

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC81 of 2018

STATE

V

KASIANO NACANIELI ASOA

Counsel : Mrs. A. Vavadakua for the State
Mr. J. Korotini (L.A.C.) for the Accused.

Date of Trial : 25 March 2019

Date of Summing Up : 25 March 2019

SUMMING UP

1. Madam and Gentlemen 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.
2. As far as the facts of this case are concerned, what evidence to accept, what weight to put on certain evidence, which witnesses are reliable, these are matters entirely for you to decide for yourselves. So if I express any opinion on the facts, or if I

appear to do so it is entirely a matter for you whether you accept what I say or form your own opinions. In other words you are masters and the judges of facts.

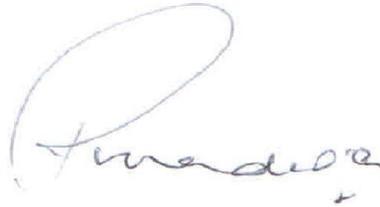
3. Counsel for the prosecution and the defence have made submissions to you about how you should find the facts of this case. They have the right to make these comments because it is part of their duties as counsel. However you are not bound by what counsel for either side has told you about the facts of the case. If you think that their comments appeal to your common sense and judgment, you may use them as you think fit. You are the representatives of the community in this trial and it is for you to decide which version of the evidence to accept or reject.
4. You will not be asked to give reasons for your opinions, but merely your opinions themselves, and you need not be unanimous although it would be desirable if you could agree on them. Your opinions are not binding on me but I can assure you that I will give them great weight when I come to deliver my judgment.
5. On the issue of proof, I must direct you as a matter of law that the onus or burden of proof lies on the prosecution to prove the case against the accused. The burden remains on the prosecution throughout the trial and never shifts. There is no obligation upon the accused to prove his innocence. Under our system of criminal justice an accused person is presumed to be innocent until he or she is proved guilty.
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 with his finger. Consent is not an issue because the law says that a young child under 13 is not able to give consent, not that you would expect this little girl to be consenting to the abuse anyway.
9. Penetration does not have to be full penetration. It can be partial or slight to be enough for rape.
10. So in this case all you would need to find proved is that the accused penetrated Rosa's vaginato some degree and if you find that then you will find him guilty of rape.
11. You will judge this case on the evidence alone. If indeed the allegation of the State is proved, then it would be an absolute tragedy not only for the little girl's psychiatric well-being, but harmony in the whole family; but you must not let your decision be swayed by sympathy, anger or possible consequences. Your final findings must be analytical and dispassionate.

12. The evidence has been brief. You heard the little girl tell us that on the night she slept with her father, he used his finger to “poke” her. She was in pain.
13. The next day she went to her grandmother’s house and told Grandma about the pain. Grandma asked what happened and Rosa told her that her father had used his hand. The child demonstrated with her fore-finger and used the word “poke”. Grandma checked her genitals and saw injuries there.
14. A report was made to the Police and she was taken to the local hospital for examination.
15. The examining doctor told us that her examination revealed a broken hymen and injuries consistent with blunt force trauma which could include penetration with a finger.
16. That was the end of the prosecution case and you heard me explain to the accused what his rights are in defence. He could give evidence and say that the State had not proved the case beyond reasonable doubt or he could give sworn evidence from the witness stand. In either case he was entitled to call witnesses.
17. As you know he chose to remain silent. He does not have to give evidence. He is entitled to sit in the dock and require the Prosecution to prove its case. You must not assume that he is guilty because he has not given evidence. The fact that he has not given evidence proves nothing, one way or the other. It does nothing to establish his guilt. On the other hand it means that there is no evidence from the accused to undermine, contradict or explain the evidence put before you by the prosecution.

18. However you still have to decide whether on the prosecution evidence you are sure of the accused's guilt.
19. Well Madame and Gentlemen, that is all I wish to say. You may leave us now to deliberate on your opinions. Please let my staff know when you are ready and I will reconvene the Court.
20. However before you go I will ask Counsel if they wish me to amend or add any directions on the law.
21. Counsel?



P.K. Madigan
Judge



At Labasa
25 March 2019