

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO: HAC 209 of 2019**

**STATE**

**V**

**AMANI RAKULA**

**Counsel** : Ms. Saini Naibe for the State  
Ms. Alanieta Bilivalu with Ms. Benita Kumari for the Accused

**Date of Trial** : 17 May 2023

**Closing Submissions** : 19 May 2023

**Judgment** : 22 May 2023

*The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "ALR".*

## **JUDGMENT**

[1] As per the Amended Information filed by the Director of Public Prosecutions (DPP), the accused, Amani Rakula, is charged with the following offence:

### **COUNT**

#### ***Statement of Offence***

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

#### ***Particulars of Offence***

**AMANI RAKULA**, on the 9<sup>th</sup> day of November 2019, at Nabudigilo Settlement, Waikubukubu, Vatukoula, in the Western Division, penetrated the vagina of **ALR** with his finger, without her consent.

- [2] The accused pleaded not guilty to the charge and the ensuing trial was held on 17 May 2023. Thereafter, the Learned Counsel for the Defence and the State made their closing submissions.

### **The Burden of Proof and the Standard of Proof**

- [3] Section 57 of the Crimes Act No. 44 of 2009 (Crimes Act) provides that the prosecution bears a legal burden of proving every element of an offence. The Section reads as follows:

(1) *The prosecution bears a legal burden of proving every element of an offence relevant to the guilt of the person charged.*

(2) *The prosecution also bears a legal burden of disproving any matter in relation to which the defendant has discharged an evidential burden of proof imposed on the defendant.*

(3) *In this Decree (Act)—*

*"legal burden", in relation to a matter, means the burden of proving the existence of the matter.*

- [4] Section 58 (1) of the Crimes Act stipulates that a legal burden of proof on the prosecution must be discharged beyond reasonable doubt.

### **Legal Provisions and the Elements of the Offences**

- [5] As could be observed the accused is charged with one count of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes Act.

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

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

- [7] Section 207(2) of the Crimes Act is reproduced below:

*(2) A person rapes another person if —*

*(a) the person has carnal knowledge with or of the other person without the other person's consent; 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; or*

*(c) the person penetrates the mouth of the other person to any extent with the person's penis without the other person's consent.*

**[8]** Section 207 (2) (b) makes reference 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 without the other person's consent. In the instant case, the accused has been charged for penetrating the vagina of the complainant with his finger.

**[9]** Therefore, in order to prove the count of Rape, the prosecution must establish beyond reasonable doubt that;

- (i) The accused;
- (ii) On the specified day (in this case the 9 November 2019);
- (iii) At Nabudigilo Settlement, Waikubukubu, Vatukoula, in the Western Division;
- (iv) Penetrated the vagina of the complainant ALR with his finger;
- (v) Without the consent of the complainant; and
- (vi) The accused knew or believed that the complainant was not consenting, or the accused was reckless as to whether or not she was consenting.

**[10]** To further elaborate upon these elements in respect of the count of Rape. 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.

**[11]** 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 reasonable doubt.

**[12]** The fourth element involves the penetration of the complainant's vagina, with the accused's finger. It must be noted that, in law, the slightest penetration is sufficient to satisfy this element of penetration. This 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 vagina of the complainant with his finger to any extent.

- [13] 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.
- [14] It should be borne 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.
- [15] 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 that 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, whether the accused did not care whether the complainant was consenting or not. Determination of this issue is dependent upon who Court believes, whilst bearing in mind that it is the prosecution who must prove it beyond any reasonable doubt.
- [16] 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 in this case was 28 years of age at the time of the alleged incident, and therefore, she had the mental capacity to consent.

[17] It must also be noted that in terms of Section 129 of the Criminal Procedure Act No. 43 of 2009 (Criminal Procedure Act), it is stated that no corroboration of the complainant's evidence is necessary to prove an offence of a sexual nature. Rape is obviously considered as offence of a sexual nature. Corroborative evidence is independent evidence that supplements and strengthens evidence already presented as proof of a factual matter or matters.

### **The Admitted Facts**

[18] Section 135 of the Criminal Procedure Act deals with "Admission of facts". The Section is reproduced below:

*135. — (1) An accused person, or his or her lawyer, may in any criminal proceedings admit any fact or any element of an offence, and such an admission will constitute sufficient proof of that fact or element.*

*(2) Every admission made under this section must be in writing and signed by the person making the admission, or by his or her lawyer, and—*

*(a) by the prosecutor; and*

*(b) by the judge or magistrate.*

*(3) Nothing in sub-section (2) prevents a court from relying upon any admission made by any party during the course of a proceeding or trial.*

[19] Accordingly, the prosecution and the defence have consented to treat the following facts as "Admitted Facts":

1. The accused is Amani Rakula, born on the 26<sup>th</sup> April 1991 and resides at Navetau, Vuda Point.
2. The complainant is ALR, also known as Pei.
3. The complainant is the sister in law of the accused, her older sister, Akanisi Raiwalui, is married to the accused.
4. On the 9<sup>th</sup> of November 2019, at about 10.30 p.m., the complainant was at home with her mother and two sons sleeping when the accused came and started calling out her name.
5. According to the complainant when she woke up she saw the accused standing beside her and the accused invited her to join him for a drink at Kupi's house.

6. On the above mentioned date, the accused was wearing a long pants (Lee) with a white t-shirt and he was drinking methylated spirit which he bought from Lautoka.
7. On the 10<sup>th</sup> of November 2019, the complainant was medically examined by Dr. Swastika Devi at Tavua Hospital.

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

### **Case for the Prosecution**

[21] The prosecution, in support of their case, called the complainant, ALR, who was their sole witness.

### **[22] Evidence of the complainant ALR**

- (i) *The complainant testified that she is currently residing at Cunningham Stage II in Suva and is doing domestic duties (she is currently unemployed). She is residing at Cunningham with her husband. She is now 32 years of age.*
- (ii) *The witness testified that she had two children before getting married to her present husband. Her eldest child had passed away (when he was 7 years of age). Her youngest child, who is now 6 years old, is living with her sister in the village.*
- (iii) *The witness said that in November 2019 she was residing at Nabudigilo Settlement, Waikubukubu Village in Tavua. She was residing with both her parents, her two children and her older sister Akanisi Moceiwaitui Raiwalui. Her sister’s husband’s name is Amani Rakula, the accused in this case. In 2019 they had three children.*
- (iv) *The complainant said that in 2019 her sister and husband (and family) were residing in the same settlement but in different houses. The distance between the two houses was about 50-100 metres. She testified that her relationship with her sister and her brother in law Amani was good.*
- (v) *As per the Admitted Facts, it has been agreed that the complainant was also known as Pei. She said that was her nickname used in the house. Her family members, including Amani used to also call her by that name.*
- (vi) *The witness testified to the events which took place on the 9 November 2019. She said around 10.30 that night she was sleeping at home with her parents and her two sons. While she was sleeping, she had heard someone calling her by her name Pei. She had stood up to see and had seen Amani. She had asked him what he came to do because their house is on the top and he had come*

down to her house. Amani asked about his wife Aggie (Aggie is the nickname of his wife Akanisi).

- (vii) *It is an Admitted Fact that according to the complainant when she woke up she saw the accused standing beside her.*
- (viii) *The witness said that she had told Amani that his wife and family were in their house at the top. Then Amani had left. She said that she knew it was Amani who was calling her as the moonlight was very bright that night.*
- (ix) *The witness was asked whether it was correct that the accused Amani had invited her to drink at Kupi's house (as is stated at paragraph 5 of the Admitted Facts). However, the witness denied that Amani had called her in this manner.*
- (x) *The complainant said that on the 9 November 2019, she was sleeping in the kitchen with her mother and her two children. Her father was sleeping inside the house. The kitchen is away from the main house-the witness said it was about 2 metres away from the main house. It was a lean-to kitchen with a tin roof. It had an open door. The accused had been standing at the kitchen door-the witness said that the accused was about 2 metres away when he had spoken to the complainant.*
- (xi) *After the accused had left, the witness says that she had gone back to lie down. 5 to 10 minutes later, the accused had come back and came straight up to her. When she had looked up, she had seen the accused standing beside her.*
- (xii) *The following questions were then asked from the witness and she answered as follows:*
  - Q. *Then what happened?*
  - A. *I asked him what he came to do. He did not respond. After that he lay on top of me.*
  
  - Q. *What happened next?*
  - A. *Then he asked me if he could kiss me. I told him no. Then he asked me again if he could lick me. I told him no and I pushed him. When I pushed him, he did not fall off me, he was still on me. Without my permission he put his finger into my vagina.*
  
  - Q. *What happened then?*
  - A. *I pushed him away. Then I looked for my phone. When he saw me looking for my phone, he ran away.*
  
  - Q. *Who are you referring to?*
  - A. *Amani Rakula.*
  
  - Q. *How did he put his finger into your vagina?*
  - A. *He put his hand through my panty.*

- Q. *What clothes were you wearing that night?*  
A. *On that night I was wearing a t-shirt, shorts and a panty.*
- Q. *How did you know that he had inserted his finger into your vagina?*  
A. *I felt it.*
- Q. *How long did he insert his finger into your vagina (for)?*  
A. *10 seconds.*
- Q. *Before Amani did this to you, did he ask you if he could do this to you?*  
A. *No.*
- Q. *On that particular night, how did you know that it was Amani Rakula who inserted his finger into your vagina?*  
A. *From the moonlight I could clearly see his face.*
- Q. *On that particular night, did you notice anything about Amani Rakula?*  
A. *Yes.*
- Q. *What was it?*  
A. *He was wearing a ¾ Lee with a t-shirt. [It is an Admitted Fact that on the above mentioned day, the accused was wearing a long pants (Lee) with a white t-shirt].*
- Q. *You said you pushed him away. Why?*  
A. *I didn't give him permission to insert his finger inside my vagina.*
- .....
- Q. *How did you push him away?*  
A. *The witness demonstrated how she did so.*
- Q. *What was your sleeping position when Amani had laid on top of you?*  
A. *I was lying on my stomach with my back up.*
- Q. *So how did he lay on top of you?*  
A. *Same position.*
- Q. *What do you mean?*  
A. *His stomach on my back.*
- Q. *When he asked you, if he could kiss you, where was he?*  
A. *He was lying on top of me.*



- Q. *When he asked you, if he could lick you, where was he?*  
A. *He was on my back-same position.*
- Q. *How about when he had put his finger into your vagina?*  
A. *He was still on my back.*
- Q. *How did he put his hand inside your panty?*  
A. *He used his hand-put it through my panty to my vagina.*
- Q. *When he did that, how did you react?*  
A. *I tried to push him away.*
- Q. *How did you do that?*  
A. *I turned a bit and did my hand like this (witness demonstrates how she had tried to push the accused with her hand).*
- Q. *Did he say anything to you at that time he put his hand into your vagina?*  
A. *No.*
- Q. *What did you feel inside your panty-was it his hand or finger?*  
A. *(He) put his hand into my panty and finger into my vagina.*
- Q. *When you had pushed him away, did he say anything to you?*  
A. *No.*
- Q. *You said you did not give him your permission-what do you mean?*  
A. *Because when he wanted to kiss me he asked. Also when he wanted to lick me, he asked me. When he inserted his finger into my vagina, I did not consent to it.*
- Q. *Did you tell him when he inserted his finger into your vagina that you didn't consent?*  
A. *Yes.*
- Q. *How did you do that?*  
A. *By pushing him away.*
- Q. *When he asked to kiss you and lick you, what was your response?*  
A. *I told him no.*
- Q. *When you had pushed him away, did he get off you?*  
A. *Yes. He moved away and went to their house.*

Q. How long did he lay on top of you before putting his finger in your vagina?

A. 20 minutes.

Q. How many minutes are there in 1 hour?

A. 60 minutes.

Q. At what point did you push him away?

A. When he inserted his finger into my vagina.

Q. Where was your mother and two kids at the time?

A. Mother was on the bed-myself then the two kids.

Q. Were you also on the bed?

A. On the mattress which was spread on the floor.

Q. Your two kids?

A. They were with me on the mattress.

Q. Both the bed and the mattress are in the kitchen?

A. Yes.

Q. What were your mother and children doing at the time?

A. They were sleeping.

(xiii) The complainant testified that after the accused ran away, she had called the Vatakoula Police Station. She had informed them that she needed help. When the Police had asked for further details, she had told them that her brother-in-law came and did something to her.

(xiv) When asked about her mother and the two children, the witness said that the two children were sleeping and that her mother had woken up when she heard the complainant crying. The witness said that this happened before she had called the Police Station.

(xv) The complainant identified the accused in the dock as Amani Rakula.

(xvi) The complainant said that prior to the incident her relationship with the accused was good. They would smoke cigarettes together and joke together quite frequently (plenty times). Normally on the day-off of the accused, her father would ask him (his family) to come down to their house. Even her relationship with her older sister was very good prior to the incident. They were very close. She used to often go and see them and the kids when they arrived home.

(xvii) However, after the incident and after her complaint made to the Police, she and the accused don't talk to each other. She and her sister talk to each other only sometimes.

- (xviii) *The complainant was cross examined by the defence. The defence also put several suggestions to the complainant in line with the defence case theory.*
- (xix) *The complainant agreed that in 2019 her sister and her three children were also living in the same house (as hers), since their house was still being built.*
- (xx) *The witness also agreed that the accused was working in Lautoka that year and came to Waikubukubu during the weekends. She further agreed that on 9 November 2019, the accused came from Lautoka to spend the weekend with his family. She also agreed that before the accused came home that day, her sister took her three children and went to the house that was still being built to spend time with her husband.*
- (xxi) *It was suggested to the witness that the reason the accused had come and asked her about his wife was because he was unaware that his wife had taken her children (and left) to the house that was being built. The witness denied this suggestion and said that the accused knew (that his wife had already left to the house that was being built).*
- (xxii) *The complainant agreed that when she called the Vatukoula Police, she has spoken to a Police Officer named Jese. The same night she had made her statement to the Police. The statement had been recorded approximately one hour after the alleged incident had happened. The witness was questioned about the statement made by her to the Vatukoula Police on 9 November 2019. The statement had been recorded by WPC 5531 Luisa.*
- (xxiii) *The Defence highlighted the following omission in the testimony given in Court by the witness vis a vis her statement made to the Police on 9 November 2019:*
- Although in her testimony in Court the witness stated that the accused Amani came to her the first time to ask about his wife Akanisi, there is no mention of this fact in her statement made to the police.*
- (xxiv) *When the witness was asked why this fact is not stated in her Police statement, she answered as follows: "...Because I have informed the Police about it and in the process of informing the Police, my father talked in between".*
- (xxv) *The complainant confirmed that her father was present when her statement was being recorded and later she said that the Police had come to her house and recoded her statement in her house.*
- (xxvi) *The witness denied that her father had forced her to tell the Police that Amani came that night and asked her to kiss her on her lips and asked to lick her.*
- (xxvii) *It was suggested to the witness that Amani Rakula came only once that night to ask her about his wife and then left and never came back. The witness denied this suggestion and said he came back.*
- (xxviii) *It was suggested to the witness that what she had told the Police about the accused wanting to kiss her and lick her were false. The witness denied this suggestion. It was further suggested to the witness that this was false because*

*it is what her father had forced her to tell the Police. The witness denied this suggestion and said "When the Police arrived then my father woke up".*

*(xxix) It was suggested to the complainant that the statement she gave to the Police that the accused inserted his finger into her vagina was false and that it was false because her father had forced her to say that to the Police. The witness denied these suggestions.*

*(xxx) It was suggested to the witness that what she had testified in Court that the accused wanted to kiss her and wanted to lick her was false. It was also suggested that her testimony that the accused had inserted his finger into her vagina was also false. The witness denied these suggestions.*

*(xxxi) It was suggested to the witness that the only thing the accused did that night was to call her to ask for his wife. The witness said it's a lie.*

*(xxxii) The complainant said that the time the accused had inserted his finger into her vagina (which she said was 10 seconds) was included or was part of the 20 minutes that the accused was on top of her. It was suggested to the witness that for over 19 minutes she did not scream or call for help from her mother who was lying beside her on the bed. The witness said that she had pulled her mother's hand. She said: "Because she has a mild stroke, the hand which I pulled she did not feel it". She agreed that she did not cry for help or scream.*

*(xxxiii) The following questions were then asked from the witness in cross-examination and she answered as follows:*

*Q. You said you were wearing a t-shirt, shorts and panty?*

*A. Yes.*

*Q. So you agree with me that at the time Amani Rakula inserted his finger into your vagina, you were still wearing your shorts and panty?*

*A. Yes.*

*Q. I suggest to you that it was not possible for Amani Rakula to insert his finger into your vagina if you were wearing your shorts and panty?*

*A. Because when he was laying on top of me, his whole weight was on me. I tried to turn but I couldn't.*

*Q. I suggest to you that it is not possible for Amani Rakula to insert his finger into your vagina when he was lying with his stomach on your back?*

*A. He did it. Whilst I was trying to turn until his hand went inside.*

*Q. I suggest to you that the allegations that you have made against Amani Rakula is false because the manner in which you have made it, it is impossible to insert his finger into your vagina?*

*A. The reason why I was moving around and turning was to make him fall off my back and from that gap he managed to insert his finger.*

Q. That officer you called at the Vatukoula Police Station-Jese, were you in a relationship with him at the time you made the complaint?

A. Yes.

Q. I suggest to you that it was easier for you to make up or lie about this allegation against Amani Rakula because you were making the complaint to your boyfriend or partner at the time?

A. No my Lord. Everything did happen.

*(xxxiv) In re-examination, the Learned State Counsel asked the complainant as to how she says the accused knew that his wife had already left to the house that was being built. She said: "Because that same day in the afternoon he came home and we informed him that his wife and his children are in their house".*

[23] At the end of the prosecution case Court decided to call for the defence. The accused was then explained his legal rights. I explained to him that he could address Court by himself or 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. I explained to the accused that he need not prove anything. The burden of proving his guilt rests entirely on the prosecution at all times.

[24] The accused exercised his right to remain silent.

### Analysis

[25] The prosecution in support of their case, called the complainant, ALR, who was their sole witness. The accused exercised his right to remain silent.

[26] The burden of proving each ingredient of the charge of Rape rests entirely and exclusively on the prosecution and the burden of proof is beyond a reasonable doubt. Therefore, it is incumbent on the prosecution to prove the elements of the charge beyond reasonable doubt. I have made reference to the elements that the prosecution has to prove in this case at paragraph 9 of this judgment.

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

- [28] Based on the said admitted facts it is admitted that the complainant is the sister-in-law of the accused, since the complainant's older sister is married to him. It is also admitted that on the 9 November 2019, at about 10.30 p.m., the complainant was at home with her mother and two sons sleeping when the accused came and started calling out her name. It is further admitted that according to the complainant when she woke up she saw the accused standing beside her.
- [29] I have summarized the evidence of the complainant led during the trial. The complainant testified in a like manner to what has been admitted above. She said at the time the accused had asked her about the whereabouts of his wife Akanisi. She had told him that his wife and family were in their house at the top. Then the accused had left.
- [30] The defence version is that this is the only instance on which he had come and spoken to the complainant that night. On being informed that his wife was at their house he had left and never come back to the complainant's house. The accused totally denies the incident alleged against him. He denies having laid on top of the complainant; he denies asking the complainant if he could kiss her; he denies asking the complainant if he could lick her and he denies inserting his finger into the complainant's vagina.
- [31] The defence attempted to impeach the complainant's credibility by highlighting one omission in her statement made to the Police on 9 November 2019, in comparison to the testimony given by her in Court. This is in relation to the complainant's statement not containing the fact that the accused came to her house the first time that night to ask about his wife Akanisi.
- [32] In *Sivoinatoto v. State* [2018] FJCA 68; AAU0049.2014 (1 June 2018); the Fiji Court of Appeal discussed as to how a Court should deal with issues arising out of contradictions and omissions.
- [33] When asked to explain as to why this fact is not found in her statement the complainant explained that and in the process of informing this fact to the Police her father had talked in between or had interrupted. It must be noted that the statement of the complainant had been taken/recorded at her own house.
- [34] However, the defence version that the only instance on which he had come and spoken to the complainant that night was to ask the whereabouts of his wife, and on

being informed that his wife was at their house he had left and never come back to the complainant's house, cannot be entirely believed as truthful. This is due to the fact that it has been admitted between the parties at paragraph 5 of the Admitted Facts as follows: *According to the complainant when she woke up she saw the accused standing beside her and the accused invited her to join him for a drink at Kupi's house.*

[35] However, most strangely, even the complainant denies that the accused Amani had invited her to drink at Kupi's house.

[36] In my opinion, this casts some serious doubts in my mind with regard to the truth and credibility of both the complainant's evidence and the defence version of the incident. It is trite law that since the prosecution and the defence have consented to treat certain facts as "*Admitted Facts*" without placing necessary evidence to prove them, the said facts are proved beyond reasonable doubt. This is clearly enumerated in Section 135 of the Criminal Procedure Act.

[37] Another serious doubt is created in my mind with regard to the complainant's testimony where she stated that the entire duration of the incident was 20 minutes. She clarified later, that it was during this 20 minutes that the accused had inserted his finger into her vagina. According to her, that specific act had taken only 10 seconds. Therefore, for a period of over 19 minutes the accused had been lying on her top of her, prior to inserting his finger into her vagina.

[38] The complainant testified to the incident as follows (after the accused laid on top of her): *Then he asked me if he could kiss me. I told him no. Then he asked me again if he could lick me. I told him no and I pushed him. When I pushed him, he did not fall off me, he was still on me. Without my permission he put his finger into my vagina.*

[39] It must also be reiterated that according to the complainant this incident had happened in the kitchen, where her mother and two sons were sleeping nearby. In fact, her mother was sleeping on the bed, while she was sleeping on the mattress which was spread on the kitchen floor, together with her two young sons.

[40] It was suggested to the complainant that for over 19 minutes she did not scream or call for help from her mother who was lying beside her on the bed. The witness said that she had pulled her mother's hand but because her mother had a mild stroke, the hand which

she had pulled her mother did not feel it. The complainant agreed that she did not cry for help or scream.

[41] In my opinion, this is a classic case, where both the prosecution version and defence version of the events cannot be entirely believed. It seems that the real truth of what had transpired on the night of 9 November 2019, at Nabudigilo Settlement, Waikubukubu, Vatukoula, has not been revealed in Court. However, it is the duty of the prosecution to prove the charge against the accused beyond reasonable doubt.

[42] For the aforesaid reasons, it is my opinion that the prosecution has failed to prove the charge of Rape against the accused beyond reasonable doubt.

[43] In the circumstances, I find the accused not guilty of the charge of Rape with which he is charged.

[44] Accordingly, I acquit the accused of the charge of Rape.



AT LAUTOKA

Dated this 22<sup>nd</sup> Day of May 2023

Riyaz Hamza

**JUDGE**

**HIGH COURT OF FIJI**

**Solicitors for the State:**

**Office of the Director of Public Prosecutions, Lautoka.**

**Solicitors for the Accused:**

**Office of the Legal Aid Commission, Lautoka.**