

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 291 of 2017

STATE

V

RATU RAVUAMA VUNIVALU VUIBAU

Counsel : Ms. Moira Konrote with Ms. Unaisi Tamanikaiyaroi for the State
Mr. Sitiveni Raikanikoda for the Accused

Dates of Trial : 5-7 & 10-13 June 2019

Summing Up : 14 June 2019

The names of all six complainants are suppressed. Accordingly, the six complainants will be referred to respectively as follows: Complainant in Counts 1 and 2 "NN", Complainant in Count 3 "TK", Complainant in Count 4 "LV", Complainant in Count 5 "MC", Complainant in Count 6 "PT" and Complainant in Count 7 "AK".

SUMMING UP

Madam Assessors and Gentleman Assessor,

[1] It is now my duty to sum up the case to you. We have reached the final stage of the proceedings before us. The presentation of evidence is over and it is not possible to hear any more evidence. You should not speculate about evidence which has not been given and must decide the case on the evidence which you have seen and heard. The Counsel for the State and the accused have addressed you on the evidence. After their addresses, it is my duty to sum-up the case to you. You will then retire to consider your opinions.

- [2] As the Presiding Judge, it is my duty to ensure that the trial is conducted fairly and according to law. As part of that duty, I will direct you on the law that applies. You must accept the law from me and apply all directions I give to you on matters of law.
- [3] It is your duty to decide questions of fact. But your determinations on questions of fact must be based on the evidence before us. In order to determine questions of facts, first you must decide what evidence you accept as truthful, credible and reliable. You will then apply relevant law, to the facts as revealed by such evidence. In that way you arrive at your opinions.
- [4] Please remember that I will not be reproducing the entire evidence in this summing up. During my summing up to you, I may comment on the evidence; if I think it will assist you, in considering the facts. While you are bound by directions I give as to the law, you are not obliged to accept any comment I make about the evidence. You should ignore any comment I make on the facts unless it coincides with your own independent reasoning.
- [5] In forming your opinions, you have to consider the entire body of evidence placed before you. In my attempt to remind you of evidence in this summing up, if I left out some items of evidence, you must not think that those items could be ignored in forming your opinion. You must take all evidence into consideration, before you proceed to form your opinion. There are no items of evidence which could safely be ignored by you.
- [6] After I have completed this summing up, you will be asked to retire to your retiring room to deliberate among yourselves so as to arrive at your opinions on the charges against the accused. Upon your return to Court, when you are ready, each one of you will be required to state his or her individual opinion orally on the charges against the accused, which opinion will be recorded. Your opinions could preferably be a unanimous one, but could also be a divided one. You will not be asked for reasons for your opinions. I am not bound to conform to your opinions. However, in arriving at my judgement, I assure you, that I shall place much reliance upon your opinions.
- [7] I have already told you that you must reach your opinions on evidence, and only on evidence. I will tell you what evidence is and what is not.
- [8] In this case, the evidence is what the witnesses said from the witness box, the document tendered as a prosecution exhibit and any admissions made by the parties by way of admitted facts.
- [9] If you have heard, or read, or otherwise came to know anything about this case outside this Courtroom, you must exclude that information from your consideration. The reason for this exclusion is, what you have heard outside this Courtroom is not evidence. Have regard only to the testimony and the exhibit put before you since this trial began. Ensure that no external influence plays any part in your deliberations.

- [10]** A few things you have heard in this Courtroom are also not evidence. This summing-up is not evidence. Statements, arguments, questions and comments by the Counsel are not evidence either. A thing suggested by a Counsel during a witness's cross-examination is also not evidence of the fact suggested, unless the witness accepted the particular suggestion as true. The opening submission made by the State Counsel and closing submissions made by both State Counsel and Defence Counsel are not evidence. They were their arguments, which you may properly take into account when evaluating the evidence; but the extent to which you do so is entirely a matter for you.
- [11]** As I already indicated to you, a matter which will be of concern to you is the determination of the credibility of witnesses, basically the truthfulness and reliability of their evidence. It is for you to decide whether you accept the whole of what a witness says, or only part of it, or none of it. You may accept or reject such parts of the evidence as you think fit. It is for you to judge whether a witness is telling the truth and correctly recalls the facts about which he or she has testified.
- [12]** Many factors may be considered in deciding what evidence you accept. I will mention some of these general considerations that may assist you.
- [13]** You have seen how the witnesses' demeanour 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? How did they conduct themselves in Court? In general what was their demeanour in Court? But, please bear in mind that many witnesses are not used to giving evidence in a Court of law and may find Court environment stressful and distracting.
- [14]** The experience of the Courts is that those who have been victims of a sexual offence react differently to the task of speaking about it in evidence. Some will display obvious signs of distress, others may not. The reason for this is that every victim has his or her own way of coping. 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 alone 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.
- [15]** According to the evidence you heard in this case, the complainant in Counts 1 and 2, NN, was 14 years old at the time of the alleged incident and was 16 years of age when she testified in Court. All the other complainants TK, LV, MC, PT and AK, were all under 16 years of age at the time the alleged incidents took place and even at the time they testified in Court. 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 is, however, a decision for you to make. Your task is to decide whether you are sure that the six complainants have given you a

truthful and a reliable account of their experience concerning the offences the accused is charged with.

- [16] You may also have to consider the likelihood or probability of the witness's account. That is whether the evidence of a particular witness seems 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] You heard in this case the evidence of Rajeli Seru, a school teacher of Nakorosule District School. She testified that in September 2017, on inquiring from the complainant, NN, the complainant had told her about the alleged incidents which occurred in June 2017. The complainant had said: *"We went inside Head Teacher's room. Head Teacher started to close the windows and the door and pulled the curtains and he kissed her and touching her breasts and putting his hands into her vagina."* You should consider whether this could be regarded as a complaint made by the complainant of the alleged incidents. If so you should also consider whether she made that complaint without delay and whether she sufficiently complained of the offences the accused is charged with in Counts 1 and 2. Also bear in mind the reasons given by the complainant, NN, for not informing anyone about the incidents, prior to informing Rejeli Seru.
- [18] The complainant need not specifically disclose all of the ingredients of the offences and describe every detail of the incident, but the complaint should contain sufficient information with regard to the alleged conduct of the accused. Accordingly, if you are satisfied that the complainant made a prompt and a proper complaint, then you may consider that her credibility is strengthened in view of that recent complaint.
- [19] It must be borne in mind that the complaint is not evidence of facts complained of, nor is it corroboration. It goes to the consistency of the conduct of the complainant with her evidence given at the trial. It goes to support and enhance the credibility of the complainant, NN.
- [20] In assessing the credibility of a particular witness, it may be relevant to consider whether there are inconsistencies in his or her evidence. This includes omissions as well. That is, whether the witness has not maintained the same position and has given different versions with regard to the same issue. This is how you should deal with inconsistencies and omissions. You should first decide whether that inconsistency or omission is significant. That is, whether that inconsistency or omission is fundamental to the issue you are considering. If it is, then you should consider whether there is any acceptable explanation for it. You may perhaps think it obvious that the passage of time will affect the accuracy of memory. Memory is fallible and you might not expect every detail to be the same from one account to the next. If there is an acceptable explanation

for the inconsistency or omission, you may conclude that the underlying reliability of the account is unaffected.

- [21] However, if there is no acceptable explanation for the inconsistency or omission, which you consider significant, it may lead you to question the reliability of the evidence given by the witness in question. To what extent such inconsistency or omission in the evidence given by a witness influence your judgment on the reliability of the account given by that witness is for you to decide. Therefore, if there is an inconsistency or omission that is significant, it might lead you to conclude that the witness is generally not to be relied upon; or, that only a part of her evidence is inaccurate. In the alternative, you may accept the reason she provided for the inconsistency and consider her to be reliable as a witness.
- [22] Ladies and Gentleman Assessor, I must make it clear to you that I offer these matters to you not by way of direction in law but as things which in common sense and with knowledge of the world you might like to consider in assessing whether the evidence given by the witnesses are truthful and reliable.
- [23] Having placed considerations that could be used in assessing credibility and reliability of the evidence given by witnesses before you, 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.
- [24] When you have decided the truthfulness and reliability of evidence, then you can use that credible and reliable 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 guilty of the charges. 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 commonsense and wide experience which you have acquired living in this society.
- [25] 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 offences charged.
- [26] 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.

- [27] 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.
- [28] In order to illustrate this direction, I will give you a very simple 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 example you will understand the relationship between primary facts and the inferences that could be drawn from them.
- [29] Then we come to another important legal principle. You are now familiar with the phrase burden of proof. It simply means who must prove the case. That burden rests entirely on the prosecution to prove the guilt of the accused.
- [30] This is because the accused is presumed to be innocent. He may be convicted only if the prosecution establishes that he is guilty of the offences charged. It is not his task to prove his innocence.
- [31] I have said that it is the prosecution who must prove the allegation. Then what is the standard of proof or degree of proof, as expected by law?
- [32] For the prosecution to discharge its burden of proving the guilt of the accused, it is required to prove it beyond any reasonable doubt. This means that in order to convict the accused, you must be sure that the prosecution has satisfied beyond any reasonable doubt every element that goes to make up the offences charged. A reasonable doubt is not any doubt or a mere imaginary doubt but a doubt based on reason.
- [33] It is for you to decide whether you are satisfied beyond reasonable doubt that the prosecution has proved the elements of the offences, in order to find the accused guilty. If you are left with a reasonable doubt about guilt, your duty is to find the accused not guilty. If you are not left with any such reasonable doubt, then your duty is to find the accused guilty.
- [34] You should disregard all feelings of sympathy or prejudice, whether it is sympathy for the complainants or anger or prejudice against the accused or anyone else. No such emotion should have any part to play in your decision. You must approach your duty

dispassionately, deciding the facts upon the whole of the evidence. You must adopt a fair, careful and reasoned approach in forming your opinions.

- [35] I must also explain to you as to the reason for the use of screen, when the complainants gave evidence in this case. It was a normal precautionary procedure adopted by Courts in the interests of vulnerable witnesses. It is believed that when a screen is placed, the complainants are relieved of any mental pressure to describe the often unpleasant incidents. Please bear in mind that you must not infer that such a protection to the witnesses was warranted due to the accused's behaviour and you should not draw any adverse inference against him on that account.
- [36] The same applies for permitting a closed court proceedings when the complainants gave evidence in this case. Again you must not infer that such a protection to the witnesses was warranted due to the accused's behaviour and you should not draw any adverse inference against him on that account.
- [37] Let us now look at the charges contained in the Amended Information filed by the Director of Public Prosecutions (DPP).
- [38] There are seven charges preferred by the DPP, against the accused:

COUNT 1

Statement of Offence

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

Particulars of Offence

RATU RAVUAMA VUNIVALU VUIBAU, on the 29th day of June 2017, at Nakorosule, Naitasiri, in the Eastern Division, inserted his finger into the vagina of **NN**, without her consent.

COUNT 2

Statement of Offence

SEXUAL ASSAULT: Contrary to Section 210 (1) (a) of the Crimes Act 2009.

Particulars of Offence

RATU RAVUAMA VUNIVALU VUIBAU, on the 29th day of June 2017, at Nakorosule, Naitasiri, in the Eastern Division, unlawfully and indecently assaulted **NN**, by sucking her breasts.

COUNT 3

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Act 2009.

Particulars of Offence

RATU RAVUAMA VUNIVALU VUIBAU, on the 11th day of August 2017, at Nakorosule, Naitasiri, in the Eastern Division, unlawfully and indecently assaulted **TK**, by pinching her buttocks with his hands.

COUNT 4

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Act 2009.

Particulars of Offence

RATU RAVUAMA VUNIVALU VUIBAU, on the 8th day of September 2017, at Nakorosule, Naitasiri, in the Eastern Division, unlawfully and indecently assaulted **LV**, by fondling her breasts with his hands.

COUNT 5

(Representative Count)

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Act 2009.

Particulars of Offence

RATU RAVUAMA VUNIVALU VUIBAU, between 1st of May 2017 to the 30th of September 2017, at Nakorosule, Naitasiri, in the Eastern Division, unlawfully and indecently assaulted **MC**, by fondling her breasts with his hands.

COUNT 6

(Representative Count)

Statement of Offence

INDECENTLY ANNOYING ANY PERSON: Contrary to Section 213 (1) (b) of the Crimes Act 2009.

Particulars of Offence

RATU RAVUAMA VUNIVALU VUIBAU, between the month of May 2017, and the month of August 2017, at Nakorosule, Naitasiri, intruded upon the privacy of **PT**, by hugging the said **PT** from behind, which offended her modesty.

COUNT 7

Statement of Offence

INDECENTLY ANNOYING ANY PERSON: Contrary to Section 213 (1) (b) of the Crimes Act 2009.

Particulars of Offence

RATU RAVUAMA VUNIVALU VUIBAU, on the 12th day of September 2017, at Nakorosule, Naitasiri, intruded upon the privacy of **AK**, by hugging the said **AK** from behind, which offended her modesty.

[39] As you may observe there are a total of seven counts. These include one count of Rape, one count of Sexual Assault, three counts of Indecent Assault and two counts of Indecently Annoying Any Person.

[40] The first count against the accused is a count of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes Act No. 44 of 2009 (Crimes Act).

[41] Section 207(1) of the Crimes Act reads as follows:

207. — (1) Any person who rapes another person commits an indictable offence.

[42] Section 207(2) (b) of the Crimes Act is reproduced below.

(2) A person rapes another person if —

(a); or

(b) the person penetrates the vulva, vagina or anus of the other person to any extent with a thing or a part of the person's body that is not a penis without the other person's consent.

[43] Therefore, when Section 207(1) is read with Section 207(2) (b) it would read as follows:

207. — (1) Any person who rapes another person commits an indictable offence.

(2) A person rapes another person if —

(b) the person penetrates the vulva, vagina or anus of the other person to any extent with a thing or a part of the person's body that is not a penis without the other person's consent.

[44] Section 207(2) (b) refers to a person penetrating the vulva, vagina or anus of the other person, to any extent, with a thing or a part of the person's body that is not a penis.

[45] Therefore, in order for the prosecution to prove the first count of Rape, they must establish beyond any reasonable doubt that;

- (i) The accused;
- (ii) On the specified day (in this case the 29 June 2017);
- (iii) At Nakorosule, Naitasiri, in the Eastern Division;
- (iv) Penetrated the vagina of NN with his finger;
- (v) Without the consent of the complainant NN; and
- (vi) The accused knew or believed that the complainant NN was not consenting, or the accused was reckless as to whether or not she was consenting.

[46] 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.

[47] The second element relates to the specific date on which the offence was committed. The third element relates to the place at which the offence was committed. The prosecution should prove these elements beyond any reasonable doubt.

[48] The fourth element involves the penetration of the complainant's vagina, with his finger. It must be noted that, in law, the slightest penetration is sufficient to satisfy this element of penetration. The element is complete on penetration to any extent. Therefore, to establish this element, the prosecution should prove beyond reasonable doubt that the accused penetrated the complainant's vagina, with his finger, to any extent.

[49] The fifth and sixth elements are based on the issue of consent. To prove the fifth element, the prosecution should prove that the accused penetrated the complainant's vagina, with his finger, without her consent.

[50] You should bear in mind that consent means, consent freely and voluntarily given by a person with the necessary mental capacity to give the consent, and the fact that there was no physical resistance alone shall not constitute consent. A person's consent to an act is not freely and voluntarily given if it is obtained under the following circumstances:

(a) by force; or

(b) by threat or intimidation; or

(c) by fear of bodily harm; or

(d) by exercise of authority; or

(e) by false and fraudulent representations about the nature or purpose of the act; or

(f) by a mistaken belief induced by the accused person that the accused person was the person's sexual partner.

[51] Apart from proving that the complainant did not consent for the accused to penetrate her vagina with his finger, the prosecution must also prove that, either the accused knew or believed that complainant was not consenting or he was reckless as to whether or not she consented. The accused was reckless, if the accused realised there was a risk that she was not consenting, but carried on anyway when the circumstances known to him it was unreasonable to do so. Simply put, 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.

[52] A woman of over the age of 13 years is considered by law as a person with necessary mental capacity to give consent. The complainant NN was 14 years of age at the time of the incident, and therefore, she had the mental capacity to consent.

[53] The second count against the accused is a count of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act.

[54] Section 210 (1) (a) of the Crimes Act reads as follows:

(1) A person commits an indictable offence (which is triable summarily) if he or she—

(a) unlawfully and indecently assaults another person;

[55] Therefore, in order for the prosecution to prove the second count of Sexual Assault, they must establish beyond any reasonable doubt that;

- (i) The accused;
- (ii) On the specified day (in this case the 29 June 2017);
- (iii) At Nakorosule, Naitasiri, in the Eastern Division;
- (iv) Unlawfully and indecently assaulted NN, by sucking her breasts.

[56] 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.

[57] The second element relates to the specific date on which the offence was committed. The third element relates to the place at which the offence was committed. The prosecution should prove these elements beyond any reasonable doubt.

[58] The accused would be guilty of Sexual Assault, if he unlawfully and indecently assaulted the complainant. The word “unlawfully” simply means without lawful excuse. An act is an indecent act if right-minded persons would consider the act indecent. As such, it is for you as Assessors to consider and decide whether the act of sucking the complainant’s breasts is an indecent act and thereby amounts to Sexual Assault.

[59] The third, fourth and fifth counts against the accused are charges of Indecent Assault, Contrary to Section 212 (1) of the Crimes Act.

[60] The offence of Indecent Assault has been described in Section 212 of the Crimes Act in the following terms:

212. — (1) A person commits a summary offence if he or she unlawfully and indecently assaults any other person.

(2) It is no defence to a charge for an indecent assault on a boy or girl under the age of 16 years to prove that he or she consented to the act of indecency.

(3) It shall be a sufficient defence to a charge for an indecent assault on a boy or girl under the age of 16 years to prove that —

(a) the boy or girl consented to the act of indecency and that the person so charged had reasonable cause to believe, and did in fact believe, that the boy or girl was of or above the age of 16 years; or

(b) that the offender was of a similar age to the boy or girl and that consent to the act of indecency was given in the context of a continuing friendship between the offender and the boy or girl.

(4) No person who is on a relationship of control or trust over the boy or girl may rely on a defence provided for in sub-section (3).

[61] Therefore, in order for the prosecution to prove the third count of Indecent Assault, they must establish beyond any reasonable doubt that;

- (i) The accused;
- (ii) On the specified day (in this case the 11 August 2017);
- (iii) At Nakorosule, Naitasiri, in the Eastern Division;
- (iv) Unlawfully and indecently assaulted TK, the complainant, by pinching her buttocks with his hands.

[62] Similarly, in order for the prosecution to prove the fourth count of Indecent Assault, they must establish beyond any reasonable doubt that;

- (i) The accused;
- (ii) On the specified day (in this case the 8 September 2017);
- (iii) At Nakorosule, Naitasiri, in the Eastern Division;
- (iv) Unlawfully and indecently assaulted LV, the complainant, by fondling her breasts with his hands.

[63] Similarly, in order for the prosecution to prove the fifth count of Indecent Assault, they must establish beyond any reasonable doubt that;

- (i) The accused;
- (ii) During the specified time period (in this case between 1 May 2017 and 30 September 2017);
- (iii) At Nakorosule, Naitasiri, in the Eastern Division;
- (iv) Unlawfully and indecently assaulted MC, the complainant, by fondling her breasts with his hands.

[64] Let me now elaborate on these elements together in respect of counts three, four and five.

[65] 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.

[66] The second element relates to the specific day or specific time period during which the offence was committed. The third element relates to the place at which the offence was committed. The prosecution should prove these elements beyond any reasonable doubt.

[67] The accused would be guilty of Indecent Assault, if he unlawfully and indecently assaulted the complainants. The word “unlawfully” simply means without lawful excuse. An act is an indecent act if right-minded persons would consider the act indecent. As such, it is for you as Assessors to consider and decide whether pinching of complainant, TK’s buttocks with his hands, and the acts of fondling the complainant’s (LV and MC) breasts by the accused with his hands is an indecent act and thereby amounts to Indecent Assault.

[68] In terms of Section 212 (2) of the Crimes Act, it is no defence to a charge for an Indecent Assault on a boy or girl under the age of 16 years to prove that he or she consented to the act of indecency. The complainant’s in Count 3, TK, Count 4, LV, and Count 5, MC were all below 16 years of age at the time the alleged incidents took place.

[69] The sixth and seven counts against the accused are charges of Indecently Annoying Any Person, Contrary to Section 213 (1) (b) of the Crimes Act.

[70] Section 213 of the Crimes Act reads as follows:

(1) A person commits a summary offence if he or she, intending to insult the modesty of any person —

(a) utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by the other person; or

(b) intrudes upon the privacy of another person by doing an act of a nature likely to offend his or her modesty.

[71] Therefore, in order for the prosecution to prove the sixth count of Indecently Annoying Any Person, they must establish beyond any reasonable doubt that;

- (i) The accused;
- (ii) During the specified time period (in this case between the months of May 2017 and August 2017);
- (iii) At Nakorosule, Naitasiri, in the Eastern Division;

- (iv) Intruded upon the privacy of the complainant, PT, by hugging the said PT from behind, with the intention of insulting her modesty.

[72] Similarly, in order for the prosecution to prove the seventh count of Indecently Annoying Any Person, they must establish beyond any reasonable doubt that;

- (i) The accused;
- (ii) On the specified day (in this case the 12 September 2017);
- (iii) At Nakorosule, Naitasiri, in the Eastern Division;
- (iv) Intruded upon the privacy of the complainant, AK, by hugging the said AK from behind, with the intention of insulting her modesty.

[73] Let me now elaborate on these elements together in respect of counts six and seven.

[74] The first element is concerned with the identity of the person who committed the offence. The prosecution should prove beyond any reasonable doubt that the accused and no one else committed the offence.

[75] The second element relates to the specific time period or specific date during which the offence was committed. The third element relates to the place at which the offence was committed. The prosecution should prove these elements beyond any reasonable doubt.

[76] The fourth element for the prosecution to prove is that the accused intruded upon the privacy of the complainants, PT and AK, by hugging the said PT and AK from behind and did so with the intention of insulting their modesty. An act is an indecent act if right-minded persons would consider the act indecent. As such, it is for you as Assessors to consider and decide whether the act of the accused in intruding upon the privacy of the complainants, PT and AK, by hugging them from behind, insulted their modesty and that the accused did so with the intention of insulting their modesty and thereby it amounts to Indecently Annoying the complainants.

[77] It must also be noted that in our law, no corroboration is needed to prove an allegation of a Sexual Offence. Rape, Sexual Assault, Indecent Assault and Indecently Annoying Any Person are obviously considered as Sexual Offences. Corroborative evidence is independent evidence that supplements and strengthens evidence already presented as proof of a factual matter or matters.

[78] It is also my duty to mention another relevant legal requirement concerning counts 5 and 6 against the accused. The said counts are titled as a representative count. These representative counts of Indecent Assault and Indecently Annoying Any Person against the accused, are based on an act or series of acts done during a specified time period (In this instance between 1 May 2017 and 30 September 2017, for the count of Indecent Assault, in Count 5; and between the months of May 2017 and August 2017, for the

count of Indecently Annoying Any Person, in Count 6). Such a charge is described generally as a representative count in legal terminology. The prosecution is expected to prove just one incident of Indecent Assault and Indecently Annoying Any Person, which falls within this period in respect of each of those counts. They need not prove a continuous or a series of incidents of Indecent Assault and Indecently Annoying Any Person, in support of a representative count.

- [79]** If you are satisfied beyond any reasonable doubt that the accused, on 29 June 2017, at Nakorosule, Naitasiri, penetrated the complainant, NN's, vagina with his finger, without the consent of the complainant NN and the accused knew or believed that the complainant NN was not consenting, or the accused was reckless as to whether or not she was consenting, then you must find him guilty of the first count of Rape.
- [80]** If you find that the prosecution has failed to establish any of these elements in relation to the first count of Rape, then you must find him not guilty of Rape.
- [81]** If you are satisfied beyond any reasonable doubt that the accused, on 29 June 2017, at Nakorosule, Naitasiri, unlawfully and indecently assaulted NN by sucking her breasts, then you must find him guilty of the second count of Sexual Assault.
- [82]** If you find that the prosecution has failed to establish any of these elements beyond reasonable doubt, then you must find the accused not guilty of the second count of Sexual Assault.
- [83]** If you are satisfied beyond any reasonable doubt that the accused, on 11 August 2017, at Nakorosule, Naitasiri, unlawfully and indecently assaulted TK by pinching her buttocks with his hands, then you must find him guilty of the third count of Indecent Assault.
- [84]** If you find that the prosecution has failed to establish any of these elements beyond reasonable doubt, then you must find the accused not guilty of the third count of Indecent Assault.
- [85]** If you are satisfied beyond any reasonable doubt that the accused, on 8 September 2017, at Nakorosule, Naitasiri, unlawfully and indecently assaulted LV by fondling her breasts with his hands, then you must find him guilty of the fourth count of Indecent Assault.
- [86]** If you find that the prosecution has failed to establish any of these elements beyond reasonable doubt, then you must find the accused not guilty of the fourth count of Indecent Assault.
- [87]** If you are satisfied beyond any reasonable doubt that the accused, between 1 May 2017 and 30 September 2017, at Nakorosule, Naitasiri, unlawfully and indecently assaulted MC by fondling her breasts with his hands, then you must find him guilty of the fifth count of Indecent Assault.

- [88] If you find that the prosecution has failed to establish any of these elements beyond reasonable doubt, then you must find the accused not guilty of the fifth count of Indecent Assault.
- [89] If you are satisfied beyond any reasonable doubt that the accused, between the months of May 2017 and August 2017, at Nakorosule, Naitasiri, intruded upon the privacy of the complainant, PT, by hugging the said PT from behind, with the intention of insulting her modesty, then you must find him guilty of the sixth count of Indecently Annoying Any Person.
- [90] If you find that the prosecution has failed to establish any of these elements in relation to count six, then you must find him not guilty of Indecently Annoying Any Person.
- [91] If you are satisfied beyond any reasonable doubt that the accused, on 12 September 2017, at Nakorosule, Naitasiri, intruded upon the privacy of the complainant, AK, by hugging the said AK from behind, with the intention of insulting her modesty, then you must find him guilty of the seventh count of Indecently Annoying Any Person.
- [92] If you find that the prosecution has failed to establish any of these elements in relation to count seven, then you must find him not guilty of Indecently Annoying Any Person.
- [93] These are some of my directions on law and I will now briefly deal with the evidence presented before this Court.
- [94] In terms of the provisions of Section 135 of the Criminal Procedure Act No. 43 of 2009 (“Criminal Procedure Act”), the prosecution and the defence have consented to treat the following facts as “*Admitted Facts*” without placing necessary evidence to prove them:
1. Ratu Ravuama Vunivalu Vuibau is the accused in this case.
 2. The accused was 41 years old at time of the alleged incident.
 3. The accused was the Head Teacher at Nakorosule District School during the time of the alleged incidents.
 4. The accused was residing at Nakorosule Village, Naitasiri at the time of the alleged incidents.
 5. One of the complainants in this case is NN, 14 years old student of Nakorosule District School.
 6. One of the complainants in this case is TK, 13 years old student of Nakorosule District School.
 7. One of the complainants in this case is LV, 12 years old student of Nakorosule District School.

8. One of the complainants in this case is MC, 13 years old student of Nakorosule District School.
9. One of the complainants in this case is PT, 12 years old student of Nakorosule District School.
10. One of the complainants in this case is AK, 13 years old student of Nakorosule District School.
11. The complainants in this matter were all residing at Nakorosule Village, at the time of the alleged incidents.
12. The complainant NN was medically examined on the 15th of September 2017, by Dr. Salome.
13. Raijeli Seru is also a school teacher at Nakorosule District School.

[95] Since the prosecution and the defence have consented to treat the above facts as “*Admitted Facts*” without placing necessary evidence to prove them you must therefore, treat the above facts as proved beyond reasonable doubt.

Case for the Prosecution

[96] The prosecution, in support of their case, called the six complainants, NN, TK, LV, MC, PT and AK, and also a school teacher, Rejeli Seru. The prosecution also tendered the following document as a prosecution exhibit:

Prosecution Exhibit **PE1**- Birth Certificate of the complainant NN.

[97] Evidence of the Complainant in Counts 1 and 2-NN

- (i) *The complainant testified that she is currently 16 years old. Her date of birth is 26 May 2003.*
- (ii) *The Birth Certificate of the complainant was tendered to Court as Prosecution Exhibit **PE1**.*
- (iii) *The complainant is currently attending AOG High School in Kinoya and is in Form 4.*
- (iv) *Before going to AOG High School, she was attending the Nakorosule District School, in Naitasiri. She had joined Nakorosule District School in Class 3. Before that she had been schooling at Saint John Bosco.*
- (v) *She testified that in 2017, she was in Class 8 at Nakorosule District School. As at 29 June 2017, she was 14 years old.*

- (vi) *In the first term of 2017, her Class Teacher was Master Vuibau, the accused in this case. Her Class Teacher in terms 2 and 3 was Master Feratariki Davetanivalu. The Head Teacher of Nakorosule District School at the time was Master Vuibau.*
- (vii) *The complainant testified that on 29 June 2017, she had gone to school. Around 1.00 p.m., mid-day, she had been scrubbing the veranda. She said that since she came late to school that morning, she had to scrub the floor. All late comers were told to scrub the floor in the afternoon.*
- (viii) *At the time a child had come running and told that the accused was calling her (later she said the name of the child was AK, the complainant in Count 7). Then she had gone to the accused office and sat inside the office. The accused had stood up, put down the window curtains in the office and closed the door.*
- (ix) *The complainant said she was sitting beside the door. The accused lifted his chair and placed it besides where she was sitting. While she was sitting, she saw that the accused had moved closer to her. The witness testified: "Then he touched my thighs. He held me and put his hands inside my tights and moved it up inside my panty. Then he put it up to my vagina."*
- (x) *When asked what the accused did after that, the witness said: "He pulled up my sports uniform t-shirt. Then he sucked both my breasts. While he was sucking my breasts, I tried to push him away, but I cannot because he is too heavy. Then there was a child that came and knocked at the door. He opened the door and went outside and spoke with the child, when he came back, he told me not to go alone in the school compound, but to go with someone. He had also told me if I tell anyone, he will expel me from school. Then I came outside. There was a teacher standing outside, Ms Seru. She then asked me and I told her that nothing had happened inside that room."*
- (xi) *The witness testified that on the said day she had been wearing her sports uniform which was a t-shirt in gold and maroon colour and a mini skirt, black in colour, up to the knees. Underneath the skirt, she was wearing tights and inside she was wearing a panty. Underneath the t-shirt she was wearing a vest and inside a bra. The usual school uniform is a maroon coloured dress.*
- (xii) *Later, when the witness was asked as to what part of his hand the accused put inside her vagina, she said, it was his finger. And the witness showed the middle finger. She said it was painful. When asked as to how far his finger went inside her vagina, the witness showed her finger indicating*

about $\frac{3}{4}$ of the size of the finger. When asked as to how many times the accused put his finger into her vagina, she said only once. When asked as to how long his finger was inside her vagina, the complainant said that she didn't know. Later, she said it was for a long time.

- (xiii) The complainant stated that the accused had removed her bra and sucked her breasts. She demonstrated as to how the accused had pulled down her bra. He had used his mouth to suck her breasts. When asked, which part of her breasts he was sucking, she said it was her nipples. She testified that when the accused was sucking on her breasts, his finger was still inside her vagina.*
- (xiv) The complainant testified that she had not given permission or consented for the accused to put his finger inside her vagina or to suck her breasts.*
- (xv) The witness also testified as to where exactly the Head Teacher's office was located within the school premises.*
- (xvi) The complainant said that she had not informed anyone about the incident as she was afraid of being expelled from school and that she will not be able to sit for her exams to enter Form 3.*
- (xvii) She had finally reported the incident to Ms Seru the school teacher. This was when the accused had gone for a Head Teacher's meeting after Constitution Day in 2017 (in 2017 Constitution Day was on 7 September). The witness testified in detail as to what exactly she had told Ms Seru.*
- (xviii) Thereafter, the matter had been reported to Police. She had given her statement regarding the incident to officers of the Vunidawa Police Station.*
- (xix) In cross examination, it was put to the witness that the accused is denying whatever had transpired. The witness replied as follows: "How can I make up a story about what had happened to me to Ms Seru, if he is denying."*
- (xx) In cross examination, it was also put to the witness that although in her evidence in Court she had said that a child (namely AK) had come running and told that the accused was calling her, in her statement to the police she has stated thus: "While I was scrubbing our Head Teacher Mr Vuibau called me to go inside his office." However, in re-examination, the witness confirmed that the accused had sent AK to call her. Further, she explained that she had forgotten to inform the Police Officers (who recorded her statement) that the accused had sent AK to call her.*

[98] Evidence of the Complainant in Count 3-TK

- (i) The complainant testified that she is currently 15 years old. Her date of birth is 28 February 2004. Currently, she is in Form 4 at Jasper William High School in Lautoka*
- (ii) In 2017, she was attending Nakorosule District Primary School. In 2017, she was 13 years of age and in class 8. Her class 8 teacher in term 2 was Master Feratariki Davetanivalu. In 2017, the Head Teacher was the accused.*
- (iii) The witness testified that whenever the noise level in her class goes up, the accused used to come to their class.*
- (iv) The witness testified to an incident which took place on 11 August 2017. On that date, she was in the school tent. The complainant AK asked her to help her in wrapping prizes (quiz prizes). She had gone with AK to the Head Teacher's office. It was mid-day and during school hours.*
- (v) After going to the Head Teacher's office they had continued wrapping prizes. The Head Teacher had been in his office.*
- (vi) She had been sitting behind the door on the floor wrapping prizes. Complainant, AK had been sitting inside the office. The witness demonstrated as to how she was seated at the time. She was in a squatting position.*
- (vii) The accused had wanted to come out of the office. The witness testified thus: "I was wrapping prizes. He came out and touched me. He touched me on my legs at the back – my bum (my buttocks)."*
- (viii) The witness said that the accused had touched the left side of the back with his hand on top of her uniform. AK had also seen this happen.*
- (ix) The complainant said that she had felt shy and afraid to report the matter to anyone.*
- (x) In cross examination it was suggested to the witness that she didn't report the matter on time or alarm other teachers to inform as to what happened because she consented to the act. The witness denied the suggestion.*
- (xi) It was also suggested to the witness that she had falsely implicated the accused. The witness denied this suggestion as well.*

[99] Evidence of the Complainant in Count 4-LV

- (i) The complainant testified that she is currently 14 years old. Her date of birth is 4 April 2005. She is from Nakorosule village and she is attending*

Nakorosule District School. She is now in class 7. She is the sister of the complainant in Counts 1 and 2, NN.

- (ii) In 2017, she was schooling at Nakorosule District School and was in class 6. She said she had to repeat her class. In 2017, she was 12 years old. Her class teacher was Master Josua and the accused was the Head Teacher of the school.*
- (iii) The witness testified to an incident which took place on 8 September 2017. She said Master Ravuama, the accused, came to supervise them when their teacher was not present. He came to teach the students Health.*
- (iv) She said while she was seated in class: "He came behind me. He came and hugged me from behind and touched my breasts." When asked as to who she meant, she said the accused. The witness said that the accused had used both his hands to touch her breasts. He had touched both breasts.*
- (v) The witness stated that she had been wearing her school uniform that day. It was a dress with a round neck and with sleeves. Underneath her dress she was wearing long pants above the knee. The accused had touched her breasts outside (on top of the uniform).*
- (vi) When asked to describe which part of her breasts did the accused touch with his hands, the witness said the whole region and demonstrated in Court.*
- (vii) The witness said that the accused touched her breasts for a while and went to MC (the complainant in Count 5).*
- (viii) While touching her breasts, the accused had said "Uro", meaning fat (however in this context it can also mean beautiful or sexy).*
- (ix) When this incident happened, she said there were 17 students in the class. She also said that when the accused touched her breasts, MC, who was sitting beside her in the classroom had seen what the accused had done to her. MC and the complainant were sitting right at the back of the classroom at the time. There was no one sitting behind them.*
- (x) The witness also testified that after the accused went to MC, he had stood behind her and touched MC's breasts. The witness described as to how the accused squeezed MC's breasts.*
- (xi) The complainant said that she did not inform anyone about the incident as she was afraid.*
- (xii) In cross examination, it was suggested that she did not want to report the matter to anybody was because she had consented to the act. It was also suggested to her that together with Ms Seru she had falsely implicated*

(framed) the accused for this incident. The complainant denied both these suggestions.

[100] Evidence of the Complainant in Count 5-MC

- (i) The complainant testified that she is currently 14 years old. Her date of birth is 20 September 2004. Currently, she is residing at Waibalavu in Naitasiri.*
- (ii) In 2017, she was attending Nakorosule District School and was in class 6. Her class teacher was Master Josua and the accused was the Head Teacher of the school.*
- (iii) She referred to an incident which took place between May and September 2017. She said that the accused touched her breast with his hand. She said the accused had used only one hand. When asked to explain, how the accused touched her breast that day, she said "He massaged over it." The accused had touched only one of her breasts, the right breast. He had used his right hand to touch her right breast. The witness demonstrated in Court as to how the accused massaged her breast. He did not massage it for long.*
- (iv) She said this happened in the 2nd term. He had touched her breasts during the time she was writing in class. Her class teacher had gone to the office at the time and the accused, who was the Head Teacher had come to watch them.*
- (v) At the time she was sitting at the back of the class. Next to her, complainant LV was seated. The witness had been wearing school uniform at the time. Inside her dress she had been wearing her bra. The accused had touched her breast on top of her uniform.*
- (vi) The witness testified that on another occasion in the 2nd term, the accused had touched her breast while she was seated in the class. On that occasion too, her class teacher was in the office. She had been seated in the back of the class. Complainant LV was seated in front of her. At the time, the accused had touched her breast he was standing behind her. Again, he had used only one hand to touch her right breast. When asked to explain further, the witness said, "He massaged my breasts", and demonstrated how it took place.*
- (vii) The complainant said that she did not inform anyone about the incident as she was afraid.*
- (viii) In cross examination, it was suggested that she did not report the matter at once, because she had consented to the act. It was also suggested to her that together with Ms Seru she had falsely implicated (framed) the accused for this incident. The complainant denied both these suggestions.*

[101] Evidence of the Complainant in Count 6-PT

- (i) The complainant testified that she is currently 14 years old. Currently, she is attending AOG High School and is in Form 3. Her date of birth is 30 January 2005.*
- (ii) In 2017, she was staying in her village at Nakorosule in Naitasiri with her parents. She was attending Nakorosule District School and was in class 7. In 2017, she was 12 years of age. Her class teacher at the time was Master Feratariki Davetanivalu and the Head Teacher of the school was the accused.*
- (iii) The witness testified to an incident which took place during the 2nd term of 2017. She said the 2nd term is from May to August. The witness had been coming back from the washroom when the accused had called her to his office. This was during school hours. The witness had then gone to the accused office.*
- (iv) The complainant testified that when she went to his office the accused had hugged from behind. He had used both his hands to hug her. He had hugged for a long time. While hugging her, the accused had said “Iko sega ni madua noqu mokoti iko?” which means “Are you not ashamed that I am hugging you?” The witness had not responded at the time, but felt ashamed. She had then returned to her class room.*
- (v) The witness also testified that on one occasion the accused came inside the class room and hugged her friend (complainant AK) and tried to touch her breasts. AK had then pushed his hand and then the accused had gone outside.*
- (vi) The witness had not informed anyone about this incident because she said she was scared.*
- (vii) In cross examination it was suggested to the witness that she had consented to this act. It was also suggested that all the complainants had planned with Ms Seru to falsely implicate the accused. The witness denied the suggestions.*

[102] Evidence of the Complainant in Count 7-AK

- (i) The complainant testified that she is currently 14 years old. Her date of birth is 21 October 2004. She is currently schooling at Dudley High School in Toorak and is in Form 3.*
- (ii) In 2017, she was staying in Nakorosule village with her father. She was attending Nakorosule District School and was in class 7. Her class teacher at the time was Master Feratariki Davetanivalu. He was class teacher for*

classes 7 and 8. At the time, the Head Teacher was the accused. The witness testified to an incident which took place on 12 September 2017. It was around 9.00 in the morning, and she was sitting at the back of the class doing her work. Her class teacher was not present that day.

- (iii) Between 9.00 and 10.30 in the morning, the accused had come and visited the class. He had come to complainant PT and hugged her and told something to her. Thereafter, he had come up to the witness and hugged her as well.
- (iv) When asked, how the accused hugged her, the witness said: "He had his right hand on my right shoulder. He slid his hand down my chest and tried to touch my breasts. I took his hand out of my uniform. He had whispered to her, *Iko vinakata se sega, Iko vinakata tale eso?* to mean, You want it or not, You want it some more?" The witness had said No, and asked the accused to move away from him. She said, "*Sega, No, Lako tani na vanua au tiko kina*, meaning No. Go away from the place I am at."
- (v) The witness demonstrated as to how the accused had hugged her. She said it had lasted 3 to 4 minutes.
- (vi) The witness also testified to having seeing the accused poke complainant TK's buttocks while they were in his office wrapping prizes. She testified that this was in August 2017.
- (vii) The witness also confirmed that on 29 June 2017, the accused had wanted her to call the complainant NN to his office and she had done so. At the time NN had been scrubbing the floor.
- (viii) The witness said that she did not report the matter to anyone as she was afraid.
- (ix) In cross examination it was suggested to this witness that she had planned with Ms Seru to falsely implicate the accused. The witness denied the suggestion.

[103] Evidence of Rejeli Seru

- (i) She is a school teacher at Nakorosule District School. This is her 6th year of service and 4th year at Nakorosule District School.
- (ii) In 2017, she was teaching at Nakorosule District School. She was teaching Year 3 and 4 students. The Head Teacher of the school at the time was the accused.
- (iii) She testified to an incident which happened in the 2nd Term of 2017. She referred to the date as 13 June 2017. She said that she was standing outside her classroom corridor. While she was standing there, she looked

in front of the school office veranda, she could see the accused and the complainant NN, who was a Year 8 student at the time. They were talking in front of the school office veranda. It had been around 12.30 p.m. The school office veranda is just in front of the door leading to the school office.

- (iv) Thereafter, she had seen the complainant, NN, went inside the accused room. She had followed them. When she followed them, they were already inside the Head Teacher's room. She could see that the door that led to the Head Teacher's room was closed. The windows of the Head Teacher's room were closed and the curtains were down. She could not see anything happening inside the room.*
- (v) She had wanted to follow them to the office because from NN's action, she could see that NN was shy.*
- (vi) Thereafter, she had come and waited patiently outside her classroom veranda. While waiting outside for 30 minutes, NN came out of the office. NN came besides her classroom and wanted to drink water from the tap nearby. Before NN went and drank water, the witness had asked her what NN was doing with the Head Teacher, in the Head Teacher's room. NN had replied that she had a USB and a movie was inside that USB and it had to be deleted.*
- (vii) The witness said, that she stopped there that day and did not ask NN anything further.*
- (viii) In September of the 3rd term, the witness had asked NN as to whether she remembers the incident that happened in June. Before the complainant replied, she could see tears coming down the complainant's cheeks. Later, NN had said "We went inside Head Teacher's room'. Head Teacher started to close the windows and the door and pulled the curtains and he kissed her and touching her breasts and putting his hands into her vagina."*
- (ix) Thereafter, she had counselled the complainant and informed the Assistant Head Teacher, Mr Davetanivalu about what NN had told her. Mr Davetanivalu had called the Social Welfare Department in Vunidawa. Later, officials from the Social Welfare Department and Police Officers from the Vunidawa Police Station had come to her place. She had then reported the matter to the Social Welfare Officers and the Police.*
- (x) In cross examination, it was put to the witness that the accused had been framed because most of the teachers did not like him. The witness said: "We did not frame him. No. Because we were in good terms before he left for the conference."*

[104] That was the case for the prosecution. At the end of the prosecution case Court decided to call for the defence. You then heard me explain several options to the accused. I explained to him that he could address Court by himself or through his counsel. He could also give sworn evidence from the witness box and/or call witnesses on his behalf. He could even remain silent. He was given these options as those were his legal rights. He need not prove anything. The burden of proving his guilt rests entirely on the prosecution at all times. In this case, the accused opted to remain silent. I must emphasize that you must not draw any adverse inference against the accused due to Court calling for his defence or of his choice to remain silent.

Analysis

[105] The above is a brief summary of the evidence led at this trial. The prosecution led the evidence of the six complainants, NN, TK, LV, MC, PT and AK, and also a school teacher, Rejeli Seru, to prove its case.

[106] As I have informed you earlier, the burden of proving each ingredient of the charges rests entirely and exclusively on the prosecution and the burden of proof is beyond any reasonable doubt.

[107] In assessing the evidence, the totality of the evidence should be taken into account as a whole to determine where the truth lies.

[108] As I have stated before, in this case it has been agreed by the prosecution and the defence to treat certain facts as agreed facts without placing necessary evidence to prove them. Therefore, you must treat those facts as proved beyond reasonable doubt.

[109] Based on the said agreed facts the identity of the accused is proved as it has been agreed that 'Ratu Ravuama Vunivalu Vuibau is the accused in this case'. However, it is incumbent on the prosecution to prove beyond reasonable doubt all the remaining elements of the seven counts the accused is charged with.

[110] The accused is totally denying the allegations of Rape and Sexual Assault (Counts 1 and 2). He takes up the position that the said allegations have been framed against him.

[111] With regard to the allegations in Counts 3-7, the accused takes up the defence that the respective complainants consented to those acts. The accused also takes up the position that the said allegations have been framed against him. The said complainants have denied that they consented to the said acts or that the said allegations were framed against the accused.

[112] I have also directed you earlier, that in terms of Section 212 (2) of the Crimes Act, it is no defence to a charge for an Indecent Assault on a boy or girl under the age of 16 years to prove that he or she consented to the act of indecency.

[113] You must consider the evidence of the prosecution to satisfy yourselves whether the narration of events given by its witnesses, is truthful and, in addition, reliable. If you find the prosecution evidence is not truthful and or unreliable, then you must find the accused not guilty of the charges, since the prosecution has failed to prove its case. If you find the evidence placed before you by the prosecution both truthful and reliable, then you must proceed to consider whether by that truthful and reliable evidence, the prosecution had proved the elements of the offences, beyond any reasonable doubt.

[114] You must consider each count separately and you must not assume that because the accused is guilty on one count, that he must also be guilty of the other counts as well.

[115] In summary, and before I conclude my summing up let me repeat some important points in following form:

- i. *If you find the prosecution evidence is not truthful and or not reliable then you must find the accused not guilty of the charges;*
- ii. *If you find the prosecution evidence is both truthful and reliable then only you must consider; whether the elements of the charges have been established beyond any reasonable doubt. If so you must find the accused guilty. If not you must find the accused not guilty.*

[116] Any re directions the parties may request?

[117] Madam Assessors and Gentleman Assessor, this concludes my summing up of the law and evidence. Now you may retire and deliberate together and may form your individual opinions on the charges separately against the accused. When you have reached your individual opinions you will come back to Court, and you will be asked to state your opinions.

[118] Your possible opinions should be as follows:

Count One

Rape- Guilty or Not Guilty

Count Two

Sexual Assault-Guilty or Not Guilty

Count Three

Indecent Assault-Guilty or Not Guilty

Count Four

Indecent Assault -Guilty or Not Guilty

Count Five

Indecent Assault -Guilty or Not Guilty

Count Six

Indecently Annoying Any Person -Guilty or Not Guilty

Count Seven

Indecently Annoying Any Person - Guilty or Not Guilty

[119] I thank you for your patient hearing.



Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

AT SUVA

Dated this 14th Day of June 2019

Solicitors for the State : **Office of the Director of Public Prosecutions, Suva.**
Solicitors for the Accused : **Raikanikoda & Associates, Suva.**