

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 81 of 2018

STATE

vs.

MR

Counsel: Ms. S. Swastika for the State
Mr. K. Cheng for Accused

Date of Hearing: 18th, 20th, 23rd and 27th September 2019

Date of Closing Submission: 30th September 2019

Date of Summing Up: 01st October 2019

SUMMING UP

1. The names of the complainant and the accused are suppressed.
2. The hearing of this case has now reached to its conclusion. It is my duty to sum up the case to you. You will then retire to consider your respective opinions.
3. Our functions are different. It is my task to ensure that the trial is conducted according to law. As part of that, I will direct you on the law that applies in this action. You must accept the law from me and apply all directions I give you on matters of law.

4. You are to determine the facts of the case, based on the evidence that has been placed before you in this courtroom. That involves deciding what evidence you accept or refuse. You will then apply the law, as I explain it to you, to the facts as you find them to be, and in that way arrive at your opinion.
5. I may comment on the facts if I think it will assist you when considering the facts. While you are bound by directions I give as to the law, you are not obliged to accept any comment I make about the facts. Hence, it is entirely upon you to accept or disregard it unless it coincides with your own independent opinion.
6. You must reach your opinion on evidence, and nothing but on the evidence itself. Evidence is what the witnesses said from the witness box and documents tendered as exhibits. This summing up, statements, arguments, questions and comments made by the counsel of the parties are not evidence. The purposes of the opening address by the learned counsel for the prosecution is not evidence, it is to outline the nature of evidence intended to be put before you. The closing addresses of the counsel of the prosecution and the defence are not evidence either. They are their arguments, which you may properly take into account when you evaluate the evidence, but the extent to which you do so is entirely a matter for you.
7. If you heard, or read, or otherwise learned anything about this case outside of this courtroom, you must exclude that information or opinions from your consideration. You must have regard only to the testimony put before you in this courtroom during the course of this trial. Ensure that no external influence plays a part in your deliberation. You are allowed to talk, discuss and deliberate facts of this case only among yourselves. However, each one of you must reach your own opinion. You are required to give merely your opinion but not the reasons for your opinion. Your opinion need not be unanimous. I must advise you that I am not bound by your opinion, but I assure you that I will give the greatest possible weight on your opinions when I deliver my judgment.
8. Moreover, I must caution you that you should dismiss all emotions of sympathy or prejudice, whether it is sympathy for or prejudice against the accused, the complainant or anyone else.

No such emotion has any part to play in your decision, nor should you allow public opinion to influence you. You must approach your duty dispassionately; deciding the facts solely upon the whole of the evidence. It is your duty as judges of facts to decide the legal culpability as set down by law and not the emotional or moral culpability of the action.

Burden and Standard of Proof

9. I now draw your attention to the issue of burden and standard of proof. The accused is presumed to be innocent until he is proven guilty. The presumption of innocence is in force until you form your own opinion that the accused guilty of the offence.
10. The burden of proof of the charge against the accused is on the prosecution. It is because the accused is presumed to be innocent until he is proven guilty. In other words there is no burden on the accused to prove his innocence, as his innocence is presumed by law.
11. The standard of proof in criminal trial is "proof beyond reasonable doubt". It means that you must be satisfied in your mind that you are sure of the accused's guilt. If there is a riddle in your mind as to the guilt of the accused after deliberating facts based on the evidence presented, that means the prosecution has failed to satisfy you the guilt of the accused beyond reasonable doubt. If you find any reasonable doubt as to the commission of the offence as charged or any other offence by the accused, such doubt should always be given in favour of the accused.

Information and the Elements of the Offences

12. The accused is charged with one count of Rape, contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Act, one count of Sexual Assault, contrary to Section 210 (1) (b) (i) and (2) of the Crimes Act and one count of Abduction of Young Person, contrary to Section 285 of the Crimes Act. The particulars of the offences are before you, hence, I do not wish to reproduce them in the summing up.

13. The main elements of the offence of Rape as charged are that:

- i) The accused,
- ii) Penetrated into the vagina of the complainant with his fingers.

14. The prosecution claims that the complainant was twelve years old at the time of these offences took place. Hence, she was incapable of giving consent to any kind of penetration into her vagina. If you are satisfied that the complainant was twelve years old at the time of these offences took place, then the consent of the complainant is not relevant for these offences.

The Accused

15. It is the onus of the prosecution to prove beyond reasonable doubt that the accused had penetrated into the vagina of the complainant with his fingers as charged in the information. It is your duty to determine whether the complainant had correctly identified the accused as the perpetrator who sexually assaulted her on the 25th of January 2018.

Penetration

16. I will now explain you the element of penetration. Evidence of slightest penetration into the vagina of the complainant by the Accused with his fingers is sufficient to prove the element of penetration. Hence, it is not necessarily required to adduce the evidence of full penetration.

17. The main elements of the offence of Sexual Assault are that:

- i) The accused,
- ii) Unlawfully and Indecently,
- iii) Assault the complainant.

18. The word "unlawfully" simply means without lawful excuse. An act is an indecent act if a right-minded person would consider the act as indecent. It is your duty as Assessors to consider and decide whether the accused had indecently forced the complainant to touch his penis.
19. The main elements of the offence of abduction of a young person are that:
- i) The accused;
 - ii) Unlawfully took the complainant, out of the possession and against the will of her parents or of any other person having the lawful care or charge of the young person; and
 - iii) The complainant was a young person being under the age of 18.
20. The first element is concerned with the identity of the person who committed the offence. The prosecution should prove beyond reasonable doubt that it was the accused and no one else committed the offence.
21. The second element relates to an unlawful taking of the complainant, out of the possession and against the will of her parents or the guardians. The word "unlawfully" simply means without lawful excuse. Therefore, the taking of the complainant must be without lawful excuse. There must also be evidence of a substantial interference with the possessory relationship between the complainant and her guardians. The prosecution should prove these elements beyond reasonable doubt.
22. The final element relates to the age of the complainant at the time the offence was committed. The complainant must be a young person under the age of 18.

Separate Consideration

23. The accused is charged with three separate counts. One count of Rape, one count of Sexual Assault and one count of Abduction of Young Person. It is your duty to consider each of

these three counts separately. If you find the accused guilty of one count, that does not automatically make him guilty of the remaining count for which he is charged with. Likewise, if you find the accused not guilty of one count, that does not automatically make him not guilty of the remainder of the counts.

Evidence of Corroboration

24. You must bear in mind that offences of sexual nature do not need the evidence of corroboration. It means that 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. One or more of you may have assumptions as to what constitutes rape, what kind of person may be the victim of rape, what kind of person may be the rapist or what a person who is being or has been raped will do or say. Though such assumptions are natural in ordinary life, it is important that you must leave behind such assumptions as there is no stereotype of circumstances for a rape, a rapist or a victim of rape.
26. Offences of this nature can take place in any circumstance between any kinds of persons, who act in a variety of ways. You must approach the case dispassionately, putting aside any view as to what you might or might not have expected to hear, and make your judgment strictly on the evidence that you have heard from the witnesses and the exhibits during the course of the hearing.
27. It is your duty to assess the evidence in order to determine whether the accused have committed these crimes of the complainant as charged. In doing that, you must be mindful that not to bring in to the assessment of the evidence any preconceived views as to how a victim of rape in a trial such as this should react to the experience that the victim had gone through. Every person has his or her own way of coping with such incident. Some may display obvious signs of distress and others may not. Demeanours of the complainant in the

court while giving evidence is not necessarily a clue to the truth of the complainant's account.

Evidence of the Prosecution

28. Let me now remind you the evidence presented by the prosecution during the course of the hearing.
29. The complainant had been living with her grandmother at Verata, Wailevu in January 2018. She was attending school at that time. On the morning of 25th of January 2018, the complainant had gone to the road just opposite to her house in order to get a bus to go to school. Her school is nearly one kilometre away from home. While she was waiting for the bus, a Honda Hybrid car bearing the registration number JG 192, stopped just passing her. It was a dark purple colour car. The driver of the car asked her whether she was going to school. He told her that he could drop her at the school. When the complainant was trying to get into the back passenger seat, the driver told her to get into the front passenger seat. When she got into the car, she observed the driver, his face and inside the car. She noticed that an Israel flag was fixed on the front dashboard of the car. The seats were covered with England flag and Union Jack.
30. The complainant then found that the driver turned the car into the Lakena irrigation and drove along that road. The driver told the complainant that he wants to drop a trousers at his home. While saying that, the driver looked back and shown her a trousers on the back passenger seat. In a while she found that the car was going along the road, where no houses. Both sides were covered with grasses. The driver stopped the car at a location where she could not find any houses. The complainant felt scared and was thinking of what the driver was going to do to her. She then saw the driver was unzipping his trouser and told the complainant to put her hands on his penis. The complainant initially refused to do so. But the driver told her in a loud voice to touch his penis, making her scared. The complainant then put her hands on his penis and took it back.

31. The complainant then tried to open the door of the car and found that the doors were locked. While she was trying to open the door, she saw the accused was taking a tape, which scared her more as she thought he would tape her hands and legs. The accused then came over to her and tried to put his hands inside her thighs. The complainant kept her legs tight, preventing the accused to put his hands inside her thighs. The accused was angry and punched heavily on her thighs. They were very heavy and made her felt weak. He then opened her legs and stepped over to her side. The driver then pressed a button to lower the backrest of the front passenger seat. He pulled her thighs down. When the backrest of the seat went down, the complainant found a space between the seats. She moved back to the back passenger seat through that space. The accused then came on the back seat. The complainant tried to open both the back doors but found they were locked. The driver tried to pull her back to the place where she was before and also tried to open her legs.
32. The driver then again punched on her thighs heavily, thus making the complainant weak. Once she felt weak, the driver then managed to open her legs and put his index finger into the vagina of the complainant. She felt pain when it went into her vagina. The complainant explained that the finger did not go really inside, but she felt the pain. The driver was right in front of her when he inserted his finger into her vagina. At that time, she found the accused had hurt his forehead as blood stains dropped on her uniform. The accused started to look back of the car. The complainant then managed to move to the front passenger seat and put down the window of the front door using the button at the driver's side. She saw a car was parked behind the car that she was in. She managed to jump out of the car and ran to the car at the back, asking help. However, the second car did not come to her assistance as it reversed and went back. The complainant then saw the accused had moved back to the driver's seat. She then asked him to give her items back. He gave them back to her. While she was trying to put her tights on, the driver drove the car towards her, which she escaped by jumping to the side of the road. The car then driven away and the complainant walked back to the main road.

33. You have heard the evidence of the complainant, where she said that she saw the driver for about an hour during the course of these events. He was just closed to the complainant. There was no obstacle preventing her vision on the driver during the course of these events.
34. When the complainant went to the school, her friends have inquired about the blood stains on her uniform. She has then explained them the incident which she faced on the morning. The friends have then relayed the information to Master Luke. Master Luke then informed Mrs. Savukiono about this incident. Mrs. Savukiono then inquired it from the complainant and recorded what the complainant told her. The complainant had explained Mrs. Savukiono about the incident and the details of the car. Mrs. Savukiono then informed the Head Master of the school and they then reported the matter to the police. The police first took her to her grandmother and then to the medical examination. The complainant identified the photos of the car as the same car that took her to that particular location by the driver and then committed these crimes on her.
35. On the following day, that was on the 26th of January 2018, she had gone to the police in order to take part on the Identification Parade. In the Identification Parade, the complainant identified the accused as the driver who committed these crimes to her. The accused was identified by the complainant while he was standing as the eighth person in the line of ten males. The complainant said that she identified the accused as the perpetrator who committed these crimes to her as she saw him closely during the course of these events and also from his injury on the forehead. You may recall that the complainant then identify the accused in the court as the perpetrator who committed these crimes to her on the 25th of January 2018.
36. During the cross examination by the learned counsel for the accused, the complainant said that she did not tell the police that the accused spoke loudly asking her to touch his penis. Moreover, the complainant said that she did not know the name of the accused when she made the statement to the police and also during the identification parade. The complainant said the Honda Hybrid was a small car and it was difficult to move around inside the car.

37. You have heard that the complainant said during the re-examination, that she was lost when she made her statement to the police on the 26th of January 2018.
38. The second prosecution witness is Ulamila Savukiono. She is a teacher at Nausori Primary School. She is the Child Protection Officer at the school. Ms. Savukiono was approached by the teacher of year 8 on the morning of the 25th of January 2018, informing about the complainant as she was upset and disturbed in the morning. Ms. Savukiono then took the complainant to a nearby shed and inquired about her issue. The complainant then explained about the events that she faced during the morning and also the details of the car that took her to the location where she was sexually abused.
39. The third witness of the prosecution is Ms. Salua Tuitubou. She is the grandmother of the complainant. The complainant is the granddaughter of her elder brother. She could recall that during the afternoon the two police officers brought the complainant home and informed her about this incident. The complainant was not looking normal and looked as she was lost. Ms. Tuitubou said that the complainant was in under her care as her parents were in USA during that time. She further said that she had not given permission to the complainant to go into any other vehicle other than the school bus.
40. The fourth witness of the prosecution is IP Viliame Maivusa. He was the crime officer at the Nausori Police Station in the month of January 2018. He recalls that the police received a report about this alleged incident at around 2.30 pm on the 25th of January 2018. IP Maivusa said that they further received the details and descriptions of the car which was alleged involved in this matter. He had then formed a team of officers to investigate the matter. The officers from the CID branch of the Nausori Police Station and Crime Intel Unit formed the investigation team. IP Maivusa had briefed the team about the nature of the allegation and also the description of the car involved in the alleged incident. Late in the night, he received a call from Detective Corporal Amani Bosenawai, informing that he had arrested an i-taukei man with a vehicle that matches with the description of the car that was allegedly involved in this matter.

41. Once the car was brought into the station, the forensic team had conducted the forensic analysis of the car. The suspect was then produced to an identification parade, which was conducted by the Inspector Anoop Narayan.
42. During the cross examination, IP Maivusa said the he had a complete overview of the investigation of this alleged crime. He has made his statement to the police regarding his involvement in this investigation on the 9th of August 2019. He had directed the forensic officers to obtain DNA samples from the car, but no such report was disclosed to the defence. Moreover IP Maivusa said that they recorded a statement from the wife of the accused. She had told the police that the accused fought with her and left home in the middle of the night till the following day, during which date this alleged offence took place.
43. The next witness of the prosecution is Constable Amani Bosenawai. He was instructed by the crime officer to conduct duties around Naduru area during the night of 25th of January 2018. He was further briefed by the crime officer about this alleged incident, including the description of the alleged perpetrator and the car used by the perpetrator in order to commit the crime. While he was in Naduru area, he has arrested the accused while he was driving the car bearing the registration number JG 192. It was a Toyota Hybrid dark purple colour car.
44. The sixth witness of the prosecution is Detective Qasio Rokodulu. He is a crime scene officer. He was tasked to inspect and take the photographs of the car bearing the registration number JG 192 on the 27th of January 2018. It was a Honda Hybrid Car. He had notice an Israel flag was on the front dashboard of the car and all the four seats were covered with Fiji Flag. Detective Qasio identified the photographs of the said car JG 192 which he took during the course of his evidence.
45. The seventh witness of the prosecution is the Doctor Elvira Ongbit. She has conducted the medical examination report of the complainant on the 25th of January 2018. You have heard that Doctor Elvira explained about her educational qualification and experiences. She then explained the procedure that she usually followed in examining of a victim of sexual abuses

cases. She then explained the specific medical findings that she found during the medical examination of the complainant, which have been recorded under D12 of the Police Medical Examination Report.

46. During the cross examination the learned counsel for the defence questioned Dr. Elvira about her qualification on Gynaecology, Obstetrics and Paediatrics.
47. The last witness of the prosecution is IP Anoop Narayan. He has conducted the identification parade of the accused. The identification parade was conducted at the Eastern Division Head Quarters. Before conducting the identification parade, IP Narayan had met the accused and obtained his consent to the identification parade. The accused had consented to the identification parade. IP Narayan had then met the complainant and obtained her consent as well.
48. Having taken the consent of the accused and the complainant to conduct the identification parade, he had lined up nine members of the public who were of the same built, height and the appearance of the accused. He then briefed the nine members of the public about the procedure of the identification parade. The escorting officer of the accused then brought the accused to the parade. Once the accused lined up with the nine members of the public, the complainant was brought into the parade. She was explained about the procedure of the parade. She was accompanied by a woman police officer. Having carefully observed the ten people who were lined up in the parade, the complainant identified the accused as the person who had committed these crimes on her. The accused was lined up at the 3rd place from the left hand side of IP Narayan.
49. During the cross examination by the learned counsel for the defence, IP Narayan explained the age of the nine members of the public and said there was one member who was age 29. One person was 28 years old and no one was at the age of 26 in the parade. He is aware of the Force Standing Orders in respect of conducting of identification parade. IP Narayan has not photographed the nine members of the public during the course of the identification parade.

Right to Remain Silent

50. At the conclusion of the prosecution case, the accused was explained about his rights in defence. The accused opted not to give evidence on oath and exercised his rights to remain silent. The accused does not have to give evidence. You must not assume that he is guilty because he did not give evidence. The fact that he has not given evidence proves nothing. It does nothing to establish his guilt.
51. I have summarized the evidence presented during the course of this hearing. However, I might have missed some. It is not because they are not important. You have heard every items of evidence and recall yourselves on all of them. What I did only was to draw your attention to the main items of evidence and help you in recalling yourselves of the evidence.

Analysis and Directions

52. According to the evidence presented by the prosecution, the prosecution alleges that the accused had taken the complainant to a location where no one was present in the morning of 25th of January 2018 against the will of her grandmother. He had then forced her to touch his penis and then penetrated into her vagina with his index finger. In order to prove the charges against the accused, the prosecution presented evidence in the forms of direct, documentary and expert evidence.

Direct Evidence

53. In some instances, you may find that some facts can be proved by direct evidence. For example, if there is reliable evidence from a witness who actually saw or felt the accused was committing the offence; or if there is a video recording of such an incident that plainly demonstrates his guilt; or if there is reliable evidence of the accused himself having admitted it, these would all be good examples of direct evidence against the accused.

Documentary Evidence

54. The evidence presented in the form of documents and photograph are considered as documentary evidence. In this case, the prosecution tendered certain documents and photographs in evidence.

Expert Evidence

55. It is the general rule that witnesses are normally not allowed to give opinion and only allow to give evidence on what they have seen, heard, or felt by their physical sense. However, the exception is that the evidence of expert witnesses. Expert witnesses are those who are learned and experts in a particular subject or field with relevant experience. Such witnesses are allowed to give evidence of their opinion.
56. In this case you have heard the evidence of Dr. Elvira Ongbit. She is a medical doctor and gave evidence about the finding that she made during the medical examination of the complainant on the 25th of January 2018. She did not provide any professional opinions about those findings. Hence, she is a witness who gave evidence about facts. However, she stated that she has certain professional qualification and experiences to observe those observations and make those findings.

Evaluation of the Evidence

57. I now take your attention to the direction of evaluation of the evidence. The evolution of evidence consists with two main steps, the determination of the reliability and the credibility of the evidences and the witnesses.

Reliability of Evidence

58. You must be satisfied that you can rely on the evidence as reliable evidence. In order to do that, you have to be satisfied that evidence is free from mistakes, errors and inaccuracies. If

you find the evidence is free from such mistakes, errors and inaccuracies, you can take the evidence into consideration as reliable evidence.

Credibility of Evidence

59. The assessment of credibility of evidence does not concern with unintended inaccuracy, mistakes or errors. It is focused on the lies or inaccurate facts that are intentional and motivated attempts to deceive. The credibility depends on the individual who gives evidence, his or her motivations, his or her relationship to and the reaction to the particular situation.
60. Evaluation of the reliability and credibility of evidence will assist you to determine what evidence you may accept and what part of the evidence you may refuse. In doing that, you may accept or reject such parts of the evidence as you think fit. It is for you to decide whether a witness is telling the truth and is correctly recalling the facts about which he or she has testified.
61. In assessing evidence of the witnesses, you must consider whether the witness had the opportunity to see, hear and or feel what the witness is talking in the evidence. You should then consider whether the evidence presented by the witness is probable or improbable considering the circumstances of the case. Apart from that you are required to consider the consistency of the witness not only with his or her own evidence but also with other evidence presented in the case.
62. It is your duty to consider the demeanour of the witnesses, how they react to being cross examined and re-examined and were they evasive, in order to decide the credibility of the witness and the evidence.
63. Moreover, you must bear in your mind that 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 accurate in another thing.

Presentation of the Evidence of the Child Complainant

64. You saw that the complainant initially gave evidence behind a screen. The accused was then taken to a separate room and took part in the hearing via Skype as he was suffering from certain medical conditions. Giving of evidence in this way is perfectly normal in cases like this. It is designed to enable the witness to feel more at ease when giving evidence. It is not intended to prejudge the evidence which the witness gives. The fact that the evidence has been given in that manner, must not in any way be considered by you as prejudicial to the accused.

Evidence of the Child Complainant

65. The most important part of your task is to judge whether the complainant has told the truth, and has given a reliable and credible account of the events that she was describing. The complainant was twelve years old when this alleged incident took place on the 25th of January 2018.
66. Some of you may have children, grandchildren, nieces or relatives who are of a similar age to the complainant. If so, I think you will recognize the sense of the advice that I am going to offer you about your opinion of the evidence of the complainant, but remember that I am speaking only about an approach to consider the evidence. Still the evaluation of the evidence is your responsibility. You do not have to accept my advice, if you do not agree with it.
67. Children do not have the same life experience as adults. They do not have the same standards of logic and consistency. Their ability to understand certain events may be severely limited for a number of reasons such as their age and immaturity. Life viewed through the eyes and mind of a child may seem very different from life viewed by an adult. Children may not fully understand what it is that they are describing, and they may not have the words to describe it. They may be embarrassed about it. They might think that using of some words are bad, and therefore find it difficult to speak.

68. Remember how you normally talk to children of this age. You should bear those difficulties in mind when you consider the answers given by the child complainant. All decisions about the evidence are for you to make.

Evidence of Identification

69. The main contentions of the defence is that the complainant had mistaken in her identification of the accused as the perpetrator who committed this crimes on her. Accordingly, the case against the accused mainly depends on the correctness of the identification of the perpetrator by the complainant. The complainant in her evidence said that she saw the accused for about one hour during the course of these alleged events. He was very closed to her during that time.
70. When you consider the evidence of identification given by the complainant, you need to exercise special caution. The reason for this is that experience tells us that honest and impressive witnesses, genuinely convinced of the correctness of their identification, have in the past made mistakes, even a number of witnesses making the same identification. You cannot convict the accused unless you are sure that the complainant's identification of the accused was accurate and, in making that judgment, you need to look carefully at the circumstances in which it was made and at any other evidence in the case which may support it. Specially you have to take into consideration the followings:
- i) How long were the accused under observation?
 - ii) At what distance?
 - iii) In what light?
 - iv) Was the observation impeded in any and, if so, what way?
 - v) Had the witness seen the suspect before and, if so, how often and in what circumstances?
 - vi) Was there any material difference between the description given by the witness at the time and the suspect's actual appearance?
 - vii) Any other circumstances emerging in the evidence which might have affected the reliability of the recognition.

71. Let us consider the circumstances in which the recognition took place. According to the complainant, it was a bright morning and no rain. She was seated at the front passenger seat while they were traveling to the location. The complainant said that she clearly observed the accused and also the inside of the car. They had conversation on their way. During this alleged incident, the accused was very closed to her. She had observed the accused nearly one hour and nothing had obstructed her view of the accused.
72. I now take your attention to the other evidence that might assist you in determining the accuracy of the identification of the accused.
73. The complainant explained the description of the car that the accused drove on that morning. It was a dark purple colour Honda Hybrid with the registration JG 192. An Israel flag was at the front dashboard and the seats are covered with English Flag and Union Jack. DC Amani Bosenawai then arrested the accused while he was driving the same car in the late night of 25th of January 2018. DC Rokodulu had taken the photographs of the car on the 27th of January 2018 and tendered the photos of the car in evidence. You can take these evidence into consideration when you determine the accuracy of the evidence of identification made by the complainant.

Evidence of Recent Complaint

74. You have heard the evidence that the complainant had related this incident to Ms. Ulamila Savukiono who is the Child Protection Officer at the Nausori Primary School. Ms. Savukiono gave evidence explaining what the complainant related to her on the 25th of January 2018. This form of evidence is known as evidence of recent complaint. It is not an evidence as to what actually happened between the complainant and the accused. Ms. Savukiono was not present and witnessed what happened between the complainant and the accused.
75. You are entitled to consider the evidence of recent complaint in order to decide whether or not the complainant has told the truth. It is for you to decide whether the evidence of recent

complaint helps you to reach a decision, but it is important that you must understand that the evidence of recent complaint is not independent evidence of what happened between the accused and the complainant. It therefore cannot of itself prove that the complainant is true.

Inconsistencies and omissions

76. Madam and Gentlemen, you have heard that the learned counsel for the accused cross examined the complainant about the omissions and inconsistencies in the statement that she made to the police and the evidence given in the court.
77. The complainant admitted in her evidence that certain incidents that she stated in her evidence have not been stated in the statement that she made to the Police. The complainant in her evidence said that she was scared and felt lost when she made the statement to the police.
78. I now explain to you the purpose of considering the previously made statement of the complainant with her evidence given in court. You are allowed to take into consideration about the inconsistencies and the omissions in such statements when you consider whether the complainant is believable and credible as a witness. However, the statement itself is not evidence of the truth of its contents.
79. It is obvious that the passage of time will affect the accuracy of memory. Memory is fallible and you might not expect every detail to be the same from one account to the next. If there is an inconsistency, it is necessary to decide firstly, whether it is significant and whether it affects adversely to the reliability and credibility of the issue that you are considering. If it is significant, you will next need to consider whether there is an acceptable explanation for it. If there is an acceptable explanation, for the change, you may then conclude that the underlying reliability of the evidence is unaffected. If the inconsistency is so fundamental, then it is for you to decide as to what extent that influences your judgment of the reliability of such witness.

Final Directions

80. Madam and Gentlemen, I now take your attention to the final directions of the summing up.

Count One

81. Upon consideration of whole of the evidence adduced during the course of the hearing, if you are satisfied that the prosecution has proven beyond reasonable doubt that the accused has committed the offence of Rape as charged under count one, you can find the accused guilty of the said offence of Rape.

82. If you are not satisfied or have doubt whether the prosecution has proven beyond reasonable doubt that the accused has committed the offence of Rape as charged under count one, you must find the accused not guilty of the said count of Rape.

Count Two

83. If you are satisfied that the prosecution has proven beyond reasonable doubt that the accused has committed the offence of Sexual Assault as charged under count two, you can find the accused guilty of the said offence of Sexual Assault.

84. If you are not satisfied or have doubt whether the prosecution has proven beyond reasonable doubt that the accused has committed the offence of Sexual Assault as charged under count two, you must find the accused not guilty of the said count of Sexual Assault.

Count Three


85. if you are satisfied that the prosecution has proven beyond reasonable doubt that the accused has committed the offence of Abduction of Young Person as charged under count three, you can find the accused guilty of the said offence.

86. If you are not satisfied or have doubt whether the prosecution has proven beyond reasonable doubt that the accused has committed the offence of Abduction of Young Person as charged under count three, you must find the accused not guilty of the said count.

Conclusion

87. Madam and Gentlemen assessors, I now conclude my summing up. It is time for you to retire and deliberate in order to form your individual opinions. You will be asked individually for your opinion and will not require to give reasons for your opinion. When you have reached to your opinion, you may please inform the clerks, so that the court could reconvene.
88. Learned counsel of the prosecution and the accused, do you have any redirections to the assessors?




R.D.R.T. Rajasinghe
Judge

At Suva
01st October 2019

Solicitors
Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission for the Accused.