

**IN THE HIGH COURT OF FIJI  
AT SUVA  
CRIMINAL JURISDICTION**

**CRIMINAL CASE NO: HAC 168/2010**

**BETWEEN: THE STATE**

**AND**

- 1. ROHIT VISHAL ANAND**
- 2. RONEEL VIKASH SINGH**

**COUNSEL:**

**Ms A Vavadakua for the State  
First Accused in Person  
Mr R P Singh for the second Accused**

**Dates of Trial: 16-18/07/2013**

**Date of Summing Up: 19/07/2013**

[Name of the victim is suppressed. She will be referred to as ML]

## **SUMMING UP**

Madam and Gentlemen of Assessors,

1. It is now my duty to sum up this case to you. I will direct on matters of law which you must accept and act upon. On matters of facts however, which witnesses to accept as reliable, which version of the evidence to accept, these are matters for you to decide for yourselves. So if I express my opinion to you about facts of the case or if I appear to do so it is a matter for you whether you accept what I say, or form your own opinions. In other words you are the judges of facts. All matters of facts are for you to decide. It is for you to decide the credibility of the witnesses and what parts of their evidence you accept as true and what parts you reject.

2. You have to decide what facts are proved and what inferences drawn from those facts. You then apply law as I explain it to you and form your individual opinion as to whether the accused persons are guilty or not guilty.
3. Prosecution and defence made their submissions to you about the facts of this case. That is their duty. But it is a matter for you to decide which version of the facts to accept or reject.
4. You will not be asked to give reasons for your opinions but merely your opinions of yourself and your opinion need not be unanimous but it would be desirable if you agree on them. Your opinions are not binding on me but I can tell you that they carry great weight with me when I deliver my judgment.
5. On the question of proof, I must direct you as a matter of law that the onus of burden of proof lies on the prosecution throughout the trial and never shifts. There is no obligation on the accused persons to prove their innocence. Under our criminal justice system accused persons are presumed to be innocent until they are proved guilty. This is the golden rule.
6. 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 persons' guilt before you can express an opinion that they are guilty. If you have any reasonable doubt about their guilt then you must express an opinion that they are not guilty.
7. Proof can be established only through evidence. Evidence can be from direct evidence that is the evidence that who saw the incident or felt the offence being committed. The other kind of evidence is circumstantial evidence that you put one or more circumstances together and draw certain irresistible inferences. Evidence presented in the form of a document is called Documentary evidence.
8. The Caution Interview Statements of the accused persons are in evidence. What accused persons say in their caution interview is evidence against them. I will direct you shortly on how you should consider that evidence.

9. The facts which agreed between the prosecution and the defence are called agreed facts. You may accept those facts as if they had been led from witnesses from witness box.
- (i) The Statement of A/CPL 3198 Atish Lal.
  - (ii) The Statement of DC 3648 Deven.
  - (iii) The Statement of Jone Veitaqomaki.
  - (iv) The Charge Statement of Rohit Vishal Anand.
  - (v) The Charge Statement of Roneel Vikash Singh.
  - (vi) The Caution Interview Statement of Rohit Vishal Anand.
  - (vii) The Caution Interview Statement of Roneel Vikash Singh.
10. Your decisions must be solely and exclusively upon the evidence, which you have heard in this court and upon nothing else. You must disregard anything you have heard about this case outside of this court room.
11. Your duty is to find the facts based on the evidence apply the law to those facts. Approach the evidence with detachment and objectivity. Do not get carried away by emotions.
12. Now let's look at the charge (amended).

## **FIRST COUNT**

### **Statement of Offence**

**RAPE:** Contrary to section 207(1) and 207(2) (a) of the Crimes Decree No: 44 of 2009.

**ROHIT VISHAL ANAND** on the 1<sup>ST</sup> day of July 2010, at Samabula, in the Central Division, had carnal knowledge of ML, without her consent.

## SECOND COUNT

### Statement of Offence

**RAPE:** Contrary to section 207(1) and 207(2) (a) of the Crimes Decree No: 44 of 2009.

**RONEEL VIKASH SINGH** on the 1<sup>ST</sup> day of July 2010, at Samabula, in the Central Division, had carnal knowledge of ML, without her consent.

13. In order to prove the offence of Rape the prosecution has to prove following elements beyond reasonable doubt.
  1. The accused persons had carnal knowledge of the complainant,
  2. without her consent,
  3. They knew or believed that she was not consenting or didn't care if she was not consenting.
14. Carnal knowledge is the penetration of vagina or anus by the penis. It is not necessary for the prosecution to prove that there was ejaculation, or even that there was full penetration.
15. As far as the element of consent is concern, in our law, a child is under the age of 13 years is incapable of giving consent. In this case the victim was 21 years of age at the time of the offence. She had the capacity under the law to consent. Under those circumstances the offence of rape is made out only if there was no consent from the alleged victim.
16. Now let's look at the evidence led by the prosecution in this case.
17. The first witness was the victim, ML. According to her she is residing at Lagilagi, Narere. On 30<sup>th</sup> of June 2010 she had gone to Suva with one of her friends namely Raijieli. They had met their male friends and went to Ritz Night Club for drinking. After closer of Ritz Club they had gone to Bourban Blue Night Club to continue their drink. As felt drunk she wanted to go home. When she crossed the road a taxi came. Two Indian boys were in the taxi and she knew one of the person. His name is Raj. (1<sup>st</sup> accused and his nick name is Raj) Raj offered her lift up to Samabula. 2<sup>nd</sup> accused was in the driving seat.

Instead of going Samabula the taxi turned to Kanace Road and stopped in front of a double storied house where 2<sup>nd</sup> accused rented a portion. 1<sup>st</sup> accused told her to take some rest before she go home. All went into the house and sat on a settee. As she fell asleep 1<sup>st</sup> accused told her to go in to the bedroom. She slept there and suddenly felt 1<sup>st</sup> accused was on top of her and inserting his penis into her vagina. She could not resist as she was so weak at that time.

18. After a while another person did the same to her. She identified the 2<sup>nd</sup> accused as the other Indian guy who had sex with her. When she pushed 2<sup>nd</sup> accused he held her hand and threw her outside the house. At that time she was wearing only her brassier. She identified both accused in open court.
19. In the cross examination by 1<sup>st</sup> accused victim said that she knew 1<sup>st</sup> accused as she met him earlier in Samabula in a Billiard Shop. She confirmed that both accused had invited her to the house. She further said that she saw his face when he was on top of her.
20. In the cross examination by counsel for 2<sup>nd</sup> accused victim said that she was fully drunk and she had fallen asleep in the flat. Witness said that she saw 2<sup>nd</sup> accused's face when he was on top of her. Witness said she was angry as to what they done to her.
21. According to Satish Narayan he woke up at 5am on 01/07/2010 in order to go for work. At that time while attending some work he heard from upstairs a girl shouting in Fijian language. He had seen a Fijian girl sitting on the steps and told him that two who were in the upstairs raped her. Then 2<sup>nd</sup> accused dragged her to the drive way. Before she was dragged victim asked her whether he knew a person called Raj. He had noticed that 2<sup>nd</sup> accused had an artificial hand.
22. 2<sup>nd</sup> witness reiterated to the question put by 1<sup>st</sup> accused that victim asked him whether he knew Raj.
23. Answering to counsel for 2<sup>nd</sup> accused witness said that 2<sup>nd</sup> accused dragged the victim with one hand and she went out of the gate alone.

24. Next Dr Nanise Sikiti gave evidence. She had examined the victim on 01/07/2010 at CWM Hospital. After obtaining her consent victim had been medically checked by the doctor. According to her professional opinion that victim is sexually active and her hymen not intact. She further said that sexual intercourse can take place without leaving any injuries to the vagina. As both accused consented, the photocopy of the Medical Report was marked as Exhibit No.1
25. She was cross examined only by counsel for 2<sup>nd</sup> accused. According to her no semen found in her vagina or on her body.
26. Finally Cop/3198 Atish Lal gave evidence on behalf of the prosecution. He had recorded the Caution Interview Statement of 2<sup>nd</sup> accused on 26/08/2010. After reading the same it was marked as Exhibit No.3.
27. 1<sup>st</sup> accused did not object for his Caution Interview Statement being marked through this witness as Exhibit No.2, as the officer who recorded his Caution Interview Statement is no more in the police service.
28. In the cross examination only by counsel for 2<sup>nd</sup> accused witness said that he was directed by investigating officer to record Caution Interview Statement of 2<sup>nd</sup> accused on 26/08/2010.
29. Prosecution then closed their case. As there was no any application from both accused defence was called and explained to their rights.1<sup>st</sup> accused opted to remain silence while second accused gave evidence from witness box.
30. According to 2<sup>nd</sup> accused on 1<sup>st</sup> July 2010, in the early hours a girl stopped his taxi. At that time 1<sup>st</sup> accused was in the taxi. Girl got in to the taxi and started to talk with 1<sup>st</sup> accused. Thereafter both wanted to drop them at Kanace Street. He dropped them and gone to town. He had come back at 6am and went to his house. He had seen 1<sup>st</sup> accused was on the steps and the girl was inside the house. When he went inside to wake the girl up 1<sup>st</sup> accused had gone by his taxi. Then the girl started to shout and demanded her mobile phone. He denied that he had any sexual intercourse with the victim. He has lost his left arm from his shoulder in the year 2002. According to him he can't support his body weight with one hand.

31. In the cross examination 2<sup>nd</sup> accused admitted that he knew the victim was drunk at that time and allowed to come to his house with 1<sup>st</sup> accused. He denied the charge levelled against him. That ended the defence case.

### **Analysis of the Evidence**

32. Madam and Gentlemen of assessors, in this case the victim gave evidence first and she clearly narrated the ordeal she encountered on 01/07/2010. According to her she was drunk when she got into the taxi after clearly identifying 1<sup>st</sup> accused. Due to insistence of 1<sup>st</sup> accused she had gone to 2<sup>nd</sup> accused's house. There she had been raped by both accused taking turns. She clearly identified both accused at the scene and in this court. According to her she was helpless due to her drunkenness. But she was conscience. As assessors and judges of facts you have to consider her evidence with great caution.
33. Madam and Gentlemen of assessors, you heard the evidence of Satish Narayan. He had seen victim was dragged out from the house by 2<sup>nd</sup> accused in the early hours of 1<sup>st</sup> August 2010.
34. The state's case against the accused persons defends on the correctness of victim's identification evidence, which the defence alleged to be mistaken. Special caution is needed with regard to correctness of identity, as an honest and convincing witness, may be mistaken. You must closely examine the circumstances in which the identification was made by the victim. You must consider following questions and its answers:
- (i) How long did the victim have the accused person under observation?
  - (ii) At what distance?
  - (iii) In what light?
  - (iv) Was the observation impeded in any way?
  - (v) Has the victim seen the accused persons before?
  - (vi) If so, how often?
  - (vii) Are there any special reasons for remembering the accused?
  - (viii) Was a police identification parade made?
  - (ix) Are there any special weaknesses in victim's identification evidence?

35. Victim in her evidence said that she identified the 1<sup>st</sup> accused as she had met him earlier. She got into the taxi after identifying the 1<sup>st</sup> accused. Further she had seen both accused on top of her taking turns in the house. Finally she said that 2<sup>nd</sup> accused was the person who chased her away from the house. You will have to analyse these evidence very carefully before you arrive at a decision.
36. Madam and gentleman of assessors, as I told you earlier, the Caution Interview Statements of the accused persons are in evidence. Accused person did not challenge their Caution Interview Statements which are marked as Exhibit-02 and 03. Both had denied their respective charge. You must consider the Caution Interview Statements only against the maker of the Statement.
37. Madam and gentlemen of assessors, in this case 1<sup>st</sup> accused opted to remain silence and 2<sup>nd</sup> accused gave evidence from witness box. That is their right. - They have nothing to prove to you.
38. I have summarized all the evidence before you. But, still I might have missed some. That is not because they are unimportant. You heard every items of evidence and you should remind yourself of all that evidence and form your opinion on facts. What I did was only to draw your attention to the salient items of evidence and help you in reminding yourself of the evidence.
39. You must consider evidence against each accused on each count separately.
40. In this case the accused persons are charged for rape contrary to section 207(1) and 207(2)(a) of the Crimes Decree No: 44 of 2009. I have already explained to you about the charges and its ingredients.
41. Madam and gentlemen of assessors, in this case victim was 21 years and she had the capacity under the law to consent. According to section 206(1) of the Crimes Decree 2009 the term "Consent" means consent freely and voluntarily given by a person with the necessary mental capacity to give the consent, and the submission without physical resistance by a person to an act of another shall not alone constitute consent. If there was no consent you can find the both accused persons guilty of rape. If you find there was consent and that they are thereof not guilty of rape.
42. Madam and gentleman of assessors as per section 129 of the Criminal Procedure Decree 2009 no corroboration shall be required in sexual offence cases.



43. You have heard all the prosecution witnesses. You have observed them giving evidence in the court. You have observed their demeanour in the court. Considering my direction on the law, your life experiences and common sense, you should be able to decide which witness's evidence, or part of their evidence you consider reliable, and therefore to accept, and which witness's evidence, you consider unreliable and therefore to reject.
44. You must also carefully consider the accused persons position as stated above. Please remember, even if you reject the version of the accused persons that does not mean that the prosecution had established the case against them. You must be satisfied that the prosecution has established the case beyond reasonable doubt against the accused persons.
45. Madam and gentleman of assessors, remember, it is for the prosecution to prove both accused persons' guilt beyond reasonable doubt. It is not for the accused persons to prove their innocence. The burden of proof lies on the prosecution to prove both accuseds' guilt beyond reasonable doubt, and that burden stays with them throughout the trial.
46. Once again, I remind, that your duty is to find the facts based on the evidence, apply the law to those facts and come to a correct finding. Do not get carried away by emotions.
47. This is all I have to say to you. You may now retire to deliberate. The clerks will advise me when you have reached your individual decisions, and we will reconvene the court.
48. Any re-directions?

I thank you for your patient hearing to my summing- up.

P Kumararatnam  
**JUDGE**

At Suva  
19/07/2013



