

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 77 of 2020

[CRIMINAL JURISDICTION]

STATE

V

ELIKI RAOMA

Counsel : Ms. S. Tivao for the State
Ms. M. Chand with Mr. K. Verebalavu for the Accused

Hearing on : 03 - 06 November 2020

Summing up on : 06 November 2020

[The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "SN". No newspaper report or radio broadcast of the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification of the said complainant.]

SUMMING UP

Madam and gentleman assessors;

1. It is now my duty to sum up the case to you. Please remember that you should accept the directions on law that I will be giving you in this summing up and should apply those directions when you evaluate the evidence in this case in order to determine whether the accused is guilty or not guilty. You should ignore any opinion of mine on the facts of this case unless you agree with that opinion. You are the judges of facts.

2. As I have told you in my opening address, your opinion should be based only on the evidence presented inside this court room. If you have heard, read or otherwise come to know anything about this case outside this court room, you must disregard that information.
3. Evidence you should assess in this case is what the witnesses said from the witness box inside this court room, the admitted facts and the exhibit tendered. A few things you heard inside this court room are not evidence. This summing up is not evidence. Arguments raised by the lawyers for the prosecution and the defence during the proceedings, their questions and comments are not evidence. A suggestion made by a lawyer during the cross examination of a witness is not evidence unless the witness accepted that suggestion. The arguments and comments made by lawyers in their addresses are not evidence. You may take into account those arguments and comments when you evaluate the evidence only if you agree with them.
4. You have to bear in mind that a statement made by a witness out of court is not evidence. Therefore, a statement made to the police by a witness can only be used during cross-examination to highlight inconsistencies. That is, to show that the relevant witness on a previous occasion had said something different to what he/she said in court. However, if a witness admits that a certain statement in such police statement was made by that witness and that it is true, then that portion of the police statement becomes part of that witness' evidence.
5. You must not let any external factor influence your judgment. You must not speculate about what evidence there might have been. You must approach the evidence with detachment and objectivity and should not be guided by emotion. You should put aside all feelings of sympathy for or prejudice against, the accused or the complainant. No such emotion should influence your decision.

6. You and you alone must decide what evidence you accept and what evidence you do not accept. You have seen the witnesses give evidence before this court, their behaviour when they testified and how they responded during cross-examination. Applying your day to day life experience and your common sense as representatives of the society, consider the evidence of each witness and decide how much of it you believe. You may believe all, part or none of any witness' evidence.
7. The complainant (PW1) said she is 06 years old and she gave evidence about incidents that had allegedly taken place this year and last year. You may have come across children of her age. You will have an idea of the way a child of a particular age behave, think, talk and the way they describe things.
8. You would have noticed that I did not make the complainant take the usual oath before she gave her evidence. Given her demeanour and her answers to the questions put to her, it is for you to decide whether the complainant was intelligent enough to understand the duty of speaking the truth and whether you are sure that the complainant has given you a truthful and a reliable account of her experience concerning the offences the accused is charged with.
9. Children can be confused about what has happened to them. Sometimes children do not speak out for fear that they themselves will be blamed for what has taken place, or through fear of the consequences should they do so. They may feel that they may not be believed. They may fear they will be punished. They may be embarrassed because they did not appreciate at the time what they were doing was wrong. They may be embarrassed because they found that some aspects of the attention they were getting from the individual concerned were enjoyable.
10. I mention these possibilities because experience shows that children do not all react the same way to sexual acts as adults would. It would be a mistake to think that

children behave in the same way as adults, because their reaction to events is conditioned by their personal experience and immaturity and not by any moral or behavioural standard taught or learned. What happened in this particular case however, is a decision for you to make.

11. When you assess the testimony of a witness, you should bear in mind that a witness may find this court environment stressful and distracting. Witnesses have the same weaknesses you and I may have with regard to remembering facts. Sometimes we honestly forget things or make mistakes when recalling past events.
12. In assessing the credibility of a particular witness, it may be relevant to consider whether there are inconsistencies in his/her evidence. That is, whether the witness has not maintained the same position and has given different versions with regard to the same issue. Inconsistencies may lead you to question the reliability of the evidence given by a witness.
13. This is how you should deal with any inconsistency you may come across. You should first decide whether that inconsistency is significant. That is, whether that inconsistency is fundamental to the issue you are considering. If it is, then you should see whether there is any acceptable explanation for it. In this regard, you may bear in mind that the passage of time will affect the accuracy of memory. Memory is fallible and you might not expect every detail given by a witness to be the same from one account to the next.
14. Accordingly, if there is a significant inconsistency in the evidence given by a witness, it might lead you to conclude that the witness is generally not to be relied upon and reject the entire evidence of that witness; or, you may reject the part of that witness' evidence that you may find unreliable given the inconsistency and accept the part of the evidence you consider reliable; or if you find that the

inconsistency has been duly explained you may disregard the inconsistency and accept the entire evidence of the witness as reliable.

15. You may also consider the ability and the opportunity a witness had, to see, hear or perceive in any other way what the witness said in evidence. You may ask yourself whether the evidence of a witness seem reliable when compared with other evidence you accept. These are only examples. It is up to you how you assess the evidence and what weight you give to a witness' testimony.
16. Based on the evidence you decide to accept, you may decide that certain facts are proved. You may also draw inferences based on those facts you consider as directly proved. You should decide what happened in this case, taking into account those proven facts and reasonable inferences. However, you should bear in mind that the inference you draw should be the only reasonable inference to draw from the proved facts. If there is a reasonable inference to draw against the accused as well as one in his favour based on the same set of proven facts, then you should not draw the adverse inference.
17. As a matter of law you should remember that the burden of proof always lies on the prosecution. An accused is presumed to be innocent until proven guilty. This means that it is the prosecution who should prove that the accused is guilty and the accused is not required to prove that he is innocent. The prosecution should prove the guilt of the accused beyond reasonable doubt in order for you to find him guilty. You must be sure of the accused person's guilt.
18. In order to prove that the accused is guilty of a particular offence, the prosecution should prove all the elements of the offence beyond reasonable doubt. If you have a reasonable doubt in respect of even one of those elements, as to whether the prosecution has proved that element, then you must find the accused not guilty of

that offence. A reasonable doubt is not a mere imaginary doubt but a doubt based on reason. I will explain you the elements of the offences in a short while.

19. You are not required to decide every point the lawyers in this case have raised. You should only deal with the offences the accused is charged with and matters that will enable you to decide whether or not those charges have been proved.
20. I must explain to you as to the reason for the use of a special room for the complainant to give her evidence. It was a normal procedure adopted in courts on the request of the prosecution to make a particular witness relatively more comfortable when giving his/her evidence. You must not infer that such a protection to the witness was warranted due to the accused's behaviour and should not draw any adverse inference against him on that account.
21. Please remember that you will not be asked to give reasons for your opinion. In forming your opinion, it is always desirable that you reach a unanimous opinion. But it is not necessary.
22. Let us now look at the Information. The Director of Public Prosecutions has charged the accused for the following offences;

FIRST COUNT
(Representative Count)
Statement of Offence

Rape: contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Act 2009.

Particulars of Offence

ELIKI RAOMA between the 1st September 2019 to the 9th February 2020 at Draubuta Village, Nausori, in the Eastern Division, penetrated the vagina of **SISILIA RUTH NAYACAVOU**, a child under the age of 13 years, with his finger.

SECOND COUNT
(Representative Count)

Statement of Offence

Indecent Assault: contrary to Section 212 of the Crimes Act 2009.

Particulars of Offence

ELIKI RAOMA between the 1st September 2019 to the 9th February 2020 at Draubuta Village, Nausori, in the Eastern Division, unlawfully and indecently assaulted **SISILIA RUTH NAYACAVOU**, a child under the age of 13 years, by touching her buttocks.

THIRD COUNT

Statement of Offence

Rape: contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Act 2009.

Particulars of Offence

ELIKI RAOMA on the 10th February 2020 at Draubuta Village, Nausori, in the Eastern Division, penetrated the anus of **SISILIA RUTH NAYACAVOU**, a child under the age of 13 years, with his finger.

FOURTH COUNT

Statement of Offence

Rape: contrary to Section 207 (1) and (2) (c) and (3) of the Crimes Act 2009.

Particulars of Offence

ELIKI RAOMA on the 10th February 2020 at Draubuta Village, Nausori, in the Eastern Division, penetrated the mouth of **SISILIA RUTH NAYACAVOU**, a child under the age of 13 years, with his penis.

FIFTHCOUNT

Statement of Offence

Sexual Assault: contrary to Section 210 (1) (a) of the Crimes Act 2009.

Particulars of Offence

ELIKI RAOMA on the 10th February 2020 at Draubuta Village, Nausori, in the Eastern Division, unlawfully and indecently assaulted **SISILIA RUTH NAYACAVOU**, a child under the age of 13 years, by licking her anus.

SIXTH COUNT

Statement of Offence

Indecent Assault: contrary to Section 212 of the Crimes Act 2009.

Particulars of Offence

ELIKI RAOMA on the 10th February 2020 at Draubuta Village, Nausori, in

the Eastern Division, unlawfully and indecently assaulted **SISILIA RUTH NAYACAVOU**, a child under the age of 13 years, by kissing her lips.

23. After the prosecution case was closed it was decided not to proceed in relation to count one and count five. Therefore your opinion is now required only in respect of counts two, three, four and six.
24. Though the accused is charged with more than one count, please remember that each charge should be considered separately. You should not find the accused guilty of another count simply because you would find him guilty of one particular count.
25. You would also notice that the second count is a representative count. A representative count is a count where, the prosecution alleges that the accused had committed the relevant offence he is charged with on more than one occasion during the period specified in that count, but because it is not possible to ascertain the exact dates those alleged incidents had taken place, the prosecution has opted to frame a single charge. When it comes to a representative count, the law says that it shall be sufficient for the prosecution to prove that, between the dates specified in the charge at least one such offence was committed.
26. Let us now look at the evidence. Please remember that I will only refer to evidence which I consider important to explain the case and the applicable legal principles to you. If I do not refer to certain evidence which you consider important, you should still consider that evidence and give it such weight you may think fit.
27. The first prosecution witness ("PW1") said in her evidence that;
 - a) *She is 6 years old. She lives with her parents and her siblings. She said that Ta Eliko comes to her house frequently and she use to play with him. Ta Eliko is related to her father and she only knows one person by that name.*

- b) *She said that Ta Eliko kissed her on her mouth pointing to her lips. He did this inside her house, where she always sit and that was inside her room. When he kissed her Ta Jerry was at home. She said that when she and Ta Eliko were inside her room, her mother and father were also inside her room. Other than kissing her he told her to bend down and poked her in her but using his finger. When he poked her she was not wearing anything. Then she said that he poked her butt inside the house when the lights were off. She said that he took out his polo, rubbed it on her butt and also put his polo inside her mouth. When he did that she choked and vomited. She was asked to draw what she referred to as 'polo' in a diagram and it was tendered as PE1.*
- c) *She said that while she was outside the house where the grass was, Ta Eliko kissed her, poked her butt, put his polo inside her butt and put his polo inside her mouth. He then told her to pick the vest and then held her hands tightly and took her home. At the same time her mother was calling, telling her that she should have her bath. She then went to have a shower and Ta Eliko was seated inside the house. She said that when Ta Eliko did this to her outside on the grass, she did not see anyone else there.*
- d) *She said that on her grandfather's birthday, Ta Eliko got her ice cream and told her to go outside. So she went. When she was outside, he kissed her, poked her butt and put his polo inside her mouth. She said that he kissed her on her mouth, he touched her butt, poked her butt and put his polo inside her mouth. She said that when Ta Ekii did this to her outside the house, she told her mother, She said that the incident in the living room happened first.*
- e) *During cross-examination she agreed that her house is built on a long post above the grass. When she was asked whether she likes her neighbours, she said 'no'. She said there are rooms inside her house, and the bathroom is inside the house. There is a door to the bathroom. She agreed that she is very close to her mother and she always listens to her mother. She denied the suggestion that she is afraid of her mother.*
- f) *When it was suggested to her that she said (in evidence in chief) that when Ta Eliko kissed her, her mother and her father were present in the house, she said "no". She again said "no" when she was asked whether Ta Jerry was inside the house when Ta Eliko kissed her. She agreed that 'lights were off' means that it was dark outside and that she didn't see Ta Eliko because it was dark.*
- g) *She agreed with the suggestion that she said Ta Eliko poked her because her mother told her to say that. She also agreed that her mother told her what to tell the police about Ta Eliko. When she was asked whether she remember (the day before) she said that Ta Eliko put his polo inside her butt, she said "no".*
- h) *When it was suggested that Ta Eliko never put his polo inside her mouth, she said that 'Ta Eliko put his polo inside my mouth.'*
- i) *When it was suggested to her that she did not tell the police that she choked and vomited when Ta Eliko put his polo inside her mouth, she said that she told them.*
- j) *When it was suggested that Ta Eliko did not kiss her lips, she said that he kissed her on her mouth and cheeks. When it was suggested that Ta Eliko did not poke her butt, she said "yes".*
- k) *She agreed that she went to the police three times. She agreed that the first time she went, she told the police that Ta Eliko kissed her lips and licked her bum. She denied*

telling the police that he told her to lick his bum. She agreed that when she went to the police the second time, she told the police that Ta Eliko touched her bum and that he only kissed her lips.

- l) During re-examination, she agreed that Ta Eliko poked her butt and that she told the police that he licked her bum. But she couldn't say when he licked her bum. Thereafter she was brought to court and she pointed at the accused as the person she was referring to as Ta Eliko.*

28. The second witness for the prosecution ("PW2") was PW1's mother. She said that;

- a) PW1 is her elder daughter. On 10/02/20 she was at home with PW1 and her four year old daughter, VD. That day, the accused who is her husband's cousin brother came to the house around 4.30pm to 5.00pm because her husband wanted the accused's assistance with the septic tank. The accused would visit them on family occasions and when her husband needs assistance from him. She said that the accused had known PW1 since her birth. When the accused comes to her house, he would play with the kids especially PW1.*
- b) When the accused came to the house, he said that he is going to fetch some coconuts. Then he did not go and went underneath the house instead. Underneath the house there is a long post and there is grass. That day, after the accused came to her house, PW1 went missing. She said that she called PW1 three times to pick up a vest that was outside. After that PW1 ran, picked up the vest and brought it to her. PW1 then quickly ran back underneath the house. She said that PW1 didn't bother to look at her.*
- c) After few minutes she called PW1 again and PW1 did not respond from underneath the house, but from where the septic tank was. PW1 came running to her and she noticed that PW1 was scared. She told PW1 to have her bath. Then she noticed the accused who was sitting near the main door looking at PW1 who was having a shower inside the bathroom. The bathroom door was open. She also saw the accused whispering to PW1 to hurry up.*
- d) After PW1 came out of the bathroom she noticed the accused looking at PW1's female private part which she also referred to as the "mimi". Then she sent the accused to buy kerosene so that she can ask PW1 as to why she was outside with the accused. She decided to do that because of the facial expressions of PW1 when she came inside [the house] and the way the accused was looking at PW1.*
- e) Then she asked MR who was there in the house to ask PW1 what the accused was doing outside. She said that MR was close to her children. MR then told PW1 that "your mum loves you, your mum wants to know what was Ta Eliko [doing] to you outside". Then PW1 said "Na Ma, Ta Eliko and I, we were underneath the house, I was pulling out the grass, he told me to remove my trousers. He was licking my bum, was kissing me, he was also telling me to sit on him. Then PW1 told them that "they went together at the back of the house where the septic tank is and he was kissing on my lips, he licked her back bum and her front bum, he then told me to lick his polo". Then PW1 said "Na Ma, my mother was calling 3 times, when I wanted to run, he grabbed my hand". PW1 also*

said "Na Ma, he has done this 3 times to me. On grandfather's birthday and when the lights were off".

- f) She said that when PW1 uses the word 'polo' she refers to the male private part. She said that she got scared upon hearing this and she called her husband. She told MR to take the children to her house before the accused come back. When the accused came PW1 was at MR's house and the accused saw PW1 with MR hanging clothes outside MR's house. The accused then waived at PW1 to come to him. Thereafter the matter was reported to police.
- g) During cross-examination she denied the suggestion that she told PW1 what to tell the police. She agreed that PW1 did not tell her directly about Ta Eliko. Then it was pointed out that it is stated in her police statement that PW1 told her about what Ta Eliko had done to PW1. She said that the police did not take her full statement and she did inform the police that she told MR to ask PW1.

29. The third witness for the prosecution ("PW3") was PW1's aunt MR. She said that;

- a) Her husband is the younger brother of PW2's husband and her house is just 10 footsteps away from PW2's house. She often visits PW2's house. She said that PW1 is very close to her.
- b) On 10/02/20 she went to PW2's house in the afternoon. At that time PW1 was having a shower and the accused was sitting beside the main door. She gave her 2 month old baby to the accused and told her baby that this is your 'Ta Eliko'. She said that she noticed from PW2's facial expressions that PW2 was scared and knew that something was wrong. After PW1 finished her shower, she heard PW2 telling the accused to go and buy kerosene. Then the accused left.
- c) Then PW2 told her to ask PW1 what she was doing when the mother was calling her. She knew that PW1 was afraid of the mother. She told PW1 that "your mother is not angry, she loves you". After that PW1 said "Na Ma, Ta Eliko had been doing bad things to me, Ta Eliko had been doing bad things to me three times". PW1 told her that first, Ta Eliko had touched her private part on the grandfather's birthday. The second incident was when the lights were off. PW1 told her that when the lights went off, PW1 was with the accused at home and her parents and the siblings were at PW3's house. Then Ta Eliko had told her to lean on the 'fence of the door' and then had used his tongue on her buttocks. PW1 then told her that on that day, the 10th, she was pulling the grass and Ta Eliko had told her to sit on him. Then PW1 went with Ta Eliko to the back and the same time her mother was calling. PW1 wanted to come but Ta Eliko kept on pulling her. PW1 ended the story there.
- d) After hearing that she was shocked and she went home with her baby, PW1 and her sister VD. PW2 told her to take them. Then while she was hanging the clothes outside the house, PW1 told her that Ta Eliko has been 'popping his tongue out' to her. PW1 also told her that Ta Eliko told her to suck his private part, she sucked and then she choked.
- e) She said that she also went to the birthday PW1 was referring to as the grandfather's birthday and it was around the month of November last year.

- f) *During cross-examination she agreed that certain details she mentioned in her evidence are not included in her police statement. She said that she told the police everything. She said that a woman police officer recorded her statement inside the car where the police officer was sitting in front of her. When she told the police officer about the three incidents, the police officer told her to just put it together as one day. Then it was suggested to her that she had the opportunity to state the things she missed when she gave the recent statement to police on 03/11/20.*
30. The prosecution case was concluded after tendering the birth certificate which is an agreed document as PE2. After the conclusion of the prosecution case, you heard this court explain certain rights to the accused. The accused opted to give evidence.
31. The accused said in his evidence that;
- a) *On 10/2/20 he went to PW1's house around 4.30pm to 5.00pm because her father called him to come and assist him (PW1's father). He went inside the house, rested for a while and then went outside to fetch some coconuts. PW1, PW2 and VD were there in the house, but when he stepped outside the house, PW1 followed him. He did not call her to come with him. He went to pick guavas with PW1 instead of coconuts. Then they came and sat underneath PW1's house.*
- b) *He said that from underneath the house two houses can be seen and the first house was 10 footsteps away. He was eating the guavas with PW1 underneath the house. They did not talk to each other while eating. After 2 to 3 minutes, PW1's mother called for PW1 and then PW1 went. He said that PW2 called PW1 three times repeatedly before PW1 left and she called PW1 to bring a vest. He told PW1 to come back before she left.*
- c) *After that PW2 also called him and then he went inside the house. He sat near the main door and the kitchen and the bathroom could be seen from where he was sitting. He saw PW1 having a bath and PW2 was in the living room. Then MR came and she gave her child to him. After MR gave her baby, he did not see PW1.*
- d) *After sometime, PW2 told him to go and buy some kerosene. He gave the baby to MR and left. When he returned, all the others were at MR's house.*
- e) *He said that he would visit PW1's village only when PW1's father calls or when there is a family function. During 01/09/19 to 09/02/20 he would have gone to that village about 7 to 10 times. He would always return without staying the night. He said that, when he had visited PW1's village he had never come across a power outage.*
- f) *He said that he attended the grandfather's birthday celebration between 01/09/19 to 09/02/20. During the celebration he saw PW1 but he could not recall whether he conversed with her.*

32. That was the evidence led in this case. Additionally, both parties have agreed with certain facts and you have been given copies of those admitted facts. The prosecution need not prove those facts. You should consider those as facts which have already been proven beyond reasonable doubt.

Analysis

33. In this case PW1 did not complain to anyone about the incidents on her own and she only came out with the allegations when PW3 questioned her on the request of PW2.
34. Prosecution says that PW2 and PW3 should be regarded as recent complaint witnesses. You may remember that according to PW1 she only told her mother, PW2 about the incidents. But according to PW2 and PW3, PW1 told them about certain incidents when PW2 got PW3 to confront her.
35. In this regard, please remember that, experience has shown that victims of sexual offences may react in different ways to what they went through. Some, in distress or anger may complain to the first person they see. Some, due to shame, fear, shock or confusion may not complain for some time or may not complain at all. However, if there is a delay, that may give room to make-up a story, which in turn could affect the reliability of the story. If the complaint is prompt, that usually leaves no room for fabrication. You should therefore consider whether there is a reasonable explanation for PW1 not to complain about the incidents on her own.
36. If you consider what PW1 told PW3 and then PW2 as a complaint, then you should consider whether that was a prompt complaint regarding the incidents and whether PW1 sufficiently complained of the offences the accused is charged with.

37. Such complaint need not specifically disclose all the ingredients of the offences and describe every detail of the incident, but should contain sufficient information with regard to the alleged conduct of the accused. However, please remember that this evidence of recent complaint is not evidence as to what actually happened between PW1 and the accused. PW2 and PW3 cannot confirm whether the content of that complaint is true because they were not there. It may only assist you to decide whether PW1 is consistent and whether or not PW1 has told you the truth. In the end you are deciding whether PW1 has given a truthful and a reliable account about her encounter with the accused concerning the offences the accused is charged with.
38. Counsel for the defence also pointed out to certain inconsistencies in the evidence given by the three prosecution witnesses. You should follow the directions I have already given you when you deal with those inconsistencies or any other inconsistency you may come across.
39. The defence also says that it was PW1's mother PW2 who has instigated this case and it was PW2 who had made up the allegations and she had made PW1 to tell that to Police and also to PW3.
40. In relation to count two where the accused is charged with the offence of indecent assault you should consider the evidence of PW1 in relation to what she said that happened at the grandfather's birthday and when the lights went off.
41. To prove the offence of indecent assault, the offence the accused is charged with on the second count, the prosecution should prove the following elements beyond reasonable doubt.
- a) the accused;
 - b) unlawfully assaulted PW1; and

- c) the said assault is indecent.
42. To prove the first element of the offence, the prosecution should prove beyond reasonable doubt that it was the accused who committed the offence.
 43. Assault is the use of unlawful force. A touch constitutes an assault if it is done without the consent of another or without a lawful excuse.
 44. The word “unlawfully” simply means without a lawful excuse. As the accused denies carrying out the assault as claimed by PW1, he is not claiming in this case that he had a lawful excuse.
 45. An assault is indecent, if it has some element of indecency and a right-minded person would consider such conduct indecent.
 46. In relation to the third, fourth and sixth counts the prosecution is relying on PW1’s evidence on what took place on 10/02/20. On count three and count four the accused is charged with the offence of rape.
 47. To prove the offence of rape in this case, the prosecution should prove the following elements beyond reasonable doubt.
 - a) the accused;
 - b) penetrated the anus of PW1 with his finger or penetrated the mouth of PW1 with his penis;
 - c) PW1 was below the age of thirteen years at the time of the alleged incident.
 48. The first element of the offence of rape again involves the identity of the offender. The prosecution should prove beyond reasonable doubt that the accused committed the offence.

49. The second element involves penetration. The law says that this element is complete on penetration to any extent. Therefore, it is not necessary to have evidence of full penetration or ejaculation. A slightest penetration is sufficient to satisfy this element.
50. Third element of the offence in relation to count three and four is not in dispute. Because it is admitted that PW1 was below the age of thirteen years.
51. On the sixth count the accused is again charged with the offence of indecent assault. I have already explained to you the elements of that offence.
52. You must remember to assess the evidence for the prosecution and the defence using the same yardstick but bearing in mind that always the prosecution should prove the case against the accused beyond reasonable doubt.
53. I must again remind you that even though an accused person gives evidence, he does not assume any burden of proving his case. The burden of proving the case against an accused beyond reasonable doubt remains on the prosecution throughout. An accused's evidence must be considered along with all the other evidence and you can attach such weight to it as you think appropriate.
54. Generally, an accused would give an innocent explanation and one of the three situations given below would then arise in relation to each count;
 - (i) You may believe his explanation and, if you believe him, then your opinion must be that the accused is 'not guilty'.
 - (ii) Without necessarily believing him you may think, 'well what he says might be true'. If that is so, it means that there is reasonable doubt in your mind and therefore, again your opinion must be 'not guilty'.

(iii) The third possibility is that you reject his evidence. But if you disbelieve him, that itself does not make him guilty. The situation would then be the same as if he had not given any evidence at all. You should still consider whether the prosecution has proved all the elements beyond reasonable doubt.

If you are sure that the prosecution has proved all the elements, then your proper opinion would be that the accused is 'guilty' of the offence.

55. Any re-directions?

56. Madam and Gentlemen Assessors, that is my summing up. Now you may retire and deliberate together and may form your individual opinion on the charges against the accused. When you have reached your separate opinion you will come back to court and you will be asked to state your separate opinion.

57. Your opinion should be whether the accused is guilty or not guilty on each count.



A handwritten signature in blue ink, appearing to read "Vinsent S. Perera".

Vinsent S. Perera
JUDGE

Solicitors;

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