

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

HAC 119 OF 2022

BETWEEN: STATE

PROSECUTION

AND: ROHIT PRASAD

ACCUSED

Appearances: Mr L Baleilevuka (ODPP) for the State
Ms B Muhammed (LAC) for Accused

JUDGMENT

Introduction

1. The accused Rohit Prasad was charged for the two counts of Rape contrary to section 207(1) and (2)(b) of the Crimes Act, 2009, one count of Sexual Assault contrary to section 210(1) of the Crimes Act, 2009 and one count of Assault Causing Actual Bodily Harm contrary to section 275 of the Crimes Act, 2009.

2. The amended information as follows:

First Count

Statement of Offence

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

Particulars of Offence

ROHIT PRASAD on the 15th day of May 2021 at Barotu, Ra in the Western Division, had licked the vagina of SARAS WATI without her consent.

Second Count

Statement of Offence

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

Particulars of Offence

ROHIT PRASAD on the 15th day of May 2021 at Barotu, Ra in the Western Division, unlawfully and indecently assaulted SARAS WATI, by sucking her breasts.

Third Count

Statement of Offence

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

Particulars of Offence

ROHIT PRASAD on the 15th day of May 2021 at Barotu, Ra in the Western Division, had carnal knowledge of SARAS WATI without her consent.

Fourth Count

Statement of Offence

ASSAULT CAUSING ACTUAL BODILY: contrary to section 275 of Crimes Act 2009.

Particulars of Offence

ROHIT PRASAD on the 15th day of May 2021 at Barotu, Ra in the Western Division, assaulted SARAS WATI thereby causing her actual bodily harm.

3. The accused pled not guilty to the said offences. The matter proceeded to trial from 20/5/24 to 24/5/24. Prosecution relied on the evidence of the following witnesses:
 - i. PW1 – Saras Wati (complainant)
 - ii. PW2 – Inspector Nacanieli (investigating officer)
 - iii. PW3 - Nilesh Chand (recent complaint)
 - iv. PW4 – Arav Chand (recent complaint)
 - v. PW5 – Doctor Shiu Narayan (medical officer)

4. At the conclusion of prosecution case, the court ruled that there was no case to answer for the first and second counts. Therefore the first and second counts were dismissed and accused acquitted for the said counts.

5. For the third and fourth counts, the court found on the evidence adduced by prosecution that there was relevant and admissible evidence pointing to each element of the offences charged. Therefore there was a case to answer for the accused with regard to the third and fourth counts. Accused was put to his defence and he exercised his right to testify (DW1) and also called one defence witness. For the defence case the witnesses as follows:
 - i. DW1 – Rohit Prasad (accused)
 - ii. DW2 – Isikeli Rabuka

Brief of Prosecution Evidence

6. PW1 (Saras Wati - complainant) - testified that on the date and time in question she was with the accused Rohit Prasad clearing the ground around the chilly farm which was some distance away from her house on the mountain side. Whilst they were at the chilly farm, accused then asked her on allegations that she was having affairs with other men and started to beat her with a vaivai stick and also knife. Accused hit her on her hand and leg. With knife, accused had placed it on her and threatened to kill her. She then began to cry and shout but no one heard her as there was no one around. Accused then told her to take off her clothes. Accused then took off her clothes forcefully and she was wearing a top, trousers and a shirt over her top at that time and inside she was wearing a panty. Accused removed her shirt, singlet, trousers and her panty and after that raped her. Accused had laid her on the ground and lifted up her legs. Accused had already undressed himself then. Accused then came on top of her and put his penis inside her vagina and did that for about 10 minutes. It was raining then and she was lying on the grass. Accused penetrated her vagina for 10 minutes and then took his clothes and went away from there. She then dressed herself and sat there for a while as accused had hit her and she was scared. Then her eldest son Nilesh Chand and her grandson Arav Chand came there. They called her and she answered. She told them that accused assaulted her, did something to her and went away. They then took her home. At home she sat there for a while and then reported the matter to police. She reported through her son's phone. She reported to police that accused assaulted her at the mountain and also raped her and went away.

In cross examination she stated that she was in de-facto relationship with the accused. She admitted that she was about 14yrs older than accused and also admitted that she had sexual intercourse with accused frequently. She denied getting angry when accused didn't have sex with her. She denied being possessive of accused. She also denied being jealous of accused or when accused was getting close to other women. Accused never told her that he was going to his father's house on the morning of the incident. She never stopped accused from going to his father's place. She never told accused that because he was leaving, she was going to commit suicide. It's a lie that accused had gone to the farm with her to stop her from committing suicide. She denied going to the farm to commit suicide and why should she commit suicide when she was looking after her son who was partly blind. She denied tying a rope on a tree at the chilly farm and trying to commit suicide. She didn't do that and can't climb a tree. She denied accused trying to save her and pulling her down. She denied falling backwards and towards her knees and injuring herself. Accused is lying that he didn't rape her. She denied being a possessive and controlling woman and didn't stop

accused from going anywhere. She denied blackmailing the accused to ensure he doesn't leave her. She denied being suicidal in nature. She denied threatening to commit suicide because accused threatened to break with her. She denied trying to harm herself by slapping herself and trying to jump out from a car. She denied coming to live with accused again. After the matter was reported to police, accused was chased from his place by his father and that is why he came to live with them for a few days only. She reported to police what accused did to her and denied reporting to teach accused a lesson. Accused beat her on 15/5/21 and then ran away. Accused beat her up and that's how she received injuries. She denied inflicting injuries to herself. She didn't report falsely to police.

In re-examination she stated that during her relationship with accused, she never threatened to commit suicide. Accused had raped her. They had allowed accused to come and live with them after police report because accused was crying and they felt pity on him and allowed him to stay with them for a few days.

7. PW2 (Inspector 3033 Nacanieli) - stated that in 2021 he was stationed at Rakiraki Police Station and was a Sergeant then. On 17/5/21 he received instructions from Crime Officer (Inspector Waqabaca) to attend and prepare a rough sketch on a scene of rape which happened at China Settlement Barotu, Rakiraki. He then went with a team of police officers and the victim Saras Wati to the scene. At the scene he prepared a rough sketch plan and also fair sketch plan. Both sketch plans were identified and tendered as PEX1 – rough sketch plan, PEX2 – fair sketch plan.

In cross examination he stated that no object was found at the scene.

8. PW3 (Nilesh Chand – son of PW1) - stated in evidence that Saras Wati (PW1) is his mother. He also admitted that he can't see clearly for 13yrs and that was his condition since his son was only 6 months old. On date in question around 4pm he was seated at the porch when accused came home (China Settlement, Barotu) and told him that he had beaten his mother with a stick and left her at the farm. He asked accused why he beat up his mother and he didn't say anything but said she's up there at the mountain and for them to go and get her if they want to. Then he went with his son Arav to the mountain to get his mother back. His mother was seated at the chilly farm. They asked her what happened and she stated that accused beat her up and did something to her and ran away. They then brought his mother back to their home then they called police with his phone. Sometimes accused lives with them and sometimes he goes to his father's place. Accused was staying at his home after the matter was reported to

police on 15/5/21. Prior to 15/5/21 his relationship with accused was good but after 15/5/21, they didn't want to see him and their relationship wasn't good.

In cross examination he admitted that his mother was in de-facto relationship with accused. He denied that his mother was possessive over the accused and not to go anywhere. Its not true that his mother was suicidal and didn't allow accused to go anywhere. He relied on what his mother told him regarding what happened on that day. Accused informed him that day that he had beaten up his mother. Accused didn't come to live with them after 15/5/21, when the matter was reported to police. His telling the truth.

9. PW4 (Arav Chand – grandson of PW1) - stated that on date and time in question accused and his grandmother had gone to the farm. Then after sometime accused returned home and told his father (PW3) that he had hit his grandmother with a stick who was still at the farm and for them to go and bring her if they want her alive. He was with his father at home that time. Accused is his grandfather. He then went with his father to get her grandmother. They had looked around for her and called and she answered. When they found her she was lying on the ground with soil on her body. He saw that she had injuries. They talked to her and she told them that accused had beaten her up. They than brought her home.

In cross examination he stated that accused came home that time. It's a lie that his grandmother influenced him to give his statement to court. He agreed that after the report was made on 15/5/21, accused came to live with them. That he was living separately with his grandmother in the same flat. He denied that his grandmother used to be possessive of accused. He was in good relationship with accused before the incident. He didn't see accused assault his grandmother. He relied on information given by his grandmother.

In re-examination he stated that accused had stayed with them for a few days and not long, after the incident. Accused came back to them because his father had chased him away and that's why he came to live with them. Before incident their relationship with accused was good but after incident, they have kept their distance and not talking to him.

10. PW5 (Dr Shiu Narayan) - mentioned that he graduated from with Bachelor of Medicine and Bachelor of Surgery Degree in 2017 and completed his Postgraduate Diploma in Mental Health in 2023 from Fiji National University. Was first posted to CWM Hospital in 2018 and was posted to Rakiraki District Hospital in 2019 as a

Medical Officer. Worked at Rakiraki from 2019 to March 2022. He would be looking after Emergency Department, managing Pediatric/Obstetric cases and surgical emergency cases as well.

He recalls doing medical examination on Saras Wati on 15th May 2021 in the evening. Police Officers brought her with complaint that she was physical assaulted. His medical findings were handwritten and record in the medical report he filled out. The patient voiced out that she was assaulted at Barotu in the same afternoon around 3pm – 4pm. She mentioned she was physically assaulted with a thick wood and a knife. The patient also alleged that she was raped by Rohit Prasad who had forceful vaginal sexual intercourse with her. She mentioned that she was hit on the back with the wood multiple times and was hit on the thigh too. She was also attacked with a knife on both hands. She was crying, emotional, in distress and a bit uncomfortable. They were able to console and reassure her. He noted multiple bruises on both patients hands and was painful when touched. The back of patients head was tender and painful to touch. Bruises were located on the forearm and below the elbow joint. Linear bruises caused by sharp object by blunt trauma but not forceful enough to cause laceration. Knife could be adjusted so it could either be blunt aspect of the knife or sharp aspect but not with that much force. At the back were multiple bruises and were tender. There was a bite mark on the left front part of the thigh. It had surrounding swelling and quite tender to touch and seemed to have been recent. Bruises like this could have been caused by blunt force trauma e.g. being hit by heavy object e.g. a wood or even punching with significant force can cause bruises like that. On the female private area no bleeding, no laceration or bruise noted. He also assessed patient for suicidal thoughts because she presented emotional and crying. Patient denied having any suicidal thoughts. He had dealt with some patients before who presented with depression and self-harm thoughts (tendered medical report).

In cross examination he agreed hypothetically that a person trying to hang themselves and then pulled to the ground could hurt their knees in the process and have injuries. The bite mark he examined on patients thigh was very big and not the normal love bite which is smaller and irregular.

In re-examination he stated that since there was no bruising around the neck or cervix area and did not really see any examination findings consistent with the person trying to hang herself. If a person is trying to cut herself then they could result in bruises.

Normally any patient presenting to the hospital with any type of major trauma (sexual or physical) it is usually a good thing to evaluate if particular person has suicidal attempts. Not all doctors do it but for him he does it.

Brief of Defence Evidence

11. DW1 (Rohit Prasad) - The accused stated that he was in a de-facto relationship with Saras Wati (PW1) for 3yrs and lived most of the time with her. PW1 was 14yrs older than him and when they were living together they always have sex. When he doesn't have sex with her, she gets angry on him. When their relationship started PW1 always argue with him. PW1 was possessive of him and didn't allow him to go to his parents places. Whenever she argues with him, he leaves PW1's place and goes back to his place. PW1 would then come to his friends place and call him to come there. PW1 also told him that she will jump out of a running car. She also tried to commit suicide. PW1 argues with him when other women seat in his car. He continued the relationship with PW1 as she threatened to commit suicide if he leave her. When PW1 was at his parents place, she tried to commit suicide by strangling herself on the lemon tree. His relationship with other members of PW1's family was good.

On the day in question they argued in the morning because he told her that he was going to his home but then she stopped him. She told him that she will strangle herself if he leave her. He then told PW1 that she's not leaving. At about 1pm he asked PW1 to leave and go to his home. PW1 got angry and went to the farm and he followed after her. PW1 was in front of him and when they arrived at the farm, PW1 had already climbed the thick tree which had a lot of branches. He was looking around for her and could not find her. Then whilst going away, he heard a sound and he looked up and saw PW1 on the tree. He asked PW1 to come down but she didn't. He then pulled PW1 down. PW1 slipped and fell backwards. He tried to pick her up then after that PW1 went to clean around the chilly trees. He denied assaulting her because he was in love with her. He denied raping her because they had sex everyday. He didn't accuse PW1 of having affairs with other men. She made these allegations because she didn't want him to leave and also wanted to teach him a lesson for leaving her. Nilesh and Arav are also lying. PW1 had told them what to say and they are listening to PW1. The matter was reported to police on 15/5/21 and after that he came to live with PW1 again. PW1 had requested him to come back to her and promised everything will be okay from then. They lived together again for one year. Then police came and arrested him. In that one year, their relationship was not good. The allegations by PW1 is all a lie. He lived with her as his wife and loves her.

In cross examination he stated that PW1 was possessive of her and they lived together most of the time. PW1 was getting income from the market and he was contributing

by driving. He took vegetables to the market and also worked on the farm with PW1. He also helped Nilesh because of his disability around the house and in town, holding his hand and taking him. He was part of PW1's family they on him quite a bit. On previous occasions when PW1 tried to commit suicide, he used to stop her. He agreed that on none of those previous occasions, PW1 would make allegations against him. On 15/5/21, they had an argument and PW1 made the allegation against him. PW1 made the allegations because he left her. He accepted that on 15/5/21 he had argument with PW1 but it was not related to her seeing other men. He agreed that prior to 15/5/21 he had good relationship with their family and although there were some difficulties, most part of the relationship with PW1 was good. When they were in good relationship there were no allegations. He denied inserting his penis into PW1's vagina without her consent on 15/5/21. He denied hitting PW1 with a vaivai stick on 15/5/21 and he denied assaulting PW1 with a knife.

In re-examination he stated that he left her in the afternoon and that's why she put all these allegation against him. He further confirmed that he was with PW1 from 1pm to 4pm after he had pulled down. He had also begged her not to commit suicide and to go home. PW1 had told him to go away and she'll come afterwards. PW1 was in a mad state and he was trying to persuade her to come home. Every time PW1 does that she slaps and harms her body.

12. DW2 (Isikeli Rabuka) - stated Rohit Prasad (accused) is his neighbor and they are farming together. She knows Saras Wati (PW1) because they live in the same area at Barotu Rakiraki. He aware that the two were in a relationship. He recalls after the matter was reported to police in 2021, Saras Wati and Rohit Prasad came to his place and living there for one month. Saras Wati had asked him to bring Rohit back because the allegation made to police was false. Saras Wati said she will bring grog and make apology to Babu (Rohit Prasad) to come back to their place. This happened in June 2021. Saras Wati had said she'll do anything to bring Rohit back and she wanted to settle with Rohit. Saras Wati use to come to his place to buy cassava, bhindi and everything and she's a best friend. He further stated that all people in his area know that Saras Wati can change a lot of stories and make things up to happen.

In cross examination he stated that it would be difficult to recall back that far to June 2021. He came to give evidence because he knew what was happening with Saras Wati and Rohit. He came on his own free will to court. He came with Rohit to court. Rohit is living with him in Lautoka. His in court to testify of the truth. He would not discuss the case with Rohit all the time. Only when Rohit returns from court then he

would discuss the case with him. Saras Wati is a friend and his giving evidence in court to tell the truth. He doesn't have any disdain for Saras Wati's family.

In re-examination he stated that Saras Wati was telling them that she lied to police about this case.

Issue

13. Whether prosecution had proved beyond reasonable doubt the elements of the offences charged for the third and fourth counts?

Law/Analysis

14. In assessing the evidence, I bear in mind that prosecution has the burden of proving the accused guilt beyond a reasonable doubt. This burden never shifts to the accused and remains with prosecution throughout the trial. Prosecution must prove all the elements of the offence beyond a reasonable doubt before an accused is found guilty for any criminal offence. (*see: Woolmington v DPP (1935) AC 462 & sections 57 & 58 of Crimes Act 2009*)
15. I also bear in mind that in sexual related offences the need for corroboration is no longer required. That is clearly stated in section 129 of the Criminal Procedure Act, 2009. Thus the Court can acquit or convict on the basis of whether it disbelieves or believes complainant's evidence alone.
16. The elements of the said offence of Rape (third count) as follows:
 - i. The accused (Rohit Prasad);
 - ii. Penetrated the vagina of complainant (Saras Wati) with his penis (third count);
 - iii. The complainant didn't consent to the accused penetrating the vagina with his penis;
 - iv. The accused knew or believed or was reckless that complainant wasn't consenting for him to insert his penis (third count) in that manner.
17. The element required to proved for the fourth count of Assault Causing Actual Bodily Harm are:
 - i. The accused (Rohit Prasad);
 - ii. Assaulted the Complainant (Saras Wati);

iii. Causing complainant actual bodily harm (injuries noted in medical report).

18. According to the agreed facts endorsed on 23/3/23, the following are established:

- 1) The Complainant is one Ms Saras Wati.
- 2) At the time of the alleged offence, the Complainant was 55yrs old.
- 3) At the time of the alleged offence, the Complainant reside at her own house in China Settlement, Barotu in the Ra district.
- 4) Mr Nilesh Chand, the Complainant's son was 39yrs old at the time of alleged offence.
- 5) Mr Arav Chand, the Complainant's grandson was 14yrs old at the time of the alleged offence.
- 6) The alleged offence took place on the 15th May 2021 at around 1.00pm at the Complainant's Chilly farm situated near to her house at China Settlement, Barotu, in the Ra district.
- 7) The Accused is one Mr Rohit Prasad.
- 8) At the time of alleged offence, the Accused was 42yrs old.
- 9) At the time of alleged offence, the Accused was residing with the Complainant and her family at the Complainant's house in China Settlement, Barotu, in the Ra district.
- 10) The Accused and the Complainant had been in de-facto relationship for three (3) years, prior to the time of the alleged offence.
- 11) On 15th May 2021 at around 1.00pm, the Accused together with the Complainant herself, was present at the Complainant's Chilly farm situated near to her house at China Settlement, Barotu, in the Ra district.

19. In addition to the above agreed facts, the court accepts the following as undisputed too:

- 1) Complainant and Accused had an argument on 15th May 2021 at the Chilly farm.
- 2) The Complainant and Accused were at the Chilly farm for about 3 hours on the afternoon of 15/5/21.
- 3) The Accused left the Complainant at the Chilly farm.
- 4) The Complainant was injured in Accused presence.

20. The states case is that on 15/5/21, the accused and complainant were both present at the Chilly farm, which is situated on the hill side and approximately 400m - 500m

away from the complainant's house. It was alleged that the accused confronted the complainant, accusing her of engaging in relationships with other men in the community. The complainant denied the allegations, prompting the accused to resort to physical violence using a vaivai stick and knife, resulting in the infliction of bodily injuries upon her. The accused proceeded to raping her before departing the scene.

21. The defence case is that there was a disagreement between the complainant and the accused regarding the accused's desire to visit his father's house, which the complainant denied. The complainant then threatened to harm herself if the accused were to leave. The complainant visited the Chilly farm with a rope, intending to harm herself. The accused, however, intervened to prevent any self-harm or potential suicide. During the incident, the accused saw the complainant perched on a tree and promptly intervened by pulling her from the precarious situation, preventing any harm upon her. The complainant subsequently fell and sustained injury. The Complainant proceeded to issue a warning, stating that if the accused were to depart from her, she would fabricate unfounded accusations against him. The accused vehemently denies any involvement in assaulting the complainant or causing her any bodily harm. He vehemently denies any involvement in the alleged rape. The complainant's claim to the police against the accused was false and motivated by a desire to teach and reconcile with the accused.
22. Identification is not an issue in this matter for the two offences. Based on the agreed facts, the accused in question is Rohit Prasad. The court will evaluate the two respective counts based on the sequence of events as indicated by the evidence. I will begin by examining the alleged offence of Assault Causing Actual Bodily Harm (fourth count) before proceeding to evaluate the evidence regarding Rape (third count). The elements in both counts are being disputed, with the exception of the accused identity.
23. During the clearing of the ground around the Chilly farm, Saras Wati was confronted by the accused regarding rumors of her alleged affairs with other men. The accused proceeded to attack her with a vaivai stick and also used a knife to assault her. She received injuries from the vaivai stick on her hands and legs. It appears that the knife was used to injure her hands. She demonstrated a cutting gesture along her forearms. She expressed her emotions loudly, but unfortunately, there was no one nearby to hear her. After a while, when the accused had departed and she was left alone, her son

Nilesh and grandson Arav arrived at the scene and found her. The complainant proceeded to inform them that the accused had assaulted her and engaged in other actions before departing. Nilesh and Arav also corroborated the complainant's account of the events and escorted her back to her residence. Nilesh and Arav also mentioned in their testimony that the accused informed them about his actions towards the complainant and shared the complainant's whereabouts with them.

24. Doctor Narayan confirms that he conducted a medical examination on the patient named Saras Wati. Based on the medical report and examination, it was observed that the patient had sustained bruises on the forearm and the area between the wrist joint and elbow joint. The doctor determined that the bruising on the complainant's arms, which appeared as linear bruises, could have been caused by a sharp object or trauma, although not with enough force to cause lacerations. The knife could have been adjusted to have either a blunt or sharp edge, with minimal force required. According to the medical report, it was observed that the patient had a circular bruise on her right thigh. This type of bruise can be caused by various forms of blunt force trauma, such as being struck by a heavy object or receiving a forceful punch. Doctor Narayan observed a recent bite mark on the patient's left thigh. There were also bruises observed on the patient's back and knees, which were reported to be tender.
25. The complainant, Nilesh and Arav were cross-examined and they stuck to their account of what happened. The complainant maintained a strong and unwavering stance that she was physically assaulted by the accused. The complainant refuted any claims of being suicidal, and the evidence provided by doctor Narayan supports this, as there were no signs of suicidal thoughts or any indication of attempted hanging as alleged by the accused.
26. Nilesh and Arav were also firm and consistent. They essentially conveyed to the court the information provided by the accused and the complainant. They were not undermined in that aspect. I acknowledge their connection to the complainant, but that alone does not justify accusing them of dishonesty. In addition to the connection between the complainant and the accused, Nilesh and Arav are also directly linked to the accused through Nilesh's father. The accused is considered to be the uncle of Nilesh and the grandfather of Arav. Additionally, both Nilesh and Arav, along with the Accused, have stated that their relationship was good prior to the alleged incident. In my perspective, there was no justification for them to falsify the evidence, and in

my opinion, Nilesh and Arav were being honest. It is unlikely that they were being dishonest, as they would not have been aware of the complainant's location unless someone had informed them. The information was provided to them by the accused, leading them to the scene where the complainant was found. There was no one else present at the scene besides the complainant and accused. It is evident that the accused did indeed disclose to Nilesh and Arav the details of what he had done to the complainant and where she was located. I find the evidence presented by Nilesh and Arav to be highly credible and reliable, and I fully accept it. It is evident that the accused was not being truthful when he claimed to have had no interaction with Nilesh and Arav.

27. While observing Saras Wati, I closely monitored her demeanor and found her to be honest and straightforward. The doctors' evidence and medical report provide strong support for her claim that she was assaulted on her hands and legs, as they document multiple injuries sustained. The doctor's observations strongly support the complainant's account of the incident that she was assaulted with a wood and knife. The evidence of the accused regarding the incident where complainant was pulled down from a tree, just as she was about to commit suicide, and subsequently fell backwards to the ground, does not provide a comprehensive understanding of the various injuries sustained by the complainant on her legs and hands. The version of events provided by the accused does not align with the severity and nature of the injuries sustained by the complainant. The extent and nature of the injuries sustained by the complainant appear to align more closely with her account of what happened. I acknowledge the complainant's testimony regarding the assault by the accused, which involved the use of a vaivai stick and a knife. This resulted in her sustaining bodily injuries, as documented in the medical report.
28. Regarding the defence counsel's argument that the complainant did not mark the medical report for identification, I consider it to be of little importance. The medical report includes the name of the complainant and identifies the accused as the alleged assailant responsible for assaulting and raping the complainant.
29. Based on the evidence presented, it is clear that the complainant is both credible and reliable. The accused did not come across as a trustworthy and dependable witness. The accused's lack of honesty was evident as he attempted to protect himself. I reject his evidence. The evidence presented does not cast any reasonable doubt on the fourth

count. I have determined that the fourth count has been proven beyond a reasonable doubt.

30. Regarding the third count of the Rape charge, I previously mentioned that corroboration is no longer necessary. Therefore, the charge can be determined based on the assessment of the complainant's evidence alone. The accused is not required to prove anything, as the onus lies with the prosecution throughout the trial.
31. The complainant alleged that the accused had attacked her, using both a stick and a knife, and forcibly stripped her. The accused proceeded to engage in sexual activity for a duration of 10 minutes. She was questioned and maintained her composure and consistency throughout. Her credibility was intact. Despite the absence of explicit denial of consent, the combination of the accused's assault on her body using a wood and knife, threats to kill her, forceful removal of her clothing, and her distressed cries and shouts lead me to believe that the complainant did not give her consent. The accused resorted to employing elements of force, threats, and intimidation in order to carry out his unlawful actions. There was no consent given by the complainant for any sexual activity with the accused at the Chilly farm. Considering the entirety of the situation, including the fact that the accused physically assaulted the complainant, causing her distress and forcibly removing her clothing, it is evident that the accused was aware that the complainant did not give consent. However, the accused displayed a reckless disregard for whether or not the complainant was consenting.
32. I observed during the trial that the complainant hesitated before describing the accused's actions. I don't believe her credibility would be affected in that regard, as I closely observed her demeanor. Based on my observations, the complainant, like any typical individual, seemed hesitant or uncomfortable when discussing the specifics of sexual activity involving the insertion of the penis into the vagina. The records clearly indicate that when she hesitated to respond, the court encouraged her to overcome any shyness or embarrassment and answer the question. It was at that point that she revealed that the accused had inserted his penis into her vagina. The complainant's credibility remained intact as she remained firm, consistent, and did not waiver.
33. Furthermore, right after the alleged incident, the complainant promptly informed Nilesh and Arav, and later on, the police and doctor on the same day what accused did to her. Despite not discussing the details with her son and grandson, she did report to

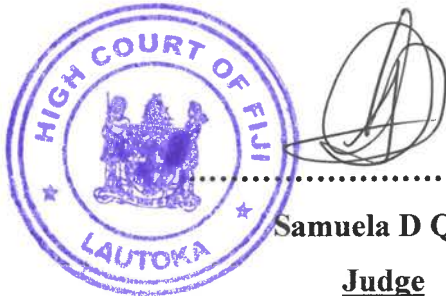
the police and the medical officer that she was a victim of rape. I consider the evidence provided by Nilesh, Arav, and the doctor to be significant in assessing the consistency of the complainant's conduct with her testimony during the trial. Their evidence further strengthens the credibility of the complainant.

34. It appears that there were some concerns regarding the complainant's decision to allow the accused back into the house temporarily, despite having filed a formal complaint. I don't believe this situation impacted her credibility. The accused was still related to them and had nowhere to stay after being forced out of his own home. The complainant and her family showed understanding and kindness by allowing the accused to return for a short time. It is evident that the complainant, Nilesh and Arav were being honest about this evidence, and I do not perceive it as an effort by the complainant to reconcile with or being possessive over the accused nor a suggestion that the formal complaint was being fabricated.
35. I cannot accept the accused's denial of sexual intercourse. The accused did not appear to be a credible and reliable witness for this specific count. The discrepancy between his words and actions raises questions about his credibility. The accused's claim of love for the Complainant and intentions to protect her from self-harm loses credibility when considering the fact that he abandoned her at the scene, fully aware of her suicidal tendencies and the fact that he had just intervened to prevent her from taking her own life. Leaving someone you care for alone in the hills with the opportunity to carry out their threats is both inconsistent and illogical behavior. If the accused truly cared for the complainant, one would expect him to have accompanied her home or even taken her to the hospital for medical treatment. The accused's excuse, claiming that the complainant didn't want to come with him, was completely illogical and dishonest. The behavior of the accused is truly astonishing, and for that reason, I cannot accept his account of what happened.
36. Regarding the defence evidence provided by Isikeli Rabuka (DW2), I do not find his testimony to be credible. He was called by the accused in an attempt to undermine the complainant's evidence, but unfortunately, it proved to be unsuccessful. Isikeli's evidence was incredibly thorough, yet its veracity was never put to test. The complainant should have been questioned during cross examination with what Isikeli was relaying to the court concerning complainant's character. While reviewing the questions put to complainant during cross-examination, it is evident that Isikeli's story

with regard to complainant's character and the communications they had was never raised with the complainant. For instance, the complainant's alleged desire to have the accused return at any cost, as well as the suggestion that her police complaint was false, were not put to her during cross-examination. That goes against the established principle set in *Browne v Dunn (1893) 6 R. 67*. That aside, DW2 acknowledged that the accused is a close friend and they were living together in Lautoka. They had occasionally talked about the case. Evidently, Isikeli and the accused must have discussed the details of the case prior to appearing in court, which would be unwise to disregard. Isikeli's credibility as a witness is questionable and no weight is placed on his evidence.

Conclusion

37. Having considered all the evidence in entirety, I find that there is no reasonable doubt in the state's case. All the witnesses for prosecution especially the complainant were credible, reliable, and truthful.
38. In my respectful opinion, prosecution has proved beyond reasonable doubt all the elements of the offence for the third count of Rape and fourth count of Assault Causing Actual Bodily Harm.
39. I find the accused guilty as charged for third count of Rape and fourth count of Assault Causing Actual Bodily Harm and convict him accordingly.

The seal of the High Court of Fiji, Lautoka, is circular with the text "HIGH COURT OF FIJI" at the top and "LAUTOKA" at the bottom. In the center is the coat of arms of Fiji. To the right of the seal is a handwritten signature in blue ink. A dotted line extends from the signature to the right.

Samuela D Qica
Judge

High Court – Lautoka
Friday, 24th May 2024