

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

**Criminal Case No.: HAC 70 of 2021**

**STATE**

**V**

**TUMELI VALAMALUA BAINIVALU**

**Counsel** : Mr. J. Nasa and Ms. R. Pai for the State.  
: Ms. L. Taukei and Ms. S. Moceinavaga for the  
Accused.

**Dates of Hearing** : 08 and 11 October, 2024  
**Closing Speeches** : 14 October, 2024  
**Date of Judgment** : 14 October, 2024

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**JUDGMENT**

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*(The name of the complainant is suppressed she will be referred to as "M.N")*

1. The Director of Public Prosecutions charged the accused by filing the following information dated 8<sup>th</sup> September, 2021:

**FIRST COUNT**

***Statement of Offence***

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

***Particulars of Offence***

TUMELI VALAMALUA BAINIVALU on the 4<sup>th</sup> day of June, 2021 at Lautoka, in the Western Division, had carnal knowledge of “M.N” without her consent.

**SECOND COUNT**

***Statement of Offence***

**INDECENT ASSAULT:** Contrary to section 212(1) of the Crimes Act 2009.

***Particulars of Offence***

TUMELI VALAMALUA BAINIVALU on the 4<sup>th</sup> of June, 2021, at Lautoka, in the Western Division, unlawfully and indecently, assaulted “M.N”.

2. In this trial, the prosecution called two witnesses and after the prosecution closed its case, this court ruled that the accused had a case to answer for both the offences as charged.

**BURDEN OF PROOF AND STANDARD OF PROOF**

3. 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.
4. 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 other as well. This also applies with the findings of not guilty.

## **ELEMENTS OF THE OFFENCE**

### **RAPE**

5. To prove the first count the prosecution must prove the following elements of the offence of rape beyond reasonable doubt:
  - (a) The accused;
  - (b) Penetrated the vagina of the complainant with his penis;
  - (c) Without her consent;
  - (d) The accused knew or believed the complainant was not consenting or didn't care if she was not consenting at the time.
6. In this trial, the accused has denied committing the offence of rape. 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 penis without her consent and the accused knew or believed the complainant was not consenting or didn't care if she was not consenting at the time.
7. The first element of the offence is concerned with the identity of the person who allegedly committed this offence. This element is not in dispute.
8. The second element is the act of penetration of the complainant's vagina by the penis. This element is also not in dispute.
9. The third element of consent is in dispute. Consent means to agree freely and voluntarily and out of her free will. If consent was obtained by force, threat, intimidation or fear of bodily harm or by exercise of authority, then that consent is no consent at all. Furthermore, submission without physical resistance by the complainant to an act of another shall not alone constitute consent.

10. If this court is satisfied that the accused had penetrated the vagina of the complainant with his penis and she had not consented, then this court is required to consider the last element of the offence that is whether the accused knew or believed that the complainant was not consenting or did not care if she was not consenting at the time.
11. To answer the above this court will have to look at the conduct of both the complainant and the accused at the time and the surrounding circumstances to decide this issue.
12. If this court is satisfied beyond reasonable doubt that the prosecution has proven beyond reasonable doubt that the accused had penetrated his penis into the complainant's vagina without her consent then this court must find the accused guilty as charged.
13. If on the other hand, there is a reasonable doubt with regard to any of those elements concerning the offence of rape, then this court must find the accused not guilty.

#### **INDECENT ASSAULT**

14. To prove the second count the prosecution must prove the following elements of the offence of indecent assault beyond reasonable doubt:
  - (a) The accused;
  - (b) Unlawfully and indecently;
  - (c) Assaulted the complainant by touching her breast.

15. The first element of the offence of indecent assault is concerned with the identity of the person who allegedly committed this offence. This element is not in dispute.
16. The words “unlawfully” and “indecently” in respect of the second element of the offence simply means without lawful excuse and that the act has some elements of indecency that any right minded person would consider such act indecent.
17. Assault is the unlawful use of force on the complainant by touching her breast.
18. The accused has denied committing this offence. It is for the prosecution to prove beyond reasonable doubt that it was the accused who had unlawfully and indecently assaulted the complainant by touching her breast.
19. If this court is satisfied that the prosecution has proved all the elements of the offence of indecent assault beyond reasonable doubt, then this court must find the accused guilty. However, if there is a reasonable doubt with respect to any elements of the offence of indecent assault then this court must find the accused not guilty.
20. The slightest of penetration of the complainant’s vagina by the accused penis is sufficient to satisfy the act of penetration.
21. 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**

22. In this trial, the prosecution and the defence have agreed to certain facts titled as admitted facts. These facts are part of the evidence and I have accepted these admitted facts as accurate, truthful and proven beyond reasonable doubt.
23. 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**

24. The complainant informed the court that on 4<sup>th</sup> June, 2021 she was residing at Soso village. After breakfast she went with four others from the village to collect sea grapes.
25. In the afternoon the same group was returning home when they reached the place known as Qela the accused her granduncle also known as Tai Vala started calling her from behind. Shortly after, the accused joined the group as they were walking the accused with his hands started touching the complainant's breast from over her clothes. When this happened the complainant got scared but she did not do anything.

26. By this time it was getting dark so the complainant and the accused went to “Melo” which is a graveyard, by this time the others had left. When questioned why she had gone to “Melo” with the accused, the complainant said *“for us to be together.”*
27. At “Melo” the accused had sexual intercourse with the complainant she did not do anything because she was scared. The complainant identified the accused in court.
28. In cross examination the complainant agreed that she had slowed her pace to allow the accused to join her and whilst walking both the accused and the complainant were talking. The complainant denied asking the accused which woman he was seeing but agreed that she told the accused that she wanted him. The complainant agreed the accused had responded that such a thing would not be proper, however upon hearing this the complainant had persisted and said *“Tai, I want you”*.
29. The complainant also stated that she and the accused had agreed to go to “Melo”. The complainant did not agree with the suggestion that she was walking ahead of the accused. She stated that they were walking together and at “Melo” she had removed her sulu and panty, placed her sulu on the ground and laid on it. The accused came on top of the complainant and inserted his penis into her vagina and they had sexual intercourse.
30. The complainant denied the suggestion that she had sexual intercourse because she wanted to but changed her answer upon further questioning agreeing that she had told the accused that she wanted to have sexual intercourse with him. The complainant also agreed that she did not shout or scream for help and that the accused had not threatened her. She did not react in any way because she was scared when questioned that she

had not reacted to indicate to the accused that she was scared the complainant agreed.

31. The complainant agreed that when she left “Melo” she met Tamani and Jovesa who had asked her why she was in the bush. In reply the complainant told the two boys that she had gone to relieve herself. It was only upon the insistence of Tamani and Jovesa that the complainant said the accused had raped her. The complainant agreed that she was embarrassed that she had sexual intercourse with the accused her grand uncle and that was the reason she told Tamani and Jovesa that she was raped by the accused.
32. In re-examination the complainant stated that she was scared that is why she told Jovesa that she had gone to relieve herself. The complainant was scared when she told the accused that she wanted him. The complainant had gone to “Melo” with the accused removed her sulu and laid on it because she was scared.
33. The complainant had agreed to have sex with the accused because she was scared and that is the reason why she did not shout or react. The reason why she had said yes to the question that due to her embarrassment of having sex with the accused she had said she was raped because she was scared.
34. The final witness Dr. Kiran Gaikwad informed the court that he graduated with an MBBS degree from the University of Pune and he also graduated with a post graduate Diploma in Mental Health from Fiji National University. In addition to this qualification the witness has also completed International Diploma in Mental Health, Human Rights and Law from the



Indian Law Society. The witness is currently employed at the St Giles Hospital as a Psychiatrist.

35. By virtue of the High Court order dated 17<sup>th</sup> April, 2024 the witness undertook a psychiatric evaluation of the complainant. The complainant was seen as an outpatient on three occasions namely on 23<sup>rd</sup> April, 24<sup>th</sup> May and 11<sup>th</sup> June, 2024. The witness has compiled a psychiatric assessment report dated 18<sup>th</sup> June, 2024 which was marked and tendered as prosecution exhibit no. 1.
36. The witness further stated that the complainant was not fit to give consent for the sexual acts. During his assessment of the complainant the witness had observed that the complainant acted in a childlike manner much younger than her given age of 36 years with no obvious psychotic or manic symptoms. She was respectful and a rapport was partially established. The complainant was also able to converse and answer questions as per her understanding and knowledge.
37. The witness came to the following conclusions based on the assumption that whatever history/ information available, observations, personal interviews and assessment of the complainant's mental status:
  1. *That Ms. M. N. has intellectual disability.*
  2. *That her ability to withstand the cross examinations is limited due to her impaired intellectual functioning. It is highly likely that she won't be able to respond to questions in evidence-in-chief and cross-examination.*
  3. *That she has intellectual disability which makes it demanding for her to fully understand the court proceedings.*

4. *That although her ability to understand the substantial effect of the evidence that may be given is uncertain, she has fair understanding that something wrong has happened with her and is able to name the person but not all the details of the incidents consistently.*
  5. *Exact level of intellectual disability can only be measured using psychometric tests administered by qualified clinical psychologists. However, we neither have the required tools nor the resource person to run the same test.*
  6. *Therefore, assessment by clinical psychologist and his opinion to assess her level of intellectual disability and competence is recommended.*
38. In cross examination the witness agreed that the actual level of intellectual disability could not be established but clinically he is able to know whether the complainant is having intellectual disability or not and also the proximity of the intellectual disability.
  39. The witness did not agree that having two children meant the complainant had some inclination about the consequence of having sexual intercourse. The witness added that in this case the complainant has no idea about contraceptive measures or how to protect herself from pregnancy.
  40. The witness accepted that the complainant was able to speak and talk and considering her previous sexual experience and pregnancy the complainant must be having some idea about what is sexual intercourse. The complainant could ask for sex if she wants to. The witness further stated that every person has a physical demand and sexual activity is one of it does not mean that the person has the capacity to give consent for sex.

41. The witness did not agree with the suggestion that the complainant wanting to have sexual intercourse meant she was consenting because the complainant did not understand the consequences of the process and the risk involved such as protecting herself by the use of condoms or other contraceptive devices.

**EXPERT EVIDENCE DIRECTION**

42. This court has heard the evidence of Dr. Gaikwad who had been called as an expert on behalf of the prosecution. Expert evidence is permitted in a criminal trial to provide the court with information and opinion which is within the witness expertise. It is by no means unusual for evidence of this nature to be called and it is important that this court should see it in its proper perspective. The report of the complainant is before this court and what the doctor said in his evidence as a whole is to assist this court.
43. An expert witness is entitled to express an opinion in respect of his or her findings and I am entitled and would no doubt wish to have regard to this evidence and to the opinions expressed by the doctor. When coming to my conclusion about this aspect of the case this court should bear in mind that if, having given the matter careful consideration, this court does not accept the evidence of the expert it does not have to act upon it. Indeed, this court does not have to accept even the unchallenged evidence of the doctor.
44. The evidence of the doctor relates only to part of the case, and that whilst it may be of assistance to this court in reaching its decision, this court must reach a decision having considered the whole of the evidence.
45. This was the prosecution case.

## **DEFENCE CASE**

46. 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. This court must also consider his evidence and give such weight as is appropriate.
47. The accused is the granduncle of the complainant and they were living in the same village. On 4<sup>th</sup> June, 2021 at about 5pm the accused met the complainant when he was walking home. During their conversation the complainant said that she wanted him, the accused told the complainant that he could not do such a thing but she kept on insisting that she wanted him. The complainant said *"Tai I really want you at this time."*
48. The complainant took the lead to the graveyard by the time the accused reached the spot where the complainant was, she had already removed her clothes and was lying down. The accused removed his pants and they had sexual intercourse. According to the accused the complainant wanted to have sex and she liked it. The complainant did not push him away or scream for help.
49. According to the accused at no time before or during sexual intercourse the complainant was scared in fact she was happy. The accused has always had a good relationship with the complainant. The complainant used to participate in the village functions and there was nothing wrong with her. The accused denied touching the breast of the complainant as alleged.

50. In cross examination the accused denied he knew the complainant was mentally slow. The accused agreed that the complainant had no reason to lie about the allegations. The accused denied that he had sexual intercourse with the complainant without her consent and that he did not know that she was not consenting or that he was reckless in having sexual intercourse with her. The accused also denied that he had unlawfully and indecently assaulted the complainant by touching her breast.
51. This was the defence case.

### **ANALYSIS**

52. The prosecution submits that the complainant and the accused are known and related to each other as niece and granduncle who were living in the same village. In the afternoon of 4<sup>th</sup> June, 2021 the complainant and four others were returning home after collecting sea grapes. When they reached Qela the accused started calling her from behind, the accused joined the group and whilst walking the accused started touching the complainant's breast from over her clothes. The complainant got scared hence she did not do anything.
53. Since it was getting dark the others left, the complainant and the accused went to "Melo" which is a graveyard. At "Melo" the accused had sexual intercourse with the complainant she did not do anything because she was scared.
54. Furthermore, the complainant is no ordinary person she has delayed development in areas of cognition and communication for example understanding, thinking, learning, problem solving, talking, social and

emotional skills. Although she had matured by age and is a mother of two children according to the psychiatrist who had examined the complainant she has some degree of intellectual impairment (mental retardation) as a result she was not in a position to consent to the acts of indecent assault and sexual intercourse.

55. Dr. Gaikwad had conducted a thorough examination of the complainant on three separate occasions and upon his assessment the complainant has a disability which prevents her from freely and voluntarily consenting to the unexpected acts of the accused.
56. On both occasions the complainant did not consent for the accused to do what he did. The complainant did not resist or tell anyone about what the accused had done because she was scared. The prosecution is asking this court to consider her intellectual disability as a crucial factor which Dr. Gaikwad had clearly explained in particular her childlike behaviour and to reason things in particular the consequences of having sexual intercourse.
57. On the other hand, the defence says the opinion of the doctor is inconclusive and incomplete because the level of the complainant's intellectual disability and competence has not been fully ascertained. In his report at opinion five the doctor made it clear that the *"exact level of intellectual disability can only be measured using psychometric tests administered by qualified clinical psychologists. However, we neither have the required tools nor the resource person to run the same test."*
58. In view of the above, the defence is asking this court to look at the evidence holistically, this is a case which does not require any special expertise to conclude whether the complainant had consented or not. The doctor has

not done any tests on the complainant his conclusion is based on his clinical assumptions from information received.

59. Moreover, the complainant's behaviour in court, her understanding and response to questions asked is in direct contrast to what the doctor had stated in his evidence and report. The complainant during her entire evidence including cross examination did not show any lapse mentally or intellectually, she was focused and was able to answer questions asked in an appropriate manner.
60. The defence also stressed the fact that the complainant was 34 years at the time and a mother of two children. Dr. Gaikwad has for most part of his assessment carried out an academic test exercise in terms of mathematical additions and subtractions and was testing her ability to read and write English when he should have known that the complainant was educated up to level two only.
61. The doctor was very much leaning on the fact that the complainant did not have an apprehension about the consequences of having unprotected sex or did not know about safe sex practice are matters of choice of an individual which the complainant had exercised at the time. The complainant in all honesty had expressed her desire to be with the accused and had mentioned this to the accused in no uncertain term that she wanted him. The complainant led the accused to "Melo" where the complainant removed her sulu and panty laid on the sulu and had sexual intercourse with the accused.
62. When the complainant left she met Tamani and Jovesa lying to them that she had gone to relieve herself in the bush. Due to her embarrassment of having sex with the accused she again lied to Tamani and Jovesa that she

had been raped. The complainant cried rape after having consensual sexual intercourse with the accused.

63. The complainant did say that she was scared but she did not clearly state what was it that she was afraid of. There can be many reasons why the complainant was scared.
64. The accused had consensual sexual intercourse with the complainant and he had not touched her breast as alleged. The complainant had honestly told the court that the accused had not threatened her in any way that day speaks volumes about what had happened between the complainant and the accused. The accused did not know of the complainant's disability who was an active villager participating in village functions.

#### **DETERMINATION**

65. 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.
66. In this case, there are two different versions, therefore 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 prosecution witnesses and the accused.



67. 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).
68. 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.”*

69. 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].*

70. There is no dispute that the complainant and the accused are known to each other. The only issue in this trial is whether the complainant had consented for the accused to touch her breast and have sexual intercourse. The complainant did not specifically say that she did not consent to what the accused had done but did say that she was scared. In this regard it is important to look at the conduct of the complainant.

71. I accept that the complainant had told the accused that she wanted him and after the accused touched her breast she had walked with the accused to “Melo” removed her sulu and panty and then laid on the sulu leads me to the inescapable conclusion that the complainant had consented for the accused to touch her breast and then have sexual intercourse. I have also taken into account the fact that the complainant had stated that she was scared.

72. After carefully considering the evidence adduced by the prosecution and the defence, I reject the complainant’s evidence that she was scared as an afterthought which is not plausible on the totality of the evidence. In my considered judgment the complainant was not scared of the accused but an active participant in what the accused had done.

73. The complainant knew what the accused was doing and she had responded positively out of her freewill. I have also taken into consideration the fact that the complainant had not resisted or shouted or screamed the legal meaning of consent also includes submission without physical resistance by the complainant to an act of another shall not alone constitute consent. In this case the conduct of the complainant from the time she met the accused at Qela was consensual therefore there was no need for the complainant to provide any form of resistance.
74. I do not accept the evidence and /or the opinion of Dr. Gaikwad that the complainant was not fit to consent to the accused due to her intellectual disability as speculative and without justification. Firstly, the exact level of the complainant's disability in the absence of a psychometric test is not known. What the doctor told the court is his assumption which is not conclusive.
75. Secondly, the complainant in court did not display any sign of intellectual disability or any degree of intellectual impairment (mental retardation), her understanding of the questions asked and her responses never gave me the impression that she needed any special protection or had difficulties in answering the questions asked. The complainant was able to give rational and thoughtful responses. It was also noticed that the complainant was composed, alert and receptive during her evidence taking and cross examination. These attributes and the totality of the complainant's evidence did not suggest that she was mentally and/or intellectually disabled.
76. Thirdly, the complainant is a mother of two children hence it is only reasonable to infer that she knows the consequences of sexual intercourse. Fourthly, the doctor had tested the complainant on her academic outcome by a mini mental state examination (such as failure to read and write and

mathematical performance) knowing that she was only educated up to level two. It is common knowledge that a person need not have to be an academic performer to express a desire, participate in sexual behaviour and be engaged in that process.

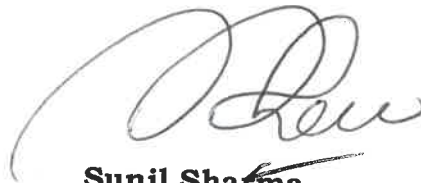
77. Finally, the doctor did not say that the complainant was not fit to give her consent due to her disability at the time of the commission of the offences. The opinion of the doctor is based on his assessment of the complainant after nearly three years of the allegations. There is no evidence before this court about her disability status in 2021.
78. My observations of the complainant and the totality of her evidence outweighs the opinion of Dr. Gaikwad that the complainant was not fit to give consent. It is to be noted that the complainant was able to recall what she had done including the specifics of her actions and those of the accused which makes it obvious to me that she had the necessary mental capacity to give her consent at the time. In his final assessment the doctor did not say anything whether any treatment was required by the complainant if indeed there was any degree of intellectual impairment (mental retardation) suffered by her.
79. The totality of the complainant's evidence points to the fact that the opinion of the doctor in respect of her inability to consent is unreliable. Although the complainant told the court that she was scared is vague, imprecise and uncertain. Her evidence that she told the accused that she wanted him which led the accused to touch the complainant's breast and thereafter have sexual intercourse is a sequence of events that cannot be ignored. On both occasions the complainant had consented but changed her mind due to her feeling of embarrassment after she had sexual intercourse with the accused who was her granduncle. The complainant also stated that there was no threat on her by the accused.

80. From the evidence of the complainant it is obvious to me that she was comfortable in the company of the accused. They were talking and walking together from Qela to "Melo" and then removing her clothes to have sexual intercourse with the accused shows willingness on the part of the complainant.
81. In view of the above, it is unsafe to convict the accused and therefore the benefit of the doubt ought to be given to him. This court is not satisfied beyond reasonable doubt that the accused had committed the offences alleged.
82. The accused in his evidence maintained that the complainant had consented for him to have sex with her that afternoon and that he had not touched her breast. I accept the accused version that he had consensual sexual intercourse with the complainant but I do not accept the evidence of the accused that he had not touched her breast as unbelievable.
83. The defence counsel had not cross examined the complainant on this aspect at all therefore I accept the complainant's version that the accused had touched the breast of the complainant. The question is whether the complainant had consented or not.
84. From the evidence of the complainant I am not satisfied beyond reasonable doubt that the complainant had not consented for the accused to touch her breast. Since the prosecution has the burden to prove the accused guilty beyond a reasonable doubt the unreliability of the accused evidence in respect of the count of indecent assault does not affect the outcome of this case. In this case the conduct of the complainant shows her willingness to be with the accused and she had consented for the accused to touch her breast and have sexual intercourse with her. The complainant

had given her consent freely and voluntarily with the necessary mental capacity to give consent.

85. There is a reasonable doubt in the prosecution case this court is not satisfied beyond reasonable doubt that the accused is guilty as charged and therefore this court has no option but to acquit the accused of both the counts mentioned in the information filed.

86. This is the judgment of the court.



**Sunil Sharma**  
Judge



**At Lautoka**

14 October, 2024

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Office of the Legal Aid Commission for the Accused.**