

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**  
**CRIMINAL CASE NO. HAC 325 OF 2018S**

**STATE**  
**Vs**  
**SOVITA TURAGABECI RAWALAI**

**Counsels : Ms. S. Sharma for State**  
**Ms. L. Ratidara and Ms. L. Filipe for Accused**

**Hearing : 16, 17 and 18 March, 2020.**

**Summing Up : 20 March, 2020.**

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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 ISSUE**

8. In this case, as assessors and judges of fact, each of you will have to answer the following question:

- (i) Did the accused, on 4 August 2018, at Vuci Road, Nausori in the Eastern Division, rape the complainant (PW1)?

**E. THE OFFENCE AND IT'S ELEMENTS**

9. 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 9 (i) above, at the time.

10. The slightest penetration of the complainant’s vagina with the accused’s penis; is sufficient to satisfy element no. 9 (i) above. It is irrelevant whether or not the accused ejaculated.

11. “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.

12. It must also be established by the prosecution beyond reasonable doubt, that the accused knew the complainant was not consenting to 9 (i) above, at the time. You will have to

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

13. If you find the elements of rape, as described in paragraph 9 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.

**F. THE PROSECUTION'S CASE**

14. The prosecution's case were as follows. On 4 August 2018, the female complainant (PW1) was 18 years old and was a Year 12 student at a secondary school in Nausori. She resided with her parents at Nausori. The accused (DW1) was 26 years old, a farmer by profession and resided also in Nausori. The accused and the complainant were distant cousins.
15. According to the prosecution, on 4 August 2018, a Saturday, PW1 was returning from her cleaning job. She reached Brij Bhan shop at about 1 pm and rested at the shop's porch for a while. The accused later arrived to buy some liquor. He had been drinking liquor with some friends at Jovilisi's house. According to the prosecution, the complainant was pressured by the accused to join them at the drinking party. The accused later took the complainant to drink at their party. They went in a taxi.
16. At the party, the complainant sat with the accused and his friends. They were drinking in a shed, next to Jovilisi's house. According to the prosecution, the accused later took the complainant to a corner of the house, forcefully held her neck and allegedly had sex with her without her consent. According to the prosecution, the accused allegedly knew she was not consenting to sex with him at the time because he allegedly held her neck in a strangling fashion, to subdue her, throughout the alleged ordeal.

17. Because of the above, the prosecution is asking you, as assessors and judges of fact, to find the accused guilty as charged. That was the case for the prosecution.

**G. THE ACCUSED'S CASE**

18. On 16 March 2020, the information was put to the accused, in the presence of his counsels. He pleaded not guilty to the charge. In other words, he denied the rape allegation against him. When a prima facie case was found against him, at the end of the prosecution's case, wherein he was called upon to make his defence, he chose to give sworn evidence and called no witness. That was his constitutional right.

19. The accused's case was simple. On oath, he admitted he was at the crime scene, at the material time. He admitted, he invited the complainant from Brij Bhan shop to drink with him and his friends at Jovilisi's house on 4 August 2018. He admitted he later took the complainant to a corner of the house. He admitted he wanted to have sex with the complainant, and asked her for the same. He admitted he inserted his penis into the complainant's vagina for about 3 minutes and ejaculated. He said, the complainant consented to the same and he knew she was consenting to the same, as she didn't resist him, when he was having sex with her.

20. On oath, he denied the complainant's version of events that he allegedly raped her. He said the sex was consensual. Because of the above, the accused is asking you, as assessors and judges of fact, to find him not guilty as charged. That was the case for the defence.

**H. ANALYSIS OF THE EVIDENCE**

**(a) Introduction:**

21. 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:**

22. The parties had submitted an "Agreed Facts", dated 16 March 2020. A copy of the same is with you. Please, read it carefully. There are 8 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:**

23. The State's case against the accused rested solely on the verbal evidence of the complainant (PW1), given in court on 16 and 17 March 2020. 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 charge had been proven by the prosecution beyond a reasonable doubt.
  
24. On the first element of the offence of rape as discussed in paragraphs 9 (i) and 10 hereof, the parties in paragraph 8 of their Agreed Facts dated 16 March 2020, agreed that the complainant and the accused had sexual intercourse on 4 August 2018. In other words, the parties agreed that the accused's penis penetrated the complainant's vagina, at the material time. So, in this case, the first element of the offence of rape, as discussed in paragraphs 9 (i) and 10 hereof, was not disputed by the parties. This entitles us to move on and consider the second element of the offence of rape, as discussed in paragraphs 9(ii) and 11 hereof.

25. The question becomes: Did the complainant consent to the accused's penis penetrating her vagina, at the material time? On this issue, the parties' version of events were different. You heard the complainant give her version of events to you on 16 and 17 March 2020 in the courtroom. I am sure the details of her evidence on the above issue are still fresh in your minds and I will not bore you with the details. However, the thrust of her evidence appear to be that she did not consent to sexual intercourse with the accused. She said, the accused continually strangled her neck with his right hand from the start of the sexual intercourse to the end of the same. She also said, the accused threatened to kill her if she raised the alarm. She said, the accused was physically stronger than her. She said, she was fearful and as a result she could not resist. She said, she was further fearful of the accused's threats because there were pieces of timber with nails attached to them and iron rods lying around the crime scene. If you accept her version of events, then that entitles you to consider the third element of the offence of rape, as described in paragraphs 9 (iii) and 12 hereof. If you reject her version on the consent issue, you must find the accused not guilty as charged.
26. Assuming you accept that the complainant did not consent to the accused inserting his penis into her vagina at the material time, then the question becomes: Did the accused know at the time, that the complainant was not consenting to him inserting his penis into her vagina? On this issue, we had considered the complainant's version of events on the consent issue. If a man had to strangle a female's neck and issue verbal threats of killing her if she raised the alarm prior to having sexual intercourse with her, then obviously, as a matter of logic, the man would know she was not consenting to sex with him, at the material time. If a woman really wants to have sex with a man, then there was no need for the man to use force on her to get her permission for sex. A man only used force on a woman or girl to have sex with him if he knows she was not consenting to sex with him at the material time. How you answer the above issue is entirely a matter for you.

27. If you accept the complainant's evidence on the allegation as credible, you must find the accused guilty as charged. If otherwise, you must find the accused not guilty as charged. It is a matter entirely for you.

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

28. I had summarized the accused's case to you from paragraphs 18 to 20 hereof. I repeat the same here. If you accept the accused's version of events, you must find him not guilty as charged. If you reject the same, you must still consider the strength of the prosecution's case, and decide accordingly. It is a matter entirely for you.

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

29. The prosecution called four witnesses:

- (i) Complainant (PW1);
- (ii) Complainant's father (PW2);
- (iii) Ms. Susuana Vosabale (PW3); and
- (iv) Doctor Oliniva Tuamoto (PW4).

The prosecution submitted the following exhibits:

- (i) Booklet of Photos - Prosecution Exhibit No. 1
- (ii) Complainant's Medical Report – Prosecution Exhibit No. 2.

Also consider the Agreed Facts, dated 16 March 2020.

30. The defence only called one witness, that is, the accused (DW1) himself.

31. You will have to consider the above evidence together. Compare them and analyze them together. If I haven't mentioned a piece of evidence you consider important, please take it on board in your deliberation. If you find a witness credible, you are entitled to accept the whole or some of his/her evidence in your deliberation. If you find a witness not credible, you are entitled to reject the whole or some of his/her evidence in your deliberation. You are the judges of fact.



I. **SUMMARY**

32. 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.

33. Your possible opinions are as follows:

(i) Rape: Accused: Guilty or Not Guilty

34. 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



**Solicitor for the State**  
**Solicitor for the Accused**

**:** **Office of the Director of Public Prosecution, Suva.**  
**:** **Legal Aid Commission, Suva.**

A handwritten signature in blue ink, appearing to be "Salesi Temo".

**Salesi Temo**  
**JUDGE**