

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 205 of 2023

STATE

v

SEVESI VATUDAU

Counsel: Ms. S. Bibi for the State
Mr. S. Ravu for the Accused

Date of Judgment: 13 September 2024

JUDGMENT

Caveat – The victim shall herein be referred as 'KLM' pursuant to the name suppression Order.

1. Sevesi Vatudau, the accused, is indicted with the offence of *Rape* contrary to section 207(1) & 2(a) of the Crimes Act 2009 laid out as follows in the Information by the Director of Public Prosecutions dated 8 August 2023:

COUNT ONE

Statement of Offence

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

Particulars of Offence

SEVESI VATUDAU on the 22nd day of April, 2023 at Nawaisomo Village, Beqa Island in the Central Division, penetrated the vagina of **KLM** with his penis, without her consent.

2. Sevesi Vatudau pleaded *not guilty* and tried for the aforesaid offence, and this is the Court's judgment.
3. Pursuant to sections 57 - 58 of the Crimes Act 2009 and Woolmington v DPP [1935] AC 462 at 481 (HL), the prosecution bear the burden to prove all elements of the offence of *Rape* beyond reasonable doubt.

Physical and fault elements of Rape

4. *Rape* is contrary to section 207(1) - (2)(a) of the Crimes Act 2009 which state:

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

(2) A person rapes another person if –

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

Section 206(4) of the Crimes Act 2009 state, '[i]f "carnal knowledge" is used in defining an offence, the offence, so far as regards that element of it, is complete on penetration to any extent'.

Consent is defined under section 206(1)-(2) of the Crimes Act 2009 as:

206. In this Part –

(1) The term "consent" means consent freely and voluntarily given by a person with the necessary mental capacity to give the consent, and the submission without physical resistance by a person to an act of another person shall not alone constitute consent.

(2) Without limiting sub-section (1), a person's consent to an act is not freely and voluntarily given if it is obtained –

(a) by force; or

(b) by threat or intimidation; or

(c) by fear of bodily harm; or

(d) by exercise of authority; or
(e) by false and fraudulent representations about the nature or purpose of the act; or
(f) by a mistaken belief induced by the accused person that the accused person was the person's sexual partner.

5. The physical and fault elements for the offence of *Rape* are:

- i) A person i.e. the accused
- ii) Penetrated the complainant's vagina with his penis
- iii) Without the complainant's consent [See ss.206(1)-(2)]
- iv) *Mens rea* - Intentionally and/or recklessly. For 'reckless', refer to Tukainiu v State [2017] FJCA 118; AAU0086.2013 (14 September 2017) per Prematilaka, JA. at paragraphs 31 – 34.

Admitted facts between prosecution and defence

6. The *Admitted facts* between the prosecution and defence filed on 6 December 2023 are:

- a) The name of the person charged is Sevesi Vatudau ["Sevesi"]
- b) Sevesi was born on 19 January 1991 and was 32 years old at the time of the alleged offending.
- c) The complainant in this matter is KLM ["KLM"]
- d) Sevesi and KLM resided at Nawaisomo village in Beqa at the time of the alleged offending.
- e) Sevesi and KLM are known to each other namely they are related.
- f) Sevesi is married with children.
- g) On the night of the alleged offending i.e. 22nd day of April 2023, Sevesi had been with the complainant at the house called "Vanuadina".
- h) It is agreed that the admissibility of the following documents are not in dispute and the same is tendered by consent and annexed as follows:
 1. The Birth certificate of KLM whose date of birth is 29 March 2009, thus she was 13 years old at the time of the alleged rape on 22 April 2023.

7. At trial, prosecution called two (2) witnesses: PW1: KLM (Complainant); and PW2: Kinisimere Vukusiga, and tendered the following exhibits bearing in mind the *Admitted facts* noted in paragraph 6 herein:
 - PE1 – Birth certificate of PW1 KLM tendered via PW1
 - PE2 – The adult female diagram on which PW1 circled the female genitalia area tendered via PW1
 - PE3 – The adult male diagram on which PW1 circled the male genitalia area using a blue ball point pen tendered via PW1
8. The defence, on the other hand, called the accused Sevesi Vatudau (DW1) who testified under oath, and there were no other independent witness.

Prosecution case via PW1 and PW2

9. **PW1 KLM** in examination-in-chief testified that her date of birth is 3 March 2009 and she is 15 years old, and her birth certificate tendered by prosecution as PE1. PW1 resides at Nawaisomo village, Beqa, with her father Waisele Tuivuya and mother Keasi Lewenibure. In April 2023 PW1 resided at Nawaisomo village and attended Beqa Yanuca Secondary School. Sevesi Vatudau also lived at Nawaisomo village in April 2023, and PW1 has known Sevesi Vatudau since she was small, and he calls her ‘*Nau*’. Sevesi Vatudau is related to PW1 through PW1’s father’s side, and PW1’s father calls him ‘*luvequ*’ i.e. son. PW1 said that she addresses Sevesi as Vesi, and always afraid of him because he is a big man. PW1 recalled that on the night of 22 April 2023 she was with Sevesi Vatudau at Vanuadina house belonging to PW1’s Tua Aisea located just beside PW1’s house called Bolatagane which is about 7 to 10 meters apart. On Saturday 22 April 2023 PW1 went to the seafront then a woman by the name of Mereoni called and asked her to go and charge her phone. PW1 then took Mereoni’s phone to have it charged, and while walking towards Mereoni’s house Sevesi called and asked PW1 for her to clean his eyelashes, to which PW1 replied that she was on an errand and lied to Sevesi that she was going to buy biscuit. PW1 then ran to the seaside, turned around, and went to sit at Vanuadina house with Mere, Vasiti, Raijieli and Boca.

While sitting at Vanuadina house, Sevesi approached and asked PW1 again to clean his eyelashes, and both laughed at each other. PW1 was then called by her mother from Bolatagane house for PW1 to go and prepare the food, and PW1 returned to Bolatagane house and spread the blankets, and thereafter returned to Vanuadina house and lied down there in the presence of Mere, Vasiti, Raijieli, Boca and Sevesi. While lying down at Vanuadina house, Sevesi told them a story and thereafter PW1 and Raijieli went to Sekove's house to watch movies, and Sekove's house is about 5 to 6 meters away from Vanuadina house. After watching movies at Sekove's house, PW1 and Raijieli left Sekove's house and went to sit outside beside the Vunivala tree with PW1's elder sister. PW1 and Raijieli then returned to Vanuadina house after 10pm and sat in the sitting room inside Vanuadina house with Boca and Vesi. Then Vesi gave his phone to Raijieli to use to go online at the front door, while he conversed with PW1. Vesi then asked PW1 to bring him a cup of water, but instead PW1 went to sit beside Raijieli at the front door. Vesi then threw a bottle at PW1, and PW1 told him to stop and threw the bottle back at Vesi. Mere who was lying in the room in Vanuadina house then told PW1 and the others to go and lie down in the kitchen and turn off the kitchen light. PW1, Boca and Vesi then went to lie down in the kitchen, while Raijieli remained in the sitting room.

PW1 then told Vesi to turn on his torch light, and when PW1 stood up to go home Vesi then pulled her beside the toilet and started touching PW1's breast and private part, which private part PW1 said is used to urinate. PW1 was then shown a human female diagram and she circled the area where the female genitalia is located, which same diagram was then tendered by the prosecution as PE2. PW1 said that when Vesi touched her breast and private part, she wore a black pullover with number 5 written on it, a black *sulu-i-ra* or skirt, black tights and pink underwear. At the wall beside the toilet Vesi pulled up PW1's pullover and squeezed her breast, and then touched and rubbed PW1's private part with his hand, to which PW1 reacted by telling Vesi not to touch her, pulled down her pullover, and then left. PW1 knew that Vesi touched her breast and private part because he told her to pull up her clothes and *sulu-i-ra* or skirt, and also saw his face with a black beard and he wore a black *sulu-vakataga* or pocket-sulu. PW1 said that the wall beside the toilet where Vesi had touched her breast and private part was about 4 meters away from the kitchen. According to PW1 she was able

to see Vesi's face, despite the light in the kitchen being switched off, because the moon was bright that night. At that moment Boca was asleep in the kitchen, while Raijieli was on her phone going online in the sitting room which is about 4 meters away from the wall beside the toilet where Vesi had touched PW1's breast and private part. PW1 said that Vesi used his whole hand when he touched her breast and private part, and she told Vesi to stop so that she can go home and after that PW1 went straight home. PW1 said that she was wearing a bra when Vesi squeezed her breast, and he was able to squeeze her breast by pulling up PW1's jacket, to which PW1 reacted by pulling down her jacket but Vesi told her to pull it up. PW1 felt afraid when Vesi squeezed her breast for a while. PW1 told Vesi to stop, but he told PW1 to have it done one more time. PW1 told him enough and that she wanted to go home. Vesi then told PW1 to take off her pants. PW1 tried pulling up her pants but he kept pulling it down. PW1 kept pulling her pants up as she had wanted to go home. Then Vesi abruptly turned PW1 towards the wall beside the toilet then he put his '*yaya-vakaturaga*' meaning penis into PW1's '*yaya-vakamarama*' meaning vagina for a short while, and PW1 was afraid at that moment and then Vesi ejaculated on PW1's knee when PW1 was pulling up her pants. When Vesi had put his penis into PW1's vagina, PW1 reacted by telling Vesi to stop. PW1 was standing upright when Vesi put his penis into her vagina, and he was standing too and told PW1 to bend over. After Vesi had ejaculated, PW1 then pulled up her *sulu* or skirt. PW1 was shown an adult male diagram and she circled the male genitalia area with a blue ball point pen and tendered by prosecution as PE3. PW1 pulled up her *sulu* or skirt and went straight home.

PW1 said that on Monday in school she told her friends namely Akanisi and Seini about what Vesi had done to her on the night of Saturday 22 April 2023 at Vanuadina house. Akanisi and Seini then told PW1 to report this matter to their school teacher Ms. Kini, which they did, and PW1 then had a conversation with Ms. Kini.

10. In cross-examination PW1 stated that on 22 April 2023 a funeral of one Inoke was held at Nawaisomo village. PW1 said that the toilet at Vanuadina house is inside the house, and if someone is standing outside the toilet with the light on, that person cannot clearly see another person sitting inside the sitting room at Vanuadina house. PW1 said that when she arrived at Vanuadina house, Vesi, Boca, Mere and her children were having dinner. PW1 said that Vesi

did not scold her regarding her being rude by sitting at the main door of Vanuadina house, and neither did Vesi tell her father regarding the same. After dinner, Mere left Vanuadina house to go to the funeral place while Vesi, Boca, Mere's children and PW1 remained at Vanuadina house. When Mere returned from drinking grog, PW1 said that she did not hear Mere tell Vesi and Boca to go and lie down in the kitchen. PW1 said that she decided to leave for Bolatagane house close to midnight. PW1 said that she did not wake Vesi to open the kitchen door, nor called or signaled Vesi to come out of Vanuadina house and come to her. PW1 said that Vesi did not approach her, and she did not attempt to kiss him, and neither did he push her away. PW1 said that Vesi did not tell her that he will raise that incident with her father the following morning. PW1 said "no" to defence counsel's suggestion that she had reported this rape matter against Vesi because Vesi was going to report to her father about her attempt to kiss Vesi.

Defence counsel Mr. Ravu then asked the following questions in cross-examination to which PW1 responded accordingly, which questions and answers are directly quoted from the Court transcript vis-à-vis Judge's notes:

⇒ Court transcript Monday 27 May 2024 – pp. 33 – 34 of 60

Mr. Ravu: Now [KLM] I will take you back to what had happened last week. Do you remember giving evidence on Thursday (23 May 2024) last week?
(Emphasis added in terms of the date)

KLM: Yes, my Lord.

Mr. Ravu: Now Thursday last week after lunch to be specific you were asked a series of questions about what had allegedly happened on the [22nd] of April, 2023.

[NB: the date on the typed court transcript is 27th of April, 2023, but in my Judge's notes it is 22 April 2023, and I have adopted the date 22 April 2023 for purposes of this judgment.]

KLM: Yes, my Lord.

Mr. Ravu: Now in your examination in chief on last week Thursday you had told the court that the accused person or rather Vesi had allegedly touched your

private part and squeezed your [breast] after which you went home, is that correct?

KLM: Yes, my Lord.

Mr. Ravu: And would you agree with me that after he allegedly done these acts of rubbing your vagina and squeezing your breast you had left [for] home?

KLM: Yes, my Lord.

Mr. Ravu: Thank you, [KLM]. Now on Friday (24 May 2024) when you came to court you [were] asked further by Ms. Bibi about what had happened?
(Emphasis added in terms of the date)

KLM: Yes, my Lord.

Mr. Ravu: And you would agree with me that your story had somewhat completely changed?

[Discussion between Judge and Counsel]

Mr. Ravu: Now [KLM] you have told the court on Thursday that Vesi had allegedly squeezed your breast and rubbed your private part with his hand and on Friday you would agree with me that when you came to court and gave evidence you have told the court that he had put his ‘yaya vakaturaga’ in your ‘yaya vakamarama’, is that correct?

Judge: Can you ask the question again.

[Discussion between Judge and Counsel]

Mr. Ravu: Very well, my Lord. Now [KLM] on Thursday you had told the court that Vesi only squeezed your breast and rubbed your vagina after which you left for home?

KLM: Yes, my Lord.

Mr. Ravu: Now would you agree with me that on Friday when you came to court you had told the court that Vesi had put his ‘yaya vakaturaga’ in your ‘yaya vakamarama’, which is completely different [from] what you said on Thursday?

KLM: I don’t understand the question.

Mr. Ravu: Now [KLM] you told the court that Vesi had allegedly squeezed your breast and rubbed your vagina with his hand on Thursday?

⇒ Court transcript Monday 27 May 2024 – pp. 35 – 36 of 60

Mr. Ravu: Thank you. Before we left off for lunch I have asked you 2 questions. I had asked you in relation to what happened on Thursday last week. And also on Friday when you came to court [you] had given evidence in relation to what had happened on 22nd April; do you still remember the question that was asked to you before lunch or do you want me to repeat it to you again?

Judge: If you can take through the questions to the witness.

Mr. Ravu: Thank you my Lord. [KLM] last week Thursday when you were asked by the learned State counsel questions you had told the court that Vesi had allegedly squeezed your breast and had rubbed your private part that is what you told the court on Thursday before you left for home?

KLM: Yes, my Lord.

Mr. Ravu: Thank you. Now when you came the following day that is on Friday last week you had told the court that Vesi had put his ‘yaya vakaturaga’ into [your] ‘yaya vakamarama’, do you confirm that?

KLM: Yes, my Lord.

Mr. Ravu: Now would you agree with me that whatever you had told the court on Thursday is different from what you told the court on Friday?

KLM: No, my Lord, I do not understand the question.

Judge: You may have to put it directly to her.

Mr. Ravu: Now [KLM] I am putting it to you that what you have told the court on Thursday in that Vesi had squeezed your breast and rubbed your vagina is not the truth?

KLM: No, my Lord. It is the truth, my Lord.

Mr. Ravu: And I also put to you [KLM] that what you had told the court on Friday in that Vesi had put his ‘yaya vakaturaga’ into your ‘yaya vakamarama’ is not the truth and that it did not happen?

KLM: My Lord, it happened, my Lord.

Furthermore, in cross-examination, PW1 said that she had relayed to her teacher Kinisimere that Vesi had touched her body, and she knew it was Vesi because the moon was bright that night, despite the lights from nearby dwelling houses being switched off. When showed her statement to the police, PW1 confirmed her signature on the top right corner of her statement. PW1 said that she gave her statement to the police in the iTaukei language but it was written down in the English language, and everything that transpired on 22 April 2023 was still fresh in her mind. Defence counsel Mr. Ravu put to PW1 that the accused Sevesi Vatudau did not penetrate her vagina on 22 April 2023, to which PW1 responded saying “No, my Lord he is lying”.

11. In re-examination prosecutor Ms. Bibi had attempted to ask certain question which she subsequently withdrew, and did not ask any further question.

12. **PW2 Kinisimere Korowaqa Vukusiga** in examination-in-chief testified that she has been a school teacher for 8 years and currently teaches at Beqa Yanuca Secondary School, which school is also attended by KLM as a student. PW2 said that the reason why she is in court is to inform the court on the conversation she had with KLM on the morning of Monday 24 April 2023. PW2 said that she was in the staff room when she saw KLM and two other girls outside the staff room, and asked them as to why they were there, to which the two girls signaled to PW2 saying that KLM wanted to see PW2. PW2 then told KLM to get a pass from her subject teacher and then go and see PW2 during her Year 13 Mathematics class. PW2 said that 15 minutes during her class, KLM came into her class, and then asked KLM whether she wants to see her in class or elsewhere, to which KLM responded that she wanted to see PW2 privately elsewhere. PW2 and KLM then went outside and sat on a bench, and then KLM started telling PW2 the following: KLM said to PW2, “Maam there are three (3) boys in the village that are harassing me, two of them are in Suva and one still in the village.” KLM then asked PW2, “Maam if a boy and a girl are having intercourse will the semen come out from the man?” KLM continued, “How would I know if I’m pregnant?” PW2 then explained to KLM that if her menses stop then there is a possibility that she is pregnant, and PW2 then asked KLM if her menses that month had arrived, to which KLM said “Yes”. PW2 then asked KLM as to what happened to her, to which KLM responded that she was in one of

the house in the village in the weekend and the owner of the house told them to go to the kitchen and talk there. KLM said that it was on a Saturday, and while they were talking, a man approached them and this particular man was telling her that he wants to have intercourse with her and signaling he will teach her how to do it. KLM then went outside to the man, and when she was coming back to where they were talking, the man locked her, took off her underwear, told her to turn around, and then the man entered her from behind while she was bracing on the wall. Straight after that KLM went home, and then on Sunday while KLM was at home she was scared of what had happened and got no one to talk about what had happened that Saturday.

PW2 said that KLM was a bit shy and realised that something big had happened to KLM when KLM told PW2 of what had happened to KLM that Saturday. PW2 said that KLM's two friends namely Seini and Akanisi are in the same form as KLM. PW2 said that after hearing KLM's story, she then told KLM to return to her form, and PW2 went to see the school principal Mrs. Nasedra and told the principal of what had happened to KLM. Principal Mrs. Nasedra then told PW2 to take KLM to the Health Center and see Dr. Biau. PW2 then took KLM to the Health Center and saw Dr. Biau, and thereafter Dr. Biau called the principal and told her for KLM to be taken to her parents. PW2, principal Mrs Nasedra and Dr. Biau took KLM to her home at Nawaisomo village, and Dr. Biau and principal Mrs. Nasedra then informed KLM's parents of what had happened to KLM. Dr. Biau also informed KLM's parents of the relevant procedure and asked for their consent. Thereafter Dr. Biau, KLM and KLM's mother went to Navua to report the matter to the police at Navua police station.

13. Mr. Ravu opted not to cross-examine PW2.

14. The prosecution then closed its case.

15. The Court then provided the relevant options to defence counsel Mr. Ravu as to whether his client wants to remain silent, or testify under oath and be subjected to cross-examination, or call independent witnesses, to which Mr. Ravu opted for his client to testify without any other independent witness.

Defence case via DW1

16. **DW1 Sevesi Vatudau** in examination-in-chief testified that he currently resides at Galoa, but in 2023 he resided at Nawaisomo village on the island of Beqa in a farm house near the beach. DW1 said that on 22 April 2023 he was in Nawaisomo village and in the evening he went to Mere's house called Vanuadina located next to the seawall, and adjacent to it are the pastor's house, Bolatagane house and Nakeli house. Bolatagane house and Nakeli house are about 5 to 6 meters away from Vanuadina house, while the pastor's house is about 8 to 10 meters away. DW1 said that he had gone to Mere's house called Vanuadina to ask Mere if her son Boca could accompany him and go camp at the beach. DW1 said that Boca helped him build up his farm, and was paid sometime. DW1 said that at Mere's Vanuadina house that evening were Mere, her two daughters and son Boca, and he chatted with all of them and all agreed that Boca accompany DW1 to go camping. Then Mere requested DW1 and her children to remain in Vanuadina house, and left to go to the funeral place. DW1, Boca and his two sisters were sitting in the sitting room at Vanuadina house when KLM entered at about 7.30pm that evening. Mere returned from the funeral function to Vanuadina house after 9 to 10 o'clock, and requested DW1 and Boca to go and sleep in the kitchen, and her and the girls to sleep in the sitting room. DW1 said that he and Boca went to the kitchen and conversed for a while until they both fell asleep. DW1 said that when he was asleep he felt someone waking him, and upon waking up he saw KLM as the one who woke him, and then went back to sleep. DW1 said that while sleeping he felt the wind blowing towards where he was sleeping, which made him wake up and noticed that the wind was coming through the open door close to the bathroom and toilet, and he went to close that door. DW1 said that when he went to close the door, he saw KLM standing in front of the door and KLM called him and also held his hand. DW1 said that KLM then wanted to come close to him to hug and kiss him, and he reacted by telling KLM to stop trying to be an adult or otherwise he will tell her father. DW1 said that he knew that KLM was trying to kiss him because she was hugging him. DW1 said that KLM is his aunt. DW1 said that he did not tell KLM's father about what KLM had tried to do to him, and he just woke up the next morning and went to the farm. DW1 said that he found out a few days later that a report to the police had been filed against him, which he did not believe at first and felt angry at the same time, and the story had already spread around Nawaisomo village. DW1 said that he did not tell KLM's

father or anyone else about what KLM had tried doing to him as he was away in the farm and never thought that the matter would be reported or escalated to the police. DW1 said that he does not agree with KLM's evidence that he had put his '*yaya vakaturaga*' or penis into KLM's '*yaya vakamarama*' or vagina.

17. In cross-examination DW1 stated that he was aged 32 years in April 2023, married with children, related to KLM via her father's side, and originally from Nawaisomo village, Beqa. DW1 said that he did not know KLM from when she was small but only knew her lately because he was brought up elsewhere. DW1 said that one Inoke had died on 21 April 2023 at Nawaisomo village, but could not recall whether his funeral service was held on 22 April 2023. DW1 said that in the evening of 22 April 2023 he was with KLM and few others at Vanuadina house. DW1 said that he did not converse alone with KLM but did so with others as well. DW1 said that it was only Boca and himself who were lying down in the kitchen, and KLM was not there. DW1 said that he was wearing a pocket-sulu that same night. DW1 said that he did not know when KLM returned to her home. DW1 said that he did not pull KLM to the wall beside the toilet when she was leaving Vanuadina house for her home, and did not pull her trousers down while she was trying to put it up. DW1 said that he did not put his penis into KLM's vagina. DW1 said that he did not wake up that night to ask KLM something, but to close the door to prevent the wind coming inside where he was sleeping in the kitchen. DW1 said that he was interviewed by the police on 13 June 2023. DW1 did not admit that on 22 April 2023 at Vanuadina house in Nawaisomo village, Beqa, he had penetrated the vagina of KLM with his penis without KLM's consent.

18. In re-examination DW1 stated that he had no issues with KLM and they had a good relationship.

19. The defence then closed its case.

20. Closing submission by both counsels was held on 12 June 2024, and this is the Court's judgment.

Analysis of the prosecution vis-à-vis defence evidence

21. The primary issue to be determined in this case is whether DW1 Sevesi Vatudau raped PW1 KLM on the evening of Saturday 22 April 2023 at Vanuadina house, Nawaisomo village on the island of Beqa.

22. The physical and fault elements for the offence of *Rape* in this particular case are:

- i) The accused Sevesi Vatudau (DW1);
- ii) penetrated the complainant KLM's (PW1) vagina with his penis;
- iii) without the complainant KLM's (PW1) consent [See ss.206(1)-(2)]; and
- iv) the accused Sevesi Vatudau (DW1) did so intentionally and/or recklessly [i.e. fault element or *mens rea*]

23. The *Admitted facts* noted in paragraph 6 herein prove that on the evening of Saturday 22 April 2023, DW1 Sevesi Vatudau (32 years) and PW1 KLM (13 years) were with others at Vanuadina house, Nawaisomo village on the island of Beqa. Refer also to PE1 – Birth Certificate of PW1 KLM.

24. Notwithstanding the aforesaid *Admitted facts*, Defence counsel Mr. Ravu contend that:

- (a) DW1 Sevesi Vatudau vehemently denied penetrating PW1 KLM's vagina with his penis.
- (b) PW1 KLM's testimony of DW1 Sevesi Vatudau raping her by inserting his penis into her vagina without her consent, and did so intentionally, is unreliable primarily on the basis that PW1 when testifying during examination-in-chief on Friday 24 May 2024 had deviated from what she had told the Court earlier on Thursday 23 May 2024 as highlighted in paragraph 10 herein.

According to Defence counsel Mr. Ravu, on Thursday 23 May 2024 PW1 testified that DW1 squeezed her breast and rubbed her private part with his hand, and she reacted by telling DW1 not to touch her private part because she had to go back home and then went straight home; however, on Friday 24 May 2024 PW1 deviated from her earlier testimony on Thursday 23 May 2024 testifying that DW1 not only squeezed her breast but also

inserted his ‘yaya vakaturaga’ or penis into her ‘yaya vakamarama’ or vagina without her consent. PW1’s testimony on Friday 24 May 2024 is noted in the Court transcript for Friday 24 May 2024, pages 22 to 36 of 60.

- (c) PW2 Kinisimere Korowaqa Vukusiga’s testimony as ‘recent complaint’ is inconsistent with that of the complainant PW1 KLM’s account, thus, failing to enhance the complainant’s credibility, and further reinforces the defence’s case that the rape allegation against DW1 was manufactured by PW1.
- (d) PW1 had ulterior motive to implicate DW1 as means of preventing DW1 from letting her father know that she had wanted to kiss DW1 but DW1 had objected to her wanting to kiss him and pushed her away.

25. Having carefully considered the entire evidence adduced by the prosecution and defence including counsels closing submission, I find as follows:

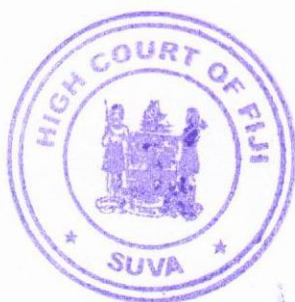
- (i) Having observed PW1’s demeanour and testimony in the course of the trial, I find that she is a credible and reliable witness.
- (ii) PW1’s testimony during examination-in-chief on Friday 24 May 2024, in my view having carefully perused the relevant Court transcript, did not deviate from her earlier testimony on Thursday 23 May 2024, however, PW1 basically testifying that DW1 had not only squeezed her breast but also inserted his ‘yaya vakaturaga’ or penis into her ‘yaya vakamarama’ or vagina without her consent on the evening of 22 April 2023 at Vanuadina house, Nawaisomo village, Beqa. Furthermore, I am of the opinion that PW1’s testimony on Thursday vis-à-vis the Friday testimony are not contradictory, and consequently does not unsettle the root of the case in terms of creating doubt.
- (iii) PW2 is a credible and reliable witness, and her testimony in terms of *recent complaint* enhances PW1’s credibility to a large degree, notwithstanding that, as a matter of law, is not corroboration.
- (iv) PW1 did not have any ulterior motive to implicate DW1 for the offence of *Rape*.

(v) In weighing the testimonies of PW1 vis-a-vis DW1, I find that the probative value of PW1's account, whose credibility is enhanced by PW2's testimony, outweigh that of the accused DW1.

26. For the reasons stated above, I therefore find that the prosecution has proved *beyond reasonable doubt* all elements of the offence of *Rape* contrary to section 207(1) & 2(a) of the Crimes Act 2009 in the Information by the Director of Public Prosecutions dated 8 August 2023.

27. On such basis I find the accused Sevesi Vatudau **guilty** of the offence of *Rape* and **convict** him accordingly.

28. Thirty (30) days to appeal to the Fiji Court of Appeal.



.....
Hon. Mr. Justice Pita Bulamainivalu
PUISNE JUDGE

At Suva

13 September 2024

Solicitors

Office of the Director of Public Prosecutions for the State.

Legal Aid Commission for the Accused