

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 383 OF 2016S

STATE

VS

- 1. WAME BALEIMAKOGAI**
- 2. NAPOLIONI LEILOMA**
- 3. LUKE SOROVAKATINI**
- 4. SANJAY LAL**

Counsels : Mr. T. Tuenuku for State
Ms. L. Manulevu and Mr. K. Prasad for Accused No. 1
Ms. L. David for Accused No. 2
Ms. L. Ratidara for Accused No.3
Mr. J. Reddy for Accused No. 4

Hearings : 25, 26, 27 and 28 June, 2, 4, 5, 6, 9, 10, 11 and 12 July, 2018

Summing Up : 13 July, 2016

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 accuseds. There is no obligation on the accuseds to prove their 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 accuseds' guilt, before you can express an opinion that they are guilty. If you have any reasonable doubt so that you are not sure about their guilt, then you must express an opinion, that they are 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 accuseds or the victims. Your duty is to find the facts based on the evidence, and to apply the law to those facts, without fear, favor 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 ISSUES

8. In this case, as assessors and judges of fact, each of you will have to answer the following questions:
- (i) On count No. 1, did Accused No. 1, 2 and 3, between 9 and 10 October 2016, at Waimaro, Tailevu in the Eastern Division, rape complainant no. 1 (PW1)?
 - (ii) On count no. 2, did Accused No. 2, between 9 and 10 October 2016, at Waimaro, Tailevu in the Eastern Division, rape complainant no. 1 (PW1)?
 - (iii) On count no. 3, did Accused No. 2, between 9 and 10 October 2016, at Waimaro, Tailevu in the Eastern Division, rape complainant no. 2 (PW2)?
 - (iv) On count no. 4, did Accused No. 1, 2 and 4, between 9 and 10 October 2016, at Waimaro, Tailevu in the Eastern Division, rape complainant no. 2 (PW2)?
 - (v) On count no. 5, did Accused No. 4, between 9 and 10 October 2016, at Waimaro, Tailevu in the Eastern Division, assault complainant no. 2 (PW2) by punching her mouth, with intent to commit rape?

E. THE OFFENCE AND IT'S ELEMENTS

9. All four accuseds were charged with "rape", contrary to sections 207(1), (2)(a) and (2)(c) of the Crimes Act 2009. Count No. 1 involved Accused No. 1, 2 and 3. Count No. 2 and 3 involved Accused No. 2 only. Count No. 4 involved Accused No. 1, 2 and 4. Accused No. 4 was further charged in count no. 5 with "assault with intent to commit rape", contrary to section 209 of the Crimes Act 2009. It was alleged that between 9 and 10 October 2016, the four accuseds enticed the two female complainants (PW1 and PW2) to a secluded spot in Waimaro, Tailevu, and raped them. Prior to the rape, it was alleged that Accused No. 4 assaulted PW2 with intent to rape her.
10. For an accused to be found guilty of rape, the prosecution must prove the following elements beyond a reasonable doubt:
- (i) the accuseds' penis penetrated the complainant's vagina (count No. 1 and 4); or the complainant's mouth (count no. 2 and 3);
 - (ii) without the complainant's consent; and
 - (iii) the accused knew the complainant was not consenting to 10 (i) above, at the time.

11. In law, the slightest penetration of the complainant's vagina (count no. 1 and 4), or her mouth (count no. 2 and 3), by the accused's penis, is sufficient to satisfy 10(i) above. There does not need to be full penetration by the accused's penis into the complainant's vagina or mouth, and whether or not the accused ejaculated, is totally irrelevant.
12. Consent is to "agree freely and voluntarily and out of her own free will", and she must have the necessary mental capacity to give her consent. If consent was obtained by force, threat, intimidation, or fear of bodily harm, or by exercise of authority over her, or by false and fraudulent representation to her about the nature or purpose of the act, that "consent" is deemed, in law, to be no consent. The consent must be freely and voluntarily given by the complainant, and out of her own free will. If the consent was induced by fear, it is no consent at all.
13. It must also be established by the prosecution beyond reasonable doubt that the accused knew the complainant was not consenting to 10 (i) above, at the time. Alternatively, the prosecution must make you sure that the accused, when he did 10 (i) above, he was reckless as to whether or not the complainant was consenting to the same, at the time. You will have to look at the parties' conduct, at the time, and the surrounding circumstances, to decide the above issues.
14. In count no. 5, for Accused No. 4 to be found guilty, the prosecution must prove beyond reasonable doubt, the following elements:
 - (i) Accused No. 4
 - (ii) assaulted the complainant
 - (iii) with intent to commit rape.
15. The least touching of another in anger is an assault. To assault someone is to apply unlawful force to the person of another, for example, to hit someone with a stick, is to apply unlawful force to the person of another. The assault must be accompanied with an intention to commit rape. The definition of rape had been explained in paragraph 10 to 13 hereof. Thus when the person assaulted the complainant, he must intent to commit rape thereafter.

16. In this case, there are four accuseds on trial. Each of the accused is entitled to be tried solely on the evidence that is admissible against him. This means that you must consider the position of each accused separately, and come to a separate considered decision on each of them. Just because they are jointly charged in the same information does not mean that they must all be guilty. You must also consider the four counts separately, when considering the whole evidence, and come to a separate considered decision on each count.

F. THE PROSECUTION'S CASE

17. The prosecution's case were as follows. On 9 October 2016, at about 9 pm, accused no. 4 was driving a rental car, registration number IQ 893, around Nausori Town. Sitting in the front passenger seat was Accused no. 1. Sitting in the back seat were accused no. 2 and 3. Accused no. 2 was sitting behind the driver, while accused no. 3 was sitting behind the front seat passenger. Accused no. 2 was accused No. 4's brother in law. Accused no. 4 was married to Accused no. 2's sister. Accused no. 1 was accused no. 2's cousin. Accused no. 3 was accused no. 2's friend. All the accuseds resided near to each other in Tailevu.
18. Accused no. 4 drove past the Deoji Shop at Nausori Town. The complainants (i.e. PW1 and PW2) were standing in front of Deoji shop. Accused no. 3 invited the complainants into the car to "cruise" around Nausori. PW1 and PW2 agreed and got into the car. They sat in the back seat between accused no. 3 and 2. The six of them then "cruise" around Nausori, then to Waidalice and to Korovou Town. On the way, they were consuming alcohol, listening to music and yarning. They were basically enjoying themselves. At Korovou Town, Accused No. 4 and PW2 got off, while the others went elsewhere. Accused no. 4 later asked PW2 for sex, but she refused.
19. The others later arrived. Accused no. 4 drove the car again. The six later drove to a secluded spot in Waimaro away from Korovou Town. They drove into a paddock. According to the prosecution, Accused no. 4 then stopped the car. The boys then got off the car. They allegedly surrounded the car. PW1 and PW2 were still in the back seat of the car. According to the prosecution, Accused no. 2 then allegedly dragged PW2 out of the car. PW2 yelled at the top of her voice. According to the prosecution, accused no. 4 then allegedly punched PW2 in the mouth to stop her yelling (count no. 5). According to the prosecution, accused no. 2 then came to PW1. PW1 was scared because

she saw what was done to PW2. Accused no. 2 then allegedly forced PW1 to suck his penis (count no. 2). Later, accused no. 2 forced PW1 onto the car back seat. PW1 asked Accused No. 2 not to do anything to her. Accused no. 2 then allegedly forced PW1 to take off her clothes, and had sex with her, without her consent (count no. 1)

20. Accused no. 2 later took PW1 out of the car. He took her 10 footsteps from the back of the car. He allegedly forced her to the ground and penetrated her vagina with his penis without her consent. PW1 said, accused no. 2 threatened her (count no. 1). When accused no. 2 finished with PW1, accused no. 3 came and forced himself on PW1. He allegedly penetrated her vagina with his penis without her consent (count no. 1). After accused no. 3, accused no. 1 came to PW1, and allegedly forced himself on her. He allegedly penetrated her vagina with his penis, without her consent (count no. 1). After accused no. 1, accused no. 2 again came to PW1 and allegedly forced himself on her again. He allegedly penetrated her vagina with his penis without her consent (count no. 1). According to the prosecution, all the above accuseds knew PW1 was not consenting to sex, at the time they had sex with her.
21. As for PW2, she allegedly ran to Accused no. 1 for assistance when accused no. 4 punched her on the mouth. Instead of assisting her, accused no. 1 allegedly dragged PW2 to a secluded spot. Despite PW2 crying, he allegedly forced her to the ground, forcefully took off her clothes and penetrated her vagina with his penis without her consent (count no. 4). PW2 said, she resisted him, but it was to no avail, as he was stronger. After accused no. 1, accused no. 2 allegedly came to PW2. Accused no. 2 allegedly took PW2 to another secluded sport and forced himself on her. First, he forced her to suck his penis. He swore at her. She then sucked his penis (count no., 3). Later he allegedly penetrated her vagina with his penis without her consent (count no. 4). After accused no. 2, accused no. 4 allegedly came to PW2. Accused no. 4 allegedly took PW2 to another secluded spot and penetrated her vagina with his penis without her consent (count no. 4). Accused no. 4 later returned to the car. According to the prosecution, all the accuseds knew PW2 was not consenting to sex at the time they had sex with her.
22. Because of the above, the prosecution is asking you, as assessors and judges of fact, to find all the accuseds guilty as charged on all counts. That was the case for the prosecution.

G. THE ACCUSED'S CASES

23. On 27 June 2018, the first day of the trial proper, the information was put to all accuseds, in the presence of their counsels. They pleaded not guilty to the charges. In other words, they denied the allegations against them. When a prima facie case was found against them, at the end of the prosecution's case, wherein they were called upon to make their defence, accused no. 1 and 3 choose to remain silent and called no witness. Accused no. 2 and 4 choose to give sworn evidence and called no witness. That was their rights.
24. As to accused no. 1 and 3 choosing to remain silent and calling no witness, nothing negative whatsoever should be imputed to them for choosing the above. This is because the burden of proof is not on them, but on the prosecution throughout the trial. There is no burden on them to prove their innocence. The burden is on the prosecution to prove their guilty beyond a reasonable doubt and they are well within their rights to sit there silently and demand the prosecution prove their guilt beyond reasonable doubt.
25. As for accused no. 2 and 4, their cases were simple. As for accused no. 2, he admitted that he penetrated PW1's vagina with his penis, at the material time. He also admitted that he penetrated PW1's mouth, at the material time. He said, PW1 consented to the above, and he knew she was consenting to the same, at the material time. As to PW2's allegations against him, he said he did not penetrate PW2's vagina or mouth, at the material time, because he was satisfied with having sex with PW1. He said, there was no need for him to have sex with PW2.
26. As for accused no. 4, he denied penetration PW2's vagina with his penis, at the material time. He denied PW2's allegations in count no. 4 and 5. He admitted slapping PW2's mouth at the material time because she was shouting at the top of her voice. Accused no. 4 admitted PW2 sucked his penis at the material time.
27. Because of the above, the accuseds ask you, as assessors and judges of fact, to find them not guilty as charged on all counts. That was the case for the defence.

H. **ANALYSIS OF THE EVIDENCE**

(a) **Introduction:**

28. 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 Agreed Facts and its significance, then the state's case against each of the accused; then the accuseds' cases, and finally, the need to consider all the evidence.

(b) **The Agreed Facts:**

29. Out of the four accuseds, only accused no. 2 and 4 submitted "Agreed Facts". A copy of the same is with you. Please, read it carefully. For accused no. 2, the "Agreed Facts", is dated 18 May 2018. It has 9 paragraphs of Agreed Facts. Accused no. 4's Agreed Facts is dated 27 June 2018. It has 6 paragraphs of Agreed Facts. In the Agreed Facts, the parties did not dispute the identities of each other. You may treat the Agreed Facts as established facts, and that the prosecution had proven those facts beyond a reasonable doubt, because the parties are not disputing the same.

(c) **The State's Case Against the Accuseds:**

30. The State's case against each of the accused persons were based fundamentally on the two complainant's (PW1 and PW2) verbal evidence given in court. Complainant No. 1 (PW1) gave evidence before you on 27, 28 June, 2, and 4 July 2018, a period of 4 days. Complainant No. 2 (PW2) gave evidence before you on 4, 5, 6 and 10 July 2018, a period of 4 days also. In rape cases, as a matter of law, a complainant's verbal evidence does not need to be corroborated by independent evidence for it to be accepted. It does not need even to be corroborated by independent medical evidence. If you accept that the complainant's verbal evidence was credible, and you accept the same, that would be enough to ground a possible conviction. A crime can be proven on the basis of the evidence of a single witness, if you, the trier of fact, accepted the same.
31. You have had 4 days (27, 28 June, 2 and 4 July 2018) to hear and observe the first complainant (PW1) give her evidence. You have had 4 days also (4, 5, 6 and 10 July 2018) to hear and observe the second complainant (PW2) give her evidence. I am sure the details of their evidence

are still fresh in your minds and I will not bore you with the details of the same. I will only highlight the salient points that relate to their allegations against each accused.

Accused No. 1 (Count No. 1 and 4) Rape:

32. From the general nature of the evidence, it was accepted that the car ride from Deoji shop Nausori Town to the secluded spot in Waimaro Tailevu was one of happiness and general agreement between the two complainants and the four accuseds. It was when the car accused no. 4 was driving stopped at Waimaro pass Korovou Town, in a secluded spot in a paddock, that the complainants' complaint began. PW1 said, when the car stopped all the accuseds got off the car. Previously, accused no. 4 was driving the vehicle; accused no. 1 was in the front passenger seat, accused no. 2 was behind the driver in the back seat, accused no. 3 was behind the front passenger seat, and PW1 and PW2 between accused no. 2 and 3 in the back seat.
33. PW1 said, she saw Accused no. 2 pulled PW2 out of the back seat of the car. PW2 said, accused no. 2 came and pulled her out of the car. PW2 said, accused no. 2 grabbed her clothes and hair and threw her out of the car. PW2 said, she yelled. PW2 said, she could not run away as the four boys were surrounding the car and knew something together. PW2 said accused no. 4 suddenly punched her on the mouth. Accused no. 4 (DW2) in his evidence, said, he slapped PW2 because she was yelling loudly. PW2 said, she ran to accused no. 1 to seek his assistance. However, PW2 said, accused no. 1 told her he wanted to have sex with her. PW2 said, accused no. 1 held her and her clothes and dragged her to a secluded spot. PW2 said, she was crying. PW2 said, accused no. 1 forcefully took off her clothes and his clothes. Then he inserted his penis into her vagina, without her consent, for 10 minutes. (count no. 4) PW2 said, despite her resistance to accused no. 1 and her crying to show her non consent, he nevertheless had sex with her.
34. PW2 said, she observed accused no. 1 from Nausori to Korovou and at the crime scene, via the street lights, the lights in the car when the doors were open and the moonlight. The above period covered more than 45 minutes. PW2 in the car, he was an arms length from her. When having sex, they were facing each other. PW2 said, that was the first time she saw him. Her viewing were not impeded. A special reason for remembering his face was what he did to her that night.,

35. PW1 said, after accused no. 2 and 3 forcefully had sex with her, accused no. 1 approached her. PW1 said, she was lying on the ground weak and helpless. PW1 said, accused no. 1 came and laid on top of her. He didn't ask her for sex. PW1 said, accused no. 1 inserted his penis into her vagina, without her consent, and had sex for 5 minutes until he ejaculated. PW1 said, she was scared to resist as she was very weak (count no. 1). PW1 said, after accused no. 1 ejaculated, he went away.
36. If you accept the two complainants' evidence as credible, and you accept the same, you must find accused no. 1 guilty as charged on count no. 1 and 4. If otherwise, you must find accused no. 1 not guilty as charged. It is a matter entirely for you.

Accused No. 2 (Counts no. 1, 2, 3 and 4) Rape:

37. PW1 said, after pulling PW2 out of the car, and accused no. 4 punching PW2, accused no. 2 came to her while she was sitting in the back seat of the car. PW1 said, after witnessing PW2 been punched by Accused no. 4, she was scared. PW1 said, accused no. 2 came to her and forced her to suck his penis. PW2 said, as she was fearful, she sucked his penis (count no. 2). PW1 said, accused no. 2 then forced her to lie on the back seat of the car. PW1 said, she asked him not to have sex with her. PW1 said, he nevertheless inserted his penis into her vagina, without her consent (count no. 1). PW1 said, he later took her to the back of the car that is 10 footsteps away. PW1 said, he laid her on the ground facing up. PW1 said, he then inserted his penis into her vagina again without her consent. PW1 said, accused no. 2 threatened her that he will do something to her if he doesn't have sex with her. PW1 said, he had sex with her until he ejaculated (count no. 1)
38. PW1 said, after accused no. 1 had sex with her, accused no. 2 came to her again. PW1 said, accused no. 2 inserted his penis into her vagina again, without her consent. PW1 said, she asked him to stop as she was weak. However, PW1 said, he continued until he ejaculated (count no. 1). PW1 said, it was then that accused no. 4 came to them, and told them that PW2 had ran away.
39. As for count no. 3, PW2 said, after accused no. 1 had sex with her, accused no. 2 came to her. PW2 said, accused no. 2 forcefully took her to another secluded spot and asked PW2 for sex.

PW2 said, she refused. PW2 said, he later forced her to suck his penis. PW2 said, she then sucked his penis, without her consent (count no. 3). PW2 said, he later forced her on the ground. PW2 said, he later inserted his penis into her vagina, without her consent. PW2 said, he well knew she was not consenting to sex, at the time (count no. 4).

40. PW2 said, she observed Accused no. 2 from Nausori to Korovou and to the crime scene. That was approximately more than 45 minutes. In the car, accused no. 2 was sitting with PW2 in the back seat and were an arms length away. PW2 said, with the street lights, the light in the car when the doors were open and the moonlight enabled her to see his face. There was no impediment in the way. This was the first time she met accused no. 2. A special reason for remembering his face was what he did to her that night. PW2 said, after sex, accused no. 2 stood up and walked to the car.

41. If you accept PW1 and PW2's evidence as credible, you must find accused no. 2 guilty as charged on counts 1, 2, 3 and 4. If otherwise, you must find him not guilty as charged. It is a matter entirely for you.

Accused No. 3 (Count no. 1): Rape:

42. PW1 said, after accused no. 2 had sex with her, accused no. 3 came to her. PW1 said, she was standing up. PW1 said, accused no. 3 came and push her down to the ground. PW1 said, she asked accused no. 3 not to have sex with her. However, he did not listen to her. PW1 said, accused later inserted his penis into her vagina, and had sex with her for about 5 minutes, until he ejaculated (count no. 1). PW1 said, accused no. 4 later came and said PW2 had ran away. They later went in the car and look for PW2. PW1 said, she went with accused no. 3 that night and slept at his home. PW1 said, they had consensual sex later. In the morning PW1 said, she helped accused no. 3 plant cassava and prepare lunch. PW1 said, later she went with accused no. 3 to Nausori, where he was arrested by police. How you treat PW1's evidence is a matter entirely for you. If you accept she was raped by accused no. 3 at the material time, you must find him guilty as charged. If otherwise, you must find him not guilty as charged. It is entirely a matter for you.

Accused No. 4 (count no. 4 and 5): Rape and Assault with Intent to Commit rape:

43. PW1 said, she saw accused no., 2 pulled PW2 out of the car when they stopped at the secluded spot (that is, the crime scene). PW1 said, she saw accused no. 4 punch PW2 on the mouth. PW2 said, accused no. 4 punched her in the mouth, at the material time. PW2 said, accused no. 4 punched her because she was yelling. Note, when accused no. 4 gave evidence, he admitted he slapped PW2 in the mouth because she was yelling loudly (count no. 5). PW2 said, after been punched by accused no. 4, accused no. 1 and 2 later inserted their penis into her vagina without her consent. They forced her to do the above. PW2 said, accused no., 4 came to her last. PW2 said, accused no. 4 pulled her hair and took her to another spot. PW2 said, accused no. 4 pushed her forcefully to the ground. PW2 said, he later laid on top of her and inserted his penis into her vagina, without her consent for about 12 minutes. PW2 said, accused no. 4 knew she was not consenting to sex at the time (count no. 4). PW2 said, accused no. 4 later dressed himself up and went to the car. PW2 said, she put on her clothes and ran away from the boys.
44. If you accept PW1 and PW2's evidence as credible, you must find accused no. 4 guilty as charged. If otherwise, you must find him not guilty as charged. It is a matter entirely for you.

(d) The Accuseds' Cases:

45. From paragraphs 23, 24, 25, 26 and 27 hereof, I had summarized the accuseds' cases to you. I repeat the same here. If you find the strength of the prosecution's case against accused no. 1 and 3 are not sufficient to make you sure that they are guilty as charged, you must find them not guilty as charged. If it's otherwise, then you must find them guilty as charged. As for accused no. 2 and 4, if you accept their sworn denials of the allegations against them, you must find them not guilty as charged. If otherwise, you must find them guilty as charged. It is a matter entirely for you.

(e) The Need to Consider All the Evidence

46. Five witnesses gave evidence for the prosecution:
- (i) complainant no. 1 (PW1);
 - (ii) complainant no. 2 (PW2);
 - (iii) PC 4344 Amani Bosenawai (PW3);
 - (iv) PC 3768 Marika Mare (PW4); and

(vi) PC 4018 Timoci Tuinaviti (PW5)

47. The defence called two witnesses:

- (i) Accused No. 2 (DW1); and
- (ii) Accused No. 4 (DW2)

48. The prosecution tendered the following exhibits:

- (i) Prosecution Exhibit 1(A) - Accused No. 4's hand written interview notes
- Prosecution Exhibit 1(B) - typed version
- Prosecution Exhibit 1(C) - handwritten blotted version
- Prosecution Exhibit 1(D) - typed blotted version

- (ii) Prosecution Exhibit 2(A) - Accused no. 2's charge statement
- Prosecution Exhibit 2(B) - typed version

49. The Defence submitted an Exhibit:

- (i) Defence Exhibit No. 1 – PW2's medical report

50. You are to consider all the above evidences together, and compare and analyse them. If I didn't mention any piece of evidence that you consider important, please take it on board and consider the same in your deliberation. As assessors and judges of fact, you are entitled to accept the whole or part of a witnesses' evidence you consider credible, and you are also entitled to reject the whole or part of a witnesses' evidence you consider not credible. You are the judges of fact.

I. SUMMARY

51. Remember, the burden to prove the accuseds' guilt beyond reasonable doubt lies on the prosecution throughout the trial, and it never shifts to the accuseds, at any stage of the trial. The accuseds are not required to prove their innocence, or prove anything at all. In fact, they are 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 them 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 accuseds' guilt, you must find them not guilty as charged.

52. Your possible opinions are as follows:

- (i) Count No. 1: Rape : Accused No. 1 : Guilty or Not Guilty
Accused No. 2 : Guilty or Not Guilty
Accused No. 3 : Guilty or Not Guilty
Count No. 2: Rape : Accused No. 2 : Guilty or Not Guilty
Count No. 3: Rape : Accused No. 2 : Guilty or Not Guilty
Count No. 4: Rape : Accused No. 1 : Guilty or Not Guilty
Accused No. 2 : Guilty or Not Guilty
Accused No. 4 : Guilty or Not Guilty
Count No. 5 Assault with Intent to
Commit Rape: Accused No. 4 : Guilty or Not Guilty

50. 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 your decisions.



Salesi Temo
JUDGE

- Solicitor for State : Office of the Director of Public Prosecution, Suva
Solicitor for Accused No. 1 : Legal Aid Commission, Suva
Solicitor for Accused No. 2 : Legal Aid Commission, Suva
Solicitor for Accused No. 3 : Legal Aid Commission, Suva
Solicitor for Accused No. 4 : J. Reddy, Barrister and Solicitor, Suva.