

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 83 of 2023

STATE

V

ETIKA PENE SULIANA

Counsel : Ms. S. Swastika for the State.
: Ms. B. Kumari and Ms. J. Terubea for the
Accused.

Dates of Hearing : 11, 12, 13, 18 March, 2024
Closing Speeches : 22 March, 2024
Date of Judgment : 18 April, 2024

JUDGMENT IN ABSENTIA

(The name of the complainant is suppressed she will be referred to as "R.T")

1. The Director of Public Prosecutions charged the accused by filing the following information dated 30th May, 2023:

FIRST COUNT

(Representative Count)

Statement of Offence

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

Particulars of Offence

ETIKA PENE SULIANA, between the 1st day of January 2019 and the 31st day of December 2019 at Lautoka, in the Western Division, unlawfully and indecently assaulted “R.T”, a child under the age of 13 years, by squeezing her breasts.

SECOND COUNT

(Representative Count)

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (b) and (3) of the Crimes Act 2009.

Particulars of Offence

ETIKA PENE SULIANA, between the 1st day of January 2019 and the 31st day of December 2019 at Lautoka, in the Western Division, penetrated the vulva of “R.T”, a child under the age of 13 years, with his finger.

THIRD COUNT

(Representative Count)

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (b) and (3) of the Crimes Act 2009.

Particulars of Offence

ETIKA PENE SULIANA, between the 1st day of January 2019 and the 31st day of December 2019 at Lautoka, in the Western Division, penetrated the vulva of “R.T”, a child under the age of 13 years, with his tongue.

FOURTH COUNT

(Representative Count)

Statement of Offence

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

Particulars of Offence

ETIKA PENE SULIANA, between the 1st day of January 2020 and the 31st day of December 2020 at Lautoka, in the Western Division, unlawfully and indecently assaulted “R.T”, a child under the age of 13 years, by squeezing her breasts.

FIFTH COUNT

(Representative Count)

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (b) and (3) of the Crimes Act 2009.

Particulars of Offence

ETIKA PENE SULIANA, between the 1st day of January 2020 and the 31st day of December 2020 at Lautoka, in the Western Division, penetrated the vulva of “R.T”, a child under the age of 13 years, with his finger.

SIXTH COUNT

(Representative Count)

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (b) and (3) of the Crimes Act 2009.

Particulars of Offence

ETIKA PENE SULIANA, between the 1st day of January 2020 and the 31st day of December 2020 at Lautoka, in the Western Division, penetrated the vulva of “R.T”, a child under the age of 13 years, with his tongue.

SEVENTH COUNT

(Representative Count)

Statement of Offence

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

Particulars of Offence

ETIKA PENE SULIANA, between the 1st day of January 2021 and the 31st day of December 2021 at Lautoka, in the Western Division, unlawfully and indecently assaulted “R.T”, a child under the age of 13 years, by squeezing her breasts.

EIGHTH COUNT

(Representative Count)

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (b) and (3) of the Crimes Act 2009.

Particulars of Offence

ETIKA PENE SULIANA, between the 1st day of January 2021 and the 31st day of December 2021 at Lautoka, in the Western Division, penetrated the vulva of “R.T”, a child under the age of 13 years, with his finger.

NINTH COUNT

(Representative Count)

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (b) and (3) of the Crimes Act 2009.

Particulars of Offence

ETIKA PENE SULIANA, between the 1st day of January 2021 and the 31st day of December 2021 at Lautoka, in the Western Division, penetrated the vulva of “R.T”, a child under the age of 13 years, with his tongue.

TENTH COUNT

(Representative Count)

Statement of Offence

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

Particulars of Offence

ETIKA PENE SULIANA, between the 1st day of January 2022 and the 31st day of December 2022 at Lautoka, in the Western Division, unlawfully and indecently assaulted “R.T”, a child under the age of 13 years, by squeezing her breasts.

ELEVENTH COUNT

(Representative Count)

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (b) and (3) of the Crimes Act 2009.

Particulars of Offence

ETIKA PENE SULIANA, between the 1st day of January 2022 and the 31st day of December 2022 at Lautoka, in the Western Division, penetrated the vulva of “R.T”, a child under the age of 13 years, with his finger.

TWELVETH COUNT

(Representative Count)

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (b) and (3) of the Crimes Act 2009.

Particulars of Offence

ETIKA PENE SULIANA, between the 1st day of January 2022 and the 31st day of December 2022 at Lautoka, in the Western Division, penetrated the vulva of “R.T”, a child under the age of 13 years, with his tongue.

2. At the outset I would like to mention that the accused was present in court in the morning of 22nd March, 2024 during the closing speeches by both counsel. The matter was stood down till 2.30 pm for judgment. When the matter was called as scheduled the accused did not appear hence a bench warrant was issued with a returnable date of 25th March, 2024.
3. On 25th March, the bench warrant was not executed and the accused was still absent so a NOAH was issued to the sureties to appear in court, on 28th March the sureties told the court that they were not aware of the accused whereabouts. The sureties told the court that they will inform the state counsel or the court registry if they come to know about the whereabouts of the accused.

4. Today 18th April, the accused was again not present in court the sureties were dealt with and discharged since the accused had breached his bail conditions by failing to appear in court. In accordance with section 14 (2) (h) of the Constitution of Fiji this court was satisfied that the accused having appeared in court during the trial and in the morning of 22nd March for closing speeches had voluntarily chosen not to attend court thereafter. This court cannot be waiting for the accused hence this judgment is delivered in the absence of the accused.
5. In this trial, the prosecution called three witnesses and after the prosecution closed its case, this court ruled that the accused had a case to answer for four counts of sexual assault (counts 1, 4, 7 and 10) as charged.
6. There was no evidence in respect of four counts of rape (counts 2, 5, 8 and 11) as charged, however, there was evidence before the court for the lesser offences of sexual assault in respect of these counts. In accordance with section 162 (1) (f) of the Criminal Procedure Act this court ruled that the accused had a case to answer for the offences of sexual assault for counts 2, 5, 8 and 11. The complainant told the court that the accused was rubbing his fingers on her vagina. Furthermore, there was evidence in respect of four counts of rape (counts 3, 6, 9 and 12) as charged.
7. In summary this court had ruled that the accused had a case to answer as follows:
 - a) 8 counts of sexual assault; and
 - b) 4 counts of rape.

BURDEN OF PROOF AND STANDARD OF PROOF

8. As a matter of law, the burden of proof rests on the prosecution throughout the trial and it never shifts to the accused. There is no obligation on the accused to prove his innocence. An accused is presumed to be innocent until he or she is proven guilty. The standard of proof is one of proof beyond reasonable doubt.
9. The accused is charged with more than one offence, the evidence in respect of each offence will be considered separately from the other if the accused is guilty of one offence, it does not mean that he is guilty of the others as well. This also applies with the findings of not guilty.

ELEMENTS OF THE OFFENCE

SEXUAL ASSAULT

10. To prove counts one, two, four, five, seven, eight, ten, and eleven the prosecution must prove the following elements of the offences of sexual assault beyond reasonable doubt:
 - (a) The accused;
 - (b) Unlawfully and indecently;
 - (c) Assaulted the complainant by holding and/or squeezing her breasts and /or by touching or rubbing her vagina with his fingers.
11. The first element of the offence of sexual assault is concerned with the identity of the person who allegedly committed these offences.
12. The words “unlawfully” and “indecently” in respect of the second element of the offences of sexual assault means without lawful excuse and that the

act has some elements of indecency that any right minded person would consider such conduct indecent.

13. The final element of assault is the unlawful use of force on the complainant by the accused holding and/or squeezing her breasts and/or by touching or rubbing her vagina with his fingers.

In this regard this court has to consider:

- (a) whether the force used in holding and/or squeezing the complainant's breasts and/or by touching or rubbing the complainant's vagina with the fingers in the context of what the accused was doing to the complainant sexual in nature; and
 - (b) if the answer is yes, whether, in view of the circumstances and/or the purpose in relation to the force used, was in fact sexual in nature.
14. In this trial, the accused has denied committing the offences of sexual assault as alleged. It is for the prosecution to prove beyond reasonable doubt that it was the accused, who had unlawfully and indecently assaulted the complainant by holding and/or squeezing her breasts and/or by touching or rubbing her vagina with his fingers.
 15. If this court is satisfied beyond reasonable doubt that the prosecution has proved all the elements of the offences of sexual assault as explained above, then this court must find the accused guilty. If on the other hand, there is a reasonable doubt with regard to any of those elements concerning the offences of sexual assault, then this court must find the accused not guilty.

RAPE

16. To prove counts three, six, nine and twelve the prosecution must prove the following elements of the offences of rape beyond reasonable doubt:
 - (a) The accused;
 - (b) Penetrated the vagina of the complainant with his tongue;
 - (c) The complainant was below the age of 13 years.
17. The slightest of penetration of the complainant's vagina by the accused's tongue is sufficient to satisfy the act of penetration. As a matter of law a person under the age of 13 years does not have the capacity to consent. In this case, the complainant was 8 to 11 years at the time of the alleged offending and therefore the consent of the complainant is not an issue in regards to these counts.
18. The first element of the offence is concerned with the identity of the person who allegedly committed these offences.
19. The second element is the act of penetration of the complainant's vagina by the tongue.
20. The final element of the offence is the age of the complainant. It is not in dispute that the complainant was 8 to 11 years from 2019 till 2022 which establishes that she was below the age of 13 years at the time of the alleged incidents.
21. In this trial, the accused denied committing the offences of rape he is charged with. It is for the prosecution to prove beyond reasonable doubt that it was the accused who had penetrated the vagina of the complainant with his tongue.

22. This court must be satisfied that the prosecution has proved all the elements of the offences of rape beyond reasonable doubt in order for this court to find the accused guilty. If on the other hand, this court has a reasonable doubt with regard to any of those elements concerning the offences, then this court must find the accused not guilty.
23. As a matter of law, I have to direct myself that offences of sexual nature as in this case do not require the evidence of the complainant to be corroborated. This means, if this court is satisfied with the evidence given by the complainant and accepts it as reliable and truthful then this court is not required to look for any other evidence to support the account given by the complainant.

ADMITTED FACTS

24. In this trial, the prosecution and the defence have agreed to certain facts titled as agreed facts. These facts are part of the evidence and I have accepted these admitted facts as accurate, truthful and proven beyond reasonable doubt.
25. I will now remind myself of the prosecution and defence cases. In doing so, it would not be practical of me to go through all the evidence of every witness in detail. I will summarize the important features for consideration and evaluation in coming to my final judgment in this case.

PROSECUTION CASE

26. In the year 2019 the complainant was living with her mother, the accused who is her stepfather and her stepsister at Tawatawa, Lautoka. It was a one bedroom house with toilet and bathroom outside. The complainant

used to sleep on the double bed in the bedroom with her younger sister whereas her mother and the accused slept in the sitting room on the mattress.

27. The complainant informed the court that her date of birth is 5th October, 2011. The birth certificate of the complainant was marked and tendered as prosecution exhibit no.1.
28. According to the complainant, the accused used to come into her bedroom in the night, remove her pants and panty and then play with her vagina by moving his fingers round and round and side to side. When the accused did this, it was painful.
29. After a few minutes the accused lifted the complainant's t-shirt, held her breast and squeezed it. Thereafter, the accused lifted her legs and started licking her vagina with his tongue. The complainant found it to be painful because the accused was trying to put his tongue inside her vagina. When the accused was doing all of the above the complainant was lying face up and she saw the accused.
30. When the accused was doing all this, the complainant's younger sister and her mother were sleeping. The complainant said the accused used to do all these things to her almost every night. The complainant did not tell anyone about what the accused was doing to her since she was scared to tell anybody.
31. In the year 2020 the complainant continued living with the accused. During the night the accused would come into her bed, remove her pants and panty and with his fingers started to play with her vagina by moving his two fingers round and round, side to side on her vagina. The complainant felt pain in her vagina, after this the accused used his tongue

- to lick her vagina for a few minutes. The complainant felt pain because the accused was trying to put his tongue inside her vagina. Thereafter, the accused lifted her t-shirt and started to hold and squeeze her breast.
32. The complainant's sister was sleeping beside her and her mother was sleeping in the sitting room. The complainant also said that the above was happening to her every night. The complainant told her class teacher Ms. Devi that when she sleeps at night the accused would come and lick her vagina with his tongue and also squeezed her breast. The reason why she told her teacher was because she did not want to go home.
 33. The complainant also told another teacher Ms. Sanjana the same thing and then the teachers told the Head Teacher. The Head Teacher with Ms. Devi and Ms. Sanjana and the complainant came to her house. The teachers in the presence of the complainant told the complainant's mother about what they had been told.
 34. The teachers told the complainant's mother to tell the accused to go away from the house. The accused was present during this conversation, the complainant's mother got angry on the accused and that is all her mother did. After this, the accused did not do anything for a few weeks but again started what he used to do to her on previous occasions.
 35. In the year 2021 the complainant was again sleeping with her sister in her bedroom, it was around midnight the accused came into the bedroom, sat beside her removed her pants and panty and started playing with her vagina by moving his fingers round and round and then side to side. The complainant felt pain in her vagina and thereafter the accused licked her vagina with his tongue.

36. After this, the accused lifted her t-shirt and held her breast. The complainant tried to move but the accused held her tight. According to the complainant the accused did these things to her almost every night. The complainant in 2021 did not tell anyone about what the accused was doing to her.
37. In the year 2022 as soon as the complainant's mother slept the accused again around midnight came into her bedroom. The accused sat near her on the bed removed her t-shirt, held her breast, then removed her pants and panty and licked her vagina and also moved his fingers on her vagina from side to side and then round and round. This happened nearly every night.
38. The complainant did not tell anyone, however, in January 2023, the complainant met her aunt Moanata from Suva at the accused's mother's house. The complainant told her aunt the accused would come into her bedroom when she sleeps and he licks her vagina and holds her breast. The complainant's father was informed, the complainant and her aunt went to Suva. The complainant recognized the accused in court.
39. In cross examination the complainant stated that the age difference between her and her younger sister was 2 years. When it was suggested to the complainant that the accused never used to go into her room every night, the complainant disagreed and said the accused was lying. The complainant denied that the accused had not done anything to her from 2019 to 2022 as mentioned by her in court.
40. On all occasions the complainant did not call for help or shout or move or do anything because the accused had told her not to. She also did not wake her sister because the accused had held her hands not to wake her sister. The complainant did not wake her mother because her mum sleeps

like a “dead person who doesn’t feel anything”. The complainant was also scared to scream.

41. The complainant agreed the accused was financially supporting and caring for her and would drop her to school. The complainant agreed if she was scared she would not go anywhere with the accused. The complainant wanted to tell her mother about what the accused was doing to her but she was scared of her mother.
42. The complainant stated that in 2019 she had told her mother and aunt Rara about what the accused was doing to her. The complainant used to visit her grandparents in Natabua but she did not tell anything to her grandparents about what the accused was doing. The complainant denied that she made false allegations against the accused because she was angry with the accused for stopping her from going to her grandparents house in Natabua.
43. The complainant stated that when her mother had asked about the allegations, she had told her mother everything the accused was doing to her. The complainant did not agree that she had told her mother nothing had been done to her by the accused and that she was lying about the allegations. The reason why the complainant changed school in 2021 was to go and stay with her cousins.
44. The complainant denied her aunt Moanata had manipulated her to raise false allegations against the accused.
45. In re-examination the complainant stated that in 2019 she had told her mother about what the accused was doing to her. The complainant also

stated that the accused had told her not to move or shout or do anything to stop him.

46. The second witness Moanata Apisalome the aunt of the complainant informed the court that in January, 2023 the witness was in Vaivai, Lautoka to visit her elder sister the mother of the accused. The accused is the nephew of the witness.
47. The witness met the complainant on 25th January, 2023 after sometime the complainant informed the witness that she did not want to stay with her mother and the accused.
48. The witness questioned the complainant why, the complainant said she was scared and she could not take the pain she was getting from the accused. The complainant explained that the accused came in the bedroom every night when she was sleeping, sometimes he took her to the toilet making her sit on the toilet pan removed her panty and touched her vagina.
49. Furthermore, the accused also took the complainant to the washroom and touched her breast. The accused has been doing this to her from class 2 till class 5. When the complainant was telling this to the witness she was crying. The witness took the complainant to her house after the father of the complainant was informed. Thereafter, the matter was reported at the Valelevu Police Station.
50. In cross examination the witness stated that she is the aunt of the accused. The witness denied having a relationship with the accused in 2016. She stated that the complainant had told her about what the

accused was doing to the complainant. The witness was present when the complainant was giving her police statement.

51. The witness denied influencing the complainant to give a false police statement to take revenge from the accused for breaking up with her in 2016. The witness said she had nothing to do with the accused.
52. The final prosecution witness Sanjini Raj Chandra, a Primary School Teacher and Child Protection Officer informed the court that this is her 27th year as a School Teacher. She has a Bachelor of Primary Education, Post Graduate Diploma in Education and Teachers Certificate. The witness was transferred to the Saru MGM Primary School in the year 2017 and from 2018 the witness has been a Child Protection Officer as well.
53. On 13th October, 2020 at about 2.45pm a Class Teacher Dipika Ram brought the complainant a student of the school in Year 3 into her classroom because the complainant did not want to go home. According to the witness she saw the complainant was sad with tears rolling down her cheeks.
54. Upon seeing this, the witness calmed the complainant and asked her to sit. The witness told the complainant that she was ready to help her. The complainant said she did not want to go home the witness asked why and was there any problem at home? The complainant said the accused was molesting her by touching her vagina. Upon further questioning, the complainant told the witness the accused had been doing this to her from 2019 and he used to follow her to the bathroom. The complainant also revealed that at night time the accused would come and sleep beside her and touch her vagina. The complainant wanted to shout and cry but she could not because she was frightened.

55. The witness assured the complainant that she will help her and there was nothing for the complainant to be afraid of. The witness discussed the matter with the Head Teacher and the witness completed the Social Welfare Form and forwarded it to the Permanent Secretary of the Social Welfare Department and Ministry of Education. The Head Teacher and the Class Teacher took the complainant to the complainant's house.
56. In cross examination the witness agreed that this was the first time the complainant had complained about molestation at home. The witness stated that she saw the complainant was sad with tears rolling down her cheeks. The witness was referred to her police statement dated 3rd April, 2023 she agreed that nowhere in her police statement it was mentioned that the complainant was sad and crying. The witness explained that she may not have mentioned it in her police statement, however, when she investigated the matter, the complainant was really sad and she could see tears rolling down the complainant's cheeks.

RECENT COMPLAINT DIRECTION

57. Complainants of sexual offences may react in different ways to what they may have gone through. Some in distress or anger may complain to the first person they see. Some due to fear, shame or shock or confusion, may not complain for some time or may not complain at all. A complainant's reluctance to complain in full as to what had happened could be due to shame or shyness or cultural taboo when talking about matters of sexual nature.
58. A late complaint does not necessarily signify a false complaint and on the other hand an immediate complaint does not necessarily demonstrate a true complaint. It is a matter for this court to determine what weight is to be given to the fact that on 13th October, 2020 the complainant told her

school teacher Sanjini Chandra that since 2019 at night on many occasions the accused would sleep beside the complainant and touch her vagina.

59. Thereafter on 25th January, 2023 the complainant informed her aunt Moanata that the accused had been coming into her bedroom every night sometimes he took the complainant to the toilet making her sit on the toilet pan, removed her panty and touched her vagina and sometimes the accused took the complainant to the washroom and touched her breast. The accused has been doing this to the complainant since she was in class 2 till class 5.
60. This is commonly known as recent complaint evidence. The evidence given by Sanjini and Moanata is not evidence of what actually happened between the complainant and the accused since Sanjini and Moanata were not present and they did not see what had happened.
61. This court is, however, entitled to consider the evidence of recent complaint in order to decide whether the complainant is a credible witness. The prosecution says the complainant was in a vulnerable and helpless situation. She was under the care and control of the accused who was the sole bread winner of the family, however, in 2020 the complainant was able to tell her teacher Sanjini Chandra about what the accused had been doing to her.
62. The prosecution further states that as the accused continued his unlawful conduct on the complainant there came a point whereby the complainant could not take it anymore. In January, 2023 the complainant told her aunt Moanata about what the accused was doing to her. Moanata promptly assisted the complainant in lodging a police complaint.

63. The prosecution is asking this court to consider the fact that the complainant was 8 years old when the abuse started and at the time the complainant told her aunt she was about 11 years old. Despite the delay the complainant was able to recall and relay relevant and important information about the conduct of the accused to Sanjini and Moanata shows that the complainant is likely to be truthful.
64. On the other hand, the defence says the complainant made up a false allegation against the accused. She gave one version to her school teacher Sanjini and another version to her aunt Moanata and a different version in court. The defence also states that this court should consider that there are different versions which shows the complainant was not consistent hence she was making up a story against the accused and therefore she should not be believed.
65. It is for this court to decide whether the evidence of recent complaint helps this court to reach a decision. The question of consistency or inconsistency in the complainant's conduct goes to her credibility and reliability as a witness. It is for this court to decide whether the complainant is reliable and credible. The real question is whether the complainant was consistent and credible in her conduct and in her explanation of it.

PREVIOUS INCONSISTENT STATEMENT

66. This court also directs its mind to the fact that the defence counsel during cross examination of Sanjini Chandra had questioned this witness about an inconsistency in her police statement which she had given to the police when facts were fresh in her mind with her evidence in court.

67. This court is allowed to take into consideration the inconsistency or omission between what this witness told the court and her police statement when considering whether this witness was believable and credible. However, the police statement is not evidence of the truth of its contents.
68. It is obvious that passage of time can affect one's accuracy of memory. Hence it cannot be expected for every detail to be the same from one account to the next.
69. If there is any inconsistency or omission, it is necessary to decide firstly whether it is significant and whether it affects adversely the reliability and credibility of the witness. If it is significant, then it is for this court to consider whether there is an acceptable explanation for it. If there is an acceptable explanation, for the change, then this court may conclude that the underlying reliability of the evidence is unaffected. If the inconsistency is so fundamental, then it is for this court to decide to what extent that influences the reliability of the witness evidence.
70. This was the prosecution case.

DEFENCE CASE

71. At the end of the prosecution case, the accused was explained his options. He could have remained silent but he chose to give sworn evidence and be subjected to cross examination and also called another witness. This court must also consider their evidence and give such weight as is appropriate.
72. The accused informed the court that he is married to the mother of the complainant and they all used to stay together at Tawatawa. The house

had one sitting room and kitchen with toilet and bathroom outside. According to the accused everyone slept in the sitting room. The complainant and her sister used to sleep on the double bed and the accused with his wife on the mattress about three meters from where the complainant slept.

73. The accused said the allegations raised against him were not true and the person who had manipulated the complainant against him was Moanata Apisalome. In 2020 he was shocked when the teachers came home and told his wife about the allegations raised against him by the complainant. After the teachers left his wife confronted him about the allegations in front of the complainant. The complainant did not say anything.
74. The accused used to play with the complainant and give her the very best he could afford but from this day he started to keep his distance. The reason why he stopped the complainant from going to the house of her grandparents was because he could not afford to buy groceries for the grandparents and his family. However, the complainant was stubborn and she continued to go to her grandparents house. In the year 2020, 2021 the complainant started to get aggressive, answered back to the accused and refused to do whatever he told her.
75. Furthermore, the accused stated that in the year 2016 he was in a relationship with his aunt Moanata but due to an argument he left her. When questioned why Moanata would have any motive to make a false allegation against him the accused said when they were in a relationship he made her pregnant so she got angry with him and the relationship broke. The accused stated that all the allegations made by the complainant are false and the complainant has been brainwashed and manipulated by Moanata.

76. In cross examination by the state counsel the accused agreed that he was the sole provider of the family and he had control over the complainant. He also agreed that he had a good relationship with the complainant and he had the responsibility of protecting her. The accused denied his wife had confronted him for touching the complainant in 2019 when his sister in law Rara was at home. The accused agreed when the complainant was brought home by the teachers the complainant was upset.
77. The accused disagreed that the only reason he was stopping the complainant from going to her grandparents house was because he was afraid the complainant would tell her grandparents about what he had been doing to her. The accused maintained that he was in a relationship with Moanata and she is still angry with him for making her pregnant. The accused denied all the allegations raised against him by the complainant he said he did not do anything as stated by the complainant.
78. The final defence witness Aokan Lepani the wife of the accused and the mother of the complainant informed the court that from 2019 till 2022 the relationship between the complainant and the accused was okay but sometimes when the complainant got the growling or telling off from the accused the complainant got angry.
79. The witness agreed the Head Teacher and Class Teacher of the complainant had come home to see her in 2020. The teachers had come due to a complaint made in school by the complainant. She was told to wait for the social welfare and police officers but there was no visit by any of these mentioned officers. After the teachers left the witness asked the complainant if the allegations she had raised against the accused were true, the complainant thought for a while and said no.

80. When questioned what the teachers had told her the witness said that the complainant did not want to stay at home because of the accused. The witness asked the accused and he denied doing anything to the complainant.
81. In cross examination the witness denied the complainant had told her in 2019 when her cousin sister Rara was at home that the accused was touching her. The witness agreed after the social welfare and the police officers did not come she did not do anything reason being when she asked the complainant, the response was everything was alright and the allegations the complainant had raised was a lie.
82. The witness stated that after the complainant told her the allegations were a lie she did not do anything. The witness said that she had also told the complainant if she did not want to tell her then she can go and report at the Natabua Police Post which was next to her school.
83. The witness also stated that it was only when the complainant went to Suva that these allegations starting coming about. The witness disagreed that the complainant had told her about the allegations. She also disagreed that had she reported the matter to the police she would have lost the financial support of the accused.
84. This was the defence case.

ANALYSIS

85. The prosecution states that the complainant and the accused are known to each other. The complainant lived with her step father the accused, her mother and step sister.

86. In the year 2019 the complainant was 8 years of age schooling in year 2. The prosecution alleges that the accused took advantage of the complainant and sexually abused her on a number of occasions from 2019 till 2022. The abuse was carried out by the accused at night when the complainant's mother and sister were fast asleep.
87. The complainant did not do anything since the accused told the complainant not to seek help or shout or move or wake her sister who was sleeping next to the complainant. The complainant was scared of the accused so she did as told.
88. From 2019 till 2022 on many occasions whilst the complainant was sleeping in her bedroom the accused in the middle of the night would remove the complainant's pants and panty and then start rubbing his fingers on the vagina of the complainant. When the accused did this, the complainant felt pain.
89. Shortly after, the accused would lift the complainant's t-shirt hold her breast and squeeze it. Thereafter, the accused would lick the complainant's vagina with his tongue. The complainant found it painful because the accused was trying to put his tongue inside her vagina. The complainant did not tell anyone about what the accused was doing to her since she was scared to tell anybody.
90. On 13th October, 2020 the complainant told Sanjini Chandra her School Teacher and Child Protection Officer that when she sleeps at night the accused would come and lick her vagina with his tongue and also squeeze her breast. According to Sanjini the complainant told her that since 2019 the accused had been touching her vagina on many occasions during night time. Sanjini had noticed that the complainant was sad and tears were

rolling down her cheeks when the complainant was telling her about what the accused had been doing.

91. The Head Teacher of the school with the Class Teacher went to the complainant's house. The teachers in the presence of the complainant told the complainant's mother to tell the accused to go away from the house. The accused was present during this conversation, the complainant's mother got angry on the accused. The accused did not do anything for a few weeks but again started what he used to do to the complainant on previous occasions.
92. In the year 2021 on many occasions the complainant tried to move away from the accused when he came into her bed so that he does not do what he had been doing to her but she could not because the accused would hold her tight. According to the complainant the accused did these things to her almost every night. The complainant in 2021 and 2022 did not tell anyone about what the accused was doing to her.
93. However, in January 2023, the complainant met her aunt Moanata at the accused's mother's house. The complainant told Moanata the accused would come into her bedroom when she sleeps and he licks her vagina and holds her breast.
94. According to Moanata on 25th January, 2023 the complainant informed her that she does not want to stay with her mother and the accused because she was scared of the accused. The complainant also told Moanata the accused came to her in the bedroom every night when she was sleeping. Sometimes the accused took the complainant to the toilet making her sit on the toilet pan removed her panty and touched her vagina.

95. The accused also took the complainant to the washroom and touched her breast. The accused has been doing this to her from class 2 till class 5. According to Moanata when the complainant was telling her this, the complainant was crying. The witness took the complainant to her house in Suva and the matter was reported at the Valelevu Police Station.
96. The prosecution further submitted that the matter was promptly reported to the police after Moanata was informed of the abuses. Furthermore, Moanata and Sanjini had seen the distraught state of the complainant when she was narrating what the accused had done. The prosecution is asking this court to consider the age of the complainant in 2019 which was 8 years and in 2022 she was 11 years which is a crucial factor in this case. It cannot be expected that the complainant will tell everything the accused was doing to her to Sanjini and Moanata hence there is bound to be a variance between her narration in court and what she told the recent complaint witnesses.
97. On the other hand, the defence says the allegations are false initiated against the accused by the aunt of the complainant. He did not do anything to the complainant as alleged. What the complainant narrated in court was not possible and/or probable and therefore she should not be believed.
98. The defence is asking this court to consider the fact that the complainant's aunt was in a relationship with the accused and after the relationship was ended by the accused in 2016 the aunt has been looking for a way to take revenge against the accused. The opportunity came in the form of the complainant. Moanata was even present when the complainant was giving her police statement which was to make sure the complainant tells the police what the aunt wants.

99. In respect of Moanata's evidence the defence says this witness has carefully laid the trap through the complainant to raise baseless allegations against the accused. The allegations came about after the complainant started living with Moanata.
100. Furthermore, the mother of the complainant told the court that the complainant had confessed to her that the allegations raised against the accused were not true but a lie.
101. Moreover, Sanjini as a responsible school teacher should have told the police but she did not because there was nothing to complain about. Had there been something serious Sanjini would have no doubt immediately informed the police.
102. The defence is asking this court not to believe the complainant and the recent complaint evidence of Sanjini and Moanata. The complainant was not consistent in relaying her complaint to Sanjini and Moanata. The complainant gave one version to Sanjini and another version to Moanata and a totally different version in court. What the complainant told Sanjini was the touching of her vagina only whereas she told Moanata about the touching of her breast and vagina. The inconsistency in what the complainant told the court and what she told Sanjini and Moanata affects the credibility of the complainant.
103. The defence further submits that the complainant was not restrained by the accused any time she was going to school, her grandparents house and yet it took her 4 years to report the matter to the police is unacceptable and reeks of suspicion.
104. Finally, the defence submits that what the complainant told the court does not make sense and is riddled with doubt. The defence is asking this court

not to believe the complainant who is furthering the vested interest and motive of her aunt and her own motive against the accused and therefore she should not be believed.

DETERMINATION

105. I would like to once again remind myself that the burden to prove the accused guilt beyond reasonable doubt lies with the prosecution throughout the trial and it never shifts to the accused. Even if I reject the version of the defence still the prosecution must prove this case beyond reasonable doubt.
106. In this case, there are two different versions, one given by the prosecution and the other by the defence. This court must consider all the evidence adduced to decide whether the prosecution has proven beyond reasonable doubt that the accused committed the offences alleged. It is not for this court to decide who is acceptable between the complainant and the accused.
107. This court has kept in mind the following factors when determining the credibility and reliability of a witness such as promptness/spontaneity, probability/improbability, consistency/inconsistency, contradictions/omissions, interestedness/disinterestedness/bias, the demeanour and deportment in court [and the evidence of corroboration where it is relevant] see *Matasavui v State* [2016] FJCA 118; AAU0036.2013 (30 September 2016, *State v Solomone Qurai* (HC Criminal - HAC 14 of 2022).
108. Brennan J in *Liberato and Others v The Queen* ((1985) [1985] HCA 66; 159 CLR 507 at 515 has discussed the appropriate approach to be taken where

there are conflicting versions of evidence given by the prosecution and the defence witnesses. Brennan J held that:

“When a case turns on a conflict between the evidence of a prosecution witness and the evidence of a defence witness, it is commonplace for a judge to invite a jury to consider the question; who is to be believed? But it is essential to ensure, by suitable direction, that the answer to that question (which the jury would doubtless ask themselves in any event) if adverse to the defence, is not taken as concluding the issue whether the prosecution has proved beyond reasonable doubt the issue which it bears the onus of proving. The jury must be told that; even if they prefer the evidence for the prosecution, they should not convict unless they are satisfied beyond reasonable doubt of the truth of that evidence. The jury must be told that, even if they do not positively believe the evidence for the defence, they cannot find an issue against the accused contrary to that evidence if that evidence gives rise to a reasonable doubt as to that issue. His Honour did not make clear to the jury, and the omission was hardly remedied by acknowledging that the question whom to believe is “a gross simplification.”

109. This court has also taken into account the observations made by the Court of Appeal in *Rokocika v The State* [2023] FJCA 251; AU0040.2019 (29 November 2023) regarding what the accused told the court at paragraph 45 as follows:

The Liberato direction covers three points on the spectrum of belief regarding what the accused has said — positive belief (first aspect), positive disbelief (third aspect), and neither actual belief nor rejection of the accused’s account (second aspect): Park v R [2023] NSWCCA 71 at [102]–[103].

110. I have also kept in mind the observations made by Prematilaka RJA. sitting as a single judge of the Court of Appeal in *Josaia Naikalivou vs. The State*, AAU 017 of 2022 (26th March, 2024) at paragraph 9 as follows:

In Murray v The Queen (2002) 211 CLR 193 at 213 [57] Gummow and Hayne JJ, in the High Court of Australia made it clear that it is never appropriate for a trial judge to frame the issue for the jury's determination as involving a choice between conflicting prosecution and defence evidence: in a criminal trial the issue is always whether the prosecution has proved the elements of the offence beyond reasonable doubt. In R v Li (2003) 140 A Criminal R at 288 at 301 it was again held that the issue can never be which of the cases is correct or who of the complainant and the accused is telling the truth. This seems to be what exactly the trial judge had done in the judgment.

111. The defence argument apart from denial is that there was a motive on the part of the complainant's aunt Moanata to take revenge on the accused for breaking away from her in 2016. It is Moanata who has used the complainant against the accused due to her anger against the accused. Moanata was the one who took the complainant to the police station and it was in Moanata's presence the complainant gave her police statement so as to get even with the accused. Another motive raised by the defence is that the accused did not allow the complainant to go to her grandparents house in Natabua so out of dislike for the accused the complainant made a false story to get rid of him.

112. In respect of the above contention, I have directed my mind to the *Jovanovic* direction to remind myself that an accused has no burden to prove a motive or reason for a complainant to lie.

113. The Court of Appeal in *Rokocika's* case (supra) from paragraphs 32 to 34 made a pertinent observation in respect of the above as follows:

In *R v Jovanovic* (1997) 42 NSWLR 520 Sperling J set out a draft direction that emphasised that:

“It would be wrong to conclude that X is telling the truth because there is no apparent reason, in your view, for X to lie. Sometimes it is apparent. Sometimes it is not. Sometimes the reason is discovered. Sometimes it is not. You cannot be satisfied that X is telling the truth merely because there is no apparent reason for X to have made up these allegations. There might be a reason for X to be untruthful that nobody knows about’.

[33] The same has been stated as follows in NSW Criminal Trial Courts Bench Book at 3-625:

‘If the defence case directly asserts a motive to lie on the part of a central Crown witness, the summing-up should contain clear directions on the onus of proof, including a direction that the accused bears no onus to prove a motive to lie and that rejection of the motive asserted does not necessarily justify a conclusion that the evidence of the witness is truthful: Doe v R [2008] NSWCCA 203 at [58]; Jovanovic v R (1997) 42 NSWLR 520 at 521–522 and 535. The jury should also be directed not to conclude that if the complainant has no motive to lie then they are, by that reason alone, telling the truth: Jovanovic v R at 523.

[34] NSW Criminal Trial Courts Bench Book also states that:

‘A motive to lie or to be untruthful, if it is established, may “substantially affect the assessment of the credibility of the witness”: ss 103, 106(2)(a) Evidence Act 1995. *Where there is evidence that a Crown witness has a motive to lie, the jury’s task is to consider that evidence and to determine whether they are nevertheless satisfied that the evidence given is*

true: South v R [2007] NSWCCA 117 at [42]; MAJW v R [2009] NSWCCA 255 at [31].'

114. There is no dispute that the accused is the step father of the complainant and both were living in the same house. After carefully considering the evidence adduced by the prosecution and the defence, I do not find the complainant credible and believable to the extent that the accused had been penetrating her vagina with his tongue from 2019 till 2022.
115. Firstly, in 2020 the complainant did not tell her school teacher Sanjini Chandra anything about the accused penetrating the complainant's vagina with his tongue. According to Sanjini what the complainant told her was that the accused was touching her vagina. At the time the complainant told Sanjini about the conduct of the accused the actions of the accused on the complainant were continuing and therefore fresh in the mind of the complainant.
116. Secondly, the complainant also did not tell Moanata anything about the accused penetrating her vagina with his tongue. According to Moanata the complainant had told her the accused was touching the complainant's vagina and breasts.
117. Furthermore, I accept the observations of Sanjini and Moanata that the complainant was crying and in a distraught state as a reliable and credible narration of what they had seen. The evidence of Sanjini and Moanata is also reliable and credible about what the complainant had told them. There was an inconsistency about the observations made by Sanjini between her evidence and her police statement. However, the inconsistency between Sanjini's evidence in court and her police statement

is not significant to adversely affect her credibility. In any event the inconsistency does not go to the root of Sanjini's evidence.

118. The Court of Appeal in *Mohammed Nadim and another vs. State* [2015] FJCA 130; AAU0080.20 (2 October 2015) had made the following pertinent observations about the above at paragraph 16 as follows:

[16] The Indian Supreme Court in an enlightening judgment arising from a conviction for rape held in Bharwada Bhoginbhai Hirjibhai v State of Gujarat (supra):

“Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses therefore cannot be annexed with undue importance. More so when the all-important “probabilities-factor” echoes in favour of the version narrated by the witnesses. The reasons are: (1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen; ... (3) The powers of observation differ from person to person. What one may notice, another may not. It is unrealistic to expect a witness to be a human tape recorder;”

119. Another pertinent observation was also made by the Court of Appeal in *Joseph Abourizk vs. The State*, AAU 0054 of 2016 (7 June, 2019) at paragraph 107 in the following manner about deficiencies, drawbacks and other infirmities in evidence by taking into account the comments made by the Indian Supreme Court in *State of UP v. M K Anthony* (1985) 1 SCC 505:

“While appreciating the evidence of a witness the approach must be to ascertain whether the evidence of the witness read as a whole

appears to have a ring of truth. Once that impression is formed, then the court should scrutinise the evidence more particularly to find out whether deficiencies, drawbacks and other infirmities pointed out in the evidence is against the general tenor of the evidence. Minor discrepancies on trivial matters not touching the core of the case should not be given undue importance. Even truthful witnesses may differ in some details unrelated to main incident because power of observation, retention and reproduction differ with individuals...'

120. Sanjini is an experienced school teacher and a child protection officer who had carried out her duty by questioning the complainant and probing into the circumstances the complainant was abused. Sanjini was satisfied that the touching of the complainant's vagina was the only complaint raised hence she had promptly notified her Head Teacher, the Permanent Secretary of Social Welfare and the Ministry of Education.
121. Moanata was also a reliable witness she had asked relevant questions to the complainant and had elicited crucial information about what the accused had done to the complainant. Furthermore, I am not satisfied that Moanata had any motive or sinister reason to take revenge from the accused. The evidence of the accused in this respect does not make sense and is disregarded. Moanata was a straight forward and honest witness who was not discredited in cross examination. Moanata had promptly assisted the complainant in reporting the matter to the police as soon as she was made aware of what the accused was doing to the complainant.
122. I also reject the defence assertion that the complainant had a motive to falsely frame the accused because the accused did not allow the complainant to go to her grandparents house is far-fetched and an attempt by the accused to divert attention away from the allegations.

123. When the evidence of the two recent complaint witnesses are taken into account I am unable to accept the complainant's evidence that the accused was penetrating her vagina with his tongue as a credible account of what had happened. Both the recent complaint witnesses were consistent with each other about what the complainant had told them that is the touching of the vagina (in addition to telling Moanata about the touching of the breasts as well). Sanjini and Moanata were matured and concerned adults who brought to court their worldly experience which was obvious to me during their evidence.
124. At this point I would like to state that although the complainant had told the court about the conduct of the accused in her bedroom on her bed Moanata had mentioned about touching of the complainant's breasts and vagina in the toilet and washroom does not affect the credibility of the complainant because passage of time can affect memory and the age of the complainant at the time of the happening is an important factor in this regard. I accept that it was the accused who had touched the breasts and vagina of the complainant, where in the house is not materially relevant? The important point to note is that the complainant had told both the recent complaint witnesses crucial information about the accused's sexual conduct on her.
125. I accept the evidence of the complainant that the accused was holding and squeezing her breasts and touching or rubbing his fingers on her vagina as a truthful and reliable account of what the accused had done. The complainant gave a comprehensive and clear narration of what the accused had done to her in respect of the above. The complainant was also able to withstand cross examination and was not discredited in relation to the above allegations.

126. I have also taken into account that it is not expected of an 8 to 11 year old child who has had an unexpected sexual encounter to tell the first person she meets everything about what had happened to her. However, the failure by the complainant to tell Sanjini and Moanata about the accused penetrating her vagina with his tongue is crucial in this case when according to the complainant the abuses were ongoing and therefore fresh in her mind.

127. I have also taken into consideration the observations of the Supreme Court in *Anand Abhay Raj vs. The State, CAV 0003 of 2013 (20th August, 2014)* at paragraph 39 as follows:

The complainant need not disclose all of the ingredients of the offence. But it must disclose evidence of material and relevant unlawful sexual conduct on the part of the Accused. It is not necessary for the complainant to describe the full extent of the unlawful sexual conduct, provided it is capable of supporting the credibility of the complainant's evidence.

128. What the complainant told Sanjini and Moanata was material and relevant to the unlawful sexual conduct of the accused. The decisive aspect of the recent complaint evidence is to show consistency of the complainant's conduct with her evidence given at trial. Here, despite the questioning of the complainant by Sanjini and Moanata the complainant had not stated anything about the accused penetrating the vagina of the complainant with his tongue.

129. In *Raj's* case (supra) the Supreme Court at paragraphs 37 and 38 stated the following about recent complaint evidence:

[37] Procedurally for the evidence of recent complaint to be admissible, both the complainant and the witness complained to, must testify as to the

terms of the complaint: Kory White v. The Queen [1998] UKPC 38; [1999] 1 AC 210 at p215H. This was done here.

[38] 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.

130. I have no doubt in my mind that the complainant told the truth in court that it was the accused who had held and squeezed her breasts and/or touched and rubbed his fingers on her vagina and this is what she had told both Sanjini and Moanata. The demeanour of the complainant was consistent with her honesty.

LATE REPORTING

131. Furthermore, it is obvious that there is an issue of late reporting by the complainant to the police. The delay in reporting to police is about 4 years from the date of the allegation in January, 2019. In law the test to be applied in such a situation is known as the totality of circumstances test. The Court of Appeal in *State v Serelevu* (2018) FJCA 163; AAU 141 of 2014 (4th October, 2018) had explained this issue as follows:

*[24] In law the test to be applied on the issue of the delay in making a complaint is described as “the totality of circumstances test”. In the case in the United States, in **Tuuford** 186, N.W. 2d at 548 it was decided that:-*

“The mere lapse of time occurring after the injury and the time of the complaint is not the test of the admissibility of evidence. The rule requires that the complaint should be made within a reasonable time. The

surrounding circumstances should be taken into consideration in determining what would be a reasonable time in any particular case. By applying the totality of circumstances test, what should be examined is whether the complaint was made at the first suitable opportunity within a reasonable time or whether there was an explanation for the delay.”

“[26] However, if the delay in making can be explained away that would not necessarily have an impact on the veracity of the evidence of the witness. In the case of Thulia Kali v State of Tamil Naidu; 1973 AIR.501; 1972 SCR (3) 622:

“A prompt first information statement serves a purpose. Delay can lead to embellishment or after thought as a result of deliberation and consultation. Prosecution (not the prosecutor) must explain the delay satisfactorily. The court is bound to apply its mind to the explanation offered by the prosecution through its witnesses, circumstances, probabilities and common course of natural events, human conduct. Unexplained delay does not necessarily or automatically render the prosecution case doubtful. Whether the case becomes doubtful or not, depends on the facts and circumstances of the particular case. The remoteness of the scene of occurrence or the residence of the victim of the offence, physical and mental condition of persons expected to go to the Police Station, immediate availability or non-availability of a relative or friend or well wisher who is prepared to go to the Police Station, seriousness of injuries sustained, number of victims, efforts made or required to be made to provide medical aid to the injured, availability of transport facilities, time and hour of the day or night, distance to the hospital, or to the Police Station, reluctance of people generally to visit a Police Station and other relevant circumstances are to be considered.”

132. Firstly, I would like to state that the accused was a person of authority in the house he was the step father of the complainant and both were living in the house given to the accused by the landowner.
133. Secondly, the accused was the sole breadwinner of the family and he had told the complainant not to do anything to shout or wake her sister or do anything to oppose him. This in my judgment had instilled fear in the mind of the complainant who did not tell anyone about what the accused was doing to her until she could not take it anymore.
134. The late reporting in my view was beyond the control of the complainant she was afraid of the accused and when the opportunity presented itself the complainant opened up and expressed herself to her school teacher Sanjini.
135. It is unfortunate that the head of school did not react by informing the police about what had been told by the complainant but went ahead and told the mother to tell the accused to leave them and go away. The complainant was not independent from the authority and control of the accused. The complainant needed to trust someone so she informed her school teachers but that did not bring any positive result. The failure by the Head Teacher to inform the police in my considered judgment had also aggravated the late reporting of the complainant. This is no criticism of Sanjini's handling of the complaint who had acted in accordance with the Child Welfare Act by promptly informing the Permanent Secretary of Social Welfare and had left the rest to be handled by the Head Teacher.
136. I accept that the complainant was a victim of circumstances which resulted in delayed complaint to the police. In addition to the above, the complainant was scared of the accused hence she did not tell anyone cannot be ignored as well. Considering the age of the complainant and the

prolonged abuse on the complainant it took a while for the complainant to gather the courage to speak out which she eventually did.

137. Moreover, I reject the defence of denial by the accused as not plausible on the totality of the evidence. The defence assertion that the accused had not done anything to the complainant is unworthy of belief.
138. The accused did not tell the truth he gave a version of events which is too good to be true. It was noted that the accused was not frank and straight forward in his evidence he was basically demeaning the complainant by labeling her as a stubborn and disobedient child and elevating himself as a concerned step father. The accused was found to be talking about issues which were unrelated and it became obvious that he was diverting attention away from the main issues at hand.
139. I do not believe the accused when he said that he did not do anything to the complainant and that the allegations are a concocted story by the complainant and her aunt.
140. Aokan Lepani the wife of the accused also did not tell the truth in court she made it obvious that she will support the accused all along. This witness was taking her time to answer questions in cross examination and at most was not fully answering the questions asked. This witness did express that she would have chosen her daughter over the accused cannot be believed when she failed and /or neglected to contact the social welfare department or the teachers or the police after there was no follow up of her daughter's complaint.
141. This witness also did not tell the truth when she said the complainant had told the witness the allegations raised against the accused was a lie. I do not give any weight to the evidence of the accused and Aokan who were

not forthcoming and were diverting attention away from the allegations to cover up for each other.

142. The defence has not been able to create a reasonable doubt in the prosecution case in respect of the eight counts of sexual assault.


CONCLUSION

143. On the basis of the evidence adduced the benefit of the doubt must go to the accused in respect of all four counts of rape that the accused had penetrated the vagina of the complainant with his tongue as charged. This court is not satisfied beyond reasonable doubt that the accused had committed the offences of rape as mentioned in counts three, six, nine and twelve.

144. However, this court is satisfied beyond reasonable doubt that the accused on numerous occasions between 1st January, 2019 till 31st December, 2022 had unlawfully and indecently assaulted the complainant by holding and/or squeezing her breasts and /or by touching or rubbing her vagina. This court is also satisfied beyond reasonable doubt that the accused had acted unlawfully that is without lawful excuse in what he did to the complainant. The act of the accused has some elements of sexuality and indecency that any right minded person would consider such conduct sexual and indecent in nature.

145. In view of the above, I find the accused guilty of eight counts of sexual assault being counts one, two, four, five, seven, eight, ten and eleven and he is convicted accordingly. Due to lack of evidence the accused is acquitted of all four counts of rape being counts three, six, nine and twelve.

146. This is the judgment of the court.



Sunil Sharma
Judge



At Lautoka

18 April, 2024

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.