

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 51 of 2019

STATE

V

SHALENDRA MANI

Counsel : Ms. S. Naibe for the State.
: Ms. P. Reddy for the Accused.

Dates of Hearing : 22, 23, 26 October, 2020
Closing Speeches : 27 October, 2020
Date of Summing Up : 28 October, 2020

SUMMING UP

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

Madam and Gentlemen 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 offences: (a copy of the information is with you).

FIRST COUNT

(Representative Count)

Statement of Offence

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

Particulars of Offence

SHALENDRA MANI between the 1st day of January and 31st day of December, 2012 at Nadi, in the Western Division, indecently and unlawfully assaulted "S.L", by kissing her lips and touching her thighs.

SECOND COUNT

Statement of Offence

ASSAULT CAUSING ACTUAL BODILY HARM: Contrary to section 275 of the Crimes Act 2009.

Particulars of Offence

SHALENDRA MANI on the 3rd day of March, 2019 at Nadi in the Western Division, assaulted “S.L.”, causing her actual bodily harm.

THIRD COUNT

Statement of Offence

ATTEMPTED RAPE: Contrary to section 208 of the Crimes Act 2009.

Particulars of Offence

SHALENDRA MANI on the 3rd day of March, 2019 at Nadi in the Western Division, attempted to have carnal knowledge of “S.L.”, without her consent.

ALTERNATIVE COUNT

Statement of Offence

SEXUAL ASSAULT: Contrary to section 210 (1) (a) of the Crimes Act 2009.

Particulars of Offence

SHALENDRA MANI on the 3rd day of March, 2019 at Nadi in the Western Division, unlawfully and indecently assaulted “S.L.” by licking her vagina.

REPRESENTATIVE COUNT

Madam and Gentlemen Assessors

13. You will note that the first count is a representative count which covers a period between the 1st day of January, 2012 and the 31st day of December, 2012. By a representative count the prosecution alleges that more than one offence as described in the information was committed during the period

specified in the count. The law says that it shall be sufficient for the prosecution to prove that between the specified dates mentioned in the first count at least one offence was committed.

14. Furthermore, as you are aware after the prosecution closed its case, this court had ruled that the accused had a case to answer in respect of the first count of indecent assault, second count of assault causing actual bodily harm and the final count of sexual assault.
15. You are to disregard the third count of attempted rape completely when the prosecution had filed the information the final count of sexual assault was alternative to the count of attempted rape now that the third count is not before you anymore the count of sexual assault stands on its own and you are to consider the evidence that relates to this count.
16. To prove the first count of indecent assault the prosecution must prove the following elements beyond reasonable doubt:
 - (a) The accused;
 - (b) Indecently and unlawfully;
 - (c) Assaulted the complainant "SL" by kissing her lips and touching her thighs.
17. The first element of the offence of indecent assault is concerned with the identity of the person who allegedly committed this offence.
18. The words "indecently and unlawfully" in respect of the second element of the offence simply means without lawful excuse and that the act has some elements of indecency that any right minded person would consider such act indecent.

19. Assault is the unlawful use of force on the complainant "SL" by the act of kissing her lips and touching her thighs.
20. If you are sure that all the elements of the offence of indecent assault have been proven beyond reasonable doubt, then you must find the accused guilty. However, if you have a reasonable doubt in respect of any elements of the offence of indecent assault then you must find the accused not guilty.
21. To prove the second count the prosecution must prove the following elements of the offence of assault causing actual bodily harm beyond reasonable doubt:
 - (a) The accused;
 - (b) Assaulted the complainant;
 - (c) Causing actual bodily harm.
22. The first element of the offence is concerned with the identity of the person who allegedly committed the offence.
23. The second element is the act of assault on the complainant. Assault is the unlawful use of force on the complainant.
24. The final element is the actual bodily harm or injuries caused to the complainant.
25. If you are satisfied the accused had assaulted the complainant by his knuckles coming in contact with the nose of the complainant when he was turning the complainant over on the bed caused the injuries to the complainant's upper lips then you must find the accused guilty of the offence of assault causing actual bodily harm. If on the other hand, you have a reasonable doubt with regard to any of those elements concerning the offence of assault causing actual bodily harm then you must find the accused not guilty.

26. To prove the final count the prosecution must prove the following elements of the offence of sexual assault beyond reasonable doubt:
 - a) The accused;
 - b) Unlawfully and indecently;
 - c) Assaulted the complainant "SL" by licking her vagina.
27. The first element of the offence of sexual assault is concerned with the identity of the person who allegedly committed the offence.
28. The words "unlawfully" and "indecently" in respect of the second element of the offence of sexual assault means without lawful excuse and that the act has some elements of indecency that any right minded person would consider such conduct indecent.
29. The final element of assault is the unlawful use of force on the complainant by licking her vagina.

You should ask yourself:

- a) whether you consider the force which was used in licking her vagina was sexual in nature; and
 - b) if the answer is yes, whether, in view of the circumstances and/or the purpose in relation to the force used, was in fact sexual in nature.
30. In this trial, the accused has denied committing the offence of sexual assault he says that he did not lick her vagina as alleged.

31. It is for the prosecution to prove beyond reasonable doubt that it was the accused, who had unlawfully and indecently assaulted the complainant by licking her vagina.
32. If you are satisfied beyond reasonable doubt that the prosecution has proved all the elements of sexual assault as explained above, then you must find the accused guilty of sexual assault. If on the other hand, you have a reasonable doubt with regard to any of those elements concerning the offence of sexual assault, then you must find the accused not guilty.
33. As a matter of law, I have to direct you that offences of sexual nature as in this case the offence of sexual assault 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.
34. You must be satisfied that the prosecution has proved all the elements of all the above offences beyond reasonable doubt in order for you to find the accused guilty of either or all the offences. If on the other hand, you have a reasonable doubt with regard to any of those elements concerning either or all the offences, then you must find the accused not guilty.
35. In this case, the accused is charged with more than one offence, you should bear in mind that you are to consider the evidence in respect of each offence separately from the other. You must not assume that because the accused is guilty of one count that he must be guilty of the other as well.

ADMITTED FACTS

36. 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.

37. 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.
38. 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

39. The prosecution called two witnesses to prove the charges against the accused.
40. The complainant informed the court that in the year 2019, she was residing at Koroniqava Road, Nasoso, Nadi with her mother and 2 brothers.
41. The accused is her step-father and in the year 2019 the accused was not living with them. On 1st March, 2019 the complainant woke up at 9am and went to have her shower she was alone since her mother had gone to work and her brothers were at school.
42. The bathroom was outside, when the complainant returned after having her shower she left the door open and went into her bedroom. She had wrapped her towel around her, in the bedroom she opened the drawer to take out her clothes.

43. When taking out her clothes she heard footsteps as she turned around she saw the accused in her bedroom. He came and grabbed her, covered her mouth and then pushed her on the bed whereby she fell on her chest facing downwards.
44. When the accused turned the complainant his knuckles (finger joints) hit her nose which started bleeding. The accused was also covering her mouth with his hand so she was unable to shout.
45. According to the complainant with the other hand, the accused was trying to put her legs apart and then he started to lick her vagina for a long time and as soon as he removed his hand from her mouth, she shouted.
46. At this time the accused ran away after a while the complainant's grandmother came and took her to her house. The complainant informed her mother and then she reported the matter to the police and then went to the hospital.
47. When the accused's knuckles had hit her lips, it started bleeding and at the neighbour's house she had used ice to stop the bleeding. The complainant could not remember what the accused was wearing on this day she was only wrapping her towel and not wearing anything the accused had licked her vagina for about 10 to 15 minutes.
48. When the accused was doing all this, the complainant tried to push him but she couldn't because the accused was forcing himself on her she even could not shout because the accused had grabbed her mouth tightly.
49. The complainant also recalled on 10th November, 2012 her mother had gone to Ba. The accused came into the room of the complainant in the night drunk and started to touch her thighs and he kissed her and ran out of the bedroom. After half an hour he came and apologized for what he had done and told her not to tell her mum. The complainant told her mum when she came home.

50. When the accused touched her thighs and kissed her she was really frightened. In respect of the 2019 incident the complainant was uncomfortable and scared.
51. For 10 years the complainant has lived with the accused, their relationship was not good. The complainant identified the accused in court.
52. In cross examination the complainant agreed that while she was working sometimes her male friends used to drop her late at night which the accused did not approve of. She did not like the accused interfering with her life.
53. The accused was not living with the complainant and her mother in 2019. Although he was living next door his belongings were in the house occupied by the complainant. The complainant denied that she had planned to blame the accused by making up the incidents.
54. The complainant denied that she always wanted to get rid of the accused or did not like him being with them. She agreed that when she left the bathroom, she did not lock the back door of the house or her bedroom door.
55. The complainant denied she had argued with the accused when he came to the door of her bedroom and that he had asked her to get out of his way and he had pushed her.
56. When it was suggested that the accused had pushed her which resulted in her ankle getting hurt, the complainant did not agree. She maintained the accused came into her room grabbed her, covered her mouth and pushed her on her bed. She got hurt when he held her.
57. The complainant denied that because she did not like the accused she decided to lodge a police complaint. When it was suggested that the narration by the complainant was not possible, the complainant stated that the accused had grabbed her mouth, with the other hand he separated her vagina apart and started to lick her vagina. She could not shout because his hand had tightly covered her face.

58. The complainant could not push the accused hands when he was licking her vagina because he was heavy and on top of her, while she was on the edge of the bed. When it was suggested that she could have bitten the hand of the accused, the complainant said his hand is big and he had covered her mouth tightly.
59. The complainant stated that although her hands and legs were free she struggled hard to free herself but she could not since by this time her body was painful. The complainant also could have kicked the accused's head but she did not. She maintained that when she landed on the bed she was facing downwards.
60. The complainant stated that she did not make up a story and that the incident had happened.
61. In 2012 when the accused had entered her room, her younger brother was at home. The complainant did not shout or call for help. She could not go to her grandmother's house next door because the accused was standing at the door.
62. After half an hour of the 2012 incident the accused came and said he was sorry for what he had done and he had also written an apology letter to her. He had told her not to tell her mother since he was drunk at the time.
63. After the accused had left she did not shout or alert anybody because the complainant was warned by the accused. After the 2012 incident the complainant continued to live with the accused she maintained that both the incidents had happened.
64. The complainant also informed the court that the accused used to peep into the bathroom when she used to have her shower and also in her bedroom through some holes he had made on the walls of both the bathroom and the bedroom. The complainant further stated that she did not make up a story against the accused although she did not like the accused for interfering in her life.

65. In re-examination the complainant clarified that the reason why she did not call for help in respect of the 2012 incident was because she was scared the accused would punch her.

Madam and Gentlemen Assessors

66. You will recall that this court had allowed defence to further cross examine the complainant after the complainant had stated that the accused had written a letter of apology to her after the first alleged incident in 2012.

67. In further cross examination the complainant agreed that the letter was given to her by her mother about one week after the first incident she was not really sure of the date but it was in November, 2012. The reason why she said the letter was written by the accused was because she knew the hand writing of the accused.

68. The final prosecution witness Dr. Sainimili Bulatale informed the court that she graduated with an MBBS Degree in 2013 from the Fiji School of Medicine. She has 7 years experience as a Medical Practitioner.

69. In 2019, the witness was based at the Namaka Health Centre on 1st March 2019 she had examined the complainant. The Fiji Police Medical Examination Form of the complainant was marked and tendered as prosecution exhibit no. 1.

70. The specific medical findings of the doctor were as follows:

- a) Slight laceration on the upper lip. The witness explained laceration meant a break in the skin but she did not see any bleeding;
- b) chest and abdomen were normal; and
- c) There were no other injuries seen on the limb that is the upper limbs and the legs.

71. When the witness undertook vaginal examination, she noted the hymen was intact. There was no bleeding but there was a normal discharge and there was no sign of rape. The witness had also illustrated the injuries in appendix 1 of the medical examination form.
72. In the professional opinion of the witness, the injury sustained by the complainant was due to force applied and the injury was probably sustained less than 12 hours ago.
73. In cross examination the witness stated that the injury seen on the complainant could have been sustained by an object or a corner or being hit by an object including biting of the upper lip.

Madam and Gentlemen Assessors

74. You have heard the evidence of Dr. Bulatale who had been called as an expert on behalf of the prosecution. Expert evidence is permitted in a criminal trial to provide you with information and opinion which is within the witness expertise. It is by no means unusual for evidence of this nature to be called and it is important that you should see it in its proper perspective. The medical report of the complainant is before you and what the doctor said in her evidence as a whole is to assist you.
75. An expert witness is entitled to express an opinion in respect of his or her findings and you are entitled and would no doubt wish to have regard to this evidence and to the opinions expressed by the doctor. When coming to your own conclusions about this aspect of the case you should bear in mind that if, having given the matter careful consideration, you do not accept the evidence of the expert you do not have to act upon it. Indeed, you do not have to accept even the unchallenged evidence of the doctor.
76. You should remember that this evidence of the doctor relates only to part of the case, and that whilst it may be of assistance to you in reaching your

decisions, you must reach your decision having considered the whole of the evidence.

77. This was the prosecution case.

Madam and Gentlemen Assessors

78. 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.

79. He could have remained silent but he chose to give sworn evidence and be subjected to cross examination.

DEFENCE CASE

80. I now draw your attention to the evidence adduced by the defence during the course of the hearing. The accused elected to give evidence on oath which you must take into account when considering the issues of fact which you are determining.

81. The accused informed the court that in the year 2012 he was living at Nasoso, Nadi with his wife who is the mother of the complainant, the complainant and his two sons. He got married in year 2008 and they were all living together till 2010. The house was his, and the bathroom was situated outside about one meter away from the house.

82. According to the accused although the complainant was staying with them she was not close to him, she did not speak to him most of the time she used to stay alone in her bedroom or be talking on the phone. The accused said

that he used to go to the temple for prayers which the complainant did not like since she followed Islam.

83. The accused denied the allegations that in 2012 he had touched the thigh and kissed the complainant on her lips. He further stated that he cannot do such a thing to anyone.
84. In respect of the letter of apology mentioned by the complainant the accused stated that he does not know anything about that letter and he had at no time written any letter to the complainant. Furthermore, when the purported letter was shown to the accused he stated that the signature was identical to his but he did not sign.
85. After 2012 the accused relationship with the complainant was normal, everything was okay. On 1st of March, 2019 the accused did not assault the complainant as alleged. At around 9.30am on this day the accused was at the house of his mother which was joined to the house in which the complainant lived.
86. He was watching TV when he received a call to do carpentry work so he went in the house of the complainant, into the kitchen to get the steel plastering tool. In the kitchen when he picked the tool and as he turned he saw the complainant in her bedroom.
87. The bedroom door was open as soon as the complainant saw the accused she started shouting and ran to the neighbour's house. The accused could not find his tool so he got ready and went to Nadi town. The complainant was wearing a towel after having her shower she went out of the house wrapped in a towel.
88. The accused did not lick the vagina of the complainant as alleged, he did not even touch her that day. The accused denied all the allegations made against him.

89. In cross examination the accused agreed that even though he was separated from his wife, in the year 2019 he was living in the house next door. He agreed that in the year 2012 the complainant was about 10 to 11 years old and he did not have a good relationship with her. When it was suggested that the relationship was not good because he used to peep into the bathroom when the complainant was having her shower and also when she was in her bedroom, the accused denied this saying it was a lie.
90. When it was put to the accused that during the cross examination of the complainant his counsel had put to the complainant that the tools were in the complainant's bedroom the accused stated that some tools were in her bedroom but the plastering tool was in the kitchen. The accused also stated he did not know the complainant was in her bedroom at the time.
91. The accused had entered the house from the front door of the house, the complainant's bedroom door was open, he did not see the complainant wrapped in a towel it was only when she shouted and ran out of the house that he saw the complainant.
92. The accused maintained that he did not enter the complainant's bedroom he explained after he had entered the house he went and picked his tool from the kitchen, as he turned the complainant shouted and ran out of the house.
93. The accused denied committing the offences alleged by the complainant, he was able to recall that when he was arrested by the police he was interviewed by them. When he told the police his side of the story everything was fresh in his mind. After the interview was shown to the accused he stated that the signature was not his, but in his interview he had denied committing the offences as alleged, other than his personal details the police officers made up the rest of the information contained in the interview.
94. The accused was referred to his caution interview dated 4th March, 2019 as follows:

Q: 36 what happened after that?

Ans: I than punched her mouth and ran away.

95. The accused stated he told the police officer interviewing him the truth but he does not know what is written in the interview, he wanted to be interviewed in the Hindi language but there was no Hindi speaking officer present at the police station. The complainant had told the court that she was not punched by him hence the answer attributed to him in Q.36 above was not his but made up by the police officer writing his police statement.
96. When it was suggested to the accused that he told the truth to the police the accused stated he told the truth to whatever he was asked but he does not know what was written in the interview.
97. Although the evidence of the accused and some of his answers in his interview were different he wants the court to believe him. Whatever he was asked by the police he told the truth also whatever he told the court was also the truth.

Madam and Gentlemen Assessors

98. The learned state counsel in this regard was cross examining the accused about some inconsistency in the statement he gave to the police when facts were fresh in his mind with his evidence in court. I will now explain to you the purpose of considering the previously made statement of the complainant with his 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.
99. 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.
100. 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 are 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 witness.

101. The accused maintained he did not commit the offences alleged by the complainant.

102. This was the defence case.

ANALYSIS

103. The prosecution alleges that on 10th November, 2012 the accused had indecently and unlawfully assaulted the complainant by kissing her lips and touching her thighs. The accused was drunk this happened during the night when the complainant was in her bedroom. The complainant did not like what the accused had done to her. After half an hour the accused went and apologized to the complainant saying he was drunk. The complainant told her mother about what the accused had done to her.

104. Thereafter, the accused wrote a letter of apology to the complainant which was delivered to the complainant by the complainant's mother. The complainant maintained that the hand writing in the letter was that of the accused which she was able to recognize.

105. When the accused touched her thighs and kissed her she was really frightened.

106. In respect of the offence of assault causing actual bodily harm the prosecution alleges that on 1st of March, 2019 the complainant sustained injuries to her upper lip when the accused had forcefully turned the complainant over after

he had pushed her on the bed and she had landed on her chest facing downwards. The knuckles of the accused hand hit the upper lips and nose of the complainant which resulted in the injuries to the complainant. The complainant went to the hospital the same day and the doctor noted injuries on the upper lip of the complainant which was consistent with the use of force.

107. In respect of the offence of sexual assault the prosecution alleges that on the 1st of March, 2019 the accused had unlawfully and indecently assaulted the complainant by licking her vagina. On this day the complainant was in her bedroom wrapped in a towel after her shower.
108. She was taking out her clothes from the drawer of her bedroom when she heard footsteps. When she turned around she saw the accused he then pushed her on the bed and then forcefully turned her over. The accused had covered her mouth tightly with one hand and with the other hand he pushed the legs of the complainant apart and then he licked her vagina for 10 to 15 minutes.
109. The complainant shouted after the accused's hand had moved away from her mouth at this time the accused ran away. The complainant did not consent to what the accused had done to her she promptly reported the matter to the police.
110. On the other hand, the defence says the complainant made up a story against the accused after much planning. She never liked the accused so she took advantage of the fact that on the 1st of March, 2019 he had gone into the house to take his tool.
111. The accused did not commit the offences as alleged in respect of the 2012 allegation the complainant did not lodge a police complaint then and she continued to live with the accused. The so called letter of apology should not

be believed because it was not written by the accused although there was a signature which was identical to the signature of the accused that does not mean that he was the author of that letter.

112. The defence is also asking you not to consider the inconsistency between the accused evidence and his caution interview which is an out of court document which was written by a police officer who had fabricated the answer in respect of Q. 36. The accused did not know what was written in his caution interview because it was conducted in English when he wanted to be interviewed in the Hindi language this opportunity was not accorded to him by the police.
113. During the interview the accused told the truth in respect of his back ground information which he had admitted in court. The defence is asking you not to give any weight to the inconsistencies between his evidence and his caution interview. In regards to the medical findings of the doctor the defence is saying that the injuries seen by the doctor could be from other causes as well and not necessarily a result of what the complainant told the court.
114. Finally the defence submits the story narrated by the complainant does not make sense and is not probable. The complainant had a motive to get rid of the accused which she succeeded by making a false police complaint. The accused did not do anything as stated by the complainant.

Madam and Gentlemen Assessors

115. You have seen all the witnesses give evidence keep in mind that some witness react differently when giving evidence.
116. 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 which witness is reliable and which one is not. You observed all the witnesses give evidence in court. You decide which witness was forthright and truthful and who was

not. Which witness was straight forward? You may use your common sense when deciding on the facts. Assess the evidence of all the witnesses and their demeanour in arriving at your opinions.

117. 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 a witness says, 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 a witness is telling the truth and is correctly recalling the facts about which he or she has testified. You can accept part of a witness evidence and reject other parts. A witness may tell the truth about one matter and lie about another, he or she may be accurate in saying one thing and not be accurate in another.
118. You will have to evaluate all the evidence and apply the law as I explained to you when you consider the charges against the accused 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 his or her previous statement or with other witnesses. It does not matter whether the evidence was called for the prosecution or the defence. You must apply the same test and standards in applying that.
119. 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.
120. 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's guilt beyond reasonable doubt lies with the prosecution throughout the trial and it never shifts to the accused at any stage of the trial.


121. The accused is not required to prove his innocence or prove anything at all. He is presumed innocent until proven guilty.
122. As I have mentioned earlier, in this case the accused is charged with more than one offence you should bear in mind that you are to consider the evidence in respect of each offence separately from the other. You must not assume that because the accused is guilty of one count that he must be guilty of the other as well.
123. Your possible opinions are:-

FIRST COUNT – INDECENT ASSAULT: Accused - GUILTY OR NOT GUILTY;
SECOND COUNT- ASSAULT CAUSING ACTUAL BODILY HARM – Accused- GUILTY OR NOT GUILTY;
THIRD COUNT – SEXUAL ASSAULT -Accused – GUILTY OR NOT GUILTY.

Madam and Gentlemen Assessors

124. 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.
125. 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

28 October, 2020

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.