

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 75 of 2019

STATE

V

VINAY CHANDRA REDDY

Counsel : Mr. A. Kumar for the State.
: Ms. J. Singh for the Accused.

Dates of Hearing : 22 July, 2020
Closing Speeches : 23 July, 2020
Date of Summing Up : 24 July, 2020

SUMMING UP

(The name of the complainant is suppressed she will be referred to as "VR")

Ladies and Gentleman Assessors

1. It is now my duty to sum up this case to you.

ROLE OF JUDGE AND ASSESSORS

2. In doing so, I will direct you on matters of law, which you must accept and act upon. On matters of facts, however, which witness to accept as reliable, what evidence to accept and what evidence to reject, these are matters

entirely for you to decide for yourselves. If I do not refer to a certain portion of evidence which you consider as important, you should still consider that evidence and give it such weight as you wish.

3. So, if I express an 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 facts.
4. You decide what facts are proved and what inferences you properly draw from those facts. You then apply the law as I explain it to you and form your own opinion as to whether the accused person is guilty or not.
5. State and Defence Counsel have made submissions to you about how you should find the facts of this case. That is in accordance with their duties as State and Defence Counsel in this case. Their submissions were designed to assist you as judges of facts. However, you are not bound by what they said. You can act upon it if it coincides with your own opinion. As representatives of the community in this trial it is you who must decide what happened in this case and which version of the facts to accept or reject.
6. You will not be asked to give reasons for your opinions and your opinion need not be unanimous. Your opinions are not binding on me but it will assist me in reaching my judgment.

BURDEN OF PROOF AND STANDARD OF PROOF

7. As a matter of law, the burden of proof rests on the prosecution throughout the trial and it never shifts to the accused person. 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 or she is proven guilty.

8. The standard of proof in a criminal trial is one of proof beyond reasonable doubt. This means you must be satisfied so that you are sure of the accused guilt, before you can express an opinion that he is guilty. If you have any reasonable doubt about his guilt, then you must express an opinion that he is not guilty.
9. Your decision must be based exclusively upon the evidence which you have heard in this court and nothing else. You must disregard anything you must have heard about this case outside of this court room.
10. You must decide the facts without prejudice or sympathy for either the accused person or the complainant. Your duty is to find the facts based on the evidence without fear, favour or ill will.
11. Evidence is what the witnesses said from the witness box, documents or other materials tendered as exhibits. You have heard questions asked by the counsel and the court they are not evidence unless the witness accepts or has adopted the question asked.

INFORMATION

12. The accused is charged with the following offence: (a copy of the information is with you).

Statement of Offence

RAPE: Contrary to section 207 (1) and 2 (a) and (3) of the Crimes Act 2009.

Particulars of Offence

VINAY CHANDRA REDDY between the 1st day of February, 2019 and the 13th day of March, 2019 at Caboni Settlement, Tavua in the Western Division, had unlawful carnal knowledge of “VR”, a child under the age of 13 years.

13. To prove the above count the prosecution must prove the following elements of the offence of rape beyond reasonable doubt:
 - (a) The accused;
 - (b) Penetrated the vagina of the complainant “VR” with his penis;
 - (c) “VR” was below the age of 13 years.
14. The slightest of penetration of the complainant’s vagina by the accused’s penis is sufficient to satisfy the act of penetration. As a matter of law a person under the age of 13 years does not have the capacity to consent. In this case the complainant was 11 years at the time of the alleged offending. I therefore direct you that the consent of the complainant is not an issue in regards to this offence.
15. The first element of the offence is concerned with the identity of the person who allegedly committed the offence.
16. The second element is the act of penetration of the complainant’s vagina by the accused with his penis.
17. The final element of the offence is the age of the complainant. It is an agreed fact that the complainant was 11 years in 2019 which establishes that she was below the age of 13 years at the time of the alleged incident.

18. If you are satisfied that the accused had penetrated the vagina of the complainant with his penis then you must find the accused guilty of rape. If on the other hand, you have a reasonable doubt with regard to any of those elements concerning the offence of rape then you must find the accused not guilty of the offence of rape.
19. In this trial the accused has denied committing the offence of rape he is charged with. It is for the prosecution to prove beyond reasonable doubt that it was the accused who had penetrated the vagina of the complainant with his penis.
20. You must be satisfied that the prosecution has proved all the elements of the offence of rape beyond reasonable doubt in order for you to find the accused guilty of the offence of rape. If on the other hand, you have a reasonable doubt with regard to any of those elements concerning the offence, then you must find the accused not guilty.
21. As a matter of law, I have to direct you that offences of sexual nature as in this case do not require the evidence of the complainant to be corroborated. This means if you are satisfied with the evidence given by the complainant and accept it as reliable and truthful you are not required to look for any other evidence to support the account given by the complainant.

ADMITTED FACTS

22. In this trial the prosecution and the defence have agreed to certain facts which have been made available to you titled as amended admitted facts.
23. From the admitted facts you will have no problems in accepting those facts as proven beyond reasonable doubt and you can rely on it. The admitted

facts are part of the evidence and you should accept these admitted facts as accurate, truthful and proven beyond reasonable doubt.

24. I will now remind you of the prosecution and defence cases. In doing so, it would not be practical of me to go through all the evidence of every witness in detail. This was a short trial and I am sure things are still fresh in your minds. I will refresh your memory and summarize the important features. If I do not mention a particular piece of evidence that does not mean it is not important. You should consider and evaluate all the evidence in coming to your opinion in this case.

PROSECUTION CASE

25. The prosecution called two witnesses to prove the charge against the accused.
26. The complainant informed the court that in the year 2019 she was 11 years of age. The complainant recalled on one occasion between 1st February, and 13th March, 2019 her brother (the accused) had called her mother asking for the house keys. At this time the complainant, her mother and her younger sister Manisha were at the complainant's sister in law's house.
27. The complainant left for her home with the house keys, after opening the door she entered the house and opened the back door for the accused to enter. Upon entering the house the accused went to have his shower.
28. The complainant was in her bedroom, after a while the accused came into her bedroom and did something bad to her. The complainant explained that she was lying on her bed, the accused came and had sexual intercourse with her by penetrating her vagina with his penis. Whilst having sexual intercourse the accused was moving his penis to and fro inside her vagina

until he ejaculated outside. At this time the complainant's mother knocked on the door.

29. The accused went and opened the door, her mother came inside the bedroom and asked her what she was doing the complainant replied by saying that she was doing nothing.
30. After a while the complainant's mother gave her some sugar to take to her sister in law's house. The complainant went with her sister Manisha and on the way she told Manisha what the accused had done to her and later she also told her paternal aunty about what the accused had done to her.
31. In cross examination the complainant denied someone had told her to say what she told the court. She agreed the incident happened two weeks before the matter was reported to the police and that she did not tell her mother about what the accused had done to her. The complainant maintained that it was only on one occasion the accused had sexual intercourse with her.
32. In further cross examination the police statement of the complainant dated 14th March, 2019 was referred to her in particular line 24 which was read as:

"When I reach home my brother Vinay was at home. The door was open so I went inside the house".
33. The defence submits that the complainant in her evidence had told the court that when she went home the door was closed whereas she gave a different version to the police when the facts were fresh in her mind.
34. The final witness was Anjila Devi the mother of the complainant, she recalled on one occasion between 1st February and 13th March, 2019 she

was working at her sister in law's house. When she went home she saw the door of the house locked so she knocked, the accused (her son) opened the door. When the accused had opened the door she saw him lacing the cords of his pants. The witness went inside the house when she entered the complainant's bedroom she saw the complainant was naked.

35. In cross examination the witness stated when the accused came to open the door he was pulling up and tying the cord of his pants.

36. The witness was referred to her police statement dated 13th March, 2019 to line 32 which was read as:

"I saw my daughter and asked her as to what she was doing also noted that her dress was folded up not looking normal."

37. When the witness was questioned that she told the police a different version to what she told the court the witness agreed she did not tell the police she had seen her daughter naked. However, she maintained that when she entered the bedroom she had seen her daughter naked and that she was not lying in court.

Ladies and Gentleman Assessors

38. The learned counsel for the accused in this regard was cross examining this witness and the complainant about an inconsistency in the statement they gave to the police when facts were fresh in their mind with their evidence in court. I will now explain to you the purpose of considering the previously made statement of both the witnesses with their evidence given in court. You are allowed to take into consideration the inconsistency in such a statement when you consider whether the witness is believable and credible.

However, the police statement itself is not evidence of the truth of its contents.

39. It is obvious that passage of time can affect one's accuracy of memory. Hence you might not expect every detail to be the same from one account to the next.
40. If there is any inconsistency, it is necessary to decide firstly whether it is significant and whether it affects adversely the reliability and credibility of the issue that you're considering. If it is significant, you will need to then consider whether there is an acceptable explanation for it. If there is an acceptable explanation, for the change, you may then conclude that the underlying reliability of the evidence is unaffected. If the inconsistency is so fundamental, then it is for you to decide as to what extent that influences your judgment about the reliability of the witnesses.
41. This was the prosecution case.

DEFENCE CASE

Ladies and Gentleman Assessors

42. At the end of the prosecution case you heard me explain options to the accused he has those options because he does not have to prove anything. The burden of proving the accused guilty beyond reasonable doubt remains on the prosecution at all times.
43. The accused chose to remain silent and did not call any witness that is his right and you should not draw any adverse inference from the fact that the accused decided to remain silent and not call any witness.

44. From the line of cross examination the defence takes the position that the accused did not commit the offence as alleged. The accused did not rape the complainant by penetrating her vagina with his penis on one occasion between 1st February, and 13th March, 2019.
45. The defence says that the evidence of the complainant is not probable in the circumstances as narrated by her and therefore she should not be believed. The complainant had made up a story to implicate the accused since she was coached to say what she told the court. If the complainant was indeed raped by the accused she would have told her mother straight away about what the accused had done to her. She did not because nothing had happened.
46. The mother of the complainant also did not tell the truth if indeed her daughter was naked when she entered the bedroom then she would have questioned her daughter why she was in that condition. The mother of the complainant also did not tell the police when giving her statement that her daughter was naked when she saw her daughter in the bedroom. The defence is also saying that the complainant did not say anything about being naked yet her mother said otherwise.
47. This was the defence case.

ANALYSIS

48. The prosecution alleges that between 1st February, 2019 and 13th March, 2019 the accused who is the brother of the complainant had sexual intercourse with her in her bedroom when there was no one in the house other than the two. After having his shower the accused entered the bedroom of the complainant where she was lying on her bed. The accused then had sexual intercourse with the complainant by penetrating his penis into the vagina of the complainant until he ejaculated.

49. At this time their mother knocked on the door it was the accused who opened the door, their mother saw the accused tying the lace of his pants and when she went into the complainant's bedroom she found the complainant naked. The prosecution says the complainant had clearly narrated what the accused had done to her which satisfies the elements of the offence of rape.
50. The inconsistency that the complainant was referred to between her evidence in court and the police statement was immaterial since it did not upset the main thrust of her evidence that the accused had sexual intercourse with her. The prosecution is asking you to consider the age of the complainant when considering her credibility the fact that she did not shout or yell or tell her mother about what had happened should not affect the reliability of her evidence.
51. Finally, the prosecution says the mother of the complainant narrated what she had observed when she entered the house. The inconsistency between the evidence of the complainant's mother in court and her police statement does not mean that she had lied in court or that the alleged rape did not occur as narrated by the complainant.
52. On the other hand, the defence position is that the accused did not commit the offence as alleged. He did not rape the complainant by penetrating her vagina with his penis between 1st February, and 13th March, 2019.
53. The defence is saying that the evidence of the complainant cannot be believed since it is not possible that the complainant was raped in the circumstances she described to the court. The complainant was conscious of what was happening around her. The complainant when giving her evidence used Hindi words such as "*chut*" meaning vagina, "*chuni*" meaning penis "*pani girais*" meaning ejaculation which showed she was aware of

what was happening and would have reacted if indeed what she told the court had happened. The defence is asking you to consider why she did not resist or shout or do anything to the accused if the incident did happen.

54. The complainant did not give any reason why she did not tell her mother about what the accused had done to her when her mother had asked her whether anything had happened to her. The defence is also asking you to consider that the complainant did not say that she was naked when her mother had walked into her bedroom yet her mother said the complainant was naked when she walked into her bedroom.
55. In respect of the mother's evidence the defence is saying if she had seen her daughter naked she would have asked some questions to ascertain why her daughter was naked and not just walk away. The defence is asking you not to believe this witness on the basis that when she gave her police statement she did not tell the police officer writing her statement that she had seen her daughter naked in the bedroom.
56. Finally, the defence says the complainant had made up a story to implicate the accused.

Ladies and Gentleman Assessors

57. Which version you are going to accept whether it is the prosecution version or the defence version is a matter for you. You must decide whether the prosecution witnesses were reliable or not. You observed the witnesses give evidence in court. You decide if the witnesses were forthright and truthful or not. You may use your common sense when deciding on the facts. Assess the evidence of the witnesses and their demeanour in arriving at your opinions.

58. In deciding the credibility of the witnesses and the reliability of their evidence it is for you to decide whether you accept the whole of what the witnesses said, or only part of it, or none of it. You may accept or reject such parts of the evidence as you think fit. It is for you to judge whether the witnesses told the truth and was correctly recalling the facts about which she has testified. You can accept part of witness evidence and reject other parts. A witness may tell the truth about one matter and lie about another or be accurate in saying one thing and not be accurate in another.
59. You will have to evaluate all the evidence and apply the law as I explained to you when you consider the charge against the accused person have been proven beyond reasonable doubt. In evaluating evidence, you should see whether the story related in evidence is probable or improbable, whether the witness is consistent in his or her own evidence or with the previously made statement or with the other witnesses.
60. It is up to you to decide whether you accept the version of the defence and it is sufficient to establish a reasonable doubt in the prosecution case.
61. If you accept the version of the defence you must find the accused not guilty. Even if you reject the version of the defence still the prosecution must prove this case beyond reasonable doubt. Remember, the burden to prove the accused guilt beyond reasonable doubt lies with the prosecution throughout the trial and it never shifts to the accused at any stage of the trial.
62. The accused person is not required to prove his innocence or prove anything at all. He is presumed innocent until proven guilty.
63. Your possible opinions are:-
1. **RAPE:** Accused - GUILTY OR NOT GUILTY.

Ladies and Gentleman Assessors

64. This concludes my summing up you may now retire and deliberate together and once you have reached your individual opinions please inform a member of the staff so that the court can be reconvened.
65. Before you do so, I would like to ask counsel if there is anything they might wish me to add or alter in my summing up.


Sunil Sharma
Judge



At Lautoka

24 July, 2020

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.