

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 68 OF 2015

STATE

-v-

KRISHNA REDDY

Counsel : Mr. Alvin Singh for the State
: Mr. Tunidau for Accused
Dates of Trial : 18th January – 20th January 2017
Date of Summing Up : 23rd January 2017

(Name of the victim is suppressed. She is referred to as JJ)

SUMMING UP

Ladies and Gentleman Assessor:

1. We have now reached the final phase of this case. The law requires me, as the Judge who presided over this trial to sum up the case to you. Each one of you will then be called upon to deliver your separate opinion, which will in turn be recorded. As you listened to the evidence in this case, you must also listen to my summing up of the case very

carefully and attentively. This will enable you to form your individual opinion as to the facts in accordance with the law with regard to the innocence or guilt of the accused person.

2. I will direct you on matters of law which you must accept and act upon.
3. On matters of facts however, which witness you consider reliable, which version of the facts to accept or reject, these are matters entirely for you to decide for yourselves. So, if I express any opinion on the facts of the case, or if I appear to do so, it is entirely a matter for you whether to accept what I say, or form your own opinions.
4. In other words you are the judges of facts. All matters of fact 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.
5. The counsel for Prosecution and Accused made submissions to you about the facts of this case. That is their duty as Counsel. But it is a matter for you to decide which version of the facts to accept, or reject.
6. You will not be asked to give reasons for your opinions. Your opinions need not be unanimous although it is desirable if you could agree on them. I am not bound by your opinions. But I will give them the greatest weight when I come to deliver my judgment.
7. On the matter of proof, I must direct you as a matter of law, that the Accused person is innocent until he is proved guilty. The burden of proving his guilt rests on the Prosecution and never shifts.
8. The standard of proof is that of proof beyond reasonable doubt. This means that before you can find the Accused guilty, you must be satisfied so that you are sure of his guilt. If you have any reasonable doubt as to his guilt, you must find him not guilty.
9. Your opinions must solely and exclusively be based upon the evidence which you have heard in this Court and upon nothing else. You must disregard anything you might have heard or read about this case outside of this Courtroom. Your duty is to apply the law as I

explain it to you to the evidence you have heard in the course of this trial. You are free to draw reasonable inferences from the facts proved in this case.

10. Your duty is to find the facts based on the evidence and apply the law to those facts. Approach the evidence with detachment and objectivity. Do not get carried away by emotion.
11. As Assessors you were chosen from the community. You, individually and collectively, represent a pool of common sense and experience of human affairs in our community which qualifies you to be judges of facts in the trial. You are expected and indeed required to use that common sense and experience in your deliberations and in deciding.
12. In assessing the evidence, you are at liberty to accept the whole of the witness's evidence or part of it and reject the other part or reject the whole. In deciding the credibility of a witness, you should take into account not only what you heard but what you saw.
13. In this case the Prosecution and the Defence have agreed on certain facts. The agreed facts are part of evidence. You should accept those agreed facts as accurate and truth. They are of course an important part of the case.
14. The agreed facts of this case are:
 1. THAT the accused person in the present case is KRISHNA REDDY of Korovuto, Nadi.
 2. THAT the victim in this case is JJ of Korovuto, Nadi.
 3. THAT the victim was 6 years old at the time of the alleged incident.
 4. THAT the victim was born on the 26th of August, 2008.
 5. THAT the accused and the mother of the victim, RANJEETA DEVI JONES was in a de-facto relationship for 10 months prior to the alleged allegation.
 6. THAT the accused is employed as a Carpenter at Fletcher Construction.

7. THAT RANJEETA DEVI JONES and the victim were residing with the accused at his house in Korovuto, Nadi from June, 2014 until 28th March, 2015.

15. The Accused is charged with the following counts:

FIRST COUNT

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (c) and (3) of the Crimes Decree 44 of 2009.

Particulars of Offence

KRISHNA REDDY between the 1st day of February, 2015 and 28th day of February, 2015 at Nadi in the Western Division penetrated the mouth of **JJ**, a 6 year old child, with his penis.

SECOND COUNT

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (c) and (3) of the Crimes Decree 44 of 2009.

Particulars of Offence

KRISHNA REDDY between the 1st day of March, 2015 and 31st day of March, 2015 at Nadi in the Western Division penetrated the mouth of **JJ** a 6 year old child, with his penis.

16. I will now deal with the elements of the offence of Rape. A person rapes another person if:

- (a) The person has carnal knowledge with or of the other person without other person's consent; or
- (b) The person penetrates the vulva, vagina or anus of other person to any extent with a thing or a part of the person's body that is not a penis without other person's consent; or

(c) The person penetrates the mouth of the other person to any extent with the person's penis without the other person's consent.

17. Consent as defined by Section 206 of the Crimes Decree, means the consent freely and voluntarily given by a woman with a necessary mental capacity to give such consent. A person under age of 13 years is considered by law as a person without necessary mental capacity to give consent. The victim in this case was 6 years of age during the period of the alleged offences and therefore, she did not have the capacity under the law to consent. So, the Prosecution does not have to prove the absence of consent on the part of the victim because law says that she, in any event, cannot consent. The elements of the offence of Rape in this case are that:
 - a. the Accused,
 - b. penetrated mouth of the victim with his penis.
18. Other parts of the offence are irrelevant to the facts of this case.
19. Apart from the elements of the offence, the identity of the person who is alleged to have committed the offence is very important. There must be positive evidence beyond reasonable doubt on identification of the accused-person that connects him to the offence that he is alleged to have committed.
20. Proof can be established only through evidence. Evidence can be from direct evidence that is the evidence of a person who saw it or by a Complainant who saw, heard and felt the offence being committed. In this case, for example, the victim was a witness who offered direct evidence, if you believe her as to what she saw, heard and felt.
21. In evaluating evidence, you should see whether the story related in evidence is probable or improbable; whether witness is consistent in his or her own evidence and with his or her previous statements or with other witnesses who gave evidence. It does not matter whether that evidence was called for the Prosecution or for the Defence. You must apply the same standards and tests in applying them. You must bear in mind that the evidence comes from human beings. They cannot have photographic or video graphic memory. A

witness can be subjected to the same inherent weaknesses that you and I suffer insofar as our memory is concerned.

22. Another relevant aspect in assessing the truthfulness of a witness is his or her manner of giving evidence in Court. You have seen how the witnesses' demeanor in the witness box when answering questions. How were they when they were being examined in chief, then being cross-examined and then re-examined? Were they forthright in their answers or were they evasive? How did they conduct themselves in Court? In general what was their demeanor in Court? But, please bear in mind that many witnesses are not used to giving evidence and may find Court environment distracting. You observed demeanor of the victim, other Prosecution witnesses and the Accused when they gave evidence. Although, demeanor is not 100% accurate test to assess credibility of a witness, the behavior of them in the witness box will give you an idea in assessing their evidence for its truthfulness and reliability.
23. You can consider whether there is delay in making a complaint to someone or to an authority or to police on the first available opportunity about the incident that is alleged to have occurred. If there is a delay that may give room to make-up a story, which in turn could affect reliability of the story. If the complaint is prompt, that usually leaves no room for fabrication. If there is a delay, you should look whether there is a reasonable explanation to such delay.
24. Bear in mind, a late complaint does not necessarily signify a false complaint, any more than an immediate complaint necessarily demonstrates a true complaint. There can be a reasonable explanation for the delay. It is a matter for you to determine whether, in this case, the lateness of the complaint and what weight you attach to it. It is also for you to decide, when the Victim did eventually complain, whether it was genuine.
25. Victims of sexual offences, can react to the trauma in different ways. Some, in distress or anger, may complain to the first person they see. Others, who react with shame or fear or shock or confusion, do not complain or go to authority for some time. Victim's reluctance to report the incident could also be due to shame, coupled with cultural taboos existing in her society, in relation to an open and frank discussion of matters relating to sex, with

elders. It takes a while for self- confidence to reassert itself. There is, in other words, no classic or typical response by victims of Rape.

26. Please remember, there is no rule in Fiji for you to look for corroboration of victim's story to bring home an opinion of guilt in a case of sexual nature. The case can stand or fall on the testimony of victim, depending on how you are going to look at her evidence.
27. You saw victim giving evidence hiding behind a screen so she can't be seen by the Accused. The screen was put up because the Victim is an underage vulnerable witness. You must not draw any negative inference from that against the accused.
28. I will now remind you of the Prosecution and Defence cases. In doing this it would not be practical for me to go through the evidence of every witness in detail and repeat every submission made by Counsel. It was a short trial and I am sure things are still fresh in your minds. I will refresh your memory and summarize the salient features. If I do not mention a particular witness, or a particular piece of evidence or a particular submission of counsel that does not mean it is unimportant. You should consider and evaluate all the evidence and all the submissions in coming to your decision in this case.

Case for the Prosecution

Evidence of Roshni Devi

29. Prosecution called Roshni Davi as its 1st witness. She is the grandmother of the Victim JJ. She said that her eldest daughter Ranjeeta was earlier married to a European guy. By that marriage she had two children Abhay and the Victim, JJ. Ranjeeta then got married to Krishna Reddy and got one child, Arushi. They were all residing at Korovuto, Nadi.
30. JJ and Abhay were living most of the time in Malolo with her. She brought JJ from Korovuto to her house because JJ was reluctant to live with their parents. JJ told her that at times Papa used to beat her and do something wrong to her. So JJ did not want to go back to her mother.

31. JJ told her that Papa, after opening his pants, used to put his penis inside her mouth. She did not tell the exact dates this happened. JJ also informed that Papa used to press her breasts. After hearing all these, she felt bad and informed this to her daughter Ranjeeta. Ranjeeta got angry and informed the police. She also went to the Nadi Police Station with JJ. Ranjeeta took JJ also for a medical examination.
32. The witness did not recall the year and the date that JJ told this story. It was in an April. She did not see any physical injuries or marks on JJ's body, legs or at her back. After the matter was reported, JJ started staying with her while her mother residing in Korovuto with Krishna.
33. Under cross examination, Devi said that JJ was attending Korovuto primary school and, in 2015, she came to her and started schooling at A.D Patel, a school in Malolo in Nadi. In 2015 she was in class 2. The reason why her school was shifted to A.D Patel was because JJ did not want to stay in Korovuto.
34. Krishna a carpenter by profession, used to work 6 days a week, Monday to Saturday. He used to leave home very early in the morning and come back around 6 pm. in the afternoon .
35. In February/ March 2015 her daughter was pregnant with Arushi and was staying home all the time while her husband was at work.
36. Devi denied the assertion that JJ hated Krishna because he was disciplining JJ. When JJ levelled this serious allegation against Krishna she believed JJ because she was crying and refusing to go back to Korovuto.
37. In the previous weekends JJ did not complain of anything when she visited her and did not refuse to go back to Korovuto.

Evidence of J J (the victim)

38. JJ said that, in 2015, she was in Class 2. She is now residing at her grandmother's place. Her mother Ranjeeta is living with Papa, in Korovuto.
39. She said that she was not staying with her mom and Papa because Papa was doing bad things to her. Describing bad things JJ said that Papa's pants were torn and he used to penetrate her mouth with his penis. Papa did this bad thing twice when her mother went shopping. Papa was doing this for sometime. Then she said for about 2 hours. One day, Papa sent her mother to the shop and took her to a corner and slapped her and told to drink water from the sink.
40. She did inform her mom and her grandmother Roshni about the assaults. She told grandmother about the bad things Papa was doing to her. Papa was bad to her prior to the incidents.
41. When he was doing all these bad things she didn't report to anyone promptly as she was scared of her Papa who used to hit her.
42. Under cross examination, she admitted that Papa used to work from Monday to Saturday and left for work early in the morning and returned home late afternoon.
43. She went to her grandmother on most of Saturdays as she was a good and nice person. Grandmother gave lollies, chewing gum and beans. She didn't like living with her mother because Papa usually growled at her accusing she was naughty. He sometimes used to beat her.
44. She reiterated that Papa put his penis into her mouth twice when her mother was away. Papa had taken a day off and was staying at home when he did this. She denied that she was making up a story.

Evidence of Satish Singh

45. Satish Singh was the Head Teacher at Korovuto Primary School in 2015. On 24th March 2015 he received a complaint from JJ's mother in relation to an assault on her daughter JJ. Mother came and complained that the step father had inflicted corporal punishment on JJ. Since the victim was a female he called the Child Protection Officer Mrs. Singh and another female officer to examine the child to find if there was any truth in the allegation.
46. Child Protection Officer did the investigation and found some marks at the back and legs of JJ. He advised the mother to lodge a complaint to Police. On the same day, JJ's mother withdrew JJ from school and took her to A. D. Patel school.
47. Under cross-examination, witness said that he could not see any injuries himself and therefore, the victim being a female, had to be referred to a female officer. JJ's mother told him that JJ had to stay with her grandmother so that no further corporal punishment would be inflicted on her daughter.

Evidence of Sarita Singh

48. In 2015, Sarita was the Child Protection Officer of Korovuto Primary School. On the 24th of March 2015, she was called by her Head Teacher Satish Singh in relation to an assault on JJ by a parent. She was asked to investigate and find out if there were any marks on JJ's body. She called another teacher, Mrs Sonam Kumar, and examined JJ to find that there were some marks at her back and on her legs and face. The marks at the back were a bit darker when compared to the marks on the face.

DC 3379 Nitesh Kumar

49. In the year 2015, DC Kumar was attached to the Criminal Investigation Department of the Nadi Police Station. He conducted the investigating in this case.

50. A formal complaint was lodged at the Nadi Police Station on the 21st of April 2015 by Ranjeeta Devi that her daughter JJ was sexually abused by her stepfather. The statement of Ranjeeta and that of JJ were recorded. JJ's grandmother's statement was also recorded as the victim had made the first complaint to her grandmother. On the 22nd of April 2015 he took JJ to the Nadi Hospital for medical examination. On the 23rd of April 2015 the suspect Krishna Reddy, the step father of JJ was arrested.
51. The witness summons of JJ was issued to her mother Ranjeeta as JJ was in her custody but Ranjeeta failed to bring the daughter to Court. Instead she took the daughter and placed her at her grandmother's house at Malolo in Nadi. When the trial was supposed to begin on Tuesday, he met Ranjeeta outside the Court room and, upon questioning her about the victim JJ, she informed that she did not bring JJ to Court because she had gone back to stay with the Accused Krishna Reddy and that she had reconciled the case with him.
52. Under cross-examination, the witness said that victim JJ was in the care and custody of her mother who was the responsible person in this case, and also the complainant. Ranjeeta gave an undertaking that she will bring JJ to Court.
53. A subpoena was issued to Ranjeeta as a State witness although she was not called by the State as a witness.
54. That was the case for Prosecution. You heard me explain to the Accused what his rights were in defence and how he could remain silent and say that the Prosecution had not proved the case against him to the requisite standard or he could give evidence in which case he would be cross-examined.
55. You are aware that the Accused elected to give evidence although he had nothing to prove in this case. That is his right. Now I must tell you that the fact that Accused adduced evidence in his defence does not relieve the Prosecution of its burden to prove

the case beyond reasonable doubt. Burden of proof remains with the Prosecution throughout.

Case for Defence

Evidence of Krishna Reddy (Accused)

56. Accused said that he had been in a *de-facto* relationship with Ranjeeta for 3 years since 2014. He denied both Rape allegations.
57. He was working at Momi as a carpenter six days a week from Monday to Saturday. He normally left for work in the morning at 6 o'clock and returned at 5.45 pm. In the months of February and March 2015, he did not take any day off from work. He only took a day off when his wife had a baby clinic to accompany her to the clinic.
58. By the time he leaves for work, JJ was still sleeping. When he returns from work in the afternoon JJ was home after school, with his wife. His wife, was not going anywhere as she was expecting a baby. During weekends, JJ goes to her grandmother's place. Most of the time during the weekend JJ stays at Malolo with her grandmother.
59. Accused admitted that he sometimes had to growl at JJ to discipline her as she was very mischievous, naughty and used to fight with other kids. She used to tell him, '*you be quiet you have no authority over me, only my mom has the authority to say things to me*'. He also admitted that, at times, he had beaten her with a stick, once or twice because she was not listening to him and not studying. Most of the time she wanted to stay with her grandmother without doing homework. He did not allow that. JJ hated him and disliked him.
60. He further said that he was in a good relationship with JJ's mother in 2015.
61. Under cross-examination, accused admitted that JJ was was calling him Papa and looked up to him as a fatherly figure because he was living with her mother.

62. Accused said that he was looking after JJ nicely and had no idea why JJ, a 6-year-old girl in 2015, made very serious allegations against him. He suspected that allegations would have been made because she didn't like him and she was not staying with him in a good way.
63. He admitted that a girl like JJ at a tender age would not be able to know about sexual terms. He had no idea as to how she came to know about those terms.
64. He admitted that Ranjeeta questioned him about the allegations when she came to know about them from her mother. However, he denied having admitted to Ranjeeta that he put his penis on JJ's face accidentally. He also admitted that Ranjeeta who was pregnant at that time left him with her children when those allegations were made. She came back because she was carrying his daughter and she wanted him to look after the child.
65. He also admitted that Ranjeeta on her own tried to withdraw this case. However, he denied having threatened Ranjeeta or putting pressure on JJ through Ranjeeta not to give evidence against him. He admitted beating JJ lightly with a stick after getting permission from her mother.
66. He admitted that he failed to tell the police that he was working from 6 o'clock in the morning to 5.45 pm in the afternoon from Monday to Saturday although he felt that information was important for his defence. However, he denied fabricating a story in Court to save himself. He said later that he informed interviewing officer Gupta that he was working from Monday to Saturday.

Analysis

67. The Prosecution based its case mainly on the evidence of the Victim. If you are satisfied that the evidence she gave in Court is reliable and trustworthy you can safely act upon her evidence in coming to your conclusion. You must remember that evidence of the victim

alone is sufficient to bring about a conviction in a rape case, if you believe her evidence to be truthful.

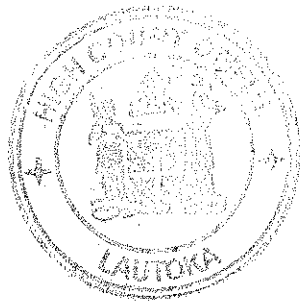
68. A most important part of your task is to judge whether the child witness has told the truth, and has given a reliable account of the events she was describing. Some of you will have children and grandchildren who are of a similar age to the victim who has given evidence. If so, I think you will recognize the sense of the advice I am going to offer you about your judgment of their evidence, but remember that I am speaking of an approach to the evidence and evaluation of the evidence is your responsibility. You do not have to accept my advice and if you do not agree with it you should reject it.
69. As the Defence Counsel said, although JJ is a child witness she is no different from other adult witnesses who have given evidence in this Court. Children, however, do not have the same life experience as adults. They do not have the same standards of logic and consistency, and their understanding may be severely limited for a number of reasons, such as their age and immaturity. Life viewed through the eyes and mind of a child may seem very different from life viewed by an adult. You have to be mindful about that.
70. Children may not fully understand what it is that they are describing, and they may not have the words to describe it. They may, however, have come to realize that what they are describing is, by adult standards, bad or, in their perception, naughty. They may be embarrassed about it, and about using words they think are naughty, and therefore find it difficult to speak. Bear in mind that they are being asked questions by an adult they see as being in a position of authority– the policeman in the interview, or a Counsel in Court. That can make it difficult for them.
71. I told you earlier that there must be positive evidence on identification of the Accused-person that connects him to the offence that he is alleged to have committed. There is no dispute in this case with regard to the identity of the Accused. In assessing the identification evidence in this case you only have to consider whether the victim had known the Accused before the incident.


72. You consider whether JJ had any reason or motive to fabricate a story against the Accused. If there was such a motive then there is room for fabrication. The victim was only six years old at the time of the alleged incidents. Prosecution suggests that JJ in her tender age came to know about sexual terms because she was really exposed to such an experience. Defence says that JJ made up a story because she disliked her stepfather and wanted to be with her grandmother. It is up to you to form your own opinion as to whether JJ had any reason to fabricate a story against the Accused at her tender age.
73. JJ had reported the incidents to her mother and grandmother albeit not immediately. JJ's grandmother testified and confirmed that she received a complaint from JJ. What she heard from JJ or the content of the complaint is not evidence in this court. However, if you believe grandmother's evidence you can use her evidence to test the consistency and credibility of JJ's evidence. You take into consideration all the evidence, and also my directions in respect of recent complaint evidence and on how to approach evidence of child victims in determining whether she is an honest witness.
74. You watched the Accused giving evidence in court. You can expect any person accused of a crime to give a self-serving version to escape criminal liability. However, you must evaluate the evidence of the Accused in light of the evidence led in this particular trial to determine if he is an honest witness or not.
75. Version of the Defence is that JJ fabricated this story because she disliked her stepfather. Defence also argues that the evidence JJ gave in Court is not probable and the alleged incidents could not have happened as the Accused always kept away from home and was engaged in his work during daytime. Prosecution says that the Accused lied to this court to save his skin and has not been consistent in his Defence.
76. How probable is the Accused's version? Is the version of the Defence appealing to you? What was Accused's demeanor like? How did he react to being cross examined and re-examined? Was he evasive? How he conducted himself generally in Court? It is up to

you to decide whether you could accept the version of the Defence and that version is sufficient to establish a reasonable doubt in the prosecution case.

77. If you are satisfied that JJ had told the truth and her evidence is believable, then you have to consider whether the Prosecution has discharged its burden and proved each element of each count beyond reasonable doubt. If you find accused guilty of one charge that does not mean he must be guilty of other charges as well unless you are satisfied that each element of the charge is proved beyond reasonable doubt. You have to consider each count separately.
78. It is not necessary to prove full penetration in order to prove the charge of rape. Even a slight penetration is sufficient to prove the element of offence. JJ said that Accused penetrated her mouth twice with his penis. She even used the word 'suck'. You must be satisfied that the Accused penetrated her mouth with his penis on two occasions described in the Information.
79. If you accept the version of the defence that means you have a reasonable doubt in the Prosecution case. In that event, you must not find the Accused guilty as charged. Remember, even if you do not believe a single word he uttered and completely reject the version of the Defence, still the Prosecution should prove its case beyond reasonable doubt.
80. Remember, the burden to prove the Accused's guilt beyond reasonable doubt lies with the Prosecution throughout the trial, and never shifts to the Accused, at any stage of the trial. The Accused is not required to prove his innocence, or prove anything at all. In fact, he is presumed innocent until proven guilty.
81. If you accept the Prosecution's version of events, and you are satisfied that the Prosecution has proved the case beyond reasonable doubt, so that you are sure of Accused's guilt of each charge you must find him guilty. If you do not accept the Prosecution's version of events, and you are not satisfied beyond reasonable doubt, so that you are not sure of the Accused's guilt, you must find him not guilty as charged.

82. You may now retire to deliberate on the case, and once you have formed your opinions, you may inform our clerks, so that we could reconvene, to receive the same.
83. Your possible opinions are as follows:
- I. First Count of Rape Accused guilty or not guilty?
 - II. Second Count of Rape Accused guilty or not guilty?
84. Any re-directions?




Aruna Aluthge
JUDGE

AT LAUTOKA
23rd January, 2017

Solicitors: Office of the Director of Public Prosecution for the State
Kevueli Tunidau Lawyers for the Accused