

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 93 of 2016

STATE

V

MANUELI VUNIBOLA KOROIBETE

Counsel : Mr. J. Niudamu for the State.
: Ms. J. Singh [LAC] for the Accused.

Dates of Hearing : 06, 07, 08 May, 2019
Closing Speeches : 08 May, 2019
Date of Summing Up : 08 May, 2019

SUMMING UP

(The name of the complainant is suppressed she will be referred to as "ST").

Ladies and Gentleman Assessors

1. It is now my duty to sum up this case to you.

ROLE OF JUDGE AND ASSESSORS

2. In doing so, I will direct you on matters of law, which you must accept and act upon. On matters of facts, however, which witness to accept as reliable, what evidence to accept and what evidence to reject, these are matters entirely for you to decide for yourselves. If I do not refer to a

certain portion of evidence which you consider as important, you should still consider that evidence and give it such weight as you wish.

3. So, if I express an opinion on the facts of the case, or if I appear to do so, then it is entirely a matter for you whether you accept what I say or form your own opinions. You are the judges of facts.
4. You decide what facts are proved and what inferences you properly draw from those facts. You then apply the law as I explain it to you and form your own opinion as to whether the accused is guilty or not.
5. State and Defence Counsel have made submissions to you about how you should find the facts of this case. That is in accordance with their duties as State and Defence Counsel in this case. Their submissions were designed to assist you as judges of facts. However, you are not bound by what they said. You can act upon it if it coincides with your own opinion. As representatives of the community in this trial it is you who must decide what happened in this case and which version of the facts to accept or reject.
6. During the closing speeches the State Counsel had told you "*if the complainant had hidden the incident of rape then she would not have informed anybody about this case*". I direct you to disregard any feeling of assumption that this may have created within you since you are not to speculate on anything but to concentrate on the evidence adduced.
7. You will not be asked to give reasons for your opinions and your opinion need not be unanimous. Your opinions are not binding on me but it will assist me in reaching my judgment.

BURDEN OF PROOF AND STANDARD OF PROOF

8. As a matter of law, the burden of proof rests on the prosecution throughout the trial and it never shifts to the accused. There is no obligation on 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 proven guilty.
9. The standard of proof in a criminal trial is one of proof beyond reasonable doubt. This means you must be satisfied so that you are sure of the accused person's guilt, before you can express an opinion that he is guilty. If you have any reasonable doubt about his guilt, then you must express an opinion that he is not guilty.
10. Your decision must be based exclusively upon the evidence which you have heard in this court and nothing else. You must disregard anything you must have heard about this case outside of this court room.
11. You must decide the facts without prejudice or sympathy to either the accused or the complainant. Your duty is to find the facts based on the evidence without fear, favour or ill will.
12. Evidence is what the witnesses said from the witness box, documents or other materials tendered as exhibits. You have heard questions asked by the counsel and the court they are not evidence unless the witness accepts or has adopted the question asked.

INFORMATION

13. The accused is charged with the following offence: (a copy of the information is with you).

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (a) of the Crimes Act 2009.

Particulars of Offence

MANUELI VUNIBOLA KOROIBETE, on the 5th day of June, 2015 at Nativi Village, Saivou, Ra in the Western Division, penetrated the vagina of '**ST**' with his penis without the consent of the said '**ST**'.

14. To prove the above count the prosecution must prove the following elements of the offence of rape beyond reasonable doubt:
 - (a) The accused;
 - (b) Penetrated the vagina of the complainant "ST" with his penis;
 - (c) Without her consent;
 - (d) The accused knew or believed the complainant was not consenting or didn't care if she was not consenting at the time.
15. In this trial the accused has denied committing the offence of rape. It is for the prosecution to prove beyond reasonable doubt that it was the accused who had penetrated the vagina of the complainant with his penis without her consent.
16. The slightest of penetration of the complainant's vagina by the penis is sufficient to satisfy the act of penetration.
17. The first element of the offence is concerned with the identity of the person who allegedly committed the offence. There is no dispute that it was not the accused as alleged therefore you can accept this element of the offence as proven beyond reasonable doubt.
18. The second element is the act of penetration of the complainant's vagina by the penis. Like the first element this element of the offence is also not in

dispute therefore you can accept this element as proven beyond reasonable doubt as well.

19. The third element is that of consent, this element of the offence is being disputed by the accused you should bear in mind that consent means to agree freely and voluntarily and out of her own free will. If consent was obtained by force, threat, intimidation or fear of bodily harm or by exercise of authority, then that consent is no consent at all. Furthermore, submission without physical resistance by the complainant to an act of another shall not alone constitute consent.
20. If you are satisfied that the accused had penetrated the vagina of the complainant with his penis and she had not consented, you are then required to consider the last element of the offence that is whether the accused knew or believed that the complainant was not consenting or did not care if she was not consenting at the time.
21. You will have to look at the conduct of both the complainant and the accused at the time and the surrounding circumstances to decide this issue.
22. If you are satisfied beyond reasonable doubt that the prosecution has proven beyond reasonable doubt that the accused had inserted his penis into the complainant's vagina without her consent then you must find the accused guilty as charged.
23. If on the other hand you have a reasonable doubt with regard to any of those elements concerning the offence of rape, then you must find the accused not guilty of the offence he is charged with.

24. As a matter of law, I have to direct you that offences of sexual nature as in this case do not require the evidence of the complainant to be corroborated. This means if you are satisfied with the evidence given by the complainant and accept it as reliable and truthful you are not required to look for any other evidence to support the account given by the complainant.

25. You must be satisfied that the prosecution has proved all the elements of the offence beyond reasonable doubt in order for you to find the accused guilty of the offence of rape. If on the other hand, you have a reasonable doubt with regard to any of those elements concerning the offence, then you must find the accused not guilty.

ADMITTED FACTS

26. In this trial the prosecution and the defence have agreed to certain facts which have been made available to you titled as further amended admitted facts.

27. The admitted facts are part of the evidence and you should accept these admitted facts as accurate, truthful and proven beyond reasonable doubt.

28. I will now remind you of the prosecution and defence cases. In doing so it would not be practical of me to go through all the evidence of every witness in detail. It was a short trial and I am sure things are still fresh in your minds. I will refresh your memory and summarize the important features. If I do not mention a particular piece of evidence that does not mean it is not important. You should consider and evaluate all the evidence in coming to your opinion in this case.

PROSECUTION CASE

29. The prosecution called three (3) witnesses to prove the charge against the accused.
30. On 5th June, 2015 the complainant was 16 years of age and a high school student. She was asked by her mother to get a bucket of clothes from the river in the village. At about 7 pm on her way to the river the complainant went past the village kitchen hall at this time she noticed light inside the hall. The complainant entered the hall to see which light was switched on and who was inside the kitchen hall.
31. As the complainant entered the hall the accused grabbed the complainant's hand and forcefully made her lie down. He forcefully removed her panty and then forcefully inserted his penis into her vagina for about 5 minutes. The accused stopped having sexual intercourse when some people came near the hall at this time the accused ran away from the hall. Thereafter the complainant wore her panty and went home. The complainant did not do anything since she was afraid of the accused.
32. At school the complainant told her friend about what the accused had done to her thereafter she was taken to the School Chaplain. The complainant said that she did not tell her parents about what the accused had done to her since she was afraid of them. The complainant was not willing to have sexual intercourse with the accused.
33. In cross examination the complainant agreed that the village hall was located in the middle of the village and during 7pm people were moving around in the village. When she saw the light in the hall she wanted to know which light was on. Further the complainant agreed at night no one was allowed to go in the village kitchen hall.

34. The complainant did not tell an elder in the village that the light in the hall was on. She did not shout when the accused grabbed her hand because she was afraid.
35. The complainant stated when the accused was removing her panty she could not do anything such as yell or scream for help because she was afraid of the accused. The complainant only heard the boys coming towards the hall but they did not come into the hall.
36. The complainant agreed she did not ask for help because she did not want anyone to know that she was inside the hall. She maintained that she did not remove her clothes and also she did not consent to have sexual intercourse with the accused. The complainant stated the accused had forceful sexual intercourse with her and when the accused had grabbed her hand she did not try to run away.
37. In re-examination the complainant clarified when she saw the light inside the hall it was like a mobile phone light. Further she wanted to know about the light that was coming from inside the hall and that was the reason why she did not want the villagers to know that she was inside the hall. The complainant did not run when the accused had grabbed her hand because she was afraid of the accused.
38. The second witness Dr. Krishneel Sharma informed the court that on 25th June, 2015 he was based at the Rakiraki Hospital at around 7.10pm he had examined the complainant. The Fiji Police Medical Examination of the complainant was marked and tendered as prosecution exhibit no. 1.
39. The specific medical finding of the doctor was:
- a) No cuts or bruises noted over the perineum;
 - b) Hymnal tissue penetrated but intact;
 - c) Hymnal membrane not present, loss of virginity evident by above;

d) Vaginal orifice admits two fingers easily.

40. The doctor explained hymnal membrane refers to the mucosa covering of the introitus. The professional opinion of the doctor was loss of virginity with the loss of hymen membrane.
41. In cross examination the doctor stated that vaginal orifice admits two fingers easily meant the patient was sexually active.

Ladies and Gentleman Assessors

42. You have heard the evidence of Dr. Sharma who had been called as an expert on behalf of the prosecution. Expert evidence is permitted in a criminal trial to provide you with information and opinion which is within the witness expertise. It is by no means unusual for evidence of this nature to be called and it is important that you should see it in its proper perspective. The medical report of the complainant is before you and what the doctor said in his evidence as a whole is to assist you.
43. An expert witness is entitled to express an opinion in respect of his or her findings and you are entitled and would no doubt wish to have regard to this evidence and to the opinions expressed by the doctor. When coming to your own conclusions about this aspect of the case you should bear in mind that if, having given the matter careful consideration, you do not accept the evidence of the expert you do not have to act upon it. Indeed, you do not have to accept even the unchallenged evidence of the doctor.
44. You should remember that this evidence of the doctor relates only to part of the case, and that whilst it may be of assistance to you in reaching your decisions, you must reach your decision having considered the whole of the evidence.

45. The final prosecution witness was Neomai Bale the School Chaplain who informed the court that on 24th June, 2015 she was in the Home Economics room when a student came and informed her that the complainant was sick. When the complainant came into the room the witness observed the complainant was sad and crying. The complainant was not looking at her in the eyes and was looking embarrassed. After a while the complainant told the witness that a boy by the name of Manueli from her village had raped her in a vacant house. When the complainant was telling this the witness noticed that the complainant looked relieved but was shivering.
46. The witness then took the complainant to the Nalawa Police Station to report the matter.
47. In cross examination the witness stated the complainant looked sick to her before telling her story she started to counsel the complainant because she was crying and shivering. The witness also stated that the complainant had told her that she was raped during the night time.

Ladies and Gentleman Assessors

48. Victims of sexual offences may react in different ways to what they may have gone through. Some in distress or anger may complain to the first person they see. Some due to fear, shame or shock or confusion, may not complain for some time or may not complain at all. A victim's reluctance to complain in full as to what had happened could be due to shame or shyness or cultural taboo when talking about matters of sexual nature.
49. A late complaint does not necessarily signify a false complaint and on the other hand an immediate complaint does not necessarily demonstrate a true complaint. It is a matter for you to determine what weight you would give to the fact that the complainant who was 16 years of age told the

School Chaplain the accused had raped her in a vacant house after she was taken to the Chaplain on the 24th of June, 2015 by a friend.

50. This is commonly known as recent complaint evidence. The evidence given by Neomai is not evidence of what actually happened between the complainant and the accused since Neomai was not present and did not see what had happened between the complainant and the accused.
51. You are, however, entitled to consider the evidence of recent complaint in order to decide whether the complainant is a credible witness. The prosecution says the complainant told the School Chaplain on the 24th June, 2015 that the accused had raped her inside a vacant house in the village during the night time and therefore she is more likely to be truthful. On the other hand, defence says the complainant did not immediately tell Neomai or anyone else what the accused had done to her so she should not be believed.
52. It is for you to decide whether the evidence of recent complaint helps you to reach a decision. The question of consistency or inconsistency in the complainant's conduct goes to her credibility and reliability as a witness. This is a matter for you to decide whether you accept the complainant as reliable and credible. The real question is whether the witness was consistent and credible in her conduct and in her explanation of it.
53. This was the prosecution case.

DEFENCE CASE

Ladies and Gentleman Assessors

54. At the end of the prosecution case you heard me explain options to the accused. He has those options because he does not have to prove anything.

The burden of proving the accused guilt beyond reasonable doubt remains on the prosecution at all times. The accused chose to remain silent and did not call any witness that is his right and you should not draw any adverse inference from the fact that the accused decided to remain silent and not call any witness.

55. From the line of cross examination the accused takes up the position that the accused and the complainant had consensual sexual intercourse in the village kitchen hall that evening. The complainant came willingly into the hall where the accused was. When inside the hall both the complainant and the accused took off their clothes and had consensual sexual intercourse. At around 7 pm that evening there were lots of people moving around the village the complainant did not yell or scream for help or try to run away because she did not want anyone to know that she was in the hall.

56. This was the defence case.

ANALYSIS

57. The prosecution alleges on 5th June, 2015 in the evening at around 7 pm the complainant whilst on her way to the river went past the village kitchen hall noticed light inside the hall. The complainant entered the hall to see which light was switched on.

58. As the complainant entered the hall the accused grabbed the complainant's hand and forcefully made her lie down. He then forcefully removed her panty and forcefully inserted his penis into her vagina for about 5 minutes. The accused stopped when some people came near the hall he then ran away. The complainant wore her panty and went home. The complainant did not do anything since she was afraid of the accused.

59. Later at school the complainant told her friend about what the accused had done to her thereafter she was taken to the School Chaplain. She told the Chaplain what the accused had done to her. The complainant did not consent to have sexual intercourse with the accused that evening.
60. Neomai Bale the School Chaplain informed the court on 24th June, 2015 the complainant told her that a boy by the name of Manueli from her village had raped her in a vacant house. When the complainant was telling this the witness noticed that the complainant looked relieved but was shivering.
61. The witness then took the complainant to the Nalawa Police Station to report the matter.
62. On 25th June, 2015 Dr. Krishneel Sharma had examined the complainant at the Rakiraki Hospital. The professional opinion of the doctor was loss of virginity with the loss of hymen membrane.
63. The accused on the other hand states that he had consensual sexual intercourse with the complainant. The complainant came willingly into the hall where he was. When inside the hall both the complainant and the accused took off their clothes and had sex.

Ladies and Gentleman Assessors

64. Which version you are going to accept whether it is the prosecution version or the defence version is a matter for you. You must decide which witnesses are reliable and which are not. You observed all the witnesses giving evidence in court. You decide which witnesses were forthright and truthful and which were not. Which witnesses were straight forward? You may use your common sense when deciding on the facts. Assess the

evidence of all the witnesses and their demeanour in arriving at your opinions.

65. In deciding the credibility of the witnesses and the reliability of their evidence it is for you to decide whether you accept the whole of what a witness says, or only part of it, or none of it. You may accept or reject such parts of the evidence as you think fit. It is for you to judge whether a witness is telling the truth and is correctly recalling the facts about which he or she has testified. You can accept part of a witness's evidence and reject other parts. A witness may tell the truth about one matter and lie about another he or she may be accurate in saying one thing and not be accurate in another.
66. You will have to evaluate all the evidence and apply the law as I explained to you when you consider the charge against the accused have been proven beyond reasonable doubt. In evaluating evidence, you should see whether the story related in evidence is probable or improbable, whether the witness is consistent in his or her own evidence or with other witnesses who gave evidence. It does not matter whether the evidence was called for the prosecution or the defence. You must apply the same test and standards in applying that.
67. It is up to you to decide whether you accept the version of the defence and it is sufficient to establish a reasonable doubt in the prosecution case.
68. If you accept the version of the defence you must find the accused not guilty. Even if you reject the version of the defence still the prosecution must prove this case beyond reasonable doubt. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies with the prosecution throughout the trial and it never shifts to the accused at any stage of the trial.

69. The accused is not required to prove his innocence or prove anything at all. He is presumed innocent until proven guilty.

70. Your possible opinions are:-

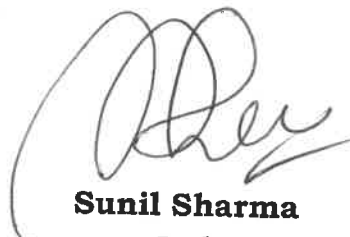
COUNT ONE: **RAPE** ACCUSED - GUILTY OR NOT GUILTY

Ladies and Gentleman Assessors

71. This concludes my summing up you may now retire and deliberate together and once you have reached your individual opinions please inform a member of my staff so that the court can be reconvened.

72. Before you do so, I would like to ask counsel if there is anything they might wish me to add or alter in my summing up.




Sunil Sharma
Judge

At Lautoka

08 May, 2019

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.