

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

**Criminal Case No. HAC 41 of 2016**

**STATE**

**v**

**MOHAMMED RASHEED**

**Counsels:** Mrs. A. Vavadakua for the State  
Mr. A. Sen for the Accused

**Dates of Hearing:** 23, 24 and 25 July 2018

**Date of Summing Up:** 26 July 2018

**SUMMING UP**

1. Ladies and Sir, the time has now come for me to sum up the evidence in this case and to direct you on the law. When I do so, you must accept what I say about the law and apply it to the facts.
2. You are the Judges of the facts and whatever you say about the facts is paramount and I must give your opinions the greatest amount of weight when I come to consider the final judgment of the Court. If in the summing up I express an opinion on the facts and I do, then you can reject my opinions unless you agree

with me and come to your own opinions. I have no right to usurp your view of the facts. On assessing the evidence of witnesses, you may accept all of what a witness says, you may reject all or you may reject or accept part of the evidence.

3. It is for you to tell me what you believe the facts of this case are by applying the law as I direct you and then by telling me if in your opinion the accused is guilty or not guilty of rape. You must accept what I tell you about the law.
4. You will judge this case solely on the evidence that has been heard or seen in this Courtroom. You will not judge this case on anything that you have heard or seen outside of the Courtroom – that would not be fair to the accused.
5. Similarly you will not let any sympathy or prejudice play a part in your deliberations. You must look at the evidence dispassionately and with the wisdom of your experience of the community and the Fijian lifestyle.
6. I make no apologies for repeating to you what I said at the beginning, because it is important. That is that you can only find the accused guilty if you have been made sure by the State prosecutrix that he is guilty – that is you are certain beyond reasonable doubt. Reasonable doubt is not any little niggling doubt – your doubt must be reasonable and if it is, then it is your duty to return an opinion of not guilty. The accused does not have to prove anything. The burden is on the State to make you sure of the guilt of the accused, no matter what they say in evidence.
7. The accused is charged with three counts of rape.

8. The counts are representative counts and I will now explain to you what that means. Alima gave evidence of three occasions when she said that the accused had sex with her. Those three acts are reflected in the three charges. However she did say that there were other occasions he made her have sex but she cannot remember the dates. So the State has made each of the three known dates represent at least one act of sexual intercourse in that period while there might well be others. You need only find that the acts she does remember are proved by the State and those three will represent other acts of intercourse which may have taken place
9. In our law and for the purposes of this trial, rape is committed when a man penetrates fully or partially the vagina of a woman without her consent. However, the law also says that a woman or girl under the age of thirteen is not capable of giving consent. Therefore in this case, all that the State has to prove to you on each representative count is:
  - That is was indeed Mohammed Rasheed,
  - Who penetrated the vagina of Alima.
10. It is obvious that Alima has had sexual intercourse because she was found to be pregnant, but the accused says that it wasn't him who had sex with her. That is an issue, and the only issue for you to decide on each count which you will look at separately.
11. It is now my duty to sum up the evidence for you. I know that you only heard it yesterday but you must be reminded of the important pieces to enable you to make a proper evaluation of it.

12. The Doctor told us that when he examined Alima on the 8<sup>th</sup> June 2015 she was in the early stages of pregnancy. He said that at the time she was only 12 and Alima herself confirmed this fact when she produced her birth certificate in Court.
13. Alima told us of the three incidents in which she said that the accused forcefully had sexual intercourse with her. The first was in December 2013 on the 40<sup>th</sup> day anniversary of her grandmother's passing and when she was staying in her grandparents' house. The accused was staying there that night with his wife and two children and in the night he came into the room where she was sleeping and forced himself on her, penetrating her. He threatened her not to tell anybody.
14. The second occasion was in December 2014 when she was staying at Habir's house (her grandfather's brother). Her parents had gone to town, and she was washing dishes when the accused came and led her to the bathroom and had intercourse with her on the bedroom floor. She felt frightened, but didn't tell her parents because the accused had threatened her. He also gave her money sometimes 50c or a dollar.
15. The third occasion was in the first few months of 2015 when the accused was staying at her place. She was sleeping in her room with her sister and the accused came in and penetrated her. She said it was painful so he left. She tried to tell people but she just couldn't. He threatened her and she was scared.
16. Apart from these three occasions, she said it happened at other times but she can't remember the days or months.

17. At some stage she felt sick and was vomiting and that is when at the hospital it was found that she was pregnant. It was then that she told her parents about it.
18. In cross-examination she was adamant that it was the accused and nobody else. You might wish to take into account the evidence that there were no other men present apart from her grandfather, her grandfather's brother and her own brothers. She had known the accused for most of her life and it is for you to decide: could she be mistaken as to who was having sex with her?
19. A Policeman came to Court and told us about the interview he conducted with the accused. He produced a written record of that interview; a copy has been given to you and he read it out in its entirety.
20. I now direct you how to approach that piece of evidence.
21. The accused says that it is all lies or rather that the confessions to having sex with Alima is untrue because it never happened.
22. You must first decide whether the answers attributed to him are true or not. If you think they are not his answers then you are to discard the interview and not use it as evidence
23. Secondly if you think that he was assaulted or mistreated in such a way that he was saying things he might not ordinarily have said, then you also to discard the interview and forget about it.
24. Finally if you think that the answers are true and are his answers and that they were given quite voluntarily by him

without anything improper done to him to put him in fear, then you may rely on the confessions and give them the weight that you think fit.

25. Well, assessors that was the end of the Prosecution case and you heard me tell the accused what his rights are in defence. He was not obliged to give evidence because he does not have to prove anything; the burden remains on the State throughout to prove his guilt to you beyond reasonable doubt.
26. As you know the accused chose to give evidence. He told us that he is 35 years old and he is a cane farmer from Tabia. He said he has never been in trouble with the law, a fact that we can accept because that was not challenged by the Prosecution. I must direct you that a man of 35 without a criminal conviction is less likely to commit an offence than a man with previous convictions and the State therefore must prove to you so that you are absolutely sure of his guilt in this trial.
27. He told us that at some stage he had been a Muslim priest but he retired from that because he moved far out of town. He remembers the grandmother's (his mother-in-law) 40 day rites after her passing but Alima never stayed the night there and he did not have sex with her there.
28. He never had sex with her at any other time.
29. The Police came and arrested him in June 2015. It was Ramadan and he was fasting. He was taken to Labasa Police station to be interviewed and the Police told him: "you know why you are here – tell the truth". The next day he told the Police that he did nothing to the girl so they punched him and told him to do 100 push-ups.

30. He admitted that the answers in the interview came from him but they are lies and untrue. He never had sex with Alima.
31. Well assessors, it is for you to decide whether those answers are true or not. You might wish to take into account the explicit detail given of the sexual acts. Would he go into such detail if he was telling lies? It is however a matter for you to decide.
32. The accused called no witnesses.
33. You have very little to decide in this case. First you must decide if Alima is telling the truth about the acts that she says the accused did to her. You don't need to think about consent. Even if you think that Alima might have been a willing partner in this affair it makes no difference. It is a crime in Fiji for a man to have sex with a girl under 13.
34. If you believe the girl, then it is unnecessary for you to go on to consider the interview; however you may wish to use it as alternative evidence for the case. There is no need for there to be corroboration of her evidence. Her evidence is enough for you to make a finding of guilty or not guilty on, depending on the weight you put on it but looking at the interview might well assist you in coming to your opinions. Remember if you think the answers are true and they were voluntarily given by the accused without threat or assault or any pressure whatsoever, then you may rely on that interview as evidence.
35. Remember too that it is the accused's case that she has mistaken him for somebody else. That she is just blaming him for it because he is a convenient suspect. He had no sex with her.

36. That is all I wish to say to you Ladies and Sir; you may now retire and consider your opinions. Try to be in agreement on your findings but if you can't be then I will hear your individual opinions.
37. Your possible opinions are guilty or not guilty on each representative count.
38. Let a member of my staff know when you are ready and I will reconvene the Court, but before you leave us I will ask Counsel if they wish me to add to or amend any direction on the law that I have given.
39. Counsel?



**P.K. Madigan**  
**Judge**

At Labasa  
26 July 2018