

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**  
**CRIMINAL CASE NO. HAC 134 OF 2019S**

**STATE**  
**Vs**  
**TIMI RATINI**

**Counsels : Ms. M. Konrote for State**  
**Ms. S. Hazelman and Ms. L. Filipe for Accused**

**Hearings : 23 and 24 September, 2019.**

**Summing Up : 26 September, 2019.**

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**SUMMING UP**

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**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 their 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 accused. There is no obligation on the accused to prove his 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 accused's guilt, before you can express an opinion that he is guilty. If you have any reasonable doubt so that you are not sure about his guilt, then you must express an opinion, that he is 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 accused or the victim. Your duty is to find the facts based on the evidence, and to apply the law to those facts, without fear, favour or ill will.

**C. THE INFORMATION**

7. You have a copy of the information with you. 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 the accused, on 27 March 2019, at Nabua in the Central Division, assault the complainant (PW1) causing her actual bodily harm?
  - (ii) On count no. 2, did the accused, on 27 March 2019, at Nabua in the Central Division, rape the complainant (PW1)?

**E. THE OFFENCES AND THEIR ELEMENTS**

9. The accused was charged with “assault causing actual bodily harm” (count no.1) and “rape” (count no. 2). We will start with the “rape” charge, as it was the more serious of the two.
10. For the accused to be found guilty of “rape”, the prosecution must prove beyond reasonable doubt, the following elements:
- (i) the accused’s penis penetrated the complainant’s vagina;
  - (ii) without her consent; and
  - (iii) he knew she was not consenting to 10 (i) above, at the time.
11. The slightest penetration of the complainant’s vagina with the accused’s penis; is sufficient to satisfy element no. 10 (i) above. It is irrelevant whether or not the accused ejaculated.
12. “Consent” is to agree freely and voluntarily and out of her own freewill. If consent was obtained by force, threat, intimidation or by fear of bodily harm to herself or by exercise of authority over her, that “consent” is deemed to be no consent. The consent must be freely and voluntarily given by the complainant. 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. You will have to

examine the parties' conduct at the time, and the surrounding circumstances, to decide this issue.

14. If you find the elements of rape, as described in paragraph 10 hereof, satisfied by the prosecution beyond reasonable doubt, you must find the accused guilty as charged. If otherwise, you must find him not guilty as charged. It is a matter entirely for you.
15. For the accused to be found guilty of "assault causing actual bodily harm", the prosecution must prove beyond reasonable doubt, the following elements:
  - (i) the accused
  - (ii) assaulted
  - (iii) the complainant
  - (iv) causing her actual bodily harm.
16. The important word in the above offence was the verb "assault". In law, the least touching of another in anger amounts to an "assault". The assault must cause the complainant "actual bodily harm", which means causing the complainant "any kind of harm", that is, a bruise, swelling, a cut or any type of physical injuries. At the time of the assault, the accused must intent to assault or was reckless in assaulting the complainant. You must examine what the accused said and did, and the surrounding circumstances to decide whether or not the accused had offended against the complainant.
17. Remember, there are two counts in the information. You must consider them separately and come to a considered decision on each of them separately, in the light of the total evidence presented at the trial.

**F. THE PROSECUTION'S CASE**

18. The prosecution's case were as follows. This case was a family affair. The complainant (PW1) and the accused were married, that is, husband and wife. They had 4 boys aged

10, 9, 6 and 5 years old. On 27 March 2019, the family resided in a two bedroom flat in Vatuwaqa. It had a sitting room, a kitchen, a porch, a bathroom and toilet. One of the bedrooms was shared by two of the children, as the other two were in a village in Kadavu with the complainant's elder sister. The other bedroom, was the complainant and the accused's bedroom. This was the alleged crime scene.

19. According to the prosecution, early morning on 27 March 2019 (Wednesday), at about 12.20 am, the complainant (PW1) was fast asleep in the couple's bedroom. The accused came to the couple's bedroom at 12.20 am. The two allegedly argued about the caring of their children and their relationship. According to the prosecution, the accused then allegedly punched the complainant in the face, chest and thighs. He also allegedly shoved PW1's head against the wooden part of their bed. According to the prosecution, the accused then demanded sex with the complainant. PW1 allegedly allowed him to have sex with her under protest, as she was sleeping and tired. The accused inserted his penis into the complainant's vagina. After sex, the accused went to the bathroom, washed himself and later went to sleep.
20. Because of the above, the prosecution is asking you, as assessors and judges of fact, to find the accused guilty as charged on both counts. That was the case for the prosecution.

**G. THE ACCUSED'S CASE**

21. On 23 September 2019, the information was put to the accused, in the presence of his counsels. He pleaded not guilty to all the counts in the information. In other words, he denied the allegations against him. At the end of the prosecution's case, he was found not guilty of count no. 3 (rape) and acquitted accordingly. On counts no. 1 (assault) and 2 (rape), a prima facie case was found against him, and he was called upon to make his defence. He chose to remain silent and called no witness. That was his right.

22. Nothing negative whatsoever should be imputed to the accused when he chose to exercise his right to remain silent. This is because the burden to prove his guilt beyond reasonable doubt, remains with the prosecution throughout the trial, and it never shifts to the accused, at any stage of the trial. Remember what I told you in paragraph 4 hereof, and I repeat the same here. There is no burden on the accused to prove his innocence, or prove anything at all. He is presumed innocent until he is proven guilty beyond a reasonable doubt. He is entitled, as he had done here, to fold his arms, sit there in the dock, and demand the prosecution prove his guilt beyond a reasonable doubt.
23. So, in this case, you will have to carefully examine the prosecution's case and decide whether or not the accused was guilty as charged. The prosecution's case was based fundamentally on the verbal evidence of the complainant, and you will have to decide whether what she alleged against the accused had made you sure of the accused's guilt. If you are sure of his guilt, you must find him guilty as charged. If otherwise, you will have to find him not guilty as charged. It is a matter entirely for you.
24. Because he pleaded not guilty to the charges, the accused is asking you, as assessors and judges of fact, to find him not guilty as charged on both counts. That was the case for the defence.

## **H. ANALYSIS OF THE EVIDENCE**

### **(a) Introduction:**

25. 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, then the State's case against the accused. Then, we will discuss the Accused's case. Then we will consider the need to look at all the evidence.

(b) **The Agreed Facts:**

26. The parties had submitted an “Agreed Facts”, dated 23 September 2019. A copy of the same is with you. Please, read it carefully. There are 10 paragraphs of “Agreed Facts”. Because the parties are not disputing the same, you may treat the same as established facts, and that the prosecution had proven those facts beyond a reasonable doubt.

(c) **The State’s Case Against the Accused:**

27. The State’s case against the accused rested solely on the verbal evidence of the complainant (PW1), given in court on 23 and 24 September 2019. You had watched her give evidence, you had observed her demeanor and you had observed her reactions to the questions thrown at her by the prosecution and defence counsels. I am sure that the details of her evidence are still fresh in your minds. However, in this case, I will not bore you with the details of her evidence, but will concentrate on the salient points on the evidence, and whether or not the elements of the charges had been proven by the prosecution beyond a reasonable doubt.
28. First, on the allegation of assault by the accused against the complainant, count no. 1. The complainant (PW1) said, she is married to the accused. She said, they had been together for 10 years, and during that time, they had brought into the world four young boys, aged 10, 9, 6 and 5 years old. She said, their relationship was often up and down. PW1 said, on 27 March 2019, at 12.20 am, the accused came into their bedroom. PW1 said, they argued over the care of their children. She was sleeping. PW1 said, she was tired and sleeping. PW1 said, accused wanted to have sex with her. PW1 said, she was tired. PW1 said, they later argued and accused repeatedly punched her on the face, chest and thighs. PW1 said, she blocked her face with her hands.
29. PW1 said, she complained to the police later. She said, she went to Raiwaqa Health Centre on the same day at 8.41 pm for a medical examination. She was seen by a doctor

(PW2). Her medical report was tendered in court as Prosecution Exhibit No. 2. In D (12) of the report, mild swelling around her left eye, left side of her forehead, pain and tenderness on both side of the chest and on both thighs and bruises and mild swelling on her left hand were found. Doctor Taraivini Waseiyaroi (PW2) confirmed the above in her evidence. What does PW1's verbal evidence and the doctor's medical report findings tell you about the complainant's allegation against the accused on count no. 1? How you decide the issue is entirely a matter for you.

30. Second, we examine the rape allegation by the complainant against the accused, count no. 2. In her evidence in court, the complainant (PW1) said she gave the accused, permission to penetrate her vagina with his penis on 27 March 2019. She agreed they had been fighting prior to that. She said, she consented to sex with the accused at the material time because he might assault her again. She said, when he was penetrating her vagina with his penis at the material time, she never told him to stop nor pushed him away. She said, the accused had sex with her until he was satisfied. She said, he later went to wash himself in the washroom, returned to bed and snored away in his sleep. When cross-examined by the defence, she said, when she reported the matter to the Raiwaqa Police Station, she was complaining about the assault against her, not on any rape matter. She said, the rape charge should not have been filed against the accused, because as far as she was concerned, she consented to sex with the accused.
31. She said, when she went to see the doctor, PW2, she complained about the accused assaulting her, not on any alleged rape by the accused. She admitted, she wrote a letter to the High Court saying it would be an injustice to charge her husband with rape, and ask for the same to be withdrawn against him. This letter was tendered in evidence as Defence Exhibit No. 1. Please, read it carefully. She repeatedly said in her evidence that she consented to sex with the accused, but according to her, the police charged her husband with rape, although she didn't formally complain to them about the same. When re-examined by the prosecution, she said, as far as she was concerned, there was no rape.



She said, she consented to sex at the time. What do the above evidence tell you on count no. 2? Was there rape in this case or was there none? How you answer the same is entirely a matter for you.

(d) **The Accused's Case:**

32. I had summarized the accused's case to you from paragraphs 21 to 24 hereof. I repeat the same here. If the prosecution had made you sure of the accused's guilt on counts no. 1 and 2, you must find him guilty as charged. If otherwise, you must find him not guilty as charged. It is a matter entirely for you.

(e) **The Need To Consider All The Evidence:**

33. Two witnesses gave evidence for the prosecution:

- (i) The complainant (PW1); and
- (ii) Doctor Taraivini Waseiyaroi (PW2).

The prosecution tendered the following exhibits:

- (i) Prosecution Exhibit No. 1 – Sketch Plan of Crime scene.
- (ii) Prosecution Exhibit No. 2 – PW1's medical report (27.3.19);
- (iii) Prosecution Exhibit No. 3 – PW1's medical report (28.3.19).

The defence tendered the following exhibit:

- (i) Defence Exhibit No. 1 – PW1's Letter to High Court (5.6.19).

34. You must consider the above evidence together. You must compare them and analyze them together. If I had not mentioned a piece of evidence you consider important, please take it onboard in your deliberation. If you find a witness credible, you are entitled to accept the whole or some of her evidence in your deliberation. If you find a witness not credible, you are entitled to reject the whole or some of her evidence in your deliberation. You are the judges of fact.

I. **SUMMARY**

35. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies on the prosecution throughout the trial, and it never shifts to the accused, at any stage of the trial. The accused is not required to prove his innocence, or prove anything at all. In fact, he is 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 him 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 accused's guilt, you must find him not guilty as charged.

36. Your possible opinions are as follows:

- (i) Count No. 1: Assault Causing Actual Bodily Harm: - Guilty or Not Guilty
- (ii) Count No. 2: Rape: - Guilty or Not Guilty

37. 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 the State** : **Office of the Director of Public Prosecution, Suva.**  
**Solicitor for the Accused** : **Legal Aid Commission, Suva.**