

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]

High Court Criminal Case No. HAC 146 of 2016

BETWEEN : STATE

AND : RISHI LAL

Counsel : Mr Tueneku for the State
Mr A. Dayal for the Accused

Dates of Hearing : 29, 30 April and 01 May 2019

Closing Speeches : 01 May 2019

Date of Summing up: 02 May 2019

SUMMING UP

Ladies and gentleman assessors,

1. I must now sum up the case to you. You must then retire to consider your opinion. I will direct you on the law that applies. You must accept those directions I give you on matters of law. You are to decide the facts of the case,

based on the evidence that has been led before this court. You will then apply those directions to the facts and give me your opinions as to whether the Accused person is guilty or not guilty in respect of each count.

2. You are bound by the directions I give you as to the law. But you are not obliged to accept any opinion I may express or appear to have expressed while going through evidence. If you do not agree with that opinion you will ignore it and form your own opinion with that evidence.
3. You must base your opinion only and only on the evidence given by the witnesses. But a few things that you heard in this court are not evidence. Opening submission, closing submissions, statements, arguments and comments made by the counsel and this summing up are not evidence.
4. You may act only upon the evidence given by the witnesses in this case and nothing else. But you may consider those submissions and arguments only as a guidance to understand the case put forward by each party when you evaluate evidence and the extent to which you do so is entirely a matter for you.
5. If you have acquired any knowledge about the facts of this case outside this court room, you must exclude that information from your consideration. Make sure that external influences play no part in forming your opinion. You will also not let any sympathy or prejudice sway your opinions. Emotions has no role to play in this process and do not let anger, sympathy, prejudice or any other emotion shroud the evidence presented in this court room. You only have to consider the evidence adduced in respect of each element of the offence. You must not form your opinion based on the emotions, sympathies, prejudices, speculations and morality. As I said before you only have to consider the evidence given by the witnesses in this case and nothing else to form your opinions.

6. I will give you only a summary of evidence. I will not go through every word uttered by the witnesses in this case, and if I leave out something that seems to be important, nothing stops you from taking that into account. Because you decide the facts.
7. After this summing up, you may give your individual opinions as the representatives of the community. You may reject or accept any evidence in forming your opinion. Your opinions need not be unanimous. And you need not give reasons for your opinions.
8. Your opinions will assist me in giving my judgement. I will give the greatest weight to your opinions in my judgement. However, I am not bound to conform to your opinions.

Ladies and gentleman assessors,

9. I will now mention some considerations that may assist you in evaluating evidence. As I said before you may reject the whole evidence of a witness, accept the entirety or even accept only a part of a witness's evidence and may reject the rest. You have to decide whether a witness has spoken the truth or correctly recalled the facts and narrated them.
10. You have seen the demeanour of the witnesses and how they gave evidence in court. You have seen whether they were forthright or evasive in giving evidence. But you may also bear in mind that some witnesses have good memory, some may not remember every detail and it is also likely that some may perceive the same incident differently and narrate differently. You have to use your common sense in assessing the reliability and credibility of witnesses. Remember, that many witnesses are not comfortable in giving evidence in a court room, they may act in anxiety and get distracted in this environment.

11. Generally, complainants of sexual offences react differently when they got to narrate the traumatic experience they have gone through. Some may display obvious signs of distress, anxiety and restlessness, but some may not. Every witness has their own way of expressions when they give evidence about an experience, specially a traumatic one. Conversely, it does not follow that signs of distress by the witness confirms the truth and accuracy of the evidence given. In other words, demeanour in court is not necessarily a clue to the truth of the witness's account. It all depends on the character and personality of the individual concerned.
12. Subsequent conduct of complainants of sexual offences can vary from person to person. Some, in distress, shame or anger, may complain to the first person they see. Some may react instantly and report because of their education level, social status, financial independency and for other similar reasons. Some may not complain at once due to lack of education, social status and financial dependency. There could be others, who react with shame, fear, shock or confusion, may not complain at once. A complainant's reluctance to report an incident could be due to many reasons. It could be social stigma which follows such incidents or cultural taboos in her society. Some may not even complain at all due to the fear that it may damage family ties. A complainant may not be comfortable to report a matter to close family members due to the respect, fear, or due to the reluctance to openly discuss matters relating to sex with elders.
13. A late complaint does not necessarily signify a false complaint. Similarly, an immediate complaint does not necessarily demonstrate a true complaint. It is a matter for you to decide what weight should be attached to the promptness or the lateness of the complaint.
14. Another consideration may be; has the witness said something different at an earlier time or whether he or she is consistent in his or her evidence? In assessing credibility of the testimony of a witness on consistency means to consider whether it differs from what has been said by the same witness on another occasion. Obviously, the reliability of a witness who says one thing one

moment and something different the next, about the same matter is called into question.

15. In weighing the effect of such an inconsistency or discrepancy, consider whether there is a satisfactory explanation for it. For example, might it result from an innocent error such as faulty recollection; or else could there be an intentional falsehood. Be aware of such discrepancies or inconsistencies and, where you find them, carefully evaluate the testimony in the light of other evidence. Credibility concerns honesty. Reliability may be different. A witness may be honest enough but have a poor memory or otherwise be mistaken.
16. Does the evidence of a particular witness seem reliable when compared with other evidence you accept? Did the witness seem to have a good memory? You may also consider the ability, and the opportunity, the witness had to see, hear, or to know the things that the witness testified about. These are only examples. You may well think that other general considerations assist. It is, as I have said, up to you how you assess the evidence and what weight, if any, you give to a witness's testimony.
17. I must now explain to you, how to use that credible and reliable evidence. These are directions of the applicable law. You must follow these directions.
18. When you have decided the truthfulness and reliability of evidence, then you can use that credible evidence to determine the questions of facts, which you have to decide in order to reach your final conclusion, whether the Accused is guilty or not. I have used the term "*question of fact*". A question of fact is generally understood as what actually had taken place among conflicting versions. It should be decided upon the primary facts or circumstances as revealed from evidence before you and of any legitimate inference which could be drawn from those given sets of circumstances. You as assessors, in determining a question of fact, should utilise your common sense and wide experience which you have acquired living in this society.

19. It is not necessary to decide every disputed issue of fact. It may not be possible to do so. There are often loose ends. Your task is to decide whether the prosecution has proved the elements of the offence charged.
20. In determining questions of fact, the evidence could be used in the following way. There are two concepts involved here. Firstly, the concept of Primary facts and secondly the concept of inferences drawn from those primary facts. Let me further explain this to you. Some evidence may directly prove a thing. A person who saw, or heard, or did something, may have told you about that from the witness box. Those facts are called primary facts.
21. But in addition to facts directly proved by the evidence or primary facts, you may also draw inferences – that is, deductions or conclusions – from the set of primary facts which you find to be established by the evidence. If you are satisfied that a certain thing happened, it may be right to infer that something else also occurred. That will be the process of drawing an inference from facts. However, you may only draw reasonable inferences; and your inferences must be based on facts you find proved by evidence. There must be a logical and rational connection between the facts you find and your deductions or conclusions. You are not to indulge in intuition or in guessing.
22. In order to illustrate this direction, I will give you an example. Imagine that when you walked into this Court room this afternoon, you saw a particular person seated on the back bench. Now he is not there. You did not see him going out. The fact you saw him seated there when you came in and the fact that he is not there now are two primary facts. On these two primary facts, you can reasonably infer that he must have gone out although you have not seen that. I think with that you will understand the relationship between primary facts and inferences that could be drawn from them.
23. According to the law the prosecution must prove its case beyond reasonable doubt. For the prosecution to discharge its burden of proving the guilt of the Accused, it is required to prove beyond reasonable doubt that he is guilty. The

burden of proof remains on the prosecution throughout the trial. For this purpose, the prosecution must prove every element of the offences beyond reasonable doubt.

24. The Accused need not prove his innocence. The fact that the Accused has given evidence does not imply any burden upon him to prove his innocence. It is not his task to prove his innocence. The burden is on the prosecution to prove the guilt of the Accused. That means you must be satisfied that the state has proved every element of the offence beyond reasonable doubt. That doubt should be a reasonable one and if you are left with a reasonable doubt you must find the Accused not guilty. If you are not left with any such doubt and if you are sure that the prosecution proved every element of the offence you must find him guilty.

Ladies and gentleman assessors,

25. We will now look at the offence that the Accused is indicted for. The Accused is indicted for one count of rape as per the Information filed by the Director of Public Prosecutions;

Statement of Offence

RAPE: Contrary to Section 207 (1) and 207(2) (a) of the Crimes Act 44 of 2009.

Particulars of Offence

Rishi Lal between the 4th day of December, 2015 and the 5th day of December 2015 at Namau, Ba in the Western Division, had carnal knowledge of Rovina Lata without the said Rovina Lata's consent.

26. I will first explain what matters you must take into consideration to determine whether the offence of rape is proved by the prosecution. The prosecution must prove the following elements beyond reasonable doubt;

- a. the Accused;
- b. penetrated the vagina of the complainant with his penis;
- c. without the consent of the complainant; and
- d. the Accused knew or believed that the complainant was not consenting; or the Accused was reckless as to whether or not she was consenting.

27. The first element is concerned with the identity of the person who committed the offence. The prosecution should prove beyond reasonable doubt that the Accused and no one else committed the offence.

28. Having carnal knowledge means having penile sexual intercourse with that other person or having sexual intercourse with the use of penis. The second element involves the penetration of the complainant's vagina with the penis. The law states that even the slightest penetration of the vagina is sufficient to constitute the offence of rape. Therefore, it is not necessary to have evidence of full penetration or ejaculation. The prosecution must prove beyond reasonable doubt that the Accused penetrated the vagina of the complainant with his penis to any extent.

29. As far as the evidence in this case is concerned you have seen that the Accused does not dispute that he had sexual intercourse with the complainant. Therefore, the only main issue that you have to consider is the element of consent.

30. The third and the fourth elements are based on the issue of consent. To prove the third element of the offence of rape, the prosecution should prove that the Accused penetrated the complainant's vagina without her consent.

31. Consent is a state of mind which can take many forms from willing enthusiasm to reluctant agreement. For the offence of rape, the complainant consents only, if she had the freedom and capacity to voluntarily make a choice and express that choice freely. Consent obtained through force, threat or intimidation, fear

of bodily harm, or by use of authority is not considered as consent given freely and voluntarily. Submission without physical resistance by the complainant alone, to the act of the other person will not constitute consent.

32. The complainant must have the freedom to make the choice. It means she must not have pressured or forced to make that choice. The complainant must have mental and physical capacity to make that choice. Further, the consent given by the complainant may have been limited to a particular sexual activity and not for another sexual activity. Also, the consent can be withdrawn at any time. It is an ongoing state of mind and its revocable once given. Consent of a person for sexual intercourse cannot be assumed.
33. In addition to proving that the complainant did not consent to the Accused to insert his penis into her vagina, the prosecution should also prove that, either the Accused knew or believed that the complainant was not consenting; or the Accused was reckless as to whether or not the complainant was consenting. This is the fourth element of the offence of rape.
34. The Accused was reckless, if the Accused realised there was a risk that she was not consenting and having regard to those circumstances known to him it was unjustifiable for him to take the risk and penetrate the vagina, you may find that the Accused was reckless as to whether or not the complainant was consenting. In other words, you have to see whether the Accused did not care whether the complainant was consenting or not. Determination of this issue is dependent upon who you believe, whilst bearing in mind that it is the prosecution who must prove it beyond any reasonable doubt.
35. If you believe that the prosecution proved all the elements of the offence you may find the Accused guilty. Likewise, if you believe that the prosecution failed to prove all the elements of the offence you must find the Accused not guilty.

Ladies and gentleman assessors,

36. Now I will refresh your memory and give a brief outline of the evidence adduced in this case. However, you should consider the entirety of the evidence adduced in this case when forming your opinions. The prosecution called two witnesses to prove the case against the Accused.
37. The first prosecution witness was the complainant in this case. Rovina Lata gave evidence that in 2015 she was living in Namau, Ba with her husband, two children and her in laws. She said that her husband is Ronald Kumar. Ronish Kumar and Richard Naresh are her two children. She said her children were 9 years and 4 years at that time. She said that on 4 December 2015 she was with her two children at home. She said that her husband and the in laws were not at home on that particular day.
38. The complainant said that around 6pm to 7 pm when she went to the washroom the Accused, Rishi Lal came to her place. She said Rishi Lal was sitting beside the sitting room door and she laid a mattress in the sitting room as her son said it was very hot. She had told the Accused that her husband had gone to Tauvegavega. The complainant said that the Accused told her son to mix grog and he was drinking grog while sitting at her place.
39. Rovina Lata said that she fell off to sleep on the mattress with her two children. When she woke up around midnight the Accused had finished his grog and she had asked him to leave as she wanted to close the door and sleep. The complainant said that the Accused then told her that she did not keep her promise. When she had asked him about the promise the Accused had held her hand and had dragged her. She said she told him to leave. She said then the Accused held her hand and told her "*come are yaar*". She said the Accused took her to her mother in law's room. The complainant further said that the Accused pushed her to the bed and made her sit on the bed. She said that she did not wake up her kids as she thought that they would be afraid.

40. The complainant said that the Accused took off his clothes and pulled her skirt up. She said that she tried to stop him with her hands. She also said that when she tried to stand up the Accused pushed her down with his body. She said that she kept on saying no. The complainant said then the Accused had sex with her. She said that the Accused inserted his penis into her vagina. She said that she tried to stop him and said no to him. She said that the Accused did not listen to her and he kept on doing it. She said that she did not count how many times he inserted his penis into her vagina, but she said it may be six or seven times.
41. The complainant said that she could not shout as she thought her children will be afraid. She said that her neighbours house is far away and they would not have heard her shouting. She also said that she was scared that her children could be hurt. She said after that the Accused went outside and started smoking. Then she said that she heard him leaving on horseback.
42. The complainant gave evidence that she had suicidal thoughts after the incident. But she said because of the children she did not commit suicide.
43. According to the complainant's evidence she had gone to her brother's place in Rarawai, Ba on 06 January 2016. She said that she told her brothers and the sister in law about what happened to her. She also said that it took so long for her to report it as she was scared of her husband and the mother in law as they usually fight with her. The complainant said that she then reported the matter to the police and she also went to the Women Crisis Centre. According to her evidence she had been going to the Women Crisis Centre even before this incident, due to the disputes between her and her husband.
44. The complainant identified the Accused in court as Rishi Lal. She said that he is her husband's cousin. She also said that the Accused used to come to her place very often.

45. Under cross examination the complainant said that she may have given two statements to the Police. However, she later answered the questions put to her as follows;

Q: Now witness you stated earlier that you had given two statements to the Police, would you agree?

A: I have given one statement then after that they call my husband to have a talk with him and one time me and my husband went together.

Court: The counsel is not asking all that, he is asking before you said that you gave two statements, do you still confirm that?

A: I can't confirm whether I have given two statements.

46. She later admitted that she gave two statements when she was shown the two statements. She also said that her husband was away for three to four days at the time the alleged incident occurred. However, during cross examination, she said that the Accused was waiting for her husband. When she was asked whether she told the Accused that her husband is not coming home, she said that she told him that. She said that she mentioned it in her statement. She was further cross examined on this point as follows;

Q: Now witness when you gave this Police statement did the Police officer writing your statement read out back to you?

A: They did read, they have read little bit then I stopped them.

Q: Why did you stop them?

A: I asked them to read it later then after that I didn't ask.

47. During the cross examination she admitted that she reported the matter to the Police after about one month. When she was asked about her education she responded as follows;

Q: Witness could you tell your level of education?

A: Secondary level education

Q: Till which Form witness?

- A: Class 4
Q: Is that primary school?
A: Primary, Sorry.

48. Under cross examination the complainant admitted that the Accused told her the words "Are yaar chalo" in Hindi. When she was asked why didn't she mention that her statement she responded as follows;

" One Fijian officer took my statement, lady police officer. She took my statement. May be she didn't understand. May be she didn't understand the meaning of " Are yaar".

49. When she was asked as to why she has not stated to the Police about the Accused dragging her she said "I was scared I thought that when I will go to the Station I will report all this to the Police officers. At that time, I was not in a real state of mind and I also thought that I would give them full information of what has happened, and I was also thinking all this while I want to commit suicide".

50. The complainant was further cross examined as follows;

- Q: Witness in your evidence in chief you had stated that my client when took you to the bed, he had pushed you, is that your evidence?
A: He pushed me from front.
Q: And he made you sit on the bed that's your evidence in court?
A: When he reached the bedroom he then pushed me on the bed.
Q: Witness in your first statement dated 11th January 2016 , in line 28 and 29 you are stating that my client made you lie in bed looking upwards then he came over you. You are not mentioning in your statement that he pushed you at any particular place?
A: He did not push me forcefully but he pushed me in such a way that I fell on the bed.

Q: Now witness in your evidence in chief you stated to the honourable court that all this material time you were saying no to him and was telling him not to do anything would you agree?

A: Yes.

Q: Now witness in your statement when the alleged incident took place, nowhere in your statement you are stating that fact?

A: I have told all this to the Police officers because my husband went on the other day and my husband had given the statement to the criminal police officers.

Q: So witness would you agree that you have not mentioned this material fact in your statement to the Police that you were at all material time saying no to the Accused, would you agree yes or no?

A: No

51. The witness also said that she gave herself to him as she was scared. She said that she stopped him. She said that the only thing she didn't do was yelling as she didn't want to wake up the children and scare them. When the complainant was asked as to why she could not run away she responded as follows;

Q: Now witness when my client was getting undressed, why didn't you run away?

A: I tried to run away just because it was dark outside, I didn't know where to run to.

Q: Witness you could have run anywhere in the dark and hid yourself, would you agree?

A: I was told that it is a haunted place and there is a slope nearby if I would have run I would have just fallen down and there are no trees where I could have gone and hid myself. And I am also thinking what if somebody else outside and if I could have run he could have caught me.

52. The complainant was asked whether she was wearing an undergarment. She confirmed that she was wearing one, but she didn't say who removed it. When it was suggested that she went and removed it before calling the Accused to her room she said "no". It was also suggested to the complainant that she was closing her eyes as she was feeling shameful. The complainant denied that and said that she was pushing him. She admitted that she went and had a bath after the incident.

53. The complainant admitted that she has stated in her statement that she reported the incident to the Women Crisis Centre on 07th December 2015. She further responded as follows;

Q: Now witness could you tell the court why after visiting Women Crisis Centre on 07th December 2015 regarding the alleged incident why you did not report to the Police until 11th January 2016?

A: I wanted to speak to my parents and I wanted to hear what they wanted to say then after talking to them I wanted to go to Police.

Q: Witness didn't the Women Crisis Centre officers advice you to go to the Police right away ?

A: I don't recall whether they had asked me to go and report or not. The statement which I had given to the Police they have not written full statement.

Q: Now witness I put it to you that you did not make the complaint that's my instruction from my client, that you only make the complaint when your family pressured you to make the complaint against my client? Yes or no witness?

A: My parents have told me to go and report to the Police and when the Police officers approached to my brother's place then my brother told them that they don't know anything about that.

54. The complainant was asked the same question again whether she made the complaint due to the pressure from the family as she didn't answer properly. Then she responded "yes". She was asked again;

Q: And your family members who had pressured you were your husband?

A: Yes, he said that I will accompany you to the Police Station.

55. During cross examination it was suggested that she consented for the Accused to have sexual intercourse with her. She responded that she was helpless, and she did not give herself to him. She also said that the Accused entered her house forcefully and she does not agree to the suggestion put forward by the defence counsel. However, when she was referred to the second statement she gave she responded as follows;

Q: Witness in your second statement 19th January 2016 in paragraph 15 you are saying that for the safety of my children I just gave myself to him to have sex, that's your second statement to the Police, yes or no ?

A: No

Q: So this statement that you have signed is incorrect, you mean to say?

A: Yes

56. The complainant admitted that the Accused came to her place on the following day. She said they hid and put the curtains down. She denied having a conversation with him.

57. At the end of the cross examination the complainant said that she first complained the incident to her husband when he returned on the following Monday.

58. During the re-examination she confirmed that she said her family members pressured her to report the incident to the Police. She also said that she also wanted to report as she thought the Accused will do it again to her.
59. The second prosecution witness was Poonam Amrita Kumar. She said that she was counselling at the Women Crisis Centre office in Ba during 12 January 2016. She said that on 12 January 2016 Rovina, the complainant came with her husband and sister in law to her office and told her that Rishi Lal raped her. She also said that the complainant was coming for counselling since 2014.
60. According to the evidence given by Poonam Kumar the complainant had already reported the matter to the Police when she came to her. She said she referred her back to the Police as there was a lot of delay.
61. The witness later said that on 8 December 2015 when the complainant came for counselling she was told that Rishi Lal came at night to drink grog and insisted her to have sexual intercourse with him.
62. During the cross-examination Poonam Kumar said that the complainant was in fear when she came for counselling on 12 January 2016. She also said that the complainant admitted to her that she was fearful of her husband. However, when she was referred to her statement made to the Police she admitted that she did not mention to the Police that she met the complainant before 12 January 2016.
63. The witness later said that she referred the complainant to the Police on 8 December 2015 as well. She said that the complainant did not want to go to the Police. She also said that they encourage victims of attempted rape and she confirmed that she encouraged the complainant to report the matter to the Police on the first day.
64. The third Prosecution witness was Ronal Kumar Vikashnand. He said the complainant is his wife. He gave evidence that on 4 December 2014 he was at home and he went to Tauvegavega as the complainant had taken the two sons

for hair cutting. He said that he went to Tauvegavega on Friday and returned home on Monday. The witness said that when he was in Tauvegavega the Accused called him and asked where he is. The witness had told him that he is in Tauvegavega and had asked the Accused not to tell the complainant about his whereabouts. The witness said that the Accused called him again in the evening and asked him when he would be returning.

65. The witness said that the complainant did not tell him about anything when he returned home on Monday. However, he said that the complainant looked a bit scared. He said that the complainant informed about the alleged incident at her brother's place only on the day before it was reported to the police. He said the incident was reported to the Police on 6 January 2016.

66. During the cross examination the witness confirmed that the first call he received from the Accused was during day time. The Accused had told him that he came to the complainant's house. However, he denied that he spoke to his wife over the phone. The witness said that he received the second call in the evening.

67. The witness also said during the cross examination that he did not ask from the complainant the reason although she looked a bit scared. The witness denied that he pressured the complainant to report the incident to Police.

68. The last witness was women corporal 3059 Miriama Nadumu. She said that she was the investigating officer of this case.

69. During the cross examination the witness said that the complainant had given two statements. She said the first statement was recorded by another officer and she recorded the second statement. She said that the complainant was talking in Hindi language and since she knows some Hindi she recorded the statement in English.

70. That was the case for the prosecution.

71. At this point I must explain to you what a recent complaint is. The complainant said that she informed about the alleged incident to her brothers first. Later she said that she informed the officer at the Women Crisis Centre. She also said that she informed the husband about the incident when he returned on the following Monday. In cases of sexual offences, the evidence given by a witness of what he or she was told by a complainant is generally considered as recent complaint evidence. The evidence of recent complaint is not adduced to corroborate the details of the alleged incident by the Accused, nor it is evidence of facts complained of. It only goes to the consistency of the conduct of the complainant with her evidence given at the trial. It is not evidence that proves what has happened between the Accused and the complainant. But it only enhances the credibility of the complainant and you can use it to decide whether the complainant gave credible evidence.

72. Further it should be noted that recent complaint evidence is not hearsay evidence. Generally, witnesses are only allowed to give evidence on what they saw, heard or felt by their physical senses only. They are not allowed to speak of a story told by a third person who is not called as a witness. Such evidence is called hearsay evidence. However, evidence of recent complaint is not hearsay. Therefore, evidence of recent complaint is considered as admissible evidence.

73. After the closure of the prosecution case the Accused was explained his rights. You must bear in mind that although those options were given, still the burden is on the prosecution to prove the guilt of the Accused and he need not prove his innocence. The Accused decided to give evidence.

74. The Accused said that the day before the alleged incident occurred the complainant's husband called him and asked to check whether the complainant was at home. He said that the complainant's husband had gone to Tauvegavega. He said when he went to the complainant's house he gave the phone to the complainant to speak to her husband. He said then he sat there

and started talking. He said that the complainant told her that her husband does not even tell her where he goes, and he beats her up. She had also informed him that her husband does not have sexual intercourse with her. According to the Accused the complainant had asked him to come back in the night and to have sexual intercourse with her. The Accused said that he told her that he will think about it and had left.

75. The Accused gave evidence that he came to the complainant's house in the evening. He said that he started mixing grog with one of the sons of the complainant. He said that he was sitting at the sitting room and the children were also there. He said that the complainant signaled to him that they can have sexual intercourse once the children go to sleep. The Accused denied that he made any calls to her husband in the evening. The Accused said that the complainant was talking to him until he finished his grog. He said that the complainant was lying beside her children. According to the Accused he had told the complainant that he is going home after he finished drinking grog. He said then the complainant told him to wait and went inside the kitchen. He said then she came back and held him from his hand and took him to her mother in law's room. The Accused said then she made him sit in the room and went to the wash room. According to the Accused the complainant had come back in 2-3 minutes and had sat beside him. He said then the complainant laid on the bed and told him to have sex with her.

76. The Accused said that he stood up and then the complainant told him that he is gay. He said that she pulled him and asked him to have sex with her. The Accused said then he had sexual intercourse with her. He said that the complainant did not say no to him at any time. He said she never tried to stop him. He denied that he pulled her hand and dragged her to the room. He said that it was the complainant who pulled him and took him to the room. The Accused said that when he lifted her skirt she was not wearing any undergarments. He said he had sexual intercourse for about 20 minutes. He said she didn't stop him but told him that she is shy. He said that the

complainant closed her eyes with her hands and told him to just have sex and go.

77. The Accused said that he never threatened the complainant and he had a good conversation with her. He said after having sexual intercourse he left. When he was passing the front door on horseback the complainant had waived at him. He said the next day he went to see her and inquired how she is. He said that the complainant told him that she is ok.

78. During the cross examination he was asked as to why he denied the incident when he made the statement to the Police. The explanation of the Accused was that he was scared that his children and his wife would get to know about having sexual intercourse with the complainant. He said that was the reason why he denied that he had sexual intercourse with her. He said that whatever has happened between the complainant and him was with consent. The Accused admitted that he lied to the police.

79. However, the Accused later responded as follows under cross examination;

Q: So, despite you knowing that there is a serious allegation against you, you still lied to the Police?

A: I was scared because of my wife that's the reason. Whatever had happened among us it was the consent of both of us myself and Rovina.

Q: But even the issue of consent with Rovina, you did not even tell the Police officers, do you agree with me?

A: I did inform the Police officers that whatever had happened between us was consented, we had conversation regarding that. I have informed the Police officers. Rovina was alleging me that I had raped her but I told them that this is not like that, this is what had transpired.

Q: That is what I am telling you Mr. Lal even that the consent part you did not even tell the Police when they were interviewing you?

A: I did inform the Police officers, but they did not write it down. They were not listening to me.

Again, the Accused responded as follows on the issue of Police officers not recording what he stated.

Q: But you would agree with me that you had the opportunity to tell the Police all this but you didn't tell them the truth?

A: I have said all the truth to the Police but they were not listening to me and they did not write all this because Police they got a report that I have raped her.

Q: So now you are blaming the Police even though you admitted earlier that you had lied to them?

A: I am not blaming the Police, but they were not listening to me and they did not even write down whatever I was saying to them.

80. The Accused said that now his wife knows about this incident. When the Accused was asked as to why he was reluctant when he came back in the night he said that he was scared thinking what would happen if he gets caught. He was further cross examined as follows;

Q: So if you were scared why did you go to her house in the first place, if you are scared of Rovina?

A: First of all the husband called me and asked me to check whether they are at home or not.

Q: No I am not talking about the first incident.

A: Because they are my family my Lord

Q: I am talking about the evening, if you know that you are going to get caught, if you are scared to get caught, why did you go to Rovina's house?

A: Rovina called me because we had a conversation during day time and even the husband called me to check whether they had returned or not.

Court: No the question is why did he go in the evening if he was scared?

A: I just went there I just removed my cattle my Lord and I just went to their place.

81. The Accused also said that when he asked the husband of the complainant to return some money that he had given him before, they went and complained about the incident.

82. During the re-examination the Accused said that he told the truth to the Police and they did not listen to him.

83. That was the case for the defence.

Ladies and gentleman assessors,

84. It should be noted that in our law no corroboration is needed to prove a sexual offence. Corroborative evidence is independent evidence that supplements and strengthens evidence already presented as proof of a factual matter or matters. In other words, the prosecution can solely rely on the evidence of the complainant only without any supporting evidence whatsoever in sexual offences. It is for you to decide how credible and consistent is the evidence of the complainant.

85. You must consider the evidence of the prosecution to satisfy yourselves whether the narration of events given by the prosecution witnesses are truthful and, in addition, reliable. If you find the prosecution evidence is not truthful and or not reliable then you must find the Accused not guilty. If you find the evidence placed before you by the prosecution both truthful and reliable, then you must proceed to consider whether the prosecution has proved the elements

of the offence of rape beyond reasonable doubt with that truthful and reliable evidence.

86. It is important that you must apply the same considerations which you applied in assessing truthfulness and reliability on the prosecution evidence, also when you are assessing the evidence of the Accused. You must consider the consistency of his evidence and must also consider the probability of his version. If you find the evidence of the Accused is truthful and reliable, then you must find the Accused not guilty.
87. If you neither believe the evidence adduced by the Accused nor disbelieve his evidence, in that instance as well, there is a reasonable doubt with regard to the prosecution case. The benefit of such doubt should then accrue in favour of the Accused and he should be found not guilty.
88. However, I must caution you that even if you reject the evidence of the Accused as not truthful and reliable that does not mean the prosecution case is automatically proved. The prosecution has to prove its case independently of the evidence of Accused.
89. The prosecution case was that the Accused penetrated the vagina of the complainant without her consent.
90. The complainant explained the delay in reporting the matter. It is for you to decide whether the prosecution evidence is reliable.
91. The Accused admitted that he had sexual intercourse with the complainant. His only contention was that he did that with the consent of the complainant.
92. As it was said before, it is the duty of the prosecution to prove the elements of the offence against the Accused. The Accused need not prove his innocence.

93. I have now given you the directions of law and summarized the evidence adduced in this case. Before I conclude my summing up let me remind you some points again.
94. If you believe that the prosecution has proved beyond reasonable doubt all the elements of rape, you may find the Accused guilty to the offence of rape.
95. If not, you must find the Accused not guilty.
96. If you have a reasonable doubt, then you must find the Accused not guilty to the offence of rape.
97. You may now retire and consider your opinions.
98. Before you do so, may I ask the counsel of both parties whether you wish to request any redirections?
99. When you are ready with your opinions, the Court will reconvene for you to inform your opinions to court.



Rangajeeva Wimalasena
Acting Judge

Solicitors

Solicitors for the State : Office of the Director of Public Prosecutions

Solicitors for the Accused: Mr A. Dayal