

IN THE HIGH COURT OF FLJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 104 OF 2020

STATE

v

SUKULU TIKOITOGA

Counsel: Ms. K. S. Semisi for State

Accused in Person

Date of Trial: 20, 21, 22 July 2020

Date of Summing Up : 24 July 2020

The name of the Complainant is suppressed.

SUMMING UP

Madam Assessors:

1. We have now reached the final phase of this case. The law requires me, as the Judge who presided over this trial to sum up the case to you. Each one of you will then be called upon to deliver your separate opinion, which will in turn be recorded. As you listened to the evidence in this case, you must also listen to my summing up of the case very carefully and attentively. This will enable you to form your individual opinion as to the facts in accordance with the law with regard to the innocence or guilt of the accused person.
2. I will direct you on matters of law which you must accept and act upon.

3. Matters of facts however, are a matter entirely for you to decide for yourselves. So, if I express any opinion on the facts of the case, or if I appear to do so, it is entirely a matter for you whether to accept what I say, or form your own opinions. In other words you are the judges of fact. All matters of fact are for you to decide.
4. The Counsel for Prosecution made a submission to you about the facts of this case. That is her duty as counsel. You are not bound by her submission. However, you may properly take their submissions into account when evaluating evidence.
5. You will not be asked to give reasons for your opinions. Your opinions need not be unanimous although it is desirable if you could agree on them. I am not bound by your opinions. But I will give them the greatest weight when I deliver my judgment.
6. On the matter of proof, I must direct you as a matter of law, that the accused person is innocent until he is proven guilty. The burden of proving his guilt rests on the prosecution and never shifts.
7. The standard of proof is that of proof beyond reasonable doubt. This means that before you can find the accused guilty, you must be satisfied so that you are sure of his guilt. If you have any reasonable doubt as to his guilt, you must find him not guilty. Remember if you have any doubt, it must be reasonable. You cannot speculate. These doubts must be based solely on the evidence or lack of evidence that you have seen and heard in this court room.
8. Your opinions must be solely and exclusively based upon the evidence which you have heard in this court and upon nothing else. You must disregard anything you might have heard or read about this case outside of this court room. Your duty is to apply the law as I explain it to you to the evidence you have heard in the course of this trial. Approach the evidence with detachment and objectivity.
9. Your duty is to find the facts based on the evidence and apply the law to those facts. You are free to draw reasonable inferences from facts proved by evidence. However, the inferences should not be based on mere speculation.
10. An incidents of rape and domestic violence would certainly shock the conscience and feelings of our hearts. It is quite natural given the inherent compassion and sympathy with which human-beings are blessed. You may, perhaps, have your own personal, cultural, spiritual and moral thoughts about such an incident. You may perhaps have your personal experience of such a thing, which undoubtedly would be bitter. You must not, however, be swayed away by such emotions and emotive thinking. That is because you act as judges of facts in this case not to decide on moral or spiritual culpability of anyone but to decide on legal culpability as set down by law to which every one of us is subject to.

11. The State Counsel in her closing address highlighted alarming reported incidents and statistics of sexual and domestic violence in this country and what the minister concerned may have said about those. Those comments are not evidence and have nothing to do with this case. Therefore you should not take those comments into consideration in making your decisions. Please remember you are not here to play the role of one of a social engineer. You are judges of facts of this case and your decisions must strictly be based on evidence led in this trial.
12. As assessors, you were chosen from the community. You, individually and collectively represent a pool of common sense and experience of human affairs in our community which qualifies you to be judges of the facts in a trial. You are expected and indeed required to use that common sense and experience in your deliberations and in deciding.
13. I have given you a copy of the Information which contains 8 counts. Please refer to the Information. The accused has pleaded guilty to count No. 6. At the end of the Prosecution's case, the court found no evidence on count 7 to put the accused to his defence and the accused was acquitted of that charge. Therefore you are not called upon to express an opinion in respect of counts 6 and 7. The fact that the accused is guilty on one count does not necessarily mean that he should be guilty on other counts also. You must consider and weigh evidence against each count separately.
14. The Information read is as follows: Sukulu Tikoitoga is charged with the following offences:

COUNT 1

Statement of offence

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

Particulars of offence

Sukulu Tikoitoga on the 10th day of March, 2020 at Nasinu in the Central Division, had carnal knowledge of DT without her consent.

COUNT 2

Statement of offence

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

Particulars of offence

Sukulu Tikoitoga on the 10th day of March, 2020 at Nasinu in the Central Division, penetrated the vagina of DT with his fingers without her consent.

COUNT 3

Statement of offence

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

Particulars of offence

Sukulu Tikoitoga on the 10th day of March, 2020 at Nasinu in the Central Division, penetrated the vagina of DT with his fist, without her consent.

COUNT 4

Statement of offence

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

Particulars of offence

Sukulu Tikoitoga on the 10th day of March, 2020 at Nasinu in the Central Division, penetrated the anus of DT with the handle of a hammer, without her consent.

COUNT 5

Statement of offence

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

Particulars of offence

Sukulu Tikoitoga on the 10th day of March, 2020 at Nasinu in the Central Division, penetrated the mouth of DT with his penis without her consent.

COUNT 6

Statement of offence

ASSAULT CAUSING ACTUAL BODILY HARM : Contrary to section 207 (1) and (2)(b) of the Crimes Act 2009.

Particulars of offence

Sukulu Tikoitoga on the 10th day of March, 2020 at Nasinu in the Central Division, assaulted DT by throwing a hammer at her, cutting her hair, punching her ear and standing on her head, causing her actual bodily harm.

COUNT 7

Statement of offence

ASSAULT CAUSING ACTUAL BODILY HARM; Contrary to section 207 (1) and (2)(b) of the Crimes Act 2009.

Particulars of offence

Sukulu Tikoitoga on the 13th day of March, 2020 at Nasinu in the Central Division, assaulted by hitting her with a hammer, causing her actual bodily harm.

COUNT 8

Statement of offence

WRONGFUL CONFINEMENT: Contrary to section 286 of the Crimes Act 2009.

Particulars of offence

Sukulu Tikoitoga between the 10th day of March, 2020 and 13th day of March 2020 at Nasinu in the Central Division, wrongfully confined DT.

15. In order to prove count one, the prosecution must establish the following elements of the offence of rape beyond reasonable doubt
 - (a) The accused;
 - (b) Penetrated the vagina of the complainant "DT" 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.

16. In order to prove the count two, the prosecution must establish the following elements of the offence of rape beyond reasonable doubt
 - (a) The accused;

- (b) Penetrated the vagina of the complainant "DT" with his finger;
 - (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.
17. In order to prove count three, the prosecution must establish the following elements of the offence of rape beyond reasonable doubt:
- (a) The accused;
 - (b) Penetrated the vagina of the complainant "DT" with his fist;
 - (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.
18. In order to prove count four, the prosecution must establish the following elements of the offence of rape beyond reasonable doubt:
- (a) The accused;
 - (b) Penetrated the anus of the complainant "DT" with a handle of the hammer;
 - (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.
19. In order to prove count five, the prosecution must prove the following elements of the offence of rape beyond reasonable doubt:
- (a) The accused;
 - (b) Penetrated the mouth of the complainant "DT" 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.
20. In order to prove count eight, the prosecution must establish beyond reasonable doubt that:
- (a) The accused
 - (b) Wrongfully and unlawfully
 - (c) Between 10 March 2020 and 13 March 2020 confined the complainant so that she can't leave the house.
21. A slightest penetration is sufficient to satisfy the element of penetration in each count of rape.
22. Consent as defined in the Crimes Act, means consent freely and voluntarily given by a person with the necessary mental capacity to give the consent. The submission without physical resistance by a person to an act of another person shall not alone constitute consent. Simply put, if somebody does not resist physically it does not necessarily mean that she or he had given consent.

23. Proof can be established only through evidence. Evidence can be from direct evidence that is the evidence of a person who saw it or by a complainant who saw, heard and felt the offence being committed. In this case, for example, the complainant was a witness who offered direct evidence as to what she saw, heard or felt.
24. Documentary evidence is evidence presented in the form of a document. In this case, the medical report is an example if you believe that such a record was made. You can take into account the contents of the document if you believe that contemporaneous recordings were made at the relevant time upon examination of the complainant.
25. In evaluating evidence, you should see whether the story relayed in evidence is probable or improbable; whether witness is consistent in his or her own evidence and with his or her previous statements or with other witnesses who have gave evidence in court. It does not matter whether that witness was called for the Prosecution or for the Defence. You must apply the same test to evaluate evidence.
26. I will now direct you on how you should deal with evidence presented by the doctor as an expert witness. Usually, witnesses are not allowed to express opinions. They are allowed to give evidence on what they have seen, heard or felt by physical senses only. The only exception to this rule is the opinions of experts. Experts are those who are learned in a particular science, subject or a field with experience in the field. They can come as witnesses and make their opinions expressed on a particular fact to aid the court to decide the issues/s before court on the basis of their learning, skill and experience.
27. In this case, the doctor gave evidence as an expert witness. Doctor's evidence should not be accepted blindly. You will have to decide the issues before you by yourself and you can make use of doctor's opinion if his reasons are convincing and acceptable to you; and, if his opinion had been reached by considering all necessary matters that you think fit. In accepting doctor's opinion, you are bound to take into account the rest of the evidence led in the case. You have to bear in mind that the expert evidence does not implicate the accused or link him to the alleged offences even if you decide to rely on it. The doctor was not present when the alleged offences were committed and therefore he is unable to confirm the truthfulness of the history relayed to him. You can only use doctor's opinion to test the constancy of complainant's story.
28. Another relevant aspect in assessing truthfulness of a witness is his or her manner of giving evidence in court. You have seen how the witness's demeanor in the witness box when answering questions. How were they when they were being examined in chief, then being cross-examined and then re-examined? Were they forthright in their answers or were they evasive? But, please bear in mind that many witnesses are not used to giving evidence and may find court environment distracting.

29. In testing the credibility of a witness, you may consider whether there is delay in making a complaint to someone or to an authority or to police on the first available opportunity about the incident that is alleged to have occurred. If there is a delay, that may give room to make-up a story which in turn could affect reliability of the story. If the complaint is prompt, that usually leaves no room for fabrication. If there is a delay, you should look whether there is a reasonable explanation for such delay.
30. Bear in mind, a late complaint does not necessarily signify a false complaint, any more than an immediate complaint necessarily demonstrates a true complaint. There can be a reasonable explanation for the delay. It is a matter for you to determine whether, in this case, the lateness of the complaint and what weight you attach to it. It is also for you to decide, when complainant did eventually complain, whether it was genuine.
31. I now wish to direct you on recent complaint evidence. You heard DT say that she had relayed the incident to her neighbour, Eseta soon after the alleged incident. Eseta gave evidence and said that she received a complaint from DT. Please bear in mind that Eseta was not present during the alleged incident and therefore, she is not capable of giving evidence as to what actually happened between DT and the accused. What she heard from the complainant is not evidence as to what actually happened between the complainant and the accused. Recent complaint evidence is led to show consistency in the conduct of the complainant and is relevant in assessing her credibility. If you find Eseta to be a credible witness you may use the complaint she received to test the consistency and credibility of the complainant.
32. Evidence was also led that the complainant looked distressed, that she was crying, that her face was swollen, that she was shocked etc. shortly after the alleged incident. This is how you should approach the evidence of distress. You must be satisfied beyond a reasonable doubt that the complainant's distressed condition was genuine and that there was a causal connection between the distressed condition and the alleged sexual offence. The distress evidence is only relevant in assessing whether the alleged sexual incidents occurred. The distress evidence does not implicate the accused to the alleged offences. Before you use the evidence of distress, you must be sure that her distressed condition was not artificial and was only referable to the alleged sexual offences and not any other cause.
33. You may also consider whether there is a reason or motive on the part of the complainant to make-up an allegation against the accused. If she had such a motive, then you may think that this allegation has been fabricated.
34. Please remember, there is no rule in Fiji for you to look for corroboration of complainant's story to bring home an opinion of guilt in a case of sexual nature. The case can stand or fall on the testimony of complainant, depending on how you are going to look at her evidence.

35. I will now remind you evidence led in the trial. It is a short trial and things should be fresh in your memory. I will only summarize the salient features. If I do not mention a particular piece of evidence that does not mean it is unimportant.

Case for Prosecution

DT (The Complainant)

36. DT (26) was married to an American when she was 19. Her husband passed away in 2019 and currently she is in a *de facto* relationship.
37. DT said that in March 2020, she was in Sakoca with Sukulu for about 4 months in a boyfriend-girlfriend relationship.
38. On 9 March 2020, she came to Suva town with Sukulu. She was dropped at a bus by Sukulu and he asked her to go back home at Sakoca. Sukulu said that he will be home before 6 pm. At around 5 pm, she reached home and was waiting for Sukulu. He was late after 7 pm. There were no lights in the house and it was surrounded by bush. She was scared to stay alone at home. She came to the road and went to Caubati village, to her aunty's place.
39. Her cousin Luisa was at her aunty's place. She joined Luisa drinking grog. Sukulu called her at around 8 pm asking where she was. She did not say anything since she was scared that he might hit her at home. So he swore at her saying "your mother's vagina". She just switched off the phone.
40. On the next morning, that was on 10 March 2020, when she switched on the phone, Sukulu called again and asked where she was. She told him that she was in Caubati at her aunt's place. He said he was coming to pick her up. She did not reply back. Sukulu came over to her aunty's place at around 8 am. He looked angry. So she asked Luisa if she too can go with her because she knew that, when they reach home, he will hit her. Luisa declined because her husband had gone to work and she had to stay with the children at home.
41. After that, she left for Sakoca with Sukulu at around 9 am. Before she left, she told Luisa that she was scared. Luisa persuaded her to stay back. She was double minded whether to stay back or go, but she insisted that she should go with Sukulu. She said she couldn't do much because they were staying together in Sakoca. When they walked down to catch a bus, they had a nice chat and so she was not scared when she entered the house in Sakoca.

42. After a short while, Sukulu picked up a metal hammer and threw it at her and it landed on her back. She got a shock and she cried because it was painful.
43. After that, he told her to move forward to him. She was scared. He was seated on the bed. He asked her where she was. She told him she was in Caubati. He then told her to take off her clothes. She was wearing a red and white vest, a white shorts, a pink bra and a blue panty. He then told her to lie down on the bed and spread her legs. She couldn't do anything because she was scared. She just followed his instructions. She laid herself down on top of the bed and spread her legs. Then he inserted his two fingers into her vagina. She felt pain inside her vagina. She begged for his forgiveness for leaving the house. She was crying and did not know what to do. She told him to stop inserting his fingers into her vagina. He kept on inserting his two fingers into her vagina.
44. After that, he inserted his fist into her vagina. It was so painful that she felt like her vagina was going to burst. She did not agree for him to do that. She was crying and begging him to stop but he kept on inserting his fist into her vagina. He told her to keep quiet or he will get the hammer and hit her head with it.
45. He took the panty she was wearing and put it inside her mouth. He took a black sock that was on top of the bed and tied her mouth around the head.
46. He then told her to turn around and bend down on the side of the bed. He picked up the hammer which he threw at her and he inserted the handle of the hammer into her anus and pulled it out again. She did not agree for him to insert the handle of the hammer into her anus. She was scared, her body felt weak. She could not do much. She thought she was going to die. She could not say anything because her mouth was tied up.
47. While he was inserting the handle of the hammer into her anus, she fell on the floor, he then inserted two fingers again into her vagina when she was down on the floor. She told him to stop, but he kept inserting his finger into her vagina.
48. He then told her to stand up and, when she stood up, she saw white sheet she fell off on to tainted with blood. He took out the panty from her mouth and forced her to suck his penis and, if not, he will get the scissors and strike her face with it and cut her hair. She then sucked his penis and, while he was sucking, he got the scissors and cut her hair. She could not do much and cannot run away.
49. He then told her to lie down and forced her to have sex with him. She told him that she did not want to have sex with him. He then punched her ear. When she was lying down on the

floor, he inserted his penis into her vagina. She was crying, scared and weak. She asked him to stop. She begged forgiveness but he kept inserting his penis into her vagina. He then pulled out his penis from her vagina and told her to sleep. The both then slept on the floor.

50. He woke up first in the afternoon and he stepped on her head while she was still sleeping. He stomped on her head with the sole of his foot. She was scared and shocked. He then told her to stand up, go to the kitchen and cook some food as he was hungry. She cooked and they had dinner.
51. After having dinner, Sukulu closed up the door and they went to sleep. He just pushed the door but it was not locked. She said that she could not leave the house and run away because she was weak. Her head was painning. She covered it up with a towel because she was scared that he might do other things and hit her face.
52. On 13 March 2020, she was home at Sakoca with Sukulu. On that morning while having breakfast, he asked her again what she was doing in Caubati and which men she had slept with. She told him that she did not sleep with any man. He told that she was lying and then he punched her face. She was crying and sought forgiveness from him but he did not accept it. When she brought over his tea, he again told her that she had slept with a man in Caubati. Then he took the cup of tea and spilled it on her.
53. DT said that she didn't leave the house and run away because if she did, he would run after her and punch her again.
54. She said she was weak and wanted to sleep. While sleeping, he came and laid beside her. She was not feeling okay. She felt that her body could not take it anymore and stay in that place anymore. She tried to sleep but she couldn't because she felt that he can repeat what he had done to her earlier. While Sukulu was still sleeping, she went to the kitchen and was thinking of ways to leave the house and seek help. She thought of taking the solar lights to the neighbor to charge it, so if he woke up, she can use it as an excuse.
55. She went out at around 4 pm and went to her neighbour Eseta's house. Eseta asked what happened. She told her that Sukulu had punched her, gotten the hammer and inserted it into her anus. She asked Eseta for \$5 and also to drop her at the main road where she can catch a taxi. She also asked Eseta to use her phone to call her brother. She talked to her brother on Eseta's phone. She was crying while talking. She told her brother Moses about the fight and what Sukulu had done to her in Sakoca.

56. Eseta dropped her at the road. She went straight to her brother at the yacht club at Walu Bay. When she met with her brother, she told what had happened on that particular day, about the fight with Sukulu but she did not tell him everything because she was ashamed. When they got to the yacht, she told her sister-in-law everything. Her brother then called the Lami Police Station. Two Police officers came and took her to Central Police Station. She slept at the police station till the next morning. On 14 March 2020, after taking her statement, she was taken and to the CWM Hospital to be medically examined. At the CWM Hospital, she was medically examined by a male doctor.
57. She went back to Sakoca, to get her things. She was told that Sukulu had left the house so she could not get her things. Sukulu had informed his sister for them to come and see him. When Sukulu was in the remand centre, she did not go there to visit him.
58. She said that between 10 March 2020 and 13 March 2020, she agreed to stay with Sukulu at Sakoca as she could not go anywhere else. She had to follow his instructions. After a short break, she continued her testimony and said that she was locked inside the house. Because she was injured, Sukulu was scared that she could run away and report him at the Police Station.
59. When the evidence in chief was over, Sukulu exercised his right to cross-examine the complainant. Under cross-examination, DT admitted that she came to see Sukulu at the court house with his sister when he called her and requested them to come to the court house. She admitted that she came 3 times to the court to see him. She admitted that on one occasion, Sukulu had called her and asked her to bring over a mobile phone and his lunch. DT identified the mobile phone that was given to Sukulu when it was shown to her. She admitted giving a photograph to Sukulu on his request.
60. She admitted that when they were residing at his sister's place in Lami, there had been fights between them that were not reported to police. She admitted that in January 2020, she went to Vanua Levu with Sukulu and spent 2 days in the bush. She admitted that there was a fight with Sukulu in Vanua Levu when Sukulu assumed that she was fixing one of the boys at the host family. She denied that the reason why she came to visit Sukulu in Court was because the statement she had given to the police was not a true.
61. She admitted that, at one time, she came to Court with a withdrawal letter. She clarified that the letter was written by Sukulu and that she and Sukulu's sister re-wrote the same and lodged it with the DPP.
62. She denied that she made up a statement that Sukulu inserted his fist into her private part because he had assaulted and cut her hair. She admitted having had sexual intercourse with

Sukulu twice at the yacht after returning from Vanua Levu. She denied having had anal intercourse with Sukulu.

63. Under re-examination, DT said that she visited Sukulu in court and re-wrote Sukulu's letter to the DPP because he had told her that if she did not come and did that he will commit suicide inside the remand centre. She felt sorry for him and that is the reason why she came over.

PW2 - LUISA KALOUGATA

64. Luisa said that on 9 March 2020, at night, her cousin DT came to her house. They had a grog session and had dinner together at home. She noted a black eye on the right side of DT's face. The next morning, 10 March 2020, DT's boyfriend Sukulu came home and was telling DT for them to go to Sakoca. DT requested her to accompany her. She declined because her husband had gone to work. Sukulu's face looked angry and the way he spoke to DT was threatening.

PW3- ESETA SILIKA

65. Eseta said that on 13 March 2020, when she was cooking dinner at home in Sakoca, DT came at around 7 pm, requesting if her light could be charged. When DT was standing at the porch DT looked scared, she had a black mark on her face and also her hair was cut really short. She asked her what happened. DT started crying and said she wanted to go to her place in Caubati. DT said that she was scared of Sukulu. DT said that Sukulu really made her angry and he took the hammer and inserted it into her anus. She requested some money for taxi fare. She gave \$ 5 and dropped DT at the main road. DT also used her husband's phone to call her brother. Eseta also said that before she came home on Friday afternoon, she heard DT shouting at her place on that previous evening.

PW4- MOSESE WAINI

66. Moses is the brother of DT. He said that on 13 March 2020, he was at the Yacht club where he was employed. He received a call from his sister DT at around 7.30 pm. DT told him that her husband Sukulu had assaulted her and if she could come over. So he was waiting for DT to come. When DT came, she looked angry. He couldn't recognize her sister because her hair was cut short. She was only wearing shorts a top and no shoes. She didn't walk properly; her face was swollen. He took her to the yacht and called the Lami Police Station. A male officer and a female officer came on that evening and took DT to Totogo Police Station. DT returned only on the next day afternoon. Spending two days with him, DT returned back home on 17 March 2020.

67. Dr. Kapoor is a MBBS qualified Obstetrician and Gynaecologist based at the CWM Hospital. He examined DT at the CWM Hospital on 14 March 2020 and filled up the Medical Examination Form that was tendered in evidence.
68. His initial impression of this patient was that she was scared and in pain. He did a head to toe examination with adequate exposure. After his examination he found a laceration or tear/cut on the posterior vagina, Tenderness and injury on right scapula region and left forehead which had pain upon touch. The patient had a very ugly looking hair-cut. He also noted a laceration on anal area. There was evidence of a forced penetration of the anus.
69. His professional opinion was based on the history provided by the patient and on his own examination. The fresh injuries, probably less than 3 days old, on the vagina and the anus are consistent with a vaginal penetration and an attempted anal penetration. There was evidence of forceful penetration of the anus by an object too big to penetrate through, resulting in notable superficial tears at the anus. He agreed the proposition that it is possible that the injuries on vagina and anus could have been caused between 10 March 2020 and 13 March 2020 because there was an infection, for which an antibiotics was given. The history and finding of his examination was consistent with an assault, positive for vaginal penetration and attempted anal penetration.
70. The doctor agreed that the vaginal penetration could have been caused by a forced penetration with anything, it could be the penis, any foreign object, stick, timber, bottle, or it could be a finger or fist. The ugly hair cut is one was like forcefully cut by someone who is not in the right state of mind. Laceration on the anal area is again a forced penetration could be by anything, a penis, stick or any other object that is big enough not even to penetrate right through, probably like a handle of a hammer.
71. That, is the case for the Prosecution. At the close of the Prosecution's case, you heard me explain to the accused what his rights were in defence and how he could remain silent and say that the Prosecution had not proved the case against him to the requisite standard or he could give evidence in which case he would be cross-examined.
72. The accused elected to give evidence. That is his right. Now I must tell you that the fact that an accused gives evidence in his own defence does not relieve the Prosecution of the burden to prove their case to you beyond reasonable doubt. Burden of proof remains with the Prosecution throughout. Accused's evidence must be considered along with all the other evidence and you can attach such weight to it as you think appropriate.

Case for Defence

Sukulu Tikoitoga

73. Sukulu Tikoitoga said that he had an argument with DT and admitted assaulting and cutting her hair. He denied that he had had sex with her on that particular day. He denied that whilst she was asleep, he stood on her head or threw a hammer at her.


Analysis

74. Madam assessors, the accused is charged with five counts of Rape, one count of Assault Causing Actual Bodily Harm and one Count of Wrongful Confinement. There are 7 counts hence you must consider evidence against each count separately.
75. Prosecution called five witnesses and they based their case substantially on the evidence of the complainant. The resolution of the dispute depends on whether you accept the complainant as a truthful witness. If you are satisfied that she is a truthful witness you can safely act upon her evidence in coming to your conclusion. No corroboration is required.
76. The Prosecution says that the complainant is consistent and reliable. It relies on recent complaint evidence, distress evidence and medical evidence to prove complainant's consistency. The Prosecution says that the complainant relayed the alleged incident to Eseta at the first available opportunity and she made a prompt complaint to police. Eseta was called to show that she had received a complaint from the complainant and that the complainant was in a distressed condition at that time she relayed the incident to her.
77. I have directed you on how you should deal with recent complaint evidence and distress evidence. The Prosecution says that the conduct of the complainant is consistent with her evidence that she was raped. Having considered the evidence led and observed her demeanour you decide if the conduct of the complainant is consistent with her evidence that she was raped in various forms as charged.
78. Prosecution also relies on medical evidence to prove consistency of the complainant. They say that the doctor's findings upon complainant being examined on 14 March 2020 are consistent with complainant's evidence that she was raped on 10 March 2020, as alleged in the information and that she was assaulted as charged. Having taken into consideration the directions I have given and the evidence led in the trial, you decide what weight you should attach to doctor's opinion and if his evidence is consistent with that of the complainant.

79. The accused denies all the charges. He says that the complainant did not tell the truth in court. He says that the complainant made up these allegations against him because he had punched her and cut her hair after an argument. He says that complainant visited him thrice at the court, even brought food to him after the alleged incident and she wanted to withdraw the complaint against him because the allegation she made was not true. You heard the complainant's explanation as to why she visited the accused in court and what made her to lodge a letter with the DPP's office. You decide if the complainant had a motive to fabricate these allegations against the complainant.
80. You watched accused giving evidence in Court. He denies all the charges. It is up to you to decide which version is to believe and whether you could accept the version of the Defence. 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 their case beyond reasonable doubt.
81. If you believe the complainant is telling the truth that the accused penetrated complainant's vagina with his penis on the 10 March 2020, you should find the accused guilty on count 1.
- If you believe the complainant is telling the truth that the accused penetrated complainant's vagina with his fingers on the 10 March 2020, you should find the accused guilty on count 2.
- If you believe the complainant is telling the truth that the accused penetrated her vagina with his fist on the 10 March 2020, you should find the accused guilty on count 3.
- If you believe the complainant is telling the truth that the accused penetrated complainant's anus with a handle of a hammer on the 10 March 2020, you should find the accused guilty on count 4. However if you are not sure if the handle of the hammer penetrated the complainant's anus or not, you should not find the accused guilty of rape but you should find him guilty of Attempt to Commit Rape, if you are sure that the accused had made a real attempt to penetrate her anus and not a mere preparation.
- If you believe the complainant is telling the truth that the accused penetrated complainant's mouth with his penis on the 10 March 2020, you should find the accused guilty on count 5.
- If you believe the complainant was confined to the house, directly or indirectly restricting her movements you should find the accused guilty on count 8.
82. However, if you do not believe the complainant's evidence regarding the alleged offences, or if you have a reasonable doubt about the guilt of the accused, then you must find the accused not guilty on each count.
83. Your possible opinion is either guilty or not guilty on each count. Please remember, you are to consider evidence against each count separately.

84. You may now retire to deliberate on your opinions. Once you have reached your decisions, you may inform our clerks, so that we could reconvene, to receive the same.
85. Any re-directions?




Aruna Aluthge
Judge

At Suva

24 July 2020

Solicitors: Office of the Director of Public Prosecution for State