

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 42 of 2017

THE STATE

V

TEVITA RASUAKI

Counsel: Mrs. A. Vavadakua for the State
Mr. H. Robinson for the Accused

Date of Trial: 21 August 2018

Date of Summing Up: 22 August 2018

SUMMING UP

1. Ladies and Sir,
2. The time has now come for me to sum up this case for you. My duty in summing up is two fold. I will direct you on the applicable law and you must accept what I say about the law. I will sum up the evidence for you but you don't have to accept what I say about the evidence or the facts. That is because you are my advisors and you will assess the evidence and after applying the law to that evidence you will tell me in your opinion whether the accused is guilty or not of rape and criminal intimidation. I don't have to follow your opinions, but I will give them great weight when I come to make the final judgment of the Court.

3. You must judge this case solely on the evidence that has been placed before you in this Courtroom and on nothing else.
4. Evidence in any case consists of the oral testimony of all witnesses, together with all documents, and in this case that is the evidence of three prosecution witnesses, two defence witnesses and the medical report. You may accept the evidence or reject it. You may also accept part of a witness' evidence or part of a document and reject the rest. It is entirely a matter for you. You will not consider as evidence anything that someone has told you outside or anything that you may have read or seen in the media. You may have heard me in the course of the trial express an opinion or make a remark about the evidence. You must ignore that completely and come to your own views about the evidence placed before you.
5. Counsel addressed you this morning on how you should find the case. That is their duty to the Court. You do not have to accept what Counsel tells you, unless you agree with them. You will make up your own minds on the evidence.
6. Please do not be influenced by any sympathy or prejudice you may feel towards anybody connected with the trial, it is your duty to come to your opinions solely on the facts as you find them in accordance with my directions on the law.
7. I repeat what you have been told several times about the burden and standard on the prosecution. You hear this often because it is very important. The State must prove to you so that you are sure that the accused is guilty of these crimes. That is a burden on the State throughout the trial and to be sure means that there can be no reasonable doubt in your minds.

8. As you are aware, the accused has been charged with rape. For the purposes of this trial the Law says that rape is committed when a man penetrates a woman's vagina with his finger or fingers without her consent.
9. Therefore before you can find Tevita guilty you must be sure that it was him and that he had used a finger or fingers to penetrate Usenia's vagina that day and it was without her consent.
10. The second count is one of Criminal intimidation. To find the accused guilty of that crime you must find so that you are sure that it was Tevita and he did threaten to injure Usenia, or somebody else, with a knife intending to cause alarm to her.
11. Now because there are two counts I direct you to look at them separately. Just because you think he might be guilty of one count does not necessarily mean he is guilty of the second count. The evidence on each is different and you will make independent decisions on each.
12. Ladies and Sir, that is all I wish to say about the law at this time. I know you only heard the evidence yesterday, but it is my duty to remind you of it just before you are sent out to deliberate. Remember that you are judges of the facts and if I express an opinion on the facts you can ignore what I say if you disagree and accept what I say if you agree.
13. The first prosecution witness was the young lady Usenia, who lives with her mother in the village. On the 20th April 2017 she was at home looking after a small child and was about to have her bath when the accused, whom she calls "Te", came and saw the child. He came inside and took off all of his clothes. He

touched her breast(s). He told her to lie down and he inserted two fingers into her vagina. The child was crying and Te told her to go and feed the child and then come back to him. Usenia then went to the school compound to tell her mother what had happened. The mother came back and Te went away on the 1pm bus.

14. She further elaborated that he was holding a knife when he came and he told her that if she shouted he would stab the child. She was frightened. She described the layout of her home, and you may or may not find that helpful. When she saw him trying to get close to the baby with the knife, she pinched the baby to make her cry. She did that so that she could then go to her mother.
15. When Defence Counsel cross-examined the witness it was pointed out that there were a few discrepancies between the evidence she gave in Court and the things she told the Police the day after the incident.
16. These assessors, brings into effect the law relating to previous inconsistent statements. Let me explain it to you.
17. The law says that whatever a witness says in Court is the definitive evidence. In some cases you might think that the differences are unimportant and you must decide whether the previous statement **is** in fact inconsistent. For example when you are deciding on the question of whether Te raped Usenia or not, does it matter whether the little child was a boy or a girl? Does it matter how old the child is? Does it matter whether he threatened to stab her or stab the baby? In either case it is criminal intimidation. You might think that some differences are important. If so, while accepting the evidence in Court as the

proper evidence you might think that the very different version given to Police before would make the evidence of the witness unreliable and you might not give it much weight. It is all a matter for you.

18. The second witness was the mother of Usenia. She remembers that on the 20th April 2017 she was working at the school compound when Usenia came to her and told her what Te had done, that he had touched her breast and put his fingers into her vagina. She was crying and she was angry while relating the incident. The Turaga-ni-Koro told her to report it to the Police, which she did.
19. Now let me direct you what the effect of this evidence is. It is what is called recent complaint evidence, that is a report to somebody very soon after the events complained of.
20. This is not evidence that confirms that the abuse related actually occurred but it is evidence for you to consider which might assist you to decide whether Usenia is telling the truth or not. The prosecution says that it shows consistency between her complaint and the reporting of it; the defence says that it is yet more proof of lies. It is yet another matter for you to consider.
21. In our law it is not necessary for you to look for evidence apart from what Usenia says. You can judge the case solely on what Usenia tells us in her evidence.
22. The third witness for the prosecution was the doctor who examined Usenia the next day at Tukavesi Health Centre. He said that she presented to him scared and sad. He conducted a complete examination on her and found her physically fit apart from her genital area. She had a small abrasion on her labia

minor and noted that her hymen was not intact. He ignored that hymen issue because the patient told him that she had had a previous sexual history but he said that the abrasion could have been from penetration of her vagina within the previous 24 to 48 hours. He told us that it could have been caused by a finger(s) but admitted in cross-examination that it could also have been caused by something else.

23. Now that was the end of the prosecution case. You heard me explain the charges again to the accused and you heard me tell him what his rights are in defence. He could give evidence and be cross-examined or he could remain silent and say that that the prosecution had not proved the case against him beyond reasonable doubt. Either way he could call witnesses.
24. As you know he elected to give evidence. Now I must direct you again that the accused does not have to prove anything to us. The burden of proof always remains on the State. Even if you don't believe his evidence it does not make him guilty if the State hasn't made you sure that he raped Usenia with his fingers.
25. Tevita told us that he is a farmer and that he knows Usenia because he is related to her. On the 20th April 2017 he went to Kanakana where she lives, to look for a horse to use on his farm. His friend Paula helped him to find the horse. Apart from looking for the horse he was in Jamesa's house "telling stories" until 1pm when he got the bus home.
26. He never went inside Usenia's house, he never threatened her with a knife. He didn't threaten the baby with a knife. He didn't take his clothes off, if he had the men working on the house next door would have seen him. Usenia is telling lies.

27. The accused called as his witness Jamesa Tuvu. He told us that the accused came to the village that day to look for a horse. He came for breakfast and then went out looking. He came back and said he could not find the horse he wanted and asked the witness to go with him to look again. They went together but then the bus came and the accused took the bus home.
28. Well ladies and Sir, you might think that his evidence is not very helpful. First, there was a period that the accused was away and that he cannot account for. Secondly, the accused said he was with Paula that day but Jamesa said that the accused was alone.
29. Well Ladies and Sir, that was the end of the Defence case and it is all evidence for you to consider. Bear in mind that the accused doesn't have to prove anything, but what he does say could make you doubt the prosecution case.
30. That is all I have to say in this Summing up. Your possible opinions when you return are guilty or not guilty. It would be better if you can be all agreed but if you cannot, then I will take your individual opinions. Please let a Member of my staff know when you are ready and I will reconvene the Court.
31. Just before you leave I will ask Counsel if there is anything they may wish me to amend or add to these directions.

32. Counsel?



P. K. Madigan

Judge

At Labasa

22 August 2018