

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 58 OF 2018

**BETWEEN** : **STATE**

**AND** : **JOELI RAVULALA**

*Counsel* : *Mr. A. Singh with Mr. R. Chand for the State*  
*Ms. V. Diroiroi for the Accused*

*Hearing on* : *17<sup>th</sup> & 18<sup>th</sup> of November 2020*

*Summing up on* : *24<sup>th</sup> of November 2020*

## **SUMMING UP**

Lady and gentlemen assessors;

1. It is now my duty to sum up the case to you. Your opinion is much important to me and I will be considering your opinion to a great extent in preparation of my judgment. In a short while, I will direct you on the law that applies in this case. You must accept my directions on law and apply those directions when you evaluate the evidence in this case in order to determine whether the accused is guilty or not guilty. You should ignore any opinion of mine on the facts of this case unless it coincides with your own reasoning. You are the assessors of facts.

2. As the representatives of the society, your duty here is sacred. Your role is to guide this legal system to serve justice. In doing so, you are steered by two equally important principals of prudence. To wit;

i) If a person has committed an offence, he should be meted out with an adequate punishment.

In other words, if you are sure that the accused has committed the alleged offence, then it is your duty to find him guilty. If an offender goes scot-free, he'll be ridiculing this legal system. It is your duty to not to let that happen.

ii) An innocent person should never be punished.

There is a saying that it is better to let 10 offenders go free than to punish one innocent person. That is, unless you are very sure that the accused has committed the alleged offence, you should not find him guilty.

If any of the said principles are violated, it would amount to a failure of the system, thus you have failed in your duty to the society. Having reminded you of your duty let me proceed.

3. Evidence in this case is what the witnesses said from the witness box inside this court room and the admissions made. As I have stated to you in my opening address, your opinion should be based only on them. If you have heard, read or otherwise come to know anything about this case outside this court room, you must disregard that information.

4. A few things you heard inside this court room are not evidence. This summing up is not evidence. The arguments, questions and comments by the Counsel for the prosecution or for the defense are not evidence. A suggestion made by a counsel during the examination of a witness is not evidence unless the witness accepted that suggestion. The arguments and comments made by counsel in their addresses

are not evidence. You may take into account those questions, suggestions, arguments and comments when you evaluate the evidence only to the extent you would consider them appropriate.

5. You must not let any external factor influence your judgment. You must not speculate about what evidence there might have been. You must approach the available evidence with detachment and objectivity and should not be guided by emotion. You should put aside all feelings of sympathy for or prejudice against, the accused or anyone else. Your emotions should not influence your decision.
6. You and you alone must decide what evidence you accept and what evidence you do not accept. You have seen the witnesses give evidence before this court, their behavior when they testified and how they responded during cross-examination. Applying your day to day life experiences and your common sense as representatives of the society, consider the evidence of each witness and decide how much of it you believe. You may believe none, a part or all of any witness' evidence.
7. When you assess the testimony of a witness, you should bear in mind that a witness may find this court environment stressful and distracting. Witnesses have the same weaknesses that we all may have with regard to remembering facts and also the difficulties in relating those facts they remember in this environment. Sometimes a witness may have other concerns when giving evidence. A witness may be worried that the evidence would incriminate him or reveal a safely guarded secret. Or else he/she might honestly forget things or make mistakes regarding what he/she remembers.
8. In assessing the credibility of a particular witness, it may be relevant to consider whether there are inconsistencies in his/her evidence. That is, whether the witness has not maintained the same position and has given different versions

with regard to the same issue. You may also find inconsistencies between the evidence given by different witnesses. This is how you should deal with inconsistencies. You should first decide whether that inconsistency is significant. That is, whether that inconsistency is fundamental to the issue you are considering. If it isn't then you can disregard that inconsistency. If it is, then you should consider whether there is any acceptable explanation for it. If there is an acceptable explanation for the inconsistency, you may conclude that the underlying reliability of the account is unaffected. You may perhaps think it obvious that the passage of time will affect the accuracy of memory. Memory is fallible and you should not expect a witness to have a photographic memory or every detail to be the same from one account to the next.

9. However, if there is no acceptable explanation for the inconsistency which you consider significant, it may lead you to question the reliability of the evidence given by the witness in question. To what extent such inconsistencies in the evidence given by a witness influence your judgment on the reliability of the account given by the witness is a matter for you to decide.
10. Therefore, if there is an inconsistency that is significant, it might lead you to conclude that the witness is generally not to be relied upon; or, that only a part of the witness' evidence is inaccurate; or you may accept the reason the witness provide for the inconsistency and consider him/her to be reliable as a witness.
11. You may also consider the ability and the opportunity a witness had, to see, hear or perceive in any other way what the witness said in evidence. You may ask yourself whether the evidence of a witness seem reliable when compared with other evidence you accept.
12. Based on the evidence you decide to accept, you may decide that certain facts are proved. You may also draw inferences based on those facts you consider as

directly proved. You should decide what happened in this case, taking into account those proved facts and reasonable inferences. However, when you draw an inference you should bear in mind that, that inference is the only reasonable inference to draw from the proved facts. If there is more than one reasonable inference to draw, against the accused, as well in his favor, based on the same set of proved facts, then you should draw the most favorable inference to the accused.

13. As a matter of law you should remember that the burden of proof always rests on the prosecution. An accused is presumed to be innocent until proven guilty. This means that it is the prosecution who should prove that an accused is guilty and the accused is not required to prove that he is innocent. The prosecution should prove the guilt of an accused beyond a reasonable doubt, for you to find him guilty. That is, you must be sure of the accused person's guilt.
14. In order to prove that an accused is guilty, the prosecution should prove all the elements of the offence against the accused beyond reasonable doubt. If you have a reasonable doubt on whether the prosecution has proved a particular element of the offence against the accused, then you must give the benefit of that doubt to the accused and find the accused not guilty. A reasonable doubt is not a mere or an imaginary doubt but a doubt based on reason. I will explain you the elements of the offences in detail in a short while.
15. You are not required to decide on every point the Counsels in this case have raised. You should only deal with the offences the accused is charged with and matters that will enable you to decide whether or not the charges are proved against the accused.
16. You will not be asked to give reasons for your opinion. In forming your opinion, it is always desirable that you reach a unanimous opinion. But it is not a must.

17. Let us look at the Information. The Director of Public Prosecutions has charged the accused of a count of rape.

**COUNT**

***Statement of Offence***

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

***Particulars of Offence***

Joeli Ravulala, on the 17<sup>th</sup> day of November 2017 at Yasawa Island, in the Western Division, penetrated the vagina of Ulamila Solomi, with his penis without her consent.

18. Now I will deal with the essential elements of the offence of Rape alleged in the count. Section 207(1) of the Crimes Act reads as;

207. —(1) Any person who rapes another person commits an indictable offence.

Section 207 (2) (a) of the Crimes Act reads as;

(2) A person rapes another person if —

(a) The person has carnal knowledge with or of the other person without the other person's consent;

19. Accordingly, in this case, to prove the offence of Rape as for the alleged count the prosecution must prove the following elements beyond a reasonable doubt.

- (i) The accused;
- (ii) Penetrated the vagina of Ulamila Solomi with his penis,
- (iii) Without the consent of Ulamila Solomi (the complainant); and
- (iv) Either the accused;

Knew or believed that the complainant was not consenting; or  
Was reckless as to whether or not she was consenting.

20. The first element is concerned with the identity of the person who committed the offence. The prosecution should prove beyond any reasonable doubt that the accused and no one else committed the offence. The defence does not challenge the identity of the accused. But you should be satisfied that the accused and no one else committed the alleged offence.
21. The second element is penetration of the Ulamila Solomi's vagina with the accused's penis. The law states, the slightest penetration is sufficient to satisfy this element of penetration. This element is complete on penetration to any extent and it is not necessary to have evidence of full penetration. The prosecution has to prove this element beyond reasonable doubt. However, the accused has admitted having sexual intercourse with the complainant.
22. To prove the third element of the offence of rape, the prosecution should prove that the accused penetrated the complainant's vagina without her consent. You should bear in mind that consent means, consent freely and voluntarily given by a person with the necessary mental capacity to give consent and the fact, that there was no physical resistance alone, shall not constitute consent. A person's consent to an act is not freely and voluntarily given if it is obtained under the following circumstances;
  - i) by force; or
  - ii) by threat or intimidation; or
  - iii) by fear of bodily harm; or
  - iv) by exercise of authority.
23. Apart from proving that the complainant did not consent for the accused to insert his penis inside her vagina, the prosecution should also prove that, either the accused knew or believed that the complainant was not consenting; or the

accused was reckless as to whether or not the complainant was consenting. This is the fourth element of the offence of rape.

24. It is not difficult to understand what is meant by the words “the accused knew or believed”. But you may wonder as to how you could determine whether the accused was reckless. If the accused was aware of the risk that the complainant may not be consenting for him to penetrate her vagina and having regard to those circumstances known to him it was unjustifiable for him to take the risk and penetrate the complainant’s vagina, you may find that the accused was reckless as to whether or not the complainant was consenting. Simply put, you have to see whether the accused did not care whether the complainant was consenting or not.
25. Please remember that no witness can look into an accused’s mind and describe what it was at the time of the alleged incident. Therefore, it is not possible to have direct evidence regarding an accused’s state of mind. Knowledge or intention of an accused can only be inferred based on relevant proven facts and circumstances.
26. If you find a reasonable doubt in respect of any of the elements, in regards to the count of rape, you shall give the benefit of that doubt to the accused and find the accused not guilty of the alleged count of Rape.
27. The following were recorded as the admitted facts by the prosecution and the defense.
  - i) It is admitted that the accused in this case is Joeli Ravualala, (hereto referred as the Accused), 53 years, Carpenter of Soso Village, Naviti, Yasawa.
  - ii) It is admitted that the accused is originally from Natalaira Village, Dawasamu, Tailevu.



- iii) It is admitted that the victim in this case is Ulamila Solomi (hereto referred to as the Victim), 23 years old, domestic duties of Soso village, Naviti, Yasawa.
- iv) It is admitted that the Victim is married to Inosi Tora and from the marriage they have two children.
- v) It is admitted that the Accused is in a de facto relationship with Mere Likutabua.
- vi) It is admitted that on the 17<sup>th</sup> day of November 2017, the accused's de facto partner was at work and his mother-in-law had gone fishing.
- vii) It is admitted that the accused runs a small canteen from his house.
- viii) It is admitted that on the 17<sup>th</sup> day of November, 2017 the accused penetrated the complainant's vagina with his penis inside his house.

These admitted facts need no further proof. You should consider them as already proved. If there happens to be any inconsistency between the admitted facts and the given evidence, the admitted facts should prevail.

### **Summary of Evidence**

28. The PW1, Ulamila Solomi is the sole witness of the alleged incident, for the prosecution. The law requires no corroboration. Therefore you can act on the evidence of a sole witness. However, my direction is that if you are to rely on a sole witnesses' evidence you must be extremely cautious of the credibility and the dependability of such evidence. Her evidence is that;

- i) She lives in Soso village, Naviti in Yasawa with her husband and 3 children. Her husband is Inosi Tora and they have got married in 2017.
- ii) Soso Village has about 80 houses and they were situated close to each other.

- iii) On the 17<sup>th</sup> of November 2017, her husband has gone to work and she was alone at home with her two children.
- iv) She knows the accused, Joeli, since 2016, when she moved in to Yasawa with her husband as her husband and Joeli's wife are cousins.
- v) She went and asked Joeli for the rake. Joeli was fixing the bridge at that time. He asked her to wait. She went home and waited.
- vi) At the lunch hour, when other co-workers too went for lunch Joeli came to her home and asked what she wants. She has told him that she wants the rake. Then Joeli has asked what she had for lunch. She has told that it was rice and tea. He has asked whether she wants anything from the shop and she has said yes she will come. She wanted to have a corned beef and a noodle to be under her husband's name.
- vii) Joeli runs a canteen. The goods in the canteen were inside a cupboard kept in the living room of the Joeli's house. She goes to the canteen almost daily to buy things and pay later when her husband receives his salary.
- viii) When she went into the Joeli's house, he was alone in the house. She has taken things from Joeli many times before as she and her family lived with Joeli and his family from April to August 2017.
- ix) When she was taking the items from the cupboard, she has told Joeli that he has to put them under her husband's name for him to pay on Friday when he get the salary. She has seen him going and closing the door of his house. When she turned to go, he has grabbed her by her hand she has turned to him. Joeli has closed her mouth using his hand and wrapped his hands around her tightly. Then he has closed her mouth with his mouth and taken her to the bed and made her lie down, face downwards. (It should be noted that later in answering a question by the Court, the witness states that Joeli did not close her mouth with his hands. It is up to you to consider this inconsistency and attach an appropriate weight to it.)
- x) Then he tried to insert his private part into her private part, but he couldn't. He then made her turn face upwards and having removed her panty,

inserted his penis into her vagina. He has had sexual intercourse with her for about 10 minutes and she has not consented him to have sexual intercourse with her. Thereafter she has gone home and cried. When her husband returned in the evening, she has told him everything.

- xi) Though her husband got angry with Jopeli, he prevented her from reporting the matter as there were no complaints to the police from Soso Village before. However, after about 2 weeks, she has gone and informed the incident to the sister-in-law of Joeli. The sister-in-law has shared it with Joeli's wife and one Sunday, Joeli has come with an uncle of her husband, to her place and reconciled with her for what he has done to her.
- xii) After some time, rumors started to spread that she has lied and she has gone and complained it to the police. Later somewhere last month, when she was at the Lautoka market, Joeli came and told her to inform to the Court that it happened with her consent.

29. In answering the cross examination by the learned counsel for the accused, the witness states;

- i) She is originally from Macuata and moved into Soso Village in 2016.
- ii) In 2017 from April to August they lived with Joeli and his family and then Joeli built a house for them and they moved into it in August 2017.
- iii) On the 17<sup>th</sup> of November 2017, she went to Joeli to borrow his rake. She denies that she called Joeli when he was passing her house having fed the pigs. She denies that she asked Joeli for her to have corned beef and noodles on credit. The witness explains that Joeli came to her house and asked what they have had for lunch and when she answered rice and tea, Joeli himself asked her to come and get corned beef and noodles.

- iv) On that day she was wearing a mini thin strap as a bra and a sarong tied to the chest as she was feeding the baby. When she went to Joeli's house he was not lying on the bed but he was standing.
- v) The witness denies the version of events suggested on behalf of the accused. She admits of not having shouted during the sexual intercourse. She explains that she was scared that Joeli would do something to her. There were house close by. This incident happened during the lunch hour. However, she has stated in her statement that she shouted and Joeli closed her mouth. You may consider this inconsistency and attach an appropriate weight to it.
- vi) After the incident she picked up her panty and the groceries and went home. She has gone home and cried thinking of what Joeli did to her. After about 2 weeks from the incident Joeli came to her place to seek forgiveness from her and her husband.
- vii) She denies that there were rumors by the time Joeli came to seek forgiveness. She states that rumors started after he came and sought forgiveness. She denies having had any affair with Joeli. She admits that there was no discussion of Rape or forceful sexual intercourse on that day when Joeli came to seek forgiveness.
- viii) She denies having had consensual sex at the Joeli's house on that day. She admits of not having spoken of having raped her when Joeli came to her house for reconciliation.
- ix) She denies the suggestion that she has had an affair with Joeli.

30. In answering the re-examination by the learned counsel for the prosecution, the witness states that;

- i) She did not shout at the time of the incident. Joeli came to seek forgiveness because he knew what he did was wrong.

31. With leading the evidence of PW1, the prosecution closed their case. The Court being satisfied that there is sufficient evidence adduced by the prosecution covering the elements of the alleged offence, decided to call for defense, acting under the virtue of section 231(2), of the Criminal Procedure Act, explaining and giving his due rights to the accused.
32. The accused having understood his rights elected to give evidence on his behalf. His evidence was that;
- i) In 2017, he was residing in Soso Village. He has been there for 4 years then.
  - ii) She knew Ulamila as she and her family lived with them for some time. His wife and Ulamila's husband are cousins.
  - iii) On the 17<sup>th</sup> of November 2017, morning he was fixing the bridge from school to the Village, with few others. At that time Ulamila called him to just to come. She has not told him what she wanted.
  - iv) During the lunch time, when he was going passing her house, Ulamila told him that she wants something for her lunch from the canteen. Then he has asked her to come to his house.
  - v) Having come home he has gone he has had a shower and was resting on the bed when Ulamila came. She came inside, opened the canteen and took the things she wanted. She has taken a lot of items and he has said that she has taken plenty but she has not paid for the items she bought before. Then she has moved close to his bed and told him that it will be up to you and bent down like giving her breast to him. Then he pulled her on and she too jumped on to him. He sucked her breast and milk has come out of it. He has spat that out. Before sucking her breast they kissed each other. After sucking her breast she pushed his head down between her thighs. When reminded that she was said to be on top of him by then, the accused states that after sucking her breast, he tried to come up to her but she pushed his head down. The again he states that once he spat out the milk, he turned her to lie down, face up. Then he kissed her and she pushed his head down. You should note the inconsistencies here. Initially he states that he kissed

her, sucked her breasts and then she pushed his head down to her thighs. Later he says that after sucking her breast he tried to come up but she pushed him down. As for his evidence, he has sucked her breast when she was on top of him. Again he states that having spat out the milk, he turned her face upwards and then he kissed her and thereafter she pushed his head down to the thighs.

- vi) Then he has licked her vagina and had sexual intercourse with her. At the time of the sexual intercourse, she was wearing only the thin strap vest. She herself removed her sarong and the panty. Later he states that she took off her sarong and he removed her panty.
- vii) He further states that he pulled the curtains, while she was on top of him. This is inconsistent with his earlier evidence where he said that he sat on the bed and pulled the curtains. Again he states that he pulled the curtains while she was standing by the side of the bed.
- viii) After having had sexual intercourse, he got down from the bed, she wore her sarong and bid farewell to each other and she took the items and her panty with her.
- ix) After about a week he heard rumors that he was having an affair with Ulamila and also Ulamila has told his sister-in-law that they were having an affair, he has taken yaqona to her house seeking forgiveness. It should be noted this version of having had an affair is the accused's version and if he has gone because of having an affair, he need not have waited till the rumors spread or her sister-in-law asked, as he was aware of the affair from the beginning.
- x) The accused admits of meeting Ulamila last month at the market and telling her to tell that he did not rape her. He admits that he has told court before that he did not meet her at the market.

xi) The accused denies raping Ulamila and states that they have had consensual sexual intercourse that day.

33. In answering the cross examination, posed on behalf of the prosecution, the accused states that;

i) He was born on the 15.10.1965 and 55 years old now. At the commencement of his evidence, he gave his age as 45 years old and that was wrong.

ii) He admits that Ulamila was quite young and age wise he was like a father to her. He has the issue of forgetting things. He gave the statement to the police when the incident was fresh in his mind. He has told the truth to the police.

iii) He has stated to the police that he was in Soso Village for 8 years by the time this alleged incident happened. As for his evidence he has been there for only 4 years. When asked of the inconsistency, the accused states that he was threatened by the police when giving the caution interview.

iv) The witness having read his caution interview admits that other than his stay at the Soso Village, everything else is properly recorded. He has told police that she followed her to his house. When confronted, he states that what he told police is incorrect. He explains that he lied to the police since his caution interview was recorded during the night time. It should be noted that his caution interview was recorded from 9am to 12noon in the morning.

v) He states that when Ulamila was inside his house the door of the house was open. But, earlier in answering a question in the examination in chief, he stated that when Ulamila came, the door was half open and she pushed it in and closed the door. However he has stated to the police that he went and closed the door. These are 3 inconsistent versions. You may consider it with due weight to be attached.

vi) In his statement to the police he has stated that "Only when we were still standing, her back was facing me and she told me to dog-style her". He

states that he has lied to the police. The accused states though he was having an affair with Ulamila he was not having any extra marital affair.

34. That was a summary of the evidence given by the witnesses. Please remember that I have only referred to the evidence which I consider important to explain the case and the applicable legal principles to you. If I did not refer to certain evidence which you consider important, you should still consider that evidence and give it such weight you may think appropriate. As I have already explained, which evidence you would accept and which evidence you would not accept is a matter for you, and you alone to decide.
35. Remember that you should first decide on the credibility and reliability of the witnesses who gave evidence in this case and accordingly decide what facts are proven and what reasonable inferences you can draw from those proven facts. Then you should consider whether the elements of the offence has been proved beyond reasonable doubt. You should take into account my directions where relevant, in deciding whether the prosecution has proved all the elements.
36. The Accused has indicated his stance and it was that he did not rape Ulamila but they have had consensual sexual intercourse. Even in case you do not accept the accused's stance as true, you should not consider it in-order to strengthen the prosecution case. The accused need not prove that he is innocent. A person may lie as sometimes as it is easier than telling the truth. Therefore even you decide to not to accept the accused's stance, you should not use it to overlook the weaknesses of the prosecution case if any.
37. With the submission of the accused's stance, one of the three situations given below would arise;



- (i) You may accept his stance and, if so, your opinion must be that the accused is 'not guilty'.
- (ii) Without necessarily accepting his stance you may think, 'well what he says could be true'. If that is so, it means that there is a doubt in your mind and if you can reason it out in your mind, and call it a reasonable doubt, again your opinion must be 'not guilty'.
- (iii) The third possibility is that you reject his stance. But, that itself does not make the accused guilty. Then the situation would then be that you should consider whether the prosecution has proved all the elements beyond a reasonable doubt. If the prosecution has proved all the necessary elements of the offence and also you reject the accused's stance only, you should find the accused guilty of the alleged count.

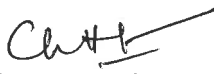
38. Any re-directions? - none -

39. Lady and Gentleman Assessors, that is my summing up. Now you may retire and deliberate together and may form your individual opinion on the charge against the accused. When you have reached your separate opinion, you will come back to court and you will be asked to state your opinion.

40. Your opinion should be;

Whether the accused is guilty or not guilty of the alleged offence of Rape?



  
**Chamath S. Morais**  
**JUDGE**

*Solicitors for the State* : *Office of the Director of Public Prosecutions*  
*Solicitors for the Accused* : *Legal Aid Commission, Lautoka*