 40 year old uncle and agree to have sexual intercourse on the very first day of the purported love affair.
88. Defence on the other hand says that Kritika did not tell the truth in court. They say that Kritika is not consistent and her evidence is not consistent with her statement to police and the evidence of her step mother. It was also argued that Kritika could have yelled and otherwise objected to what the Accused was doing if she was not consenting. It was also argued that she could have complained to her aunty or police at the first available opportunity if she had not consented. In her closing address, Defence Counsel submitted to you that Kritika's failure to protest and complain at the first available opportunity demonstrates that she was not telling the truth and that the sexual intercourse took place with her consent.
89. You heard Kritika's explanations. She said that she was in fear of her uncle who had threatened to kill her. She said she wanted to yell but her mouth was covered. Prosecution says that Kritika was in a vulnerable position in Mira Sami's house under his constant control and observation and also his death threats prevented her from reporting the matter and, when she returned home, she opened up and complained to her step mother and then to police.
90. You observed Kritika's demeanor in court. You decide if she is an honest and credible witness and what weight should be attached to her evidence.

91. Accused maintained that he had had consensual sexual intercourse with Kritika. He explained how he was tempted to have sexual intercourse with her. Prosecution says that the version of the Defence is inconsistent and implausible. You see whether Accused's evidence is believable and consistent and whether his version is consistent with the position taken up by his Counsel at cross-examination.
92. Mira Sami said that he has a beautiful wife and he did not want to have sex with Kritika. He however admitted that he had proposed to be her boyfriend. Prosecution argues that Accused is not consistent in his evidence.
93. Counsel for Prosecution queried why a 17 year old girl would want to make up such a serious allegation against his uncle. Mira Sami said that the allegation was fabricated by Kritika and her stepmother when he refused to give in to their demand for money and property.
94. You watched Accused giving evidence in court. It is up to you to decide which version is to believe and whether you could accept the version of the Defence. If you accept the version of the Defence you must find the Accused not guilty. Even if you reject the version of the Defence and do not believe a single word Accused told in court, still the Prosecution should prove their case beyond reasonable doubt. Remember, the burden to prove the Accused's guilt beyond reasonable doubt on each count lies with the Prosecution throughout the trial, and never shifts to the Accused, at any stage of the trial.
95. If you accept the Prosecution's version of events, and you are satisfied that the Prosecution has proven the case beyond reasonable doubt on each count, so that you are sure of Accused's guilt you must find him guilty on each count. Please remember, you are to consider each count separately.
96. You may now retire to deliberate on the case, and once you have reached your decisions, you may inform our clerks, so that we could reconvene, to receive the same.
97. Your opinions should be
 - 1st Count –Accused guilty or not guilty ?
 - 2nd Count- Accused guilty or not guilty?
 - 3rd Count- Accused guilty or not guilty?Any re-directions?




Aruna Aluthge
Judge

AT LAUTOKA
5th March, 2018

Solicitors: **Office of the Director of Public Prosecution for State**
 Office of the Legal Aid Commission for Defence