

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 39 of 2017

THE STATE

V

ULIANO SAMUNAKA

Counsels: Mrs. A. Vavadakua for the State
Ms. L. Boseiwaqa (L.A.C.) with Mr. U. Koro
for the Accused

Date of Trial: 16, 17 August 2018

Date of Summing Up: 17 August 2018

SUMMING UP

1. Ladies and Sir,
2. The time has now come for me to sum up this case for you. My duty in summing up is two fold. I will direct you on the applicable law and you must accept what I say about the law. I will sum up the evidence for you but you don't have to accept what I say about the evidence or the facts. That is because you are my advisors and you will assess the evidence and after applying the law to that evidence you will tell me in your opinion whether the accused is guilty or not of rape. I don't have

to follow your opinions, but I will give them great weight when I come to the make the final judgment of the Court.

3. You must judge this case solely on the evidence that has been placed before you in this Courtroom and on nothing else.
4. Evidence in any case consists of the oral testimony of all witnesses, together with all documents, and in this case that is the evidence of two prosecution witnesses, four defence witnesses and the medical report. You may accept the evidence or reject it. You may also accept part of a witness' evidence or part of a document and reject the rest. It is entirely a matter for you. You will not consider as evidence anything that someone has told you outside or anything that you may have read or seen in the media. You may have heard me in the course of the trial express an opinion or make a remark about the evidence. You must ignore that completely and come to your own views about the evidence placed before you.
5. Counsel addressed you this morning on how you should find the case. That is their duty to the court. You do not have to accept what Counsel tells you, unless you agree with them. You will make up your own minds on the evidence.
6. Please do not be influenced by any sympathy or prejudice you may feel towards anybody connected with the trial, it is your duty to come to your opinions solely on the facts as you find them in accordance with my directions on the law.
7. I repeat what you have been told several times about the burden and standard on the prosecution. You hear this often because it is very important. The State must prove to you so that you are sure that the accused is guilty of these crimes. That is a burden

on the State throughout the trial and to be sure means that there can be no reasonable doubt in your minds.

8. As you are aware, the accused has been charged with rape. For the purposes of this trial the Law says that rape is committed when a man penetrates a woman's vagina with his finger or fingers without her consent.
9. Therefore before you can find Uliano guilty you must be sure that it was Uliano and that he had used a finger or fingers to penetrate Koleta's vagina that night and it was without her consent.
10. You will note that the defence are not disputing that this happened to Koleta against her will but they are saying that it was **not** Uliano. That remains then the sole issue for you to decide assessors, was it Uliano or not?
11. I know that you heard the evidence only yesterday but it is my duty to summarize it for you in fairness to both sides
12. Koleta told us that she is married and that she lives with her husband, her mother-in-law and a young uncle called Sakeo.
13. During the night leading to the 23 July 2017 she awoke from sleeping in pain. There was a heavy person lying on top of her. She opened her eyes and saw the accused. He was using his fingers to play with her and penetrate her. She asked him what he was doing, and telling him that it was very painful. He pressed his hand and mouth on to hers to keep her from shouting out. She tried to move around to evade him and shout. He punched her twice on her right thigh. He tried to force her legs apart but wasn't able to. He then stood up and went to

stand in the kitchen, where she could see him by the light that was on there. She had known him for 14 years because they lived in the same village. When this happened it was sometime between 2am and 3am and he was in her room for about 15 minutes. At the time her husband was in another part of the village drinking yaqona. He didn't return until about 3pm that afternoon. She told him what had happened. He wanted to go to find Uliano but she said: "Enough already. I have already told the Turaga-ni-Koro and the Police. "

14. In cross-examination she added that after the accused had left her house she had shouted out and had asked her young uncle Sakeo to run after the fellow. She told Sakeo that he was the same build as Mokambo. She didn't want to tell Sakeo that it was Uliano because she was ashamed and her body was weak.
15. The young Doctor told us about his medical examination of Koleta the next day, (the 24th) at the Korovesi Medical Centre. He noted two bruises on her right leg one on her lower thigh and one on her upper inner thigh. He said that these would be caused by violent blunt force trauma and were likely to be caused by a punch etc.
16. Now that was the end of the prosecution case. You heard me explain the charge again to the accused and you heard me tell him what his rights are in defence. He could give evidence and be cross-examined or he could remain silent and say that that the prosecution had not proved the case against him beyond reasonable doubt. Either way he could call witnesses.
17. As you know he elected to give evidence. Now I must direct you again that the accused does not have to prove anything to us. The burden of proof always remains on the State. Even if you

don't believe his evidence it does not make him guilty if the State hasn't made you sure that he raped Koleta with his fingers.

18. Uliano told us that in the evening of the 23rd July 2017, he was drinking grog in the village with a group of his friends. They drank until about 11 pm. It was after that that Sakaraia invited him to drink home brew in a deserted house in Navutu, a neighbouring settlement. He went and drank there with some others. In the course of the night, he had an argument with Uraia which developed into a physical fight. They were very drunk. He left the house and went to the roadside where the home brew drinking had resumed. He joined his friends who had two buckets of home brew with them. After drinking one and a half buckets, he went home with Sakaraia. They were drunk but he says they knew what they were doing.
19. When they got to the village Sakaraia went to Alipate's house to get food and he went to the toilet. He then went to Kolinio's house with Sakaraia and they slept in the sitting room there. He woke up at about 10.30 in the morning and Sakaraia was still asleep.
20. He never went to Koleta's house that night and when he heard the allegations, he just laughed. He said that he had travelled a lot at both home and abroad and he had met lots of women. It is for you to decide what he meant by that statement.
21. He didn't sleep in his own house because he didn't want his family to see him so drunk.
22. Uliano called Sakaraia as his first witness. He is what we call an alibi witness, who along with Mataisi were called to say that he

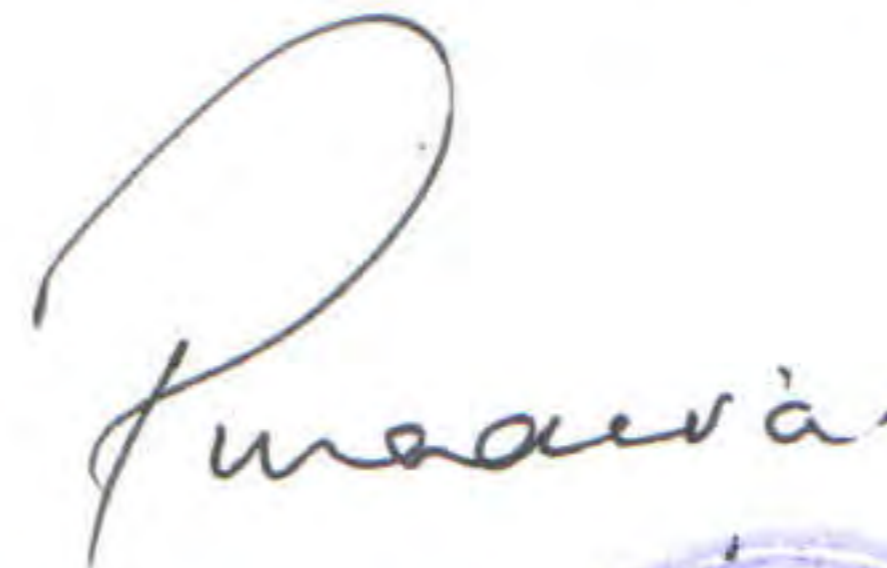
was not at the scene of the crime when it was committed. As the prosecution has to prove his guilt so that you are sure of it, he does not have to prove that he was elsewhere at the time. On the contrary, the prosecution must disprove the alibi.

23. Even if you conclude that the alibi was false, that does not by itself entitle you to convict the accused. It is a matter which you may take into account but you should bear in mind that an alibi is sometimes invented to bolster a genuine defence.
24. Sakaraia told us that he was drinking grog then a few of them went to drink home brew. He saw the accused and Uraia have the fight and he tried to stop the fight twice. He (Sakaraia) and Kolinio took one bucket to drink outside. They sat at the roadside. Both Uraia and Uliano came and joined them. They drank a lot and then Uraia ran away. Then he and Uliano walked back to the village. He went to his sister's house to get food and Uliano went to his own house. Sakaraia went to Mataiasi's house and slept. At some stage he "felt" that Uliano had come into the room to sleep.
25. It is of course for you to decide what to make of Sakaraia's alibi evidence. You should ask yourselves.
 - Did his evidence accord with what Uliano told us?
 - Were there times that he was unable to account for Uliano's whereabouts?
26. The second alibi witness was Mataiasi Kolonio, another friend of the accused. He said that the accused and Sakaria slept in his house that night, but once again he was not able to help us account for the accused's movements and whereabouts for the

whole night. You might think he was not a very helpful witness at all, but again it is a matter for you to decide, not me.

27. The final witness for the defence was Sakeo Matakuru. The young boy Sakeo told us that on the night of 23 July 2017 he was sleeping at Koleta's house when he heard Koleta shout out. She said that somebody had been in her room and had "done something" to her. It was somebody of a big build and she gave two names, Uliano and Makama. After the culprit had left her room and went outside, Koleta had heard a dog barking and she told Sakeo to go and look for the man. He couldn't see anybody.
28. Well that was the end of all the evidence in the case and you will consider it all in your deliberations. Remember that the defence case is that the wrong person has been charged. Uliano says he never went to Koleta's house that night.
29. Your possible opinions on the evidence are guilty or not guilty. I would ask that you try to be all agreed on your opinions but that is not strictly necessary. If you cannot agree, I will accept your individual opinions. Please let a member of my staff know when you are ready and I will reconvene the Court.
30. You may leave us now but just before you go I will ask Counsel if there is any matter of law that they want me to add or amend.

31. Counsel?



P. K. Madigan

Judge



At Labasa

17 August 2018