

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

**Criminal Case No: 123 of 2020**

**STATE**

**-v-**

**TANIELA LOTU**

**Counsel:** Mr. Nasa of DPP for the State  
Mr. Singh of LAC for the Accused

**Date of Hearing:** 1<sup>st</sup> to 2<sup>nd</sup> October, 2024

**Date of Judgment:** 15<sup>th</sup> October, 2024

**JUDGMENT**

1. The accused is charged with one count of Rape contrary to section 207 (1) and (2) (b) of the Crimes Act 2009.
2. The offence and its particulars are as follows;

**First Count**

***Statement of Offence***

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

***Particulars of Offence***

**TANIELA LOTU**, on the 21<sup>st</sup> day of September 2019 at Lautoka in the Western Division had carnal knowledge of **DEEPIKA FLORAN** without her consent.

3. The accused pleaded not guilty to one count of rape. The matter had proceeded to trial from 1<sup>st</sup> October 2024 and concluded on the 2<sup>nd</sup> of October, 2024. The Prosecution presented the evidence of complainant only. The Accused opted to give evidence on his behalf.

4. Afterwards, the Court heard the oral closing submissions of the Counsel for the Prosecution and the Defence. In addition to their oral submissions. Having carefully considered the evidence adduced before the Court and the respective oral submissions of the parties, I now pronounce the Judgment of this case.
5. The Accused is presumed to be innocent until proven guilty. The burden of proof of the charge against the Accused is on the Prosecution. It is because the Accused is presumed to be innocent until proven guilty. The standard of proof in a criminal trial is "proof beyond reasonable doubt". The Court must be satisfied that the Accused is guilty of the offence without any reasonable doubt.

### **Elements of the Offences**

#### **Rape**

6. The main elements of the offence of Rape as charged on the said count areas follows;
  - i) The Accused,
  - ii) Penetrated the vagina of the Complainant with his penis.
  - iii) The Complainant did not consent to the Accused to penetrate her vagina with his penis
  - iv) The Accused knew or believed or reckless that the Complainant was not consenting for him to insert his penis into the complainant's vagina.
7. The first element is the identity of the Accused. It is the onus of the Prosecution to prove beyond a reasonable doubt that the Accused committed this offence against the Complainant.
8. Evidence of the slightest penetration of the vagina of the Complainant with the penis of the Accused is sufficient to prove the element of penetration.
9. Consent is a state of mind that can take many forms, from willing enthusiasm to reluctant agreement. In respect of the offence of Rape, the Complainant consents if she had the freedom and capacity to make a choice and express that choice freely and voluntarily. Consent obtained through fear, threat, the exercise of authority, use of force, or intimidation could not

be considered consent expressed freely and voluntarily. A submission without physical resistance by the Complainant to an act of another person shall not alone constitute consent.

10. If the Court is satisfied that the Accused had penetrated the vagina of the Complainant with his penis and she had not given her consent, the Court is then required to consider the last element of the offence. That is whether the Accused honestly believed, knew, or was reckless that the Complainant was freely consenting to this alleged sexual act. The belief in consent differs from the hope or expectation that the Complainant was consenting.
11. 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 facts as accurate truthful and proven beyond reasonable doubt.
12. The admitted facts are reproduced herewith as,
  - i) The accused in this matter is TANIELA LOTU (*hereto referred to as the accused*) 27 year's old, unemployed of Vunato Settlement at the time of the alleged offence.
  - ii) The complainant in this matter is DEEPIKA FLORAN, (*referred to as the complainant*) 18 years old (DOB: 20/08/01) student of Reliance Road, Lovu Lautoka.
  - iii) The Complainant and the accused were not known to each other and met for the first time on the 21<sup>st</sup> of September, 2019.
  - iv) The accused was wearing a black denim pants and a black vest on the alleged day of the incident.

**Prosecution Case:**

**PW1: Deepika Floran**

13. She testified and stated that she resides at Reliance Road Lovu in Lautoka. She is employed as a baker with Hot Bread Shop. She resides with her husband Manueli Sovau and her child namely Adi Veniana, her two brothers Rusiate Drekiyasawa and Makario Tuibua.
14. In 2019, she was schooling at Jasper Williams High School, year 11. She recalls on the 21<sup>st</sup> of September 2019 on that morning her grandmother

send her to town with her brother Rusiate to do research in the internet for their school work at the Mega net internet shop at 12.00pm. On their way back they followed the shortcut road that goes through Vunato.

15. According to her at about 4.00pm on their way through the short cut, a road that goes inside beside the Vunato Bridge. She saw a tall, fat and dark gentleman standing underneath the mango tree.
16. The accused pulled her hand and her sunglasses and wanted her to go with him. She refused but the accused kept on pulling her hand into the small tin house. Closed the door.
17. She said she did not see anyone inside the house. On that day she was wearing a long pants and T shirt. She said the accused eyes were red and she could smell liquor on him. Inside the house it was dark. The description of the accused was tall fat and dark was the same person inside the house. She said she pulled her trousers and removed it by force.
18. She said she tried to pull up her trousers again but the accused forcefully removed both her pants and panty as well. There was only one bed in the middle. She said the accused removed his trousers whilst lying on top of her.
19. She said she was lying on top of her and she was facing the accused, the accused inserted his penis into her vagina. She said his penis was inside her vagina for 5 minutes. Whilst inserting his penis into her vagina she tried to shout but the accused was blocking his mouth with his hand she tried to push the man away with her hands but the man was stronger than her and was lying on top of her.
20. Hence, there was no obstruction to her view whilst looking at the accused. She said the accused was very close to her. She said that when her brother called her from outside. The accused wore his clothes and ran away. She said when the man opened the door she again saw the looks of the accused.
21. She said that it was the same person that inserted his penis into her vagina. The accused was wearing the same clothes he was wearing denim black pants and black vest. She said she stood up from the bed wore her clothes.

22. She said her grandmother came and called her saying what had happened. She said she lodge her complain to the police on the same day. She said the man, tall fat and dark who was wearing denim black pants and black vests is resent in Court today. She pointed at the accused who was the accused sitting in the accused box.
23. She said she did not gave permission to the man to insert his penis into her vagina.

### **Cross examination**

24. In cross examination she said the accused was standing under a mango tree. She said the road is a short cut road. The mango tree was right beside the house and the man was standing underneath the mango tree. She said she frequently use that short cut road. She agreed that she resides at Reliance road. She agreed that Vunato road was beside the mango tree.
25. She said she was taking a short cut from Vunato road to Reliance road. She said the distance from the mango tree to the house was about 8 meters apart. She said that there are other houses there. She said on the other side of the mango tree was a kindergarten school. She said his house was the one near the mango tree. She said the short cut was a track. She said there were other houses closed by.
26. He agreed that the accused pulled her glasses. She said the accused came she confirmed that she did shout only once. Whilst the accused pulled her glasses his brother was just standing there. She said by the time the accused pulled her into his house her brother than ran home.
27. Further she said she did shouted only. Her police statement was shown to her where she had initially stated that she screamed three times. She than confirmed that what she is telling the court is the truth. She said she cannot ran away because he was pulling her hand. She said the man pulled her harder and pulled her inside the house.
28. She said it was about 20 minutes when the man was pulling her from the mango to reach the house. She said at that time she was also trying to push him away but she couldn't because the man was stronger than her.

29. She said that the accused and her brother never interact on that day. She disagreed that she did told the accused to give her brother two dollars on that day.
30. She said that it was about 80 meters distance from the mango tree to her residence at reliance road. She said it would take 10 minute walk from the mango tree to her place. It would take 8 minutes to run the length.
31. She said her brother ran home and when he came back he came with her grandmother. She said her brother came to knock on the door whilst her grandmother stood underneath the mango tree.
32. Her police statement was shown to her and she confirmed that her grandmother was standing underneath the mango tree. She disagreed that she came voluntary from the mango tree into the house of the accused. She said the house was open that time.
33. Her statement was shown to her and she was directs to the place where she had stated that she screamed three times. She agreed that she gave that statement to the police. But she concur with her examination in chief that she screamed only once.
34. She said she was wearing skinny jeans loose fitting. She said that the jeans had an elastic on the waist. She agreed that when the accused was lying on top of her he remove his pants and whilst the accused was doing that her hands was free.
35. She said that at that time she was trying to push the accused but she couldn't. She agreed that her grandmother scolded her. She said that she did not tell her grandmother that she shouted.
36. She said that the allegation she is alleging is true. She said she was examine by the doctor.

**RE examination**

37. She confirmed that she did shout only once. She confirmed that her house was about 80 meters distance away from the mango tree.

## **Defence Evidence**

### **DW1: Taniela Lotu**

38. He said prior to residing in Keiyasi he was residing in Vunato Lautoka. He was born in Vunato. He recalls the 21<sup>st</sup> of September 2019 he was returning from visiting his friend a soccer player namely Zibra Zayad. The man was staying at Reliance road. He was standing at a mango tree when the complainant and her brother were coming back this was at reliance road. He said he did not know them.
39. He said he called out to the girl and she stood still, the girl was accompanying her younger brother, she called the complainant by using the word "Tau". He said the girl agreed to his request and also stated that her grandmother is not aware. She then requested her for them to go to Vunato. According to him the complainant said that the younger brother to accompany her.
40. According to him reliance road and Vunato are two separate place. He said the three of them were going towards his home. He said from where he was standing to his home following the road is about 25 minutes. The shortcut based at the church might take 10 to 15 minutes. The distance from the mango tree to his home is about 800 meters but the distance from the mango tree taking a short near the church to his home is about 80 meters.
41. He said whilst walking he was conversing with the complainant. He said they walked pass our neighbour's house than to his house. He said his neighbour's house is between the school and his house. He said the distance between the neighbour's house and his house is about 8 meters.
42. He said whilst walking the complainant told him to give some money to his younger brother. He said he gave the money to the complainants and went to his father to get the house keys. He opened his room and took the complainant inside. He said he did not drag the complainant inside. He did not held her hands. He said she ask him money so that she could send his bother to the shop and buy something.
43. He said once inside he opened the window and told her to sit inside. He said the complainant agreed and walked into the room, but the younger brother left did not go to the shop but went home. After about 10 minutes he heard someone calling. It was the brother of the complainant. He said at no time

he forcefully remove her pants and panty. He said he told the complainant to leave and he went to his father's house.

44. He said whilst he was standing inside his father's house he saw the complainant beaten by the grandmother. He said he saw the villagers gathered around the place the mother was standing. He said he overheard that the police was called. He stayed with his dad inside the house. He denied penetrating the vagina of the complainant with his penis.

**Cross Examination.**

45. He said on the 21<sup>st</sup> of September 2019 he went to see his friend Zibra at Churchill park carnival. He disagreed that he was standing close to his house He said it was not in Vunato it was Reliance Road. He said he was standing under a mango tree but it was at Reliance road. He agreed that close to where he was standing there was a short cut. He said the complainant and her brother were walking along Reliance road.
46. He said they walked together through the shortcut. He denied pulling the complainants sunglasses when approaching her.
47. It was suggested to him that he pulled the complainant with him. He said they were walking together with the complainant's brother. It was put to him that he pulled the complainants hands and took her inside his house. He denied the same.
48. He said there were noises in the area. It was suggested to him that he pulled the girls hands and he shouted once. He denied the same.
49. He said that there is great distance between the mango tree to where he was standing.
50. It was suggested to him that he made the complainant lay down on a bed inside his house. He denied the same. He agree that he was wearing a three quarter denim black pants and black vests.
51. He disagreed that the inside of the house was not dark as he had opened the windows.
52. It was suggested to him that after he laid the complainant on the bed he remove her pants. He denied the proposition.



53. It was suggested to him that the complainant was lying underneath him facing upwards towards him whilst he was lying on top of her facing towards her.
54. It was suggested to her that he inserted his penis into her vagina and the complainant did not consent to that. He disagreed with the same.
55. He disagree that the complainants brother and grandmother came and called at the door. He denied the same.
56. It was put to him that he ran away when he heard the calling at the door of his house. He said he walked home.
57. He said nothing happened it was because of the beating her grandmother was doing to her forcing her to make the complaint. He said he did not commit the crime.

#### **Re examination**

Nil.

Defence closes its case. Both parties made oral closing submissions before the court.

#### **Previous Inconsistent Statement**

58. During cross examination of the complainant, Defense counsel had questioned the complainant about the inconsistency in her police statement which she had given to the police when facts were still fresh in her mind with her evidence in court.
59. It was put to the complainant during cross examination that she failed to mention in her statement that she shouted only once when the accused was pulling her hand dragging her into the house, in her sworn evidence she had clearly stated that she shouted only once. The complainant confirmed that what she had given in her sworn evidence is the truth in that she had shouted only once and not three times.
60. Thus, the police statement is not evidence of the truth of its contents. It is obvious that passage of time can affect one's accuracy of memory. Hence it cannot be expected for every detail to be the same from one account to the next. Clearly the discrepancies does not go to the root of the matter and shake the basic version of the witnesses' evidence.

61. The Court of Appeal In Lulu v State [2016] FJCA 154; AAU0043.2011 (29 November 2016) made an important observation on paragraph 14 Bhoginbhai Hirjibhai v State of Gujarat [1983] AIR 753, 1983 SCR (3) 280 (an appeal from a conviction for rape) demonstrated vividly the behavior of witnesses similar circumstances as follows.

*“Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses therefore cannot be annexed with undue importance.*

62. The inconsistency or omission between her evidence in court and her police statement was not significant to adversely affect the credibility of the complainant. The complainant was not shaken as to the basic version of her allegations. She was consistent in her evidence as well.

63. This court is allowed to take into consideration the inconsistencies or omissions between what the witnesses told the court and her police statement when considering whether this witness was believable and credible. However, the police statement is not evidence of the truth of its contents. It is obvious that passage of time can affect one’s accuracy of memory. Hence it cannot be expected for every detail to be the same from one account to the next.

64. If there is any inconsistency or omission, it is necessary to decide firstly whether it is significant and whether it affects adversely the reliability and credibility of the witnesses. If it is significant, then it is for this court to consider whether there is an acceptable explanation for it. If there is an acceptable explanation, for the change, then this court may conclude that the underlying reliability of the evidence is unaffected. If the inconsistency is so fundamental, then it is for this court to decide to what extent that influences the reliability of the witness evidence.

65. In this case I find that the inconsistency does not adversely affect the credibility of the complainant. The complainant had confirmed that she screamed three times which is reflected in the complainant’s statement to police. However the complainant had stated in her evidence that she shouted only once. The Complainant agreeing to the versions in her sworn evidence does not affect the credibility of the complainant. The complainant confirmed that she did shout on that day when the accused was dragging her into the house.

## **ANALYSIS.**

66. Both the complainant and the accused gave evidence in this case. Even if I reject the version of the defence the prosecution still have to prove all the elements of the offence of Rape beyond reasonable doubt before the accused can be found guilty.
67. The prosecution are saying that the accused an known Fijian man who was standing underneath a mango at a shortcut in Vunato settlement had grabbed the complainants sunglasses and hand and pulled her into a tin house close to the mango tree.
68. Hence, the accused had successfully pulled the complainant into the tin house and dragged her onto the bed. The accused then lay on top of the complainant undress her forcefully, pulling down her pants and pantie, undressed himself and then and inserted his penis into complainant's vagina without her consent.
69. The accused after inserting his penis into the complainant's vagina without her consent and was moving back and forth for 5 minutes. The complainant was using her hands to try and to push the accused way by telling him not to do it but she was unable to because the accused was lying on top of her and was strong and heavy. The complainant did tried to shout but the accused was blocking her mouth with one of his hand. The complainant said that she did not consent to the accused.
70. The prosecution submits that the accused only stopped when he heard the complainant's brother calling the complainants name at the door outside his tin house. The accused got away from the complainant put on his pants and ran away from the scene.
71. The accused on the other hand submits he did not force the complainant to go with him that afternoon. According he met the complainant and her brother at Reliance road and he was talking to the complainant whilst walking along the short cut at Vunato.
72. Hence, he submitted that the complainant told him to give some money to her brother to go the shop. He said the complainant voluntarily agreed to the request by the accused for them to go inside the house.
73. The accused denied pulling the complainant's hand and dragging her into his house. According to him the complainant voluntarily went into his

house upon his request and they were sitting down in his house for about 10 minutes when he heard someone calling the complainant outside door of his house.

74. The accused said that the complainant left out and he when to his father's place. He said he saw the complainant's grandmother scolding her at the side of the road in which she agreed.
75. The Court is required to consider the testimonial trustworthiness of the evidence given by the complainant and the accused. The evaluation of testimonial trustworthiness encompasses two primary assessments: the credibility of the witnesses and the reliability of the evidence given by the witnesses. The witness's credibility or veracity focuses on the witness's sincerity, whether the witness tells the truth or lies. The reliability concerns whether the evidence is free from mistakes, errors, and inaccuracies. A witness who is not credible could not be a reliable witness. However, the evidence of an honest, credible witness may not be a reliable witness.
76. In evaluating the credibility and reliability of evidence, the Court must consider the 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. **(vide; Matasavui v State [2016] FJCA 118; AAU0036.2013 (the 30th of September 2016, State v Solomone Qurai (HC Criminal - HAC 14 of 2022).** On the other hand, the defence says the allegations are a made up story narrated in court by the complainant. The defence further stated that it was due to the scolding by her complainant's grandmother that had put the complainant into fear.
77. I accept the evidence of the complainant to be reliable and credible. The promptness of her complain on the same day of the incident her demeanour and deportment in Court. She was credible and reliable in her evidence. I found the complainant was truthful in her evidence given that the complainant and the accused have not met before and are not known to each other.
78. Although there was some minor discrepancy in terms of her evidence. The discrepancy does not go to the root of the matter. I am acutely conscious that a witness cannot be expected to possess a photographic memory and recall all the details of an incident. Usually, the sexual assault of this nature occurred suddenly and unexpectedly. Hence, a witness could be overtaken by the sudden and surprise event. Under such circumstances, it is unrealistic to expect the witness to recall all the details of the incident.

(Vide; **Bharwada Bhoginbhai Hiribhai v State of Gujarat [1983] INSC 72; (1983) 3 SCC 217, at; 22, 223**) However, it is essential to provide the main details of the scope of the event or the fundamental aspects that constitute the alleged incident in evidence.

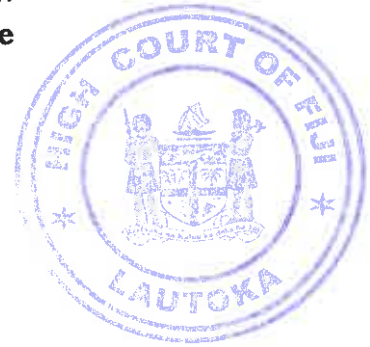
79. I accept the evidence of the complainant version of evidence to be credible and reliable. I believe her evidence that the accused pulled her hand and dragging her into the house of the accused. Thus, the accused forcefully remove the complainant's long pants and panty whilst lying on top of her and penetrated her vagina with his penis.
80. I also accept that the accused knew that complainant was not consenting or was reckless when penetrating the vagina of the complainant. This Court is fully aware that the slightest penetration will suffice to prove penetration.
81. The Court also noted section 129 of the Criminal Procedure Act 2009 that Corroboration is no longer required in sexual cases.
82. The Court refuses to accept the denial by the accused that he did not penetrate the vagina of the complainant with his penis without her consent whilst inside his small tin house. Thus the evidence was clear that the complainant never knew or have met the accused before. This was the first time the complainant saw the accused and for her to be submitting to the accused request is unbelievable.
83. This Court is of the view that of the evidence of the accused was fabricated not truthful and unbelievable. Hence the evidence was tailored to favour or support accused position

### **CONCLUSION**

84. The court is satisfied beyond reasonable doubt that the accused **Taniela Lotu** on the 21<sup>st</sup> of September, 2019 penetrated the vagina of **Deepika Floran** with his penis without her consent and at that time of the offending, the accused knew that the complainant was not consenting or reckless that the Complainant was not consenting for him to insert his penis into her vagina.

85. In view of the above, I find the accused guilty of one count of Rape and I convict the accused accordingly for the same.

  
.....  
**Sekonata V. Vodokisolomone**  
**Acting Puisne Judge**



**At Lautoka**  
**On the 15<sup>th</sup> October 2024**

**Solicitors**

**For the State: Office of the Director of Public Prosecutions**  
**For The Accused: Office of the Legal aid Commission**