

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO: HAC 81 OF 2023**

**STATE**

**v**

**KOLINIO NASILOKIA**

Counsel : Ms S. Prakash for Prosecution  
Accused in Person

Dates of Hearing : 10, 11, 17, 19 & 20 June 2024

Date of Judgment: 20 June 2024

**JUDGMENT**

(Photo identification- Evidence via Skype)

1. The Accused is charged with three counts of Rape. The information reads as follows:

**Count One**

*Statement of offence*

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

*Particulars of Offence*

KOLINIO NASILOKIA on 23rd February 2019, at Lautoka in the Western Division, penetrated the vagina of ALESI KURISARU, with his fingers without her consent.

**Count Two**

*Statement of offence.*

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

*Particulars of Offence*

KOLINIO NASILOKIA on 23rd February 2019, at Lautoka in the Western Division, penetrated the vagina of ALESI KURISARU, with a TV remote controller without her consent.

**Count Three**

*Statement of offence*

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

*Particulars of Offence*

KOLINIO NASILOKIA on 23rd February 2019, at Lautoka in the Western Division, penetrated the vagina of ALESI KURISARU, with a screwdriver handle without her consent.

**Count Four**

*Statement of offence*

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

*Particulars of Offence*

KOLINIO NASILOKIA on 23rd February 2019, at Lautoka in the Western Division, penetrated the vagina of ALESI KURISARU, with his penis without her consent.

2. The Accused pleaded not guilty to the charges. At the ensuing trial, the Prosecution presented the evidence of the Complainant and seven other witnesses. After the Prosecution's case was closed, I found no evidence touching each element of the offence of Rape on count four thus no case for the Accused to answer on Count 4. Therefore, the Accused should be acquitted on count 4. The Accused was put to his defence on Counts 1, 2 and 3. The Accused elected to remain silent and called a witness for the Defence. Both sides tendered written

submissions. Considering the evidence and the submissions, I shall now pronounce my judgment as follows.

3. The Prosecution bears the burden to prove all the elements of each offence and that burden must be discharged beyond reasonable doubt. That burden never shifts to the Accused at any stage of the trial. The presumption of innocence in favour of the Accused will prevail until the charges are proved beyond reasonable doubt. The Accused is under no obligation to prove his innocence or prove anything at all.
4. The Accused is charged with Rape under Sections 207(2) (b) and 207(2)(a) of the Crimes Act 2009. Section 207(2)(b) of the Crimes Act defines the offence of Rape as follows: the person penetrates the vulva, vagina or anus of the other person to any extent with a thing or a part of the person's body that is not a penis without the other person's consent. Section 207(2)(a) of the Crimes Act defines the offence of Rape as follows: the person has carnal knowledge with or of the other person without the other person's consent.
5. According to Section 206 of the Crimes Act, the term consent means consent freely and voluntarily given by a person with the necessary mental capacity to give the consent. The submission without physical resistance by a person to an act of another person shall not alone constitute consent. A consent obtained by force or threat or intimidation etc. will not be considered as consent freely and voluntarily given. To establish the fourth element of Rape, the Prosecution must prove that the Accused knew or believed that the Complainant was not consenting or that he was reckless as to whether the Complainant was consenting or not.
6. I shall now summarise the salient parts of evidence led in this trial.

#### **The case for the Prosecution**

##### **PW 1: Alesi Kurisaru (via Skype)**

7. Alesi gave evidence via Skype. She administered the oath on the Bible and was explained the consequences of not telling the truth on oath. She confirmed that no one else was present

in the room where she was. She displayed the room to the Court. The camera of the laptop was focused on her face and was clear enough for the Court to observe her demeanour.

8. Alesi is currently residing at 2388 McBride Lane, Santa Rosa, California, USA. She moved to the USA on 28 September 2019. Before moving to the USA, she had been with her mother, Asinate Kurisaru, at 1 Lum Street, Waiyavi Stage 5, Lautoka. She moved to the USA because she feared for her safety. She could not cope with the pressure of the ordeal she went through in 2019. She was traumatized and felt being in an old house was not safe for her. She used to have flashbacks ever since the incident that happened to her on 23 February 2019. It kept re-occurring. She was depressed. She just wanted to escape from that and decided to be away from home and the country.
9. In 2019, she was a Financial Clerk at Punjas & Sons Ltd. On 23 February 2019, she was on leave from work. Her mother left for some church activities. After the mother left, she locked the doors and had a shower. After having a shower, she came outside through the back door to do her laundry. After hanging her dry clothes, she entered the house wearing a towel.
10. As she entered the bedroom, she saw a stranger inside the room. She was shocked. She yelled at the top of her voice. She tried to run out of the room. In the process, she fell down. As soon as she fell, he came after her. While she was lying on the floor, he came on top of her with a knife over her neck and told her that if she screamed, he was going to kill her. He shoved socks inside her mouth and inserted his fingers up above her mouth.
11. She got so weak and couldn't scream anymore. He kept asking for money. She told him to get off so that she could give him money. She got up slowly and tried to run into the kitchen to get hold of something to hit him with. In the process, her towel fell off. She couldn't do much because he got hold of her. He was quite aggressive. He then pushed her to the gas stove making her fall. After that, he dragged her from the kitchen into her bedroom. She was screaming all the time.

12. In the bedroom, he tied both her hands on her back with mobile charger cords and a belt found in her mother's bedroom. Then he tied her mouth with a bedsheet, made her lie down on the bed and started sexually harassing her. He opened her legs and then he inserted his fingers into her vagina for about five minutes. He then came out of the room and brought a TV remote controller and a screwdriver from the living room. He inserted the TV remote controller for 5-10 minutes inside her vagina. She was screaming because it was so painful. In the process, he kept punching her upper thighs because she was screaming a lot. She didn't know whether her voice came out because her mouth was covered with a bed sheet. He then took the screwdriver and threatened to insert it into her vagina if she kept shouting. He then inserted the handle of the screwdriver inside her vagina for about five minutes.
13. She told him in Fijian, *Kua*, meaning stop it. After that, he told her to lie down on the floor while he was on the bed. By then, he had taken the socks and the bedsheet out from her mouth. He stepped on the bed and showed his penis and started rubbing it on her face. She tried to dodge his every movement, taking her face away from his penis. He then put his penis into her mouth. She was quite resistant while he was doing all these things.
14. Then he came back to his senses. When he was doing all these things, he was very wild and seemed like he was high on drugs. He put on his pants and said that he wanted to go out. She pleaded with him to remove everything and untie her hands. He then untied her hands and voluntarily gave her the bath towel back.
15. She told him that he could take the money which was \$10 and a few coins in her purse but begged him not to take her laptop and the mobile phone since they were both on hire purchase payments. He gave them back. While they were still in the kitchen, she reassured him that she had forgiven him for the offence and told him not to repeat the offence to anyone. He cried saying that he was sorry and said he did not expect it to turn out that way. She wanted to know about him briefly and asked him of his name. He told her that his name was Vasu. He was originally from Ra and resided in Natokowaqa. She told him never to come back to her neighbourhood and that he should leave her house. She opened the kitchen door and let him out. He spent nearly two hours in the house.

16. Soon after he left, she called her mother on her cell phone and told her to come home quickly because she was attacked by someone at home. Mother arrived home in 10-15 minutes. She told her mother everything that had happened.
17. She didn't want to report the matter to the police. She had so many bruises on her body, her jaws were locked and had body pain from the punches and the injuries in her vagina from the TV remote and the screwdriver. She had to get medical attention for her injuries. She went to Dr Bhagat with her mother on the same day and told the doctor everything. The doctor didn't want to do anything. He drove them right to the Lautoka Police Station where she lodged a complaint. The police then took her to the Lautoka Hospital. She identified her signature on the Medical Form where she consented for medical examination at the Lautoka Hospital.
18. She said that she had a good look at this person's face for more than two hours while he was in her house. He was an iTaukei man, short, medium built, and he had a scar on his forehead. While they were conversing in the kitchen, he took off his pullover. She saw a tribal tattoo on his left arm with a girl in the middle of that tattoo. He had a very short haircut then. She gave this description to the police when she made the complaint.
19. After this incident she spent two weeks at home, just to recover. During those two weeks, the police officers came home with photo IDs of men who had committed crimes. She was able to identify the perpetrator in one of those photos. When she saw the perpetrator's face in the photo, she was so shocked and shaking. She could not stand seeing him in the photo because it was so disturbing for her to see him again. In the photo, he was wearing a vest, but what she could notice was only his face. She said she was shown 10 plus photos over that period. They were all in small sizes with faces of people.
20. The Accused objected to the tendering of the photos in the A-4 sheet saying that he was the only one fair in complexion and with the beard in those photos and that the Complainant had mentioned that the person she identified from the photo was wearing a vest. According to

those photos he was wearing a round neck blue t-shirt. His position was that it was not the same photo that was shown to the Complainant back in 2019 and that those photos were just made up by the State for late disclosing.

21. She was shown all twelve photos depicted in one A4 sheet. Alesi had a look at the photos shown over the camera and confirmed that that was how the photos were shown to her by the police officer. After all the photos were shown one by one, the State Counsel asked whether she could identify the perpetrator. She identified the photo of the accused and confirmed that he was the one who committed the offences.
22. The Court indicated that it would arrange for 10 people to come in front of the camera, one by one, and ask the Complainant to identify the perpetrator if he was among them. The Accused vehemently objected and refused to take part in the proposed identification process. His objection appeared to be based on his privacy. He strongly believed that his privacy would be compromised on Skype given what is happening worldwide today. The Court did not compel the Accused to come in front of the camera for identification process.
23. She could not recall exactly when she identified the perpetrator through the photo. Her recollection was that she made the identification when she was on leave for two weeks after the incident.
24. The Accused refused to cross-examine the Complainant because she was not physically present in Court.

#### **PW2 Asinate Navasua**

25. In 2019, Asinate was residing at 1 Lum Street, Waiyavi, Lautoka with her daughter Alesi Kurisaru. On 23 February 2019, she left home at around 10 a.m. for AOG Church in Saru. Alesi did not go to work on that day.

26. When she was still at church, she received a call from Alesi asking her to rush back home because a man had entered the house. When she arrived home, Alesi looked lost and shaken. When she asked Alesi what happened, she did not reply. She was just crying. She tried to calm Alesi down. Alesi then told her that she was raped by a stranger who had entered the house. Alesi told her everything that was done to her.
27. Alesi said how a knife was put on her, cutting below the arm beside her breast. She was punched when she was struggling to get away from him. He put her on Alesi's bed and used his finger, a TV remote control and the handle of a screwdriver on her vagina and raped her. While telling this story, she was not able to sit down because she was in a lot of pain.
28. Then they went to see a private doctor, Dr. Bhagat. The doctor took them in his vehicle to the police station. After recording a statement with the Police, they were taken to the Lautoka Hospital where she was medically examined.
29. Under cross-examination by the Accused, the witness said that she received the call from Alesi at around 1 p.m. She could only identify the remote controller which had blood stains but could not see anything on the screwdriver.

**PW3 - Dr Senimili Leba**

30. In 2019, Dr Leba was practising as a Medical Officer at the Emergency Department, Lautoka Hospital. On 23 February 2019, she medically examined Alesi Kurisaru and prepared a report. She tendered the medical report marked as PE 1. Alesi looked depressed and sad about what had happened. She complained of pain all over her body. She noted a lot of bruises all over her body. Upon vaginal examination, she noted bruises along the clitoris, labia minora and labia majora and bleeding due to menstruation.
31. She opined that the vaginal bruises could have been caused by blunt force trauma from a sharp object. There was a linear abrasion below the left nipple and a hematoma on the upper thighs. The bruises all over her body with abrasion indicated that she was in contact with a



rough surface. She concluded that the history given by the patient coincided with her physical findings. She agreed that penetration by a TV remote controller and a handle of a screwdriver could have caused the injuries visible on the vagina. The doctor further agreed that the bruises noted on the hand could have been caused if the patient had been tied with a charging wire.

32. Under cross-examination by the Accused, Dr Leba agreed that no diagram was drawn to depict the vaginal injuries. But the injuries were described in written form.

#### **PW4 ASP Silio Finau**

33. In 2019, ASP Finau was based at Lautoka Police Station. On 23 February 2019, the station received a report from the Complainant. On the 24<sup>th</sup>, the Complainant described the suspect as a person with a medium built, blonde hair, a scar on the forehead and a tattoo on the left hand. On the same day, Inspector Jitoko, the officer-in-charge of the crime scenes which maintains a forensic database of those charged by the police, came to the police station. The database contained the photos and descriptions such as the scars, tattoos etc. of those who were previously charged.
34. On 25 February 2019, IP Jitoko compiled 12 photos of the likely suspects with the same description as the Complainant gave. He took the photos to the Complainant at her residence. The Complainant identified the suspect who came to her house on 23 February 2019. She pointed to the photo of Kolinio Nasilokia whose name was verified from the database maintained by the forensics. The Complainant started shivering and crying as she saw the photo of the person who came to her house on the 23<sup>rd</sup>. ASP Silio recognized the A4 paper with 12 photos he had shown to the Complainant. He pointed out to the Court the photo the Complainant identified. That photo had been taken in 2007.
35. After the photo identification process, IC Simi and his team started the search for the suspect. They could not find this person in 2019 as he was not residing at the Lovu address recorded in the database. They later became aware that this suspect was serving a prison term in

another case. He was not serving in Lautoka when the suspect was brought in for questioning. He never saw this person at any time. To his recollection, Netava was the officer who arrested the suspect for questioning in this case.

36. Under cross-examination by the Accused, ASP Silio confirmed that the 12 photos were assembled in an A-4 paper. The Court permitted him to tender the A4 sheet marked as PE 2, which he should have tendered during his examination-in-chief. He is not aware when the photos were disclosed to the Defence although they formed solid evidence of the State. The photos were disclosed late because the Accused was arrested last year (2023). He is not aware if the Accused was arrested in May 2023 and that the photos were disclosed to the Accused on 4 June 2024. He denied that the photos shown to the Complainant in Court were not the same photos that Jitoko had prepared and shown to the Complainant in 2019. He denied that the photo that was shown to the Complainant in Court was taken between 31 May and 3 June 2023 after he was arrested.

#### **PW5 Constable Ilisapeci Ratusaki**

37. In 2019, Ilisapeci was based at the Crime Scene Investigation Unit (CSIU) of the Lautoka Police Station. On 23 February 2019, she received instructions to take photos of the alleged crime scene and prepare a sketch plan of the Complainant's house in Lum Street, Waiyavi, Lautoka. She took photos of the alleged crime scene and prepared a sketch plan of it. She tendered the photographic booklet marked as PE 3. She identified the photo 13 as the knife allegedly used to threaten the Complainant and the photos 19 and 20 as the TV remote controller allegedly used on the Complainant. She also tendered the rough sketch plan and the fair sketch plan prepared by her.
38. Under cross-examination by the Accused, Ilisapeci said that she uplifted and photographed the evidence as they were being pointed out by the Complainant. She took the clothing found on the passage, the bedsheet, the remote controller, and the knife from the alleged crime scene. She could not recall if she took a picture of the screwdriver. The remote control was not dusted for fingerprints.

**PW6 Miriama Tamaivena**

39. In 2009, Mariama was residing in Lum St, Waiyavi, Lautoka. On 23 February 2019, she was at home and was doing her laundry at around 11 a.m. to 12 p.m. She heard some screaming of a lady coming from the side of the house of the Complainant Lesi. She went outside to check, but she didn't find anything suspicious. She heard the scream twice. Her window is situated right across the street about 50 – 70 metres away from the Complainant's house. The next day police came and inquired if she heard anything on the previous day. The police officers told the whole thing that happened to Lesi. She informed the police of the screaming she heard.

**PW 7 DS Nateva Yalayala**

40. Netava said that his team arrested the Accused on 8 May 2023 from a farm at Drasa when a search was being conducted to arrest the suspect in another robbery case. When he saw the suspect, he recognized him to be Kolinio Nasilokia who was also wanted in the Lum Street rape case of which he was part of the investigation team. He knew that the Complainant had identified Kolinio Nasilokia from the photographic booklet maintained by the CSI unit. However, Kolinio could not be located for more than three years. He said that the Accused was wearing a red round neck t-shirt with a black lining at the time of the arrest. He denied under cross-examination that the red t-shirt was removed and taken as an exhibit by the police and that he was wearing a blue round neck t-shirt at the time of the interview.

**PW8 DC Tevita Raki**

41. DC Tevita interviewed the Accused under caution on 8 May 2023. He also took part in arresting the Accused on the same day. He said that the Accused was wearing a red t-shirt with a black lining at the time of the arrest and at the interview. He also compiled the Accused Identification Form for the Accused which he tendered marked as PE5. He showed the photo of the Accused which he took from his mobile phone during the arrest of the Accused. He tendered the hard copy of that photo in evidence (PE 6).

## **The Case for Defence**

### **DW1- Rakesh Roy Reddy**

42. Reddy said that he was at the Lautoka Police Station on a day in a weekend in May 2023, the Accused was brought into the station under arrest and at that time the Accused was wearing a red round neck t-shirt. He was detained at the police station for two days during the weekend, and after two days, he saw the Accused in a blue round neck t-shirt.

### **Evaluation/ Analysis**

43. The Prosecution substantially relied on the evidence of the Complainant to prove the charges. To support the version of the Complainant, the Prosecution adduced recent complaint evidence, evidence on post-incident distressed condition of the Complainant and medical evidence. The case for the Defence is one of complete denial. The Defence case was almost based on mistaken identity.
44. The Complainant said that a stranger entered her house and sexually assaulted her by penetrating her vagina with his fingers and two objects, namely a TV remote controller and a handle of a screwdriver.
45. The Complainant was straightforward in her evidence. Since the Accused was unrepresented, I perused the statement she made to police soon after the alleged incident only to check if her evidence is consistent with what she had told the police on 23 February 2019. She had told almost the same story to the police. She maintained her consistency in Court. The circumstances under which the complaint was made to police further convinced me that she is an honest and truthful witness.
46. She had complained to her mother soon after the alleged sexual offences. Her mother Asinate gave evidence (PW2) and confirmed that she received the complaint from the Complainant

of the alleged sexual offences. Asinate also confirmed that the Complainant was depressed and that she had injuries all over her body. Asinate also confirmed that the TV remote controller had blood. Asinate's evidence is straightforward and consistent with that of the Complainant. I accept Asinate to be a truthful witness. The complaint she received from the Complainant soon after the incident and her evidence on the depressed condition of the Complainant are consistent with the allegation of rape made by the Complainant.

47. Doctor Leba had medically examined the Complainant soon after the alleged incident. The medical evidence is also consistent with the allegation of rape. The injuries noted by the doctor in the Complainant's body, especially the injuries on genitalia confirm that the Complainant was raped as charged.
48. I observed the demeanour of the Complainant carefully on the screen. The clear image of the facial expressions of her face proved that she is an honest witness. I am satisfied that the evidence of Complainant is credible and that she was raped as charged.
49. However, the fact that she told the truth does not mean that the charges against the Accused have been proved unless it could be established that the Accused is the rapist. The Accused must be implicated in the offences. I warned myself that even credible and convincing witnesses are sometimes mistaken when it comes to the identification of a person. Therefore, it is important for the Court to be satisfied that the evidence of the Complainant is not only credible but also reliable when it comes to visual identification of the culprit.
50. Now I turn to the identification made by the Complainant, which the Defence appears to say is mistaken. Bearing the Turnbull Guidelines on visual identification in mind, I analysed the evidence and the circumstances under which the identification was made. The Accused refused to cross-examine the Complainant on the premise that she was not physically present in Court. However, as I said in my Ruling on evidence via Skype, our law, under Sections 131(2) and 295 of the Criminal Procedure Act, allows a witness to give evidence from a remote location using closed circuit television (CCTV) technology provided that the conditions and the procedural requirements were fulfilled. In a pre-trial hearing, the Court

was satisfied that the Complainant is a vulnerable witness and that the taking of her evidence from a remote location was justified in terms of her safety and also in the interests of justice.

51. I ensured that the procedure laid down in Section 295 of the Criminal Procedure Act was strictly followed and heard the parties before allowing the State's application to adduce evidence of the Complainant, who is currently abroad. The facilities and the equipment were readily available to Court and the quality of the visuals, and the sound of the CCTV system was satisfactory. The Accused was given the opportunity to cross-examine, observe the demeanour of the witness and challenge her evidence. The Court made a special arrangement to avoid the prejudicial effects on the Defence in the event a dock identification was allowed.
52. However, the Accused miserably failed to exercise his right to confront the Complainant. In result, the evidence of the Complainant on visual identification was unchallenged. The Court is however mindful of the responsibility cast on it to safeguard the rights of the unrepresented Accused in ensuring a fair trial and ascertaining the truth. Therefore, I warned myself of the dangers of mistaken identification and strictly followed the Turnbull Guidelines.
53. The perpetrator was a complete stranger to the Complainant. However, he had spent approximately two hours with the Complainant in close proximity and under broad daylight. It was never a fleeting glance identification. The view of the perpetrator was never obstructed. He was not wearing anything to cover up his face. He even had a conversation with the Complainant before he left the house. He also had distinguishable characteristics on his body like tattoos and scars.
54. Although he was aggressive and wild while committing the offences, in the Complainant's own words, 'he came back to his senses' from a state which seemed to her as if he was high on drugs. After committing the offences, he untied her hands and voluntarily gave her the bath towel, cellphone, and laptop back. When she reassured him that she had forgiven him for the offence and told him not to repeat the offence to anyone, he cried and apologized to her and said that he did not expect it to turn out that way. This evidence shows that the

Complainant was in a sound mental state to make a correct identification of the person who, being her rapist, must have left an indelible mark in her mind for the rest of her life.

55. In the brief conversation with the Complainant, he told the Complainant that his name is Vasu and that he was originally from Ra. Constable Tevita Raki (PW8) confirmed that the Accused is nicknamed Vasu. The accused identification detail form which he tendered in evidence (PE 6) shows that the Accused is nicknamed Vasu and that he is from Ra Province. Raki said that the nickname was disclosed by the Accused himself during the interview.
56. I was wondering, if a criminal, after committing such terrible crimes, would ever reveal his identity and personal information to the victim. In the circumstances of this case, her evidence to me is not beyond imagination. According to the Complainant, the perpetrator made those revelations when she reassured him that she had forgiven him for the offence and told him not to repeat the offence to anyone. She also said that she did not want to report the matter to police. The complaint she eventually lodged was not her own initiative. It was Dr Bhagat whom she resorted for medical treatments that had taken her to the police station. In these circumstances, I have no reason to disbelieve the Complainant's evidence that the perpetrator disclosed his identity to her after the incident.
57. In the statement she made to police soon after the incident, she had given a vivid description of the perpetrator that he was an iTaukei man, short, medium built, had a scar on his forehead and a tribal tattoo on his left arm with a girl in the middle of that tattoo and a very short haircut. After the alleged incident she had spent two weeks at home, to recover herself. During this period, the police officers had come home with photo IDs of men who had committed similar crimes, but the perpetrator was not among them. Finally, she was able to identify the perpetrator in one of the photos that was brought by an iTaukei police officer. When she saw the perpetrator's face in the photo, she was shocked and could not stand seeing him because it was so disturbing for her to see him again.
58. When the Complainant was shown the A4 photo sheet with twelve photos, she had a close look over the camera and confirmed that that was how the photos were shown to her by the

iTaukei police officer. After all the photos were shown to her one by one, she singled out the photo of the Accused and confirmed that he was the one who committed the offences on her.

59. ASP Silio's evidence is consistent with that of the Complainant. He was the iTaukei police officer who approached the Complainant with the photos. He said that on 25 February 2019, he took the A-4 sheet with 12 photos of the likely suspects with the similar description, obtained from the CSI database, and showed it to the Complainant. He confirmed that the Complainant identified the photo of the person who came to her house on 23 February 2019. He also confirmed that as the Complainant saw the photo of this person, she started shivering and crying. He said that the name of this person was verified from the CSI database as being Kolinio Nasilokia.
60. According to ASP Silio, after the identification was confirmed by the Complainant, the police hunt was on to arrest the suspect. However, the suspect could not be located at the address recorded in the data base. He later came to know that the suspect was serving a prison term. There is no dispute that the Accused was charged for the offences in this matter when he was arrested on 8 May 2023 for another offence. The Complainant said she moved to the USA in September 2019. In these circumstances, it is obvious that holding an identification parade would not be possible because the Accused could not be located until the Complainant left Fiji.
61. The Prosecution relied on the photo identification process to establish the identity of the Accused. The Accused disputed the photo identification. However, I am satisfied that the photo identification was properly conducted. The photo of the Accused was not the only photo that was shown to the Complainant. She had been shown 12 photos of iTaukei people with similar characteristics. She confirmed that she was shown '10 plus' photos. When she was shown the A-4 sheet with 12 photos by the prosecutor, she confirmed that it was in the same format when it was shown to her back in 2019.
62. I do not agree with the Accused that he was the only person with a fair complexion and with a beard. There are two people with a beard, albeit not grown to the extent of his beard, and



identification parade would not be possible because the Accused could not be located until the Complainant left Fiji.

61. The Prosecution relied on the photo identification process to establish the identity of the Accused. The Accused disputed the photo identification. However, I am satisfied that the photo identification was properly conducted. The photo of the Accused was not the only photo that was shown to the Complainant. She had been shown 12 photos of iTaukei people with similar characteristics. She confirmed that she was shown '10 plus' photos. When she was shown the A-4 sheet with 12 photos by the prosecutor, she confirmed that it was in the same format when it was shown to her back in 2019.
62. I do not agree with the Accused that he was the only person with a fair complexion and with a beard. There are two people with a beard, albeit not grown to the extent of his beard, and two people with a fair complexion among those photos. There was no suggestion that the police officers singled out the Accused's photo and showed it to the Complainant. She had not picked any of the photos that were taken to her until she was sure of the identity of the real culprit. Therefore, no prejudice was caused to the Accused in the photo identification process.
63. The Accused claimed that the photo of him shown to the Complainant in Court was taken after he was arrested on 8 May 2023. To support his claim, he pointed out the inconsistency that in the photo shown to the Complainant in Court (PE2) he was wearing a **round neck t-shirt** whereas the Complainant said that the perpetrator whom she identified in the photo that was shown to her in 2019 was wearing a **vest**. He also alleged that the late disclosure of PE 2 was due to police manipulation.
64. I concede the Complainant having said that, in the photo shown to her in 2019, the perpetrator was wearing a vest. However, she gave evidence after five years when her recollection was poor. Further, she particularly said that what she could notice was only the perpetrator's face. PE2 was disclosed after the Accused objected to the taking of the evidence via Skype on 4 June 2024. It should have been disclosed well in advance of the

Netava Yalayala and interviewing officer Tevita Raki to be called as Defence witness in the event Prosecution failed to call them.

66. Prosecution called DS Nateva (PW7) and DC Tevita Raki (PW8) as its witnesses. Nateva's team arrested the Accused on 8 May 2023. When he sighted the suspect, he recognized him to be Kolinio Nasilokia who was also wanted in the Lum Street rape case of which he was part of the investigation team. He already knew that the Complainant had identified Kolinio Nasilokia from the photographic booklet maintained by the CSI unit. He said that the Accused was wearing a red round neck t-shirt with a black lining at the time of the arrest. He denied under cross-examination that the red t-shirt was taken off to be exhibited by the police and that he was wearing a blue round neck t-shirt at the time of the interview.
67. DC Tevita Raki (PW8), interviewed the Accused and took part in arresting him. He confirmed that the Accused was wearing a red t-shirt with a black lining at the time of the arrest and also at the interview. He showed the photo of the Accused which he took from his mobile phone during the arrest of the Accused. He tendered the hard copy of that photo in evidence (PE 6).
68. The Defence called Rakesh Roy Reddy (DW1) who was in remand with the Accused to dispute the police evidence. Reddy said that he was at the Lautoka Police Station when the Accused was brought into the station under arrest and at that time the Accused was wearing a red round neck t-shirt. He further said that, after two days, he saw the Accused in a blue round neck T-shirt.
69. Reddy's evidence is hardly believable for several reasons. I doubt in the absence of any special reason that he could recall what the Accused wore approximately a year ago. He was not sure about the colour of the pants the Accused was wearing on those two days. Then how was it possible for him to say for sure that the Accused was wearing a blue t-shirt two days after his arrest. Furthermore, he could not say exactly when he met the Accused at the police station. If he happened to be at the police station on 5, 6 or 7 of May 2023, he was not in a position to sight the Accused as the Accused was arrested and brought to the Station and

interviewed on 8 May 2023. He admitted that he knew the Accused even before 2023 and that they were in conversation at the remand center before coming to give evidence. I can't reject the claim of the Prosecution that Reddy's evidence was cooked up with the Accused in the remand centre to support the version of the Defence. I reject the evidence of the Defence which I find to be implausible and biased towards the Defence.

70. In this regard, the evidence of the two police officers is consistent and believable. The photograph PE 6 confirms that the Accused was wearing a red round neck t-shirt with a black lining at the time of the arrest. It is hardly believable that the police officers took it off from the Accused to be exhibited by the time of the interview which was conducted on the same day. I reject the claim of the Defence that the photograph shown to the Complainant in Court (PE2) was taken after the Accused was arrested in May 2023. No doubt is created in the version of events of the Prosecution's case.
71. The Accused refused to take part in the special identification process arranged by the Court. This special arrangement was made to avoid the prejudicial effect of a typical dock identification in a case where the witness has been allowed to give evidence via CCTV (Skype) from a remote location as was highlighted in *Lotawa v State*<sup>1</sup>.
72. However, the Accused refused to take part in the identification process and confront the Complainant despite the assurance by the Court that he will not be prejudiced as ten people of similar characteristics would come in front of the camera. There is no logic or weight in the argument that his privacy would be compromised if he took part in the proposed identification process. He refused to cross-examine the Complainant when there was prima facie evidence against him having been adduced.
73. From the conduct of the Accused, it is reasonable to draw the inference that the Accused did not confront the Complainant and participate in the identification process because he was guilty. He could have simply shown his forehead and left hand to challenge her evidence

---

<sup>1</sup>Crim App. No AAU 0091 of 2011 (5 December 2014)

that he had no such characteristics (scar/tattoo) on his body. I observed the Accused carefully for his personal characteristics the Complainant talked about. The description the Complainant had given to the police and to the Court of the Accused perfectly matched with that of the Accused in Court. He is an iTaukei man, short, medium built and he has a scar on his forehead. He has a tribal tattoo on his left arm as was described by the Complainant. I am sure the Accused is the person who entered the house of the Complainant and raped her on 23 February 2019. The Prosecution proved the identity of the Accused beyond reasonable doubt.

74. In this trial, police witnesses adduced bad character evidence and talked about the criminal history of the Accused. I had to allow this evidence to ascertain the truth and in the interests of justice. However, I strictly bear in mind that the previous criminal history does not implicate the Accused in the present case. In coming to the conclusion in this case, I was not swayed by his past criminal record. I do not believe for a moment that merely because the Accused had a criminal history, he must have done the offences in the present case also. I was strictly guided by the evidence relevant to the charged offences in the present case.
75. There is sufficient and credible evidence to prove each element of Rape as charged on Counts 1, 2 and 3 in the information. I find the Accused guilty of rape on Counts 1, 2 and 3 and convict him accordingly. The Accused is acquitted on Count 4 as there is no sufficient evidence on the allegation of vaginal penetration.



A handwritten signature in black ink, appearing to read "Aruna Aruthge".

**Aruna Aruthge**  
**Judge**

20 June 2024  
At Lautoka

Solicitors:

Office of the Director of Public Prosecutions for State  
Accused in Person