

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION.

Criminal Case No. HAC 399 of 2012

BETWEEN

STATE

AND

WASEROMA KOROI

BEFORE THE HON. JUSTICE PAUL K. MADIGAN

Counsels: Ms. A. Vavadakua with Ms. W. Elo for the State
Mr. J. Savou with Mr A. Chand (L.A.C.) for the accused

Dates of hearing: 17, 18 March 2014

Date of summing up: 19 March 2014

SUMMING UP

Ladies and Gentleman assessors:

- (1) The time has come now for me to sum up the case to you and to direct you on the law involved so that you can apply those directions to the facts as you find them.

- [2] I remind you that I am the Judge of the Law and you must accept what I tell you about the law. You in turn are the Judges of the facts and you and only you can decide where the truth lies in this case. If I express any particular view of the facts in this summing up then you will ignore it unless of course it agrees with your view of that fact.

- [3] Counsel have addressed you on the facts but once again you need not adopt their views of the facts unless you agree with them. You will take into account all of the evidence both oral and documentary. You can accept some of what a witness says and reject the rest. You can accept all of what he or she says and you can reject all. As judges of the facts you are masters of what to accept from the evidence.
- [4] You must judge this case solely on the evidence you heard in this court room. There will be no more evidence. You are not to speculate on what evidence there might have been or should have been. You judge this case solely on what you have heard and seen here.
- [5] The court room is no place for sympathy or prejudice. You may have particular moral or religious views about sexual relationships but you must not let that cloud your view of the proceedings. You will judge the case solely on the law as I direct you and on the evidence before you and on nothing else. It was not right for Mr. Savou to discuss in his closing the absence of medical evidence. He knows that the case must be decided on the evidence that is before us and he should never have speculated on any other possible evidence. Neither should you. You must use the evidence you have heard to apply it to the principles of law that I direct you on in this summing up as they apply to the crimes of rape and incests that the accused faces and to nothing else. You can accept some of what a witness says and reject the rest. You can accept all of what he or she says and you can reject all. As judges of the facts you are masters of what to accept from the evidence.
- [6] I am not bound by your opinions but I will give them full weight when I decide the final judgment of the Court.
- [7] It is most important that I remind you of what I said to you when you were being sworn in. The burden of proving the case against this accused is on the Prosecution and how do they do that? By making you sure of it. Nothing less will do. This is what is sometimes called proof beyond reasonable doubt. If you have any doubt then that must be given to the accused and you will find him not guilty – that doubt

must be a reasonable one however, not just some fanciful doubt. The accused does not have to prove anything to you. If however you are sure that the accused raped Niumai, once in January 2010 and once in February 2010 and that he had sex with her in 2011, then you will find him guilty of the charges he faces.

- [8] Rape in our law is committed when there is sexual intercourse without consent. It must be proved that there is at least some penetration (and in this case but not always penetration of the vagina.) Consent to sex must be freely and voluntarily given by the passive party to the rape but the law says that consent cannot be freely and voluntarily given if it is obtained by the exercise of authority over the victim. Apart from the fact that the accused is Niumai's father with all the authority that implies, there is no direct evidence in this case as to the lack of consent, but the State is asking you to infer that there was none from the evidence that she screamed and that the accused covered her mouth and on one occasion slapped her.
- [9] Incest is committed when there is sexual intercourse and the offender knows that the victim is related to him, in this case his daughter. All you need to find to prove this crime is that, in October or November 2011, there was an act of sex between the accused and Niumai. I do not think it will trouble you to find that the accused knew she was his daughter.
- [10] You must consider the case against the accused on each count separately. Just because you may think that he is guilty of one count does not necessarily mean that he is guilty of either of the two others. You may think that there was no rape but that there was sex, in which case you would find the accused not guilty of the first two counts but guilty of the third. You might find that there was no sex at all, in which case you will find the accused not guilty on all three counts. It is all a matter for you.
- [11] Niumai told us that she was born in Nayavu and had lived there all her life with her father and mother. She was educated up to Class 3. Her father, the accused looked after her. In January 2010 he raped her in the kitchen. She screamed and her

father covered her mouth with a cloth and told her not to tell anybody. In February 2010 the same thing happened again when they had gone to the plantation to get bananas. She screamed again and he slapped her and again told her not to tell anybody. In 2011, one day in the middle of the day when it was raining, father again came when she was feeding the baby. He moved the baby to one side, took his clothes off and again had sex with her. This time she went to her "aunt's" house, that is Koini, and told her all about it. Koini encouraged her to go to the Police which she did.

[12] Koini gave evidence for the Prosecution – she described the village layout for us in detail. She then told us of events between Koroi the accused and Niumai which you are to take no account of. That evidence referred to happenings which are not reflected in the charges; it is prejudicial evidence which the prosecution should never had led and which the defence should have objected to. Please disregard it. What you can accept and put in "into the mix" is that Koini told us that one morning in 2011, she went to the house where Niumai was living with her father to see Niumai's mother who she thought was visiting. She could not rouse anybody by knocking on the door. She heard noises from inside and she peered through a broken door. She saw that Niumai was naked. Koini called out to her. Niumai dressed and opened the door. When she did, Koini saw that her father was with her. Koini was angry and returned home. Niumai followed her home and told her that they had had sexual intercourse and that she was going to report it to the Police. She was crying. Koini said that she did have a good relationship with the accused who was her cousin-in-law but when she found out about this she was angry with him.

[13] Well Ladies and Gentleman, that was the end of the prosecution case and you heard me tell the accused what his rights are in defence. He was entitled to give evidence and be cross-examined or remain silent and say that the State had not proved the case against him. Whatever his choice he was entitled to call witnesses to give evidence for him. As you know he chose to give evidence and to call one witness.

- [14] The accused told us that he has been divorced for 15 years and had brought up his 4 children single-handedly. Niumai was his second daughter. In 2010 the Police came to his farm and took him in for this case. He spent 5 days in Korovou Police Station. When the Police interviewed him about the allegations, he told them that the report was false. Niumai had been born on the 31st October 1984. She didn't go to school because she had a "sickness". He claimed that the story she told of the rape was not true. She left the family home in 2008 and didn't return until October 2011. She started to live with her uncle where she still lives. The allegation that they had sex in October or November 2011 is also untrue. Koini forced her to complain to the Police because she wouldn't be able to take the initiative to make the complaint herself. Koini came and took Niumai away from the family home. In cross-examination by State Counsel he said that Niumai was not able to make a complaint to the Police and he was very surprised that she in fact did.
- [15] The accused's witness was Aseri, a one time turaga-ni-koro of Nayavu Village. He told us that Niumai was not in the village in 2010 but married and living in Bucalevu. He said that his relationship with Koini was not good because of this "incident" and the same applied to Koini's relationship with the accused. In cross-examination he admitted that there were times that Niumai was in the village in 2010 and 2011. Apart from that you might think that this witness did not help us factually at all.
- [16] Well Ladies and Gentleman that is a summary of all the evidence and it represents the sum total of the evidence on which you are to give me your opinions. The case really hangs on whether you believe Niumai or not and if you believe her whether the case is proved to you beyond reasonable doubt. This is definitely a case where you must judge the demeanour and assess the credibility of the witnesses. It is all a matter for you.
- [17] You may retire now and consider your opinions. When you return you will be asked individually for your opinions on each of the three charges. Your possible

verdicts are guilty or not guilty on each charge. Just before I release you I am going to ask Counsel if there are any amendments or additions that they wish me to make to this summing up.

[18] Counsel?

P.K. Madigan
Judge

At Suva

19 March 2014