

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO. HAC 102 OF 2017**

**BETWEEN** : **STATE**

**AND** : **SEMI RADANIVA**

*Counsel* : *Mr. T. Tuenuku for the State*  
*Mr. E. Sailo for the Accused*

*Hearing on* : *25<sup>th</sup> of May 2020 – 26<sup>th</sup> of May 2020*

*Summing up on* : *29<sup>th</sup> of May 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 judges of facts.

2. As the representatives of the society, your duty here is sacred. Your role is to assist this legal system to serve justice. In doing so, you are guided 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 100 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, comments and addresses 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/her 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 is not, 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. These are only a few guidelines. It is up to you, how you assess the evidence and what weight you give to a witnesses' testimony.

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 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 favourable 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, in order 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 following;

**COUNT 1**

***Statement of Offence***

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

***Particulars of Offence***

Semi Radaniva, on the 12<sup>th</sup> day of January 2017, in the Western Division, had carnal knowledge with Reave Turagakece, without her consent.

**COUNT 2**

***Statement of Offence***

INDECENT ASSAULT: Contrary to section 212(1) of the Crimes Act of 2009.

***Particulars of Offence***

Semi Radaniva, on the 24<sup>th</sup> day of April 2017, in the Western Division, unlawfully and indecently assaulted Reave Turagakece, by kissing her.

18. Now I will deal with the essential elements of the offence of Rape.

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, 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 Reave Turagakece with his penis
  - (iii) Without the consent of Reave Turagakece; and
  - (iv) Either the accused;  
knew or believed that Reave Turagakece 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. This element is not contested in this case.
21. In the second element 'carnal knowledge' means having sexual intercourse or in this case, the penetration of Reave Turagakece'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. Therefore, to establish this element, the prosecution should prove beyond reasonable doubt that the accused penetrated the vagina of Reave Turagakece with his penis, to any extent. This element too was not contested by the accused in this case.
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.
23. 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.

24. 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.
25. 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.
26. 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.



27. If you find a reasonable doubt in respect of any of the above, you shall find the accused not guilty of the count of Rape.

28. The second count, the accused is charged with is the offence of Indecent Assault. Section 212 (1) of the Crimes Act states:

212.-(1) A person commits a summary offence if he or she unlawfully and indecently assaults any other person.

29. Therefore, the ingredients of the offence of Indecent Assault would be;

- (i) The Accused
- (ii) unlawfully and indecently;
- (iii) assaulted, Reave Turagakece.

30. The Accused is guilty of Indecent Assault, if he has unlawfully and indecently assaulted the victim. The word “unlawfully” simply means without lawful excuse. An act is an indecent act if right-minded persons would consider the act indecent. Assault can be defined as an application of unlawful force on another’s body.

31. You should ask yourselves:

- a) Whether the accused;
- b) Used force; and
- c) You consider the force that was used could have been indecent because of its nature; and
- d) If the answer is yes, whether, in view of the circumstances and/or the purpose in relation to the force used, that use of force is in fact indecent in nature.

You may observe that absence of consent is not an element of the offence. In result, consent is not a defense for this offence. However, certain acts if done with consent may not be unlawful or indecent to a reasonable man.

Therefore, you should consider, under the proven circumstances, whether the acts proved to have committed are illegal or indecent in nature.

32. If you are satisfied beyond reasonable doubt that the prosecution has proved all the elements of Indecent Assault as explained above, then you must find the accused guilty of Indecent Assault. If, you have a reasonable doubt with regard to any of those elements concerning the offence of Indecent Assault, then you must find the accused not guilty.
33. The following were recorded as admitted facts;
- i) The accused - Semi Radaniva and the complainant – Reave Turagakece worked at Shangri-La Fijian resort in Yanuca Island, Nadroga.
  - ii) The accused was 29 years old. He was employed as a Houseman.
  - iii) The complainant was 23 years old. She is employed as a Housemaid. The complainant is married to Fifita Vatu and has 2 children.
  - iv) The matter was reported to the police and an investigation was conducted.
  - v) The accused was arrested and he was interviewed under caution.
  - vi) Subsequently the accused was formally charged for the offence of Rape: contrary to section 207 (1) & (2) (a) and Indecent Assault: contrary to section 212 of the crimes Act.
  - vii) At the commencement of the trial, it was admitted on behalf of the accused the act of accused having sexual intercourse with the complainant on one occasion.

It should be remembered that those facts do not require any further proof. You are to consider and accept them as correct. Anything inconsistent with them should be considered as incorrect or false.

## Summary of Evidence

34. The PW1, Reave Turagakece is the main witness 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 reliability of such evidence. Her evidence is that;
- i) In January 2017, she worked at Shangri-La Fijian resort as a House Keeper.
  - ii) She has known the accused, Mr. Semi Radaniva as a co-worker since 2015.
  - iii) On the 12<sup>th</sup> of January 2017, she had been cleaning the room no. 427 as for her duty roster. It was a check-out room and was empty.
  - iv) She was in the wash room, cleaning it. Semi has entered the room came there and held her forcefully and kissed her. Then he has undressed her and made her lay down on the bed. Semi has come on top of her and inserted his penis into her vagina and had sexual intercourse with her.
  - v) At that time she has struggled to push him away by wiggling her body. She could not use her hands as he has held them pressed on to the bed. She has told him that she is married and he is not supposed to do that. She has not agreed for Semi to have sexual Intercourse with her. The act has taken about 2-4 minutes. Then Semi has wore his pants and left the room.
  - vi) She was afraid, scared and was embarrassed. She has tried to get hold of her-self. She has put her skirt on and gone on continuing with her work.
  - vii) She has not complained of this incident to her supervisor as she was scared, embarrassed and just returned after her maternity leave.
  - viii) On the 24<sup>th</sup> of April she was cleaning room 259. Semi has come there and told her that he is returning her broom. When she went back into the room, Semi has followed her and started kissing her on her lips. She did not agree for semi to do that to her. Nevertheless, she has kissed him back as she could not free herself.

- ix) At that moment his mobile phone has rang and he has answered the phone. She has run out of the room straight to the staff tea room. At 10 O'clock in the morning they have had their meeting and thereafter, she has returned to her duties and cleaned the room. Having finished cleaning that room, she has finished cleaning another room and then she has met her co-worker Kolaia.
- x) She has told Kolaia everything and Kolaia has told Talica. Then Talica has come and she has told everything to Talica.
- xi) Answering a question by the court, the witness states that she remembers the 12<sup>th</sup> of January 2017 well as it was the first day she returned to work after going on leave on maternity leave for her second child birth.

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

- i) She and Semi worked together in the house keeping department of the Shangri-La Fijian Resort. Semi worked as a linen porter. Her husband, Fifita too worked in the resort initially as a security guard and by 2017, as a Grounds Keeper.
- ii) 12<sup>th</sup> of January 2017, she was rostered to clean room No. 427, though the produced copy of the roster does not indicate so.
- iii) Prior to the first alleged incident on 12<sup>th</sup> of January 2017, she has been working together with Semi for about 2 years. She knows Semi very well as he was her colleague. She admits of making jokes and playing around with semi in front of her other colleagues when they come across each other.
- iv) She denies that the first alleged incident took place in December 2016, as she was on maternity leave from September 2016 till she reported to work on 12<sup>th</sup> of January 2017.
- v) The witness states that on the 12<sup>th</sup> of January 2017, when she was at room 427, scrubbing the bathroom floor, Semi came in. when she turned back she saw him and he forcefully took her from there to the bed. He has used

both his hands to pull her to the bed. She has tried to resist him and scream. Then he has covered her mouth with one of his hands.

- vi) Thereafter, while at the sexual intercourse, too the witness states that she tried to scream. However, she could not scream as Semi was on top of her and she has run out of breath.
- vii) The witness denies having a consensual sexual intercourse and states that by that date she was still having the stiches in the vaginal area subsequent to the child birth. In answering a question by the court, witness stated that she delivered her second child on the 25<sup>th</sup> of November 2016. Therefore, by the 12<sup>th</sup> of January 2017, it was about 48 days after the said delivery. It is up to you to use your common sense and consider the reliability of the said evidence.
- viii) The second alleged incident has happened on the 24<sup>th</sup> of April 2017, when she was cleaning room 259 which was also a check out room; Sami has come there to return the broom. She has opened the door and having taken the broom she has pushed the door to close. Before the door closed properly, Semi has pushed it and come in. According to her that was the first time she met Semi on that day. This version has a few lapses. The word 'return' was used by her repeatedly. A thing which was not earlier removed from her possession cannot be returned. Another would be the said conduct of the witness. If she had been raped before, by the person at the door, would she be walking from the door to the vacant room in to the isolation without ensuring that the door was closed properly? You may consider the reliability of it, using your common sense and the life experiences.
- ix) When Semi entered the room, he kissed her next to the bathroom area. The witness states that it was done forcefully and she tried to push him away. This answer is somewhat inconsistent with her evidence in chief. There she stated that when Semi kissed her, she too kissed him back as she had no way of getting away.

- x) The witness admits that Semi received a call on his mobile at that moment and states that he answered it releasing her.
- xi) She has met Kolaia, after the tea. She states that she met him on her way from the tea and came with Kolaia to room 259. As for her evidence in chief, she has come back after the tea alone and cleaned the room 259 and room 256, by the time she met Kolaia. Therefore it would be an inconsistency you should take into your consideration.
- xii) She admits that Semi came into room 259, when she was with Kolaia. Having seen her talking to Kolaia, he has turned back and gone out.
- xiii) Kolaia is known to her since 2015. Before becoming a linen porter, he has worked at the security with her husband, Fifita and they were very close to each other.

36. The PW2 was Talica Kurinabaya. Her evidence was that;

- i) She had been working at the Shangri-La Fijian Resort for the last 21 years and in 2017, worked as an Assistant House keeper.
- ii) She knows Reave and Semi as both of them have worked under her. On the 24<sup>th</sup> of April 2017, she was there at the resort and at about 3.00 pm Kolaia has come to her and told that Reave wants to speak to her. Accordingly, she has gone and met Reave. She was crying and told that Semi always ill-treats her at work during the working hours and was also informed of forcing her to have sex in room 427.
- iii) It should be noted that this raises many issues. Reave in her evidence never mentioned of Semi ill-treating her at work. Furthermore, forcing to have sex is somewhat different from the incident described by Reave before.
- iv) She has immediately informed the Executive house keeper of the incident and a meeting with Reave and Semi was scheduled for the next day.
- v) At the meeting the executive House Keeper has queried them both and Semi has told that he was having a girl-friend and boy-friend relationship

with Reave and she has asked him to come to see her on that day. He has admitted having sex with Reave, but denied raping her. Reave has not reacted to that but has kept on crying.

37. In answering the cross-examination, she states that;
- i) Prior to this, she has not received any complaint by Reave. She knew them both as she was their immediate supervisor. Due to their work Semi and Reave had to work closely.
  - ii) She has neither heard of any nor was aware of any intimate relationship between Reave and Semi.
  - iii) She states that at the meeting Semi has admitted of having consensual sex with Reave.
38. With leading the evidence of PW1 and PW2 the prosecution closed their case. Court being satisfied that on the face of it, the prosecution has adduced sufficient evidence covering the elements of the alleged offence, decided to call for a defense, acting under the virtue of section 231(2), of the Criminal Procedure Act, explaining and giving his due rights to the accused.
39. The accused having understood his due rights elected to give evidence on his behalf. His evidence was that;
- i) He presently works as an Engineer at Gounder Shipping, commencing from 2017.
  - ii) Prior to that he has worked at the Shangri-La Fijian Resort from 2013 to 2017 as a Linen Porter, distributing linen to room maids.
  - iii) He knows Reave well, as they have worked together at the House Keeping department in the said resort since the time she joined the resort in 2014.
  - iv) Reave has been his girl-friend till the alleged incident happened in 2017. He is aware that Reave got married in 2016, to a security officer working there in the resort. Reave used to call the witness, 'husband'. However,

the others in the resort were unaware of their relationship. It should be noted that this is somewhat inconsistent with the questioned asked from Reave on the instructions of the accused. It was suggested that Reave used to call Semi 'husband' in front of the others.

- v) When he came to work on the 24<sup>th</sup> of April 2017, he has gone and checked the roster. As for the roster he has gone distribute the working materials to the House Maids from the store room at the lagoon wing. House Maids had to come and pick them up from him at the pantry.
- vi) While distributing the working materials, Reave has had a conversation with him and told that she will be at room 259, which is a check-out room and had asked him to come there.
- vii) Having distributed the materials and cleaning the pantry, he has gone to the said room. Reave was inside the room and she has opened the door for him. He has entered the room and they have kissed. When he kissed Reave, she has kissed him back.
- viii) They haven't had any conversation, but gone on with kissing and after about 5 minutes, his phone had rung. Answering the phone, he has come out of the room and as for the phone call he has gone to inform the House Maids of the scheduled meeting at 10.00am.
- ix) Having informed the others he has come back to room 259. When he came in he has seen Reave talking to Kolaia, another linen porter, inside the room. Since Kolaia has done the work Semi is supposed to do, to wit, collecting the dirty linen, he has turned back and come out without saying anything.
- x) When Reave asked him to come to room 259, he thought that is because they were in a relationship in addition to helping her clean the room. The witness stated that it was the second time Reave asked him to come to a specific room. The earlier was on the 12<sup>th</sup> of January 2017.



- x i) When he went to the meeting at 10.00am on the 24<sup>th</sup> April, Kolaia and Reave too were there at the meeting. He has not gone to see Reave after the meeting.
- x ii) The witness states that he became aware of the allegations, only on the 25<sup>th</sup> of April, from Talica. When he was called for a meeting with Reave, Talica and Sala, he has gone there. At the meeting, Reave has told that they were kissing in room 259 and he has agreed. Furthermore, Reave has told that they have had sexual intercourse in room 427 on the 12<sup>th</sup> of January. He has agreed with that too. Thereafter they were taken to the HR office and his services were terminated.
- x iii) The witness referring to the incident that took place on the 12<sup>th</sup> of January states that on that day too, Reave informed him in the morning to come to room no. 427, which was a check-out room. When he went there the door was closed with a stopper to prevent it from closing fully. He pushed open the door and went in. Reave was there in the washing area. He locked the door, took Reave to the bed and had sexual intercourse with her.
- x iv) He states that neither he nor Reave took their clothes off to have sexual intercourse. Lady and gentlemen assessors, it is up to you to decide on the possibility and the credibility of such.
- x v) Reave did not try to stop him at any time from having sexual intercourse. Having had sexual intercourse, he has gone and continued with his work and Reave has continued with cleaning the room.
- x vi) The accused states that he has had sex with Reave only once and that was in December 2016 and not on the 12<sup>th</sup> of January. In any event the date of the alleged rape is not a vital ingredient. Furthermore, the accused admits having sexual intercourse with Reave once. Therefore, the date of the offence should only be considered for the limited purpose of assessing the credibility and the reliability.
- x vii) He has come to know of the allegation of rape, only when the police officers came in search of him.

40. In answering the cross examination, posed on behalf of the prosecution, the accused states that;
- i) He was unaware of the Reave's relationship with Fifita, before they got married in 2016.
  - ii) He has come to know that Reave and Fifita were living in the same house and he has seen them going together after work.
  - iii) Though Reave has left him for another man he has not felt any animosity towards her as there were still other girls working with him. When Reave got married he has had a relationship with another girl who worked there.
  - iv) He has gone to Reave's room because she wanted him to come on those two occasions.
  - v) On the 24<sup>th</sup> of April, he was rostered to go to room no. 259. However, he did not ask Kolaia to move out as he and Kolaia were rostered together. Furthermore, Kolaia has already collected the dirty linen by the time he went there.
  - vi) When he received the call, he has gone to inform the other housemaids. He did not inform Reave and has thought of informing it to her when he returned.
  - vii) The accused denies raping and indecently assaulting Reave. His defense is that those acts were committed with the consent of Reave.
41. 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.

42. Though the 1<sup>st</sup> incident alleged to have happened on the 12<sup>th</sup> of January 2017, Reave has not complained of it to anyone until the alleged 2<sup>nd</sup> incident happened on the 24<sup>th</sup> of April. There exists a delay of nearly 3 ½ months. The complaint was lodged for the first time on the 26<sup>th</sup> of April 2017. Therefore, you should consider the delay and the reasons given in justification and decide whether they are acceptable or not. Furthermore, you should consider whether the complaint was made on his/her own accord or not. Then you should give the appropriate credit for such complaint.
43. 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 offences have been proven beyond a reasonable doubt. You should take into account my directions where relevant, in deciding whether the prosecution has proved all the elements.
44. The Accused has indicated his stance and it was that the sexual intercourse they had was done with the consent of Reave. In other words he denies committing rape. 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.
45. 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 counts.

46. Any re-directions?

47. 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. ~~You have the copies of the document tendered as exhibit "PE 1".~~ When each of you have reached your separate opinion, you will come back to court and you will be asked to state your opinion.

48. Your opinion should be;

1. Whether the accused is guilty or not guilty of the alleged offence of Rape; and
2. Whether the accused is guilty or not guilty of the alleged offence of Indecent Assault.



**Chamath S. Morais**

**JUDGE**

*Solicitors for the State*  
*Solicitors for the Accused*

:  
:

*Office of the Director of Public Prosecutions, Lautoka.*  
*KLAW Chambers & Partners, Main Street, Nadi.*