

2. State and Defence Counsels have made their submissions to you, about how you should find the facts of this case. That is in accordance with their duties as State and Defence Counsels, in this case. Their submissions were designed to assist you, as the judges of fact. However, you are not bound by what they said. It is you who are the representatives of the community at this trial, and it is you who must decide what happened in this case, and which version of the evidence is reliable.
3. You will not be asked to give reasons for your opinions, but merely your opinions themselves and they need not be unanimous. Your opinions are not binding on me, but I will give them the greatest weight, when I deliver my judgment.

B. THE BURDEN AND STANDARD OF PROOF

4. As a matter of law, the onus or burden of proof rest on the prosecution throughout the trial, and it never shifts to the accused. There is no obligation on the accused to prove his innocence. Under our system of criminal justice, an accused person is presumed to be innocent until he is proved guilty.
5. The standard of proof in a criminal trial, is one of proof beyond reasonable doubt. This means that you must be satisfied, so that you are sure of the accused's guilt, before you can express an opinion that he is guilty. If you have any reasonable doubt so that you are not sure about his guilt, then you must express an opinion, that he is not guilty.
6. Your decision must be based exclusively upon the evidence which you have heard in this court, and upon nothing else. You must disregard anything you might have heard about this case outside of this courtroom. You must decide the facts without prejudice or sympathy, to either the accused or the victim. Your duty is to find the facts based on the evidence, and to apply the law to those facts, without fear, favour or ill will.

C. THE INFORMATION

7. You have a copy of the information with you. I will now read the same to you:

“... [read from the information]....”

At the start of the trial on 29 July, 2020, the accused had pleaded guilty to count no. 2. Thus, this summing up only involved the rape allegation in count no. 1.

D. THE MAIN ISSUE

8. In this case, as assessors and judges of fact, each of you will have to answer the following question:

- (i) On count no. 1, did the accused, on 14 March 2019, at Namosi in the Central Division, rape the complainant (PW1)?

E. THE OFFENCE AND IT'S ELEMENTS

9. The accused was charged with “rape”, contrary to section 207 (1) and (2) (b) of the Crimes Act 2009. It was alleged that, on 14 March 2019, at Namosi in the Central Division, he raped the complainant (PW1) by penetrating her vagina with a body spray bottle, without her consent. For the accused to be found guilty of the offence, the prosecution must prove beyond reasonable doubt, the following elements:

- (i) the accused penetrated the complainant’s vagina with a body spray bottle;
 - (ii) without her consent; and
 - (iii) he knew she was not consenting to 9 (i) above, at the time.
10. If the accused inserts the body spray bottle into the complainant’s vagina, the slightest penetration of the same by the body spray bottle is enough to constitute penetration of the vagina by the spray bottle. There does not need to be full penetration of the vagina by the spray bottle.

11. "Consent" is to agree freely and voluntarily and out of her own freewill. If consent was obtained by force, threat, intimidation or by fear of bodily harm to herself or by exercise of authority over her, that "consent" is deemed to be no consent. The consent must be freely and voluntarily given by the complainant. If the consent was induced by fear, it is no consent at all.
12. It must also be established by the prosecution beyond reasonable doubt, that the accused knew the complainant was not consenting to 9 (i) above, at the time. You will have to examine the parties' conduct at the time, and the surrounding circumstances, to decide this issue.
13. If you find the elements of rape, as described in paragraph 9 hereof, satisfied by the prosecution beyond reasonable doubt, you must find the accused guilty as charged. If otherwise, you must find him not guilty as charged. It is a matter entirely for you.

F. THE PROSECUTION'S CASE

14. The prosecution's case were as follows. On 14 March 2019, the date of the alleged incident, the accused was 41 years old. The complainant (PW1) was 40 years old. They were married on 17 January 2004 and resided at the accused's family house in Namosi in the Central Division. They had four children together and they were aged 16, 15, 13 and 11 years old. The complainant had another child from a previous relationship, then aged 19 years old.
15. According to the prosecution, on 14th March 2019, the couple woke up in the morning. The accused wore his $\frac{3}{4}$ lee pants and it appeared it was not fully dried. According to the prosecution, this started an argument between the couple. They argued and the same became heated. The accused allegedly called his wife a "con woman and a liar." The complainant then allegedly told him to get another woman to look after him, and to let her leave. She then began to pack her belongings to leave the accused.

16. According to the prosecution, the accused then approached the complainant and allegedly assaulted her several times. First, he allegedly kicked the left side of her face. Second, he then allegedly stood on her leg and punched her head three times. Third, he allegedly told her to remove her clothes until she was completely naked. Then he allegedly told her to part her legs so that her vagina was fully exposed. Then he allegedly inserted a 3.7 inches body spray bottle into her vagina, without her consent. The complainant allegedly called out for help, but the accused allegedly told her to shut up and punched her in the mouth.
17. The accused thereafter allegedly forced her to insert the body spray bottle into her vagina, without her consent. He allegedly knew she was not consenting to the above because she feared him. Later in the day, the prosecution alleged the accused again repeatedly assaulted the complainant by hitting her several times on the body with a hammer. The complainant later reported the matter to police. An investigation was carried out. On 18th March 2019, the accused was brought before the Navua Magistrate Court charged with assaulting and raping the complainant.
18. Because of the above, the prosecution is asking you as assessors and judges of fact, to find the accused guilty as charged. That was the case for the prosecution.

G. THE ACCUSED'S CASE

19. On 29 July 2020, the information was put to the accused, in the presence of his counsel. He pleaded not guilty to the rape allegation in count no. 1, but pleaded guilty to the assault allegation in count no. 2. In this summing up, we will only concern ourselves with the rape allegation. By pleading not guilty to the same, he denied the same. When a prima facie case was found against him, at the end of the prosecution's case, wherein he was called upon to make his defence, he chose to remain silent and called no witness. That was his constitutional right.

20. Nothing negative whatsoever should be imputed to the accused when he chose to exercise his right to remain silent. This is because the burden to prove his guilt beyond reasonable doubt, remains with the prosecution throughout the trial, and it never shifts to the accused, at any stage of the trial. Remember what I told you in paragraph 4 hereof, and I repeat the same here. There is no burden on the accused to prove his innocence, or prove anything at all. He is presumed innocent until he is proven guilty beyond a reasonable doubt. He is entitled, as he had done here, to fold his arms, sit there in the dock, and demand the prosecution prove his guilt beyond a reasonable doubt.
21. So, in this case, you will have to carefully examine the prosecution's case and decide whether or not the accused was guilty as charged. The prosecution's case was based fundamentally on the verbal evidence of the complainant, and you will have to decide whether what she alleged against the accused had made you sure of the accused's guilt. If you are sure of his guilt, you must find him guilty as charged. If otherwise, you will have to find him not guilty as charged. It is a matter entirely for you.
22. Because he pleaded not guilty to the charge, the accused is asking you, as assessors and judges of fact, to find him not guilty as charged. That was the case for the defence.

H. ANALYSIS OF THE EVIDENCE

(a) Introduction:

23. In analyzing the evidence, please bear in mind the directions I gave you in paragraphs 4, 5 and 6 hereof on the burden and standard of proof. In the acceptance and/or rejection of the evidence presented at the trial and your role as assessors and judges of fact, please bear in mind the directions I gave you in paragraphs 1, 2 and 3 hereof. In analyzing the evidence, we will first discuss the Agreed Facts, then the State's case against the accused. Then, we will discuss the Accused's case. Then we will consider the need to look at all the evidence.

(b) **The Agreed Facts:**

24. The parties had submitted an “Agreed Facts”, dated 24 July 2020. A copy of the same is with you. Please, read it carefully. There are 3 paragraphs of “Agreed Facts”. Because the parties are not disputing the same, you may treat the same as established facts, and that the prosecution had proven those facts beyond a reasonable doubt.

(c) **The State’s Case Against the Accused:**

25. The State’s case against the accused rested solely on the verbal evidence of the complainant (PW1), given in court on 29 and 30 July 2020. You had watched her give evidence, you had observed her demeanor and you had observed her reactions to the questions thrown at her by the prosecution and defence counsels. I am sure that the details of her evidence are still fresh in your minds. However, in this case, I will not bore you with the details of her evidence, but will concentrate on the salient points on the evidence, and whether or not the elements of the charge had been proven by the prosecution beyond a reasonable doubt.
26. On the first element of rape as discussed in paragraph 9 (i) hereof, the question becomes: Did the accused penetrate the complainant’s vagina with the body spray bottle, at the material time? Alternatively, did the accused force the complainant to penetrate her vagina with a body spray bottle, at the material time? In her evidence, the complainant said that the accused, at the material time, penetrated her vagina with a body spray bottle. She also said, he later forced her to penetrate her own vagina with the body spray bottle. If you accept this evidence, then the prosecution had proven the first element of rape beyond reasonable doubt. If you reject the complainant’s evidence on the above issue, you must find the accused not guilty as charged. It is a matter entirely for you.
27. Assuming you find the accused penetrated the complainant’s vagina with a body spray bottle, at the material time, or alternatively, forcing her to penetrate her own vagina with a body spray bottle, the question becomes: was it done with her consent? In her evidence

she said, she did not consent to the body spray bottle being inserted into her vagina. You must examine the whole of the complainant's evidence. If you find she did not consent to the accused penetrating her vagina on 14 March 2019 with a body spray bottle, then you will have to move on to consider the last element of the offence of rape, that is, did he know that the complainant was not consenting to him penetrating her vagina with a body spray bottle at the time? If, on the other hand, you find that the complainant gave her consent to the accused penetrating her vagina with a body spray bottle at the time, or you are not sure on this issue, you must find the accused not guilty as charged. It is a matter entirely for you.

28. Assuming you find the complainant did not give her consent to the accused penetrating her vagina with a body spray bottle at the time, then the last question becomes: Did he know at the time that she was not consenting to her vagina being penetrated by a body spray bottle? The complainant said the accused assaulted her repeatedly and threatened her to part her legs before inserting the body spray bottle into her vagina, at the time. She also said, he threatened her to insert the body spray bottle into her vagina, at the time, and had to do so under duress. How you answer the above question is entirely a matter for you.
29. If you accept the complainant's evidence on the allegation as credible, you must find the accused guilty as charged. If otherwise, you must find the accused not guilty as charged. It is a matter entirely for you.

(d) **The Accused's Case:**

30. I had summarized the accused's case to you from paragraphs 19 to 22 hereof. I repeat the same here. If you reject the complainant's evidence, you must find the accused not guilty as charged.

(e) **The Need To Consider All The Evidence:**

31. The State called two witnesses, the complainant herself and the doctor (PW2). A crime can be proven on the basis of the verbal evidence of one witness alone, if you, as assessors and judges of fact, accept the same. If you accept the complainant's evidence, you must find the accused guilty as charged. If otherwise, you must find the accused not guilty as charged. It is a matter entirely for you.

I. **SUMMARY**

32. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies on the prosecution throughout the trial, and it never shifts to the accused, at any stage of the trial. The accused is not required to prove his innocence, or prove anything at all. In fact, he is presumed innocent until proven guilty beyond reasonable doubt. If you accept the prosecution's version of events, and you are satisfied beyond reasonable doubt so that you are sure of the accused's guilt, you must find him guilty as charged. If you do not accept the prosecution's version of events, and you are not satisfied beyond reasonable doubt so that you are not sure of the accused's guilt, you must find him not guilty as charged.

33. Your possible opinions are as follows:

(i) Count No. 1: Rape: Accused: Guilty or Not Guilty

34. You may now retire to deliberate on the case, and once you've reached your decisions, you may inform our clerks, so that we could reconvene, to receive your decisions



Solicitor for the State
Solicitor for the Accused

: **Office of the Director of Public Prosecution, Suva.**
: **I. Romanu, Barrister & Solicitor, Suva.**

A handwritten signature in blue ink, appearing to be "Salesi Temo".

Salesi Temo
JUDGE