

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 33 of 2014

STATE

V

SHELVIN PRASAD

Counsels: Ms. A. Vavadakua for State
Mr. A. Paka (L.A.C.) for Accused

Date of Trial : 18 and 19 May 2016

Date of Summing Up : 20 May 2016

SUMMING UP

- [1] Ladies and Sir Assessors. It is now my duty to sum up to you. In doing so, I will direct you on matters of law which you must accept and act on. You must apply the law as I direct you in this case.

- [6] The standard of proof is one of proof beyond reasonable doubt. This means that before you can find the accused guilty of the offence charged, you must be satisfied so that you are sure of his guilt. If you have a reasonable doubt about the guilt of the accused, then it is your duty to express an opinion that the accused is not guilty. It is only if you are satisfied so that you feel sure of the guilt of the accused that you can express an opinion that he is guilty.
- [7] Your opinions must be based only on the evidence you have heard in the courtroom and upon nothing else.
- [8] The accused faces one charge of rape. In our law and for the purposes of this trial, rape is committed when a person penetrates the vagina of another and where the person doing that does not have the consent of the victim or is reckless to whether she was consenting or not.
- [9] The penetration need not be complete. Even the slightest penetration is enough to constitute rape if it is done without consent.
- [10] The accused also faces a count of assault causing actual bodily harm to find this offence proved you must find that:
- (i) it was indeed Shelvin, who
 - (ii) unlawfully assaulted Aloesi, and
 - (iii) it was that assault which was caused her to have a black eye.
- [11] It was suggested in cross-examination that the accused was acting in self defence when the injury to Aloesi occurred. A person is not criminally liable if he does act in self defence.

However I must direct you that questions put in cross examination are not evidence and there is no other evidence that the accused acted in self defence; so it is not a defence you need to consider.

- [12] If you think that Shelvin did hit Aloesi causing her the bruises on her face, then you will find him guilty. If you think not or if you are not sure you will find him not guilty.
- [13] As you know, there are two counts and you must consider each count separately. Just because you might find he is guilty of one count does not necessarily mean that he is guilty of the other and similarly with not guilty.
- [14] Lastly at this stage of the summing up I must tell you that you are to decide the strength of the Prosecution case on the evidence of Aloesi alone. What I mean by that is that these days the law says that you do not have to look for other evidence to confirm her story.
- [15] I turn now to the evidence.
- [16] Aloesi told us that she lives by herself. On the 20th March she was contacted by the accused who was her neighbor. He suggested she accompany him to a party and arranged to meet her at the shop. When she got there the accused (Shelvin) was in a car with his cousin, a man called Sonny. They drove around and spent time at Sonny's house. When it got dark they drove into town and had dinner. After dinner they decided to have drinks, so they went to the Royal Hotel, buying rum at a nearby liquor store. The boys hired a room and the three of them went to the room to drink the rum. After a while Aloesi felt drunk and dizzy so she lay down on the bed. She said she slept,

but “wasn’t really asleep” when she felt something strange. She saw Shelvin on top of her and he was partially penetrating her with his penis. She pushed him away and kicked him. He came back and punched her. At this time Sonny who had been in the bathroom heard her screaming came out and spoke to Shelvin. She retrieved her clothes, dressed and dashed out of the door bumping into the receptionist on the way out. .

- [17] In cross-examination, she denied having spent a night with Shelvin in Savusavu the previous week, and denied having an intimate relationship with him in the months leading up to this incident. She denied that she had drunk grog with Shelvin and Pintu.
- [18] Ladies and Sir, it was at this stage of her evidence that it was noticed that her mother was signaling to her from the gallery. I didn’t notice it but others did.
- [19] I tell you that it was most improper for the mother to be doing this and you must try to put it from your minds and not let it have any bearing on Aloesi’s evidence. She did say that she was scared of her mother but her mother’s presence was not in any way influencing her evidence; and of course it is what is said in evidence that you must consider, nothing else.
- [20] After this incident Aloesi could not recall anything that night when questions were put to her in cross-examination. She did say however that her upper clothes (tube top and bra) were not removed but the accused had somehow removed her trousers and panty. She denied drinking with Shelvin and his friends at Pontoon.
- [21] The Doctor who examined Aloesi later that night (in fact very

early the next morning) told us that her genital area did not have any sign of injury. Her hymen was not intact but she did have injuries to her face and in particular to her left eye which was bruised.

[22] You will make what you will of that evidence.

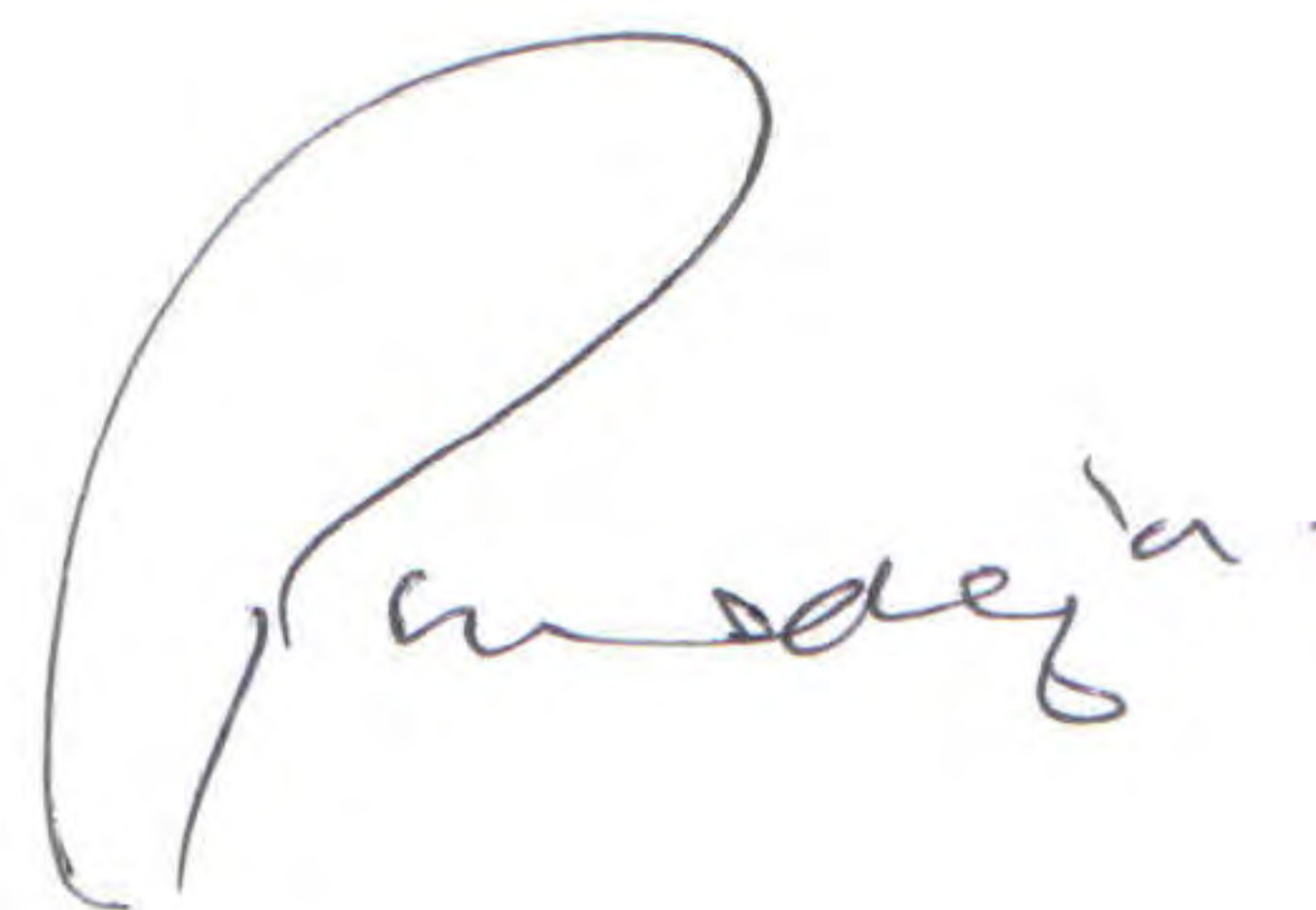
[23] Well, Ladies and Sir, that was the end of the Prosecution case. You heard me explain to the accused his rights in defence. He could give evidence from the witness box or he could remain silent. In either case he was entitled to call witnesses.

[24] He elected to remain silent and call two witnesses.

[25] I direct you Ladies and Sir to think no less of the accused because he elected to remain silent. That is his right in our Criminal Procedure Law. It doesn't make him guilty but what it means is that you must examine the Prosecution case with extreme care to see if they have proved to you so that you are sure that he committed these crimes. If you are not certain then you must return with an opinion of not guilty.

[26] The first witness for the defence was Lemani Bale who used to work at the same company as Shelvin. They were friends and he had met Aloesi before. He had met her early last year at a grog session at another man's house and he also met her once at Pontoon night club. Lemani was drinking beer with his colleagues from work, including Shelvin when Aloesi approached and had a couple of drinks with them. She stood next to Shelvin. He had seen them another time at Pontoon when they were upstairs smoking. They were very close to each other.

- [27] The second witness for the defence was Pranit Chand Maharaj (also known as Pintu). Pintu knows Shelvin very well because they live near each other and they regularly drink grog together. One day last year when he was in town with Shelvin they bumped into Aloesi who had a can of Woodstock. She ordered Shelvin to drink it. He, Pintu, told them not to talk but Aloesi said her Mum was making her continue with the rape case. The three of them went back to Pintu's house where they drank grog. Again Aloesi said that if he wanted she could withdraw the case. It's only Mum who wants it to proceed.
- [28] Well Ladies and Sir, that was the end of all the evidence and it is nearly the end of my summing up.
- [29] Remember to look at each count separately and remember you can only return an opinion of guilty if you are really sure.
- [30] You may retire now. Please let a member of my staff know when you are ready and I will reconvene the Court.
- [31] Redirections Counsel?



P. K. Madigan
Judge



At Labasa
20 May 2016