

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC16 of 2018

STATE

V

RAVNEEL SANDEEP PRASAD

Counsel : Miss D. Rao for the State
Mr. A. Kohli with Miss R. Raj for the Accused

Date of Trial : 27, 28 and 29 March 2019

Date of Summing Up : 01 April 2019

SUMMING UP

1. Ladies and Gentleman 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 made submissions to you on Friday 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 the final judgment of the Court.
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. In this regard, Mr. Kohli has made reference to the absence of evidence such as photographs and the vehicle log book. You may wish to adopt what he said about these but they are not before us in evidence and you must judge this case on the evidence you have seen and heard.
8. The accused faces two charges 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 penis and without her consent.
9. In this summing up, I am calling the victim Mere to protect her identity from anyone reading this document.
10. To find the charges proved you must be sure:
 1. That it was this accused, Ravneel, who
 2. Penetrated Mere's vagina with his penis, and
 3. That Merewas not consenting, and
 4. He knew that she was not consenting, or was reckless in proceeding not knowing whether she was consenting or not.
11. As you know, Ravneel is charged with two separate counts of rape. One in the spring of 2016 and one in the autumn of 2017. You must look at each count separately. Just because you might think he is guilty of one count it does not necessarily mean he is guilty of the other and of course the same if you

think he is not guilty of one. The evidence on each count is different.

12. I also direct you on the issue of consent. You have heard the evidence of Mere in which she said that she was shocked and tried to push Ravneel away and in the second incident tried to run from the bed. You may find that this indeed shows a lack of consent. Furthermore, our law says that consent cannot be freely and voluntarily given if it is obtained by the exercise of authority over the victim.
13. There is evidence before you both from Mere and the accused himself that he assumed the role of correction and discipline over her. In addition to the circumstances, you might then find that she was submitting to this authority when she says he was raping her.
14. In his cross-examination, Mr.Kohli pointed out various matters in Mere's statement to the police which were different from what she was telling us in Court. I must tell you about the laws of evidence around this - what we lawyers call previous inconsistent statements.Let me explain it to you.
15. What a witness says in Court is the definitive evidence. That over-rides anything he or she may have told the Police beforehand. However you must then Judge how important the differences are. You might think the differences are unimportant - for example you might think - does it matter if Ravneel came into the room bare topped or wearing a vest? Or you might think that the differences are important. If so, while accepting the evidence in Court as the proper evidence you might think that a 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.

16. I know that the evidence will be fresh in your mind but it is my judicial duty to remind you of the evidence, both for the prosecution and for the defence. I will remind you of the facts but it is for you to determine if those facts make you sure that Ravneel committed either or both of these offences he is charged with.
17. The main prosecution witness was Mere (not her real name).
18. She told us that she is now 18 and a student in Form 7 at a local secondary school. In October 2016, her elder brother, the accused, took her in his company vehicle to their grandparents' house to get a machine that he had left there. It was about 2am. Her mother said she could go. However they never got to the grandparents' house. He (the brother) turned off the road and took a road towards the sea. He stopped the vehicle and locked the doors. It was an area of mangroves, trees and grass – she thought he might be going to get some plants. He moved to sit beside her in the front passenger seat. He held her hands and lay her down. He was holding her legs. Entangling her legs with his own, he lay on top of her. She tried to escape but couldn't. He removed her bra and t-shirt and then her shorts and panty. He was sitting on her legs. He removed his clothes and then he penetrated her. She couldn't believe it – she never expected he would do that. She told him to leave her alone but he kept on in the act for 10 to 15 minutes until he ejaculated outside her body. They both got dressed and went back to where they lived arriving at about 3.30am. Mum was awake but she didn't tell Mum because she would not have believed it and anyway she always favoured Ravneel.

19. Mere was afraid of Ravneel because he was strict with her and used to beat her.

20. Mere told us about the second incident which she says happened in March or April 2017. The three of them, Mum Ravneel and the witness Mere were all still living together. At about 6.30 am on the day in question (it was a Saturday) she was in bed sleeping ; she heard a conversation between he Mum and Ravneel in which he told her he had a headache and would be going to work late. After Mum left, he came into the room and locked the door. He came and sat on the bed next to her. He took the blanket off her. She tried to run away because she knew that he was going to have sex with her and she didn't want that to happen. He pushed her on to the bed. She was wearing a shorts and a t-shirt and he was wearing shorts and was bare chested. He removed her top and bra. She tried to escape by pushing him away with her legs. He took his own shorts off and sucked her breasts and kissed her neck. Then he penetrated her with his penis. She was shouting and calling out for Mum. He kept doing it for 5 to 10 minutes. She bit him on his upper arm and ran naked into the next room. She locked the door with the nail and stayed inside that room for about 15 minutes. She heard him leave the house. Mum came home at 5pm but she didn't tell Mum for the same reasons as before. In addition she thought that if she told, he would go to gaol.

21. She told the Police in February 2018 about these two assaults. She came into contact with the Police when she was with a friend in Malau and she was taken in because of her young age. She was sent for a medical about 2 or three days later. The friend that she was with was named Rajesh and they were going for a ride in his van. Mum didn't know she was with Rajesh but Mum was with her at the Police Station and later at the medical.

22. In cross-examination, Mere said that on the night of the first incident in October '16, the three of them had gone to the grandparents earlier at about 8pm along with her Uncle. They had returned, Uncle was dropped off at home to drink grog and when Ravneel came back he had said that he had forgotten the machine. Mum said she wanted to rest and he wanted someone to go with him so she was asked to go.
23. Mr. Kohli then took the witness through the minutia of the assault which you will of course take into careful consideration.
24. When pressed about his beating her, she admitted that he had slapped her once when he learned that she was playing truant from school.
25. When cross examined about the second incident she admitted that the door to the next room did not have a functioning lock but insisted it could be locked with the nail. She stood naked in the next room until he left
26. The other prosecution witness was WPC Komal who is posted to the Sexual Offences Unit in the Labasa Police Station.
27. She said that in February 2018 she was the Investigating Officer for this case and she recorded Mere's statement. She also interviewed the accused under caution. She visited the two scenes of the report; the first in the bush at Naleba and the second at the family home.
28. On the 16th February, she was with a colleague patrolling in Malau when they saw a vehicle of interest. When investigating that vehicle they found a young girl sitting in the back passenger seat and it was found that she was only 16, a minor.

29. They proceeded to pick up her mother and they were both taken to the Station for enquiries. The girl was Mere and she said that she was in the vehicle with her friend to talk. She was taken for a medical examination because the WPC said they wanted to confirm if the girl had been sexually active that day or beforehand. It was found that her hymen was broken and the assumption was that she had been sexually active. That medical finding led to further questioning revealing the details of the allegations Mere had made in Court.
30. When she interviewed the accused he denied his involvement in both allegations.
31. In cross examination she denied Mr. Kohli's suggestion that she (the WPC) was related to the man in the vehicle in Malau and that she trying to shift any blame away from him. You will also recall that there was some confusion over the dates of the medical examination - the 16th or the 19th. She explained that although the broken hymen was noticed on the 16th and told to the Social Welfare Officer who told the Police; it was not until the 19th that it was actually recorded in the medical report. It is for you to decide how to resolve that confusion and indeed how much weight you put on it.
32. It is also for you to decide what to make of her evidence that she inspected the log book of the vehicle Ravneet drove, bearing in mind that it has not been produced as evidence in this case; and you are not to speculate on what evidence there should have been in this case.
33. That was the end of the prosecution case and you heard me explain to the accused what his rights are in defence. He could remain silent and say that the State had not proved the case

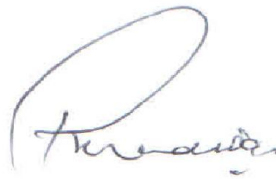
beyond reasonable doubt or he could give sworn evidence from the witness stand. In either case he was entitled to call witnesses. As you know he elected to give sworn evidence from the witness stand. You must consider his evidence in the normal way and give it the weight that you think fit. If you don't believe him it doesn't necessarily make him guilty. The prosecution must still prove to you so that you are sure that he committed the crimes.

34. Ravneel told us about his job at Mirror and Glass. He had the use of the Company vehicle but he never had it overnight for his personal use.
35. He first heard of the allegations of Mere when the Police came for him at work. He had heard that his sister Mere had been found in a van with a married man called Sonnu in Malau. She had been taken in by the Police on 16 February 2018, and she had made these allegations against him (the accused) the next day. He was questioned and told the Police that he had not done anything. He told the truth in his interview, he said. He entered into a love marriage in November 2017.
36. He had never been with Mere in the truck . They used to go to visit grandparents in the day time; never at night and he would hire a car from Avinesh to get there. He had never gone to visit them with Uncle Shardha.
37. He never had sex with Mere in March or April 2017.
38. He was interviewed by the Police on 23rd February 2018.
39. In cross-examination he admitted that as the provider of the house and the breadwinner, he was the authoritative figure in the household.
40. The accused called his Uncle Sharda as his witness. He was

adamant that he had never been in a vehicle with the accused's family to visit to visit the grandparents. He would go in the bus in the afternoon, stay overnight and return in the morning.

42. Well Ladies and Sir, that was all the evidence. You will make your findings by taking it all into account, and by not speculating on evidence that could have been before you.
43. Keep in mind that it is the defence case that Mere's presumed sexual activity was not conducted with him. I ask you to ignore the accused's evidence that it was Rakesh she was having sex with. He is in no position to know that and in any event even if she were it is irrelevant to these charges.
44. You may leave us now and you will let my staff know when you are ready and I will reconvene the Court but before you do I am going to ask Counsel if they wish me to add or alter any of my Directions on the law. The facts of course are for you.




P. K. Madigan
Judge

At Labasa

01 April 2019

