

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No. 220 of 2013

STATE

V

VILIAME WAQANIVATU

Counsels : Ms. S. Kiran for the State
Ms.R. Varasikete with Mr. E. Maopa for
the accused.

Date of Trial : 19th, 20th February 2018
Date of Summing Up : 21st February 2018

SUMMING UP

Ladies and Gentleman:

- 1.] The time has now come for me to sum up the evidence in this case and to direct you on the law. When I do so, you must accept what I say about the law and apply it to the facts.
- 2.] You are the Judges of the facts and whatever you say about the facts is paramount and I must give your opinions the greatest amount of weight when I come to consider the final judgment of the Court. If in the summing up I express an opinion on the

facts and I do, then you can reject my opinions unless you agree with me and come to your own opinions. I have no right to usurp your view of the facts. On assessing the evidence of witnesses, you may accept all of what a witness says, you may reject all or you may reject or accept part of the evidence.

- 3.] It is for you to tell me what you believe the facts of this case are by applying the law as I direct you and then by telling me if in your opinion the accused is guilty or not guilty of rape and of attempting to pervert the course of justice you must accept what I tell you about the law.
- 4.] You will judge this case solely on the evidence that has been heard or seen in this Courtroom You will not judge this case on anything that you have heard or seen outside of the Courtroom – that would not be fair to the two accused persons. In that regard, I ask you to ignore Mr. Maopa's comments in his closing speech about the lack of medical evidence. Maybe she never saw a doctor? Medical evidence was not called and you are not to speculate why. Again I stress, judge the case on the evidence before you.
- 5.] Similarly you will not let any sympathy or prejudice play a part in your deliberations. You must look at the evidence dispassionately and with the wisdom of your experience of the community and the Fijian lifestyle.
- 6.] I make no apologies for repeating to you what I said at the beginning, because it is important. That is that you can only find the accused guilty if you have been made sure by the State prosecutor that he is guilty – that is you are certain beyond reasonable doubt. Reasonable doubt is not any little niggling

doubt – your doubt must be reasonable and if it is, then it is your duty to return an opinion of not guilty. The accused does not have to prove anything. The burden is on the State to make you sure of the guilt of the accused.

- 7.] The accused is facing one charge of rape. In our law and for the purposes of this trial, rape is proved if:
- You are sure that it was this accused, who
 - Penetrated the vagina of Lili,
 - Without her consent and
 - He knew that she was not consenting.
- 8.] The State has to prove to you all of these elements of the charge.
- 9.] He also faces a count of attempting to pervert the course of justice. When an accused faces two counts, you must look at each separately. Just because you may find him guilty on one count, it doesn't mean that he is guilty of the other. The evidence on each is different, so look at them differently.
- 10.] To prove the case of attempt to pervert the course of justice, The State must prove to you that
- It was the accused alone or acting with others
 - That he or they were attempting to evade justice
 - By trying to force Lili to withdraw her complaint.
- 11.] Now in this short trial the defence in their cross examination showed Lili the statement that she made to the Police in October 2012. They challenged her as to differences between her evidence in Court and what she told the Police.
- 12.] The law says that whatever a witness says in Court is the definitive evidence. In some cases you might think that the

differences are unimportant such as her drinking with a man called Isemeli for example, or you may think that the differences are more important. The law is that the definitive evidence is what she says in the Court room so, while accepting the evidence in Court as the proper evidence you might think that the very different version given before would make the evidence of that witness unreliable and you might not give it much weight. It is all a matter for you. Bear in mind that it is over 5 years since she made that statement.

- 13.] I now turn to reminding you of the evidence in this case. I know you only heard it yesterday and it will be fresh in your minds but it is my judicial duty to remind you of it. Bear in mind that what I say about the evidence, you don't have to accept.
- 14.] The thrust of the prosecution evidence came from Lili the lady who reported this crime of rape. She told us that in the early hours of the 27th October she was drinking grog at her sister's house with her two roommates. When she was there a friend called Sai called her and asked her to go to NASA Club. She and the two friends went to NASA and joined Sai for about 2.5 hours. After that the 4 of them went to "After Dark" night club.
- 15.] When that club closed she was outside with Vili and he asked her to go with him to his dorm to get some money. She had never met Vili before but had met him in the "After Dark". She said that Sai knows Vili and he had called him over to meet them. They spent an hour together in the club. She went with Vili in a taxi to his dorm. He asked her to go inside the room and asked her to hug him. She said no, just get the money and we will go. He kept hugging her and trying to have sex with her. He lay on top of her wearing $\frac{3}{4}$ shorts and no top. He overcame her and pulled her panties and he had sexual intercourse with her. She didn't like what he did. She was crying and didn't want

him to put his penis in her vagina. When he had finished he left her and went to his home which was not in the dorm. When she came out of the room she saw a policeman and she ran to him. His name was Pita and she told him what had happened. He took her to the Police Station because he didn't want to talk in a public place and he wanted to find out what had happened. She was taken to another officer and told him that it was Vili who had done it. It was at the station that she learned that Vili was a Police Officer and that he lived in quarters and not the dorm. She made a statement to the Police and then went to the hospital.

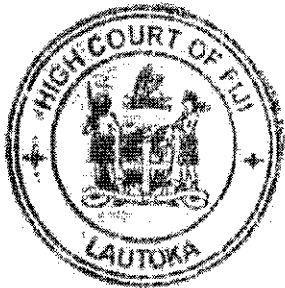
- 16.] After that Vili asked Patrick, another Police Officer, to call her and get her to go to Vili's house and talk about the incident. Patrick came with Vili's wife and their small child to her dorm to ask her to withdraw the case. Patrick came twice and on a third occasion he picked her up from the grog shop and took her to Vili's place to talk. Her roommate Unaisi went with her. They got to his house in the early evening between 7pm and 8pm, they sat on a mat outside. There were Vili, his wife, Patrick, the witness Lili, and Unaisi. They told her to withdraw the complaint and they would give her money. Vili's wife said that when he got his job back they would pay her. Vili was talking to Patrick and he talked to her but she didn't speak to him. She told the group that she didn't want to withdraw the case.
- 17.] Two days after that Patrick went to her sister's house to try to get her to persuade Lili to withdraw. The sister called and asked Lili to go and meet her to discuss it. Lili went and her sister told her that Patrick had been to see her three times. She told her sister she wasn't going to withdraw.

- 18.] Lili identified the accused in Court as the Vili she had been talking about all through her evidence.
- 19.] In cross-examination Lili agreed that she never mentioned the name Vili in her statement to the Police, but she said that she didn't know his name at the time she made the Statement. She also admitted that she told the Police he was wearing a condom, something that she did not say in her evidence.
- 20.] She admitted that there was no formal identification parade at the station, but she saw him there and identified him as her rapist.
- 21.] The second prosecution witness was a senior officer Petero. At 5am on the 27th October 2012 he was stationed outside the "After Dark" nightclub. He saw the accused (he identified him in Court) following a tall slim iTaukei girl out of the club. He happened to see her in the Namaka Police station later that day. He paid special attention to the accused because he knew him as a police officer.
- 22.] The third and last witness for the prosecution was Pita Keni, another senior police officer in the Nadi District. On the 27th October 2012 he was going for his morning walk and on the way he conducted his usual check on the Namaka compound and quarters. On his way home, he met Lili who was with another officer, PC Ledua . She told Pita that she had been raped at the Bachelors quarters. Ten minutes later she came to Pita's residence, frustrated. She told Pita that she had been raped and told him where the room was. Pita went to the room and said that there was nobody there. He did not say it was empty as Mr. Maopa told you yesterday. Pita took Lili to Namaka Police Station to lodge a complaint and he handed her over to Corporal Joshua to take a statement.

- 23.] It is at this stage I must give you a further direction on the law. If you believe Pita Keni's evidence beyond reasonable doubt you have to consider whether his evidence is confirming Lili's evidence regarding a complaint of rape made at the earliest opportunity. Such complaint to him is not evidence of the facts that Lili complained of and it cannot be regarded as corroboration, but it goes to the consistency of the conduct of the complainant with her evidence given at trial.
- 24.] You know that the accused elected to remain silent and to call no witnesses. That is his right and you are not to think any less of him or his case because of it. An accused person does not have to prove anything to you, so the fact that he did not give evidence or call witnesses means nothing, one way or the other. You must not assume that an accused is guilty just because he has not given evidence. The burden remains on the State throughout to prove to you so that you are sure that the accused is guilty of these two crimes.
- 25.] Well Madam and Gentlemen, that is all I wish to say to you.
- 26.] The State's case against the accused is that Viliame had sexual intercourse with Lili that night, knowing that she was not consenting to it. In addition Vili, his wife and friend Patrick were making strong attempts to pervert the course of justice by trying to get Lily to withdraw her complaint.
- 27.] Even if Vili was not doing any of the talking, if you find that he was taking part in that plan to get her to withdraw then he is guilty of the crime.
- 28.] You may start your deliberations now. The possible opinions you may return with for each crime will be guilty or not guilty.

29.] Just before you retire, I am going to ask Counsel if they wish me to add or alter any of my legal directions.

30.] Counsel?



P.K. Madigan
Judge.

At Lautoka High Court
21st February 2018

SPONSORSHIP OF PART-TIME STUDIES



To be used by USP staff wishing to apply for sponsorship of part-time studies

N.B. Criteria for consideration of applicants will be guided by the following criteria;

- a) Attendance at courses should not conflict with the applicant's University duties and as a consequence a staff member may normally enroll for only one course at a time.
- b) The benefit likely to accrue on successful completion of the course to the staff member and the university.
- c) The performance of the applicant in previously sponsored courses
- d) Sponsorship will not be offered for any course a staff member has previously failed.
- e) Any other relevant factors including security considerations ie staff member's access to examination material in the course of his/her normal duties.

STAFF MEMBER TO COMPLETE:

Staff No: _____ Staff Member's Name: _____
 Faculty/Section: _____ School/Department: _____
 Position _____ Date of Appointment ___/___/___

DETAILS OF COURSE:

Course Title : _____ Course No. _____
 Year: _____ Semester: _____ Program _____

If you are enrolled for any other courses in the same semester you must list the Courses here;

List all previous Courses undertaken on USP sponsorship

| Course | Result |
|--------|--------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

List Courses undertaken prior to USP sponsorship

| Course | Result |
|--------|--------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

Signed: _____
 Staff Member

_____/_____/_____
 Date

SPONSORSHIP OF PART-TIME STUDIES



HEAD OF SCHOOL/DEPARTMENT/INSTITUTE TO COMPLETE:

Comment on the relevance of the proposed studies to the department and the University

Signed : _____ Date: ___/___/___
Head of School/Department /Institute

HUMAN RESOURCES/FACULTY OFFICE TO COMPLETE

Comment on applicant's eligibility

Signed: _____ Date: ___/___/___
Human Resources Officer

Approved/Not Approved _____ Date: ___/___/___
Director, Human Resources

DECISION OF THE STAFF DEVELOPMENT COMMITTEE

(If funding is applied for)

Signed: _____ Date: ___/___/___
Chair of Staff Development Committee