

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 315 OF 2023

STATE

v

MAKARIO TURAGANIQALI

Counsel: Mr. H. Nofaga for the State
Mr. K. Verebalavu for the Accused

Date of Hearing: 2 September 2024 – 3 April 2025
Date of Judgment: 23 May 2025

JUDGMENT

Caveat – The victim shall herein be referred as ‘**JIL**’ pursuant to the name suppression Order.

1. **Makario Turaganiqali**, the accused, is indicted with 2 counts of **Rape** contrary to sections 207(1), (2)(a) - (b) and (3) of the Crimes Act 2009, laid out as follows in the Amended Information by the Acting Director of Public Prosecutions dated 2 August 2024 and filed on 5 August 2024.

COUNT 1

Statement of Offence

RAPE: Contrary to section 207(1), 2(a) and (3) of the Crimes Act 2009

Particulars of Offence

MAKARIO TURAGANIQALI between the 8th day of September 2022 and the 21st day of December 2022 at Wainadoi, Namosi, in the Central Division, penetrated the vagina of **JIL**, a child under the age of 13 years, with his penis.

COUNT 2

Statement of Offence

RAPE: Contrary to section 207(1), 2(b) and (3) of the Crimes Act 2009

Particulars of Offence

MAKARIO TURAGANIQALI between the 8th day of September 2022 and the 21st day of December 2022 at Wainadoi, Namosi, in the Central Division, penetrated the vagina of **JIL**, a child under the age of

13 years, with his tongue.

2. Makario Turaganiqali pleaded *not* guilty and tried accordingly for the aforesaid 2 counts of *Rape*.
3. The prosecution commenced its case on 2 September 2024 and closed it on 6 September 2024, having called a total of 3 witnesses namely, PW1 – Mareta Josevini Katonivere, PW2 – Tobia Matavura and PW3 – JIL (complainant), to prove its case *beyond reasonable doubt* against Makario Turaganiqali.
4. Upon the prosecution closing its case, defence counsel Mr. Verebalavu then informed the Court of wanting to make a *submission of no case to answer*, the hearing of which was held on 19 September 2024, and on 3 October 2024 the Court ruled acquitting the accused Makario Turaganiqali of Count 2 Rape, but held a *case to answer* for the *Rape* in Count 1, and gave the defence its options under section 231(2) of the Criminal Procedure Act 2009, to which the defence opted for the accused to testify under oath, and also call a Nacanieli Gusu i.e. Forensic Biologist and the accused's wife Alevina Matanimekewai whom the defence later decided not to call after the testimonies of DW1 – Makario Turaganiqali and DW2 – Nacanieli Gusu.
5. Defence commenced its case for purposes of Count 1 Rape only on 24 February 2025 and closed it on 28 February 2025, having called a total of 2 witnesses namely, DW1 – Makario Turaganiqali and DW2 – Nacanieli Gusu.
6. Both counsels delivered their closing submission on 3 April 2025, and this is the Court's judgment on Count 1 Rape.

Burden & Standard of proof

7. Pursuant to sections 57 and 58 of the Crimes Act 2009 including Woolmington v DPP [1935] AC 462 at 481 (HL), the prosecution bears the burden to prove *beyond reasonable doubt* all elements of the offence of *Rape* in Count 1 of the indictment.

Physical and fault elements of Rape

8. In this instant, as for Count 1 in the indictment, *Rape* is contrary to section 207(1) - (2)(a) & (3) of the Crimes Act 2009 which state:

Rape

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; ...*

(3) *For this section, a child under the age of 13 years is incapable of giving consent.*

206.- *In this Part –*

(3) *The term “penetrate” does not include penetrate for a medical, hygienic or law enforcement purpose only.*

(4) *If “carnal knowledge” is used in defining an offence, the offence, so far as regard that element of it, is complete on penetration to any extent.*

9. The physical and fault elements for the offence of *Rape* in Count 1 are:

- i) A person i.e. the accused Makario Turaganiqali;
- ii) Penetrated the complainant JIL’s vagina with his penis; and
- iii) Did so intentionally.

Admitted Facts between prosecution and defence

10. The *Admitted facts* between the prosecution and defence filed on 23 April 2024 pursuant to section 135 of the Criminal Procedure Act 2009 are:

- a) The name of the person charged is Makario Turaganiqali [“Makario”] is also known by the name “Makari”.
- b) Makario was born on 13 January 1991 and was 31 years old by January 2022.
- c) The name of the complainant is JIL.
- d) JIL was born on 7 July 2010 and was 12 years old by July 2022.
- e) JIL’s biological mother’s name is Alivina Durilala Matanimekewai [“Alivina”] who is also known by the name “Duri”.
- f) JIL’s grandmother’s name is Ledua Bulutani [“Ledua Bulutani”] who is known to Makario.
- g) Mareta’s husband’s name is Tomasi Moa [“Tomasi”] who is also known by the name “Tomu” and is known by Makario.

11. At trial, prosecution called 3 witnesses:

PW1 – Mareta Josevini Katonivere;

PW2 – Tobia Matavura and PW3 – JIL (complainant), and tendered the following prosecution exhibits by consent of defence counsel Mr. Verebalavu:

PE1 – Medical report of the complainant JIL by Dr. Radhika Elizabeth Menon dated 21.12.2022; and

PE2 – Forensic Report number 14/12/22 for Case number 60/12/22 by Nacanieli Gusu, Forensic Biologist, dated 28/02/2023.

12. Defence, on the other hand, called 2 witnesses, that is, the accused DW1 - Makario Turaganiqali and DW2 – Nacanieli Gusu (Forensic Biologist), who both gave sworn testimony.

PROSECUTION case via PW1, PW2, and PW3

PW1: Mareta Josivini Katonivere

13. **PW1 Mareta Josivini Katonivere** testified in **examination-in-chief** that she is 37 years old, married, unemployed and resides at Wainadoi. PW1 stated that she currently stays with her mother-in-law, brother-in-law, and husband namely Tomsai Rasegadi Moa. PW1 stated that she stays in one house in Wainadoi, while her mother-in-law and brother-in-law live in another house. PW1 stated that in September 2022 she stayed at Wainadoi in the same house she is currently living. PW1 stated that she can recall what happened on 21 December 2022. PW1 stated that on the morning of 21 December 2022, she was at home and then went to her mother-in-law's place to have breakfast. PW1 stated that her mother-in-law then asked her if she can ask JIL on what Makari had signaled to JIL. PW1 stated that she then sat on the table and asked JIL as to what Makari had signaled to her, but JIL kept quiet. PW1 stated that she then asked JIL again twice, and JIL was in tears and replied saying 'yes'. PW1 stated that she then asked JIL as to what Makari had done to her, to which JIL replied that 'Makari had raped her'. PW1 stated that she then stood up and went to the other house to call her husband and tell him what JIL had just told her. PW1 stated that after telling her husband, he then told them to go to the police station. PW1 stated that they then went to the Lami Police Station, and upon being questioned by the police at the Lami Police Station, they were then transported to the Totogo Police Station. PW1 stated that her and JIL were then questioned at the Totogo Police Station, and then taken to the CMW hospital. PW1 stated that at the CWM hospital, JIL was told to lie down for medical examination, she then received two injections or vaccination, and the doctor then examined her female private part. PW1 stated that after JIL's medical examination, they were taken back to the police station, and then proceeded to Qauia and stayed there for two days before returning to Wainadoi. PW1 stated that after that they were then counselled. PW1 stated that JIL is her sister-in-law's daughter, and Makari is her sister-in-law's husband. PW1 stated that her sister-in-law's name is Alevina Durulala, and Makari's full name is Makario Turaganiqali who is JIL's step-father. PW1 stated that when they reached the house, those at home were two elderly ladies, that is, her mother-in-law, mother-in-law's sister, brother-in-law and JIL. PW1 stated that at the house where she went to have breakfast is occupied by her mother-in-law, Makari and Durulala and their children including JIL. PW1 stated that JIL told her that morning that Makari had done to her what adults do in that they had

sex. PW1 stated that when JIL told her this in the presence of her mother-in-law and her younger sister. PW1 stated that when JIL told her this, JIL was crying. PW1 stated that after she told her husband, right away she then called her sister-in-law Amania Sabeta because she has a car for her to pick them to take them to the Lami Police Station. PW1 stated that Amania Sabeta, JIL, her and her husband all went to the Lami Police Station. PW1 stated that Sergeant Maria told them to go to Qauia to her husband's family house. PW1 stated that the reason why she stayed with JIL at Qauia was because JIL's mum also stays at Wainadoi. PW1 stated that when she and JIL returned to Wainadoi, JIL's mother was not at home, and PW1's aunty told her that JIL's mother had gone with the children. PW1 stated that JIL currently stays with her and her husband since the incident happened. PW1 stated that she asked JIL as to what she meant when she said that 'Makari had done what adults do together', and JIL told PW1 that 'Makari raped her'. PW1 stated that she did not ask JIL any other question after that. PW1 stated that she did not ever find out as to when that incident happened. PW1 stated 'yes' she would be able to identify this person Makari if she were to see him again. Leave was then granted by the Court for PW1 to engage in Dock ID. PW1 then looked around the courtroom and pointed at the accused sitting in the accused box wearing a red shirt.

14. In **cross-examination** by Mr. Verebalavu, PW1 testified that she remembers making a statement to the police after the alleged incident. PW1 stated that she knowingly made the statement and to the best of her ability. PW1 stated that she made sure that every single relevant detail was put in her statement including the first time that JIL told her about the rape allegation. PW1 stated 'yes' that she did say yesterday as to what JIL had relayed to her the incident that happened early that morning. PW1 stated that JIL is not the first grandchild of her mother-in-law. PW1 stated that JIL is regarded as a special child in the family. PW1 stated that in Wainadoi she saw the accused often discipline and ill-treat JIL, which would involve smacking the complainant JIL at times. PW1 said that this would not happen often. PW1 stated that the extended family knew of the disciplinary method used by the accused on JIL. PW1 stated that as JIL's aunt, she witnessed the accused discipline JIL, and this would involve JIL being smacked by the accused. PW1 stated that she was not happy as to how the accused treated JIL while disciplining her. PW1 stated that at times she

would be angry at the accused as to how he disciplined JIL. PW1 stated that at times, she would want to take JIL away from her parents because of how they disciplined her. PW1 stated that she was present when JIL's statement was taken. PW1 stated that the report was taken the same morning that the complaint was lodged, and JIL's statement was taken that same evening at Totogo Police Station. PW1 stated that JIL's statement was taken by a police officer Sergeant Maria. In response to the proposition that JIL's statement was not actually taken that same evening but roughly a month later on 17 January 2023, PW1 stated that because she saw Sergeant Maria writing, she thought that JIL's report was being taken, and that is why she had stated that JIL's statement was taken that evening. PW1 stated 'no' to the proposition that that was the only time she was present with JIL when JIL was giving her statement. PW1 stated that she cannot recall and does not know when JIL's statement was taken. PW1 stated that she does not know when JIL's statement was taken when defence counsel had put to her that JIL's statement was taken on 17 January 2023, 1 month after the actual report. PW1 stated 'yes' to the suggestion that during the 1 month, JIL resided with PW1 at Wainadoi. PW1 stated that JIL was taken for counselling on most occasion, and does not speak when she is at home, in response to the proposition that she would have talked to JIL about the rape allegation during that 1 month. PW1 stated that they did not discuss about the rape allegation during the time JIL was with her prior to when JIL's statement was taken on 17 January 2023. PW1 stated that the only time she heard about the rape allegation was in the morning of 21 December 2022. PW1 stated that sometimes they discussed about the rape allegation from that time till today, that is, after JIL's statement was taken. PW1 stated 'no' to the proposition that during the 1 month before JIL's statement was taken, she had influenced JIL to raise false allegation of rape against the accused. PW1 stated 'no' to the proposition that the reason why she had influenced JIL was because of the way that the accused had treated JIL. PW1 stated that she was present with the complainant JIL when she underwent medical examination. PW1 stated that she did not hear the conversation between the doctor and the complainant JIL, and was just sitting there. PW1 stated that on 21 December 2022, JIL told her that Makari raped her, and said in I-Taukei, "*Na cakacaka era dau cakava na qase.*" [English translation – '*What adults do.*'] PW1 stated that JIL was not specific as to the allegation of rape. PW1 stated that the things she is telling the Court this morning has been put down in

her statement. PW1 stated that she did not suspect anything going on between the complainant and accused prior to her becoming privy to the allegation on 21 December 2022. PW1 stated that she cannot recall the date she gave her statement to the police about the incident in response to defence counsel's proposition that she gave her statement on 14 February 2023. PW1 stated that she does recall giving a statement to the police regarding the incident.

15. In **re-examination** by the prosecutor, PW1 stated that she has witnessed Makari discipline or ill-treat JIL. PW1 stated that Makari usually beat up JIL by just using a stick. PW1 confirmed that she was with JIL when they had gone to report the matter, and also when JIL was taken to the police station to give her statement. PW1 stated that she was with JIL at the police station for about 4 times. PW1 stated that she had gone with JIL for counselling for about 3 times.

PW2: Tobia Matavura

16. **PW2 Tobia Matavura** testified in **examination-in-chief** that he is 43 years old and live at Waikasinaura, Wainadoi, with his father-in-law, wife Bulou Naitoko and children who 14, 12, 10 and 4 years old. PW2 stated that he works in Pacific Harbour for Rivers Fiji Company as a tour guide. PW2 stated that on 21 December 2022 he resided at Waikasinaura, Wainadoi, at the same place he currently lives. PW2 stated that he had returned from work sometime in December 2022, and upon sitting on porch of this father-in-law's house while his wife slept on the bed after returning from a funeral in Namosi at about after 7.00pm, he then heard Makari calling out wanting to come home. PW2 then called him and conversed with each other on the porch, and Makari was on his phone and perhaps calling his wife. PW2 also asked Makari as to whether he wanted to drink kava, to which Makari said "*It's ok*". PW2's wife then woke up and prepared their dinner, and PW2 called Makari to have dinner, to which Makari said "*It's ok*". PW2 stated that him, his wife and his daughters were at home when Makari came, while his son was with his uncle i.e. PW2's brother-in-law. PW2 stated that he had his dinner on the porch while his wife and daughters had their dinner inside the house, and Makari sat with PW2 while having his

dinner. PW2 stated that he asked Makari as to what he wants, and Makari asked him if he could sleepover. PW2 stated that he then asked Makari as to why he wanted to sleepover since he has a wife and a house of his own, to which Makari responded for them to go inside the house and have a talk. PW2 stated that they then went inside the house and have a talk, and Makari asked him if he could wake his wife up as he wanted to them something. PW2 stated that he then asked Makari as to what he wanted to raise with them, and Makari replied that his brother-in-law had chased him away. PW2 stated that he then asked Makari as to whether he fought with his wife, to which Makari said no, and also asked why his brother-in-law had chased him, to which Makari replied that he tried to do something to JIL. PW2 then asked Makari as to what he did to JIL, to which Makari replied that they have been having sexual intercourse. PW2 stated that he was shocked, and asked Makari if he can confirm that he really did it, to which Makari replied and confirmed saying “*Yes, I really did it*”. PW2 stated that he allowed Makari to sleepover, and he left on the 6 o’clock bus the next morning. PW2 stated that after hearing Makari confirm to him that he had sexual intercourse with JIL, he then told Makari that he cannot him inside the house due to what had done, and also because the family that chased Makari is also related to the family at home. PW2 does not know Makari’s full name and has known him for 4 years since relocating to that area. PW2 stated that he knows JIL who is related to him through JIL’s maternal side, and JIL is Makari’s step-daughter. Leave was then granted by the Court for PW2 to engage in Dock ID. PW2 then looked around the courtroom and pointed at the accused sitting in the accused box. PW2 stated that he cannot recall the exact date that Makari had come to his home and told him that he had sexual intercourse with JIL, but can recall that it was in December nearing Christmas day, and cannot recall the year.

17. When **cross-examined** by Mr. Verebalavu, PW2 stated that he was shocked when Makario admitted to him that he had sexual intercourse with JIL, and agree that these are serious admissions. PW2 stated that he took steps to report the matter to the police, and the police came to see him. PW2 agreed that he gave his statement to the police on 7 February 2023. PW2 agreed that he had given his statement to the police about 1 month after Makari admitted to him. PW2 stated that he also told JIL’s family about Makari’s admission as they had found out that Makari had slept over at his house. PW2 stated that he had gone to

have grog with JIL's family, and they then asked him whether Makari had slept over at his house, to which PW2 replied in the affirmative and told them about Makari's admission. PW2 stated that he allowed Makari to sleepover at his house. PW2 stated that Makari had admitted to him that he did it. PW2 stated that having heard Makari's admission, he could not chase him out of the house, but allowed him to sleepover and to go the next morning. PW2 stated that he could not immediately report the matter to the police since Makari had just told him and he did not see it, but had related the story to JIL's family and for them to then report the matter to the police. PW2 stated that he went there to ask JIL's family whether Makari really did it, and JIL admitted it. PW2 stated that he could not recall who were present when he had gone to ask JIL's family, but there were plenty of them consuming kava on that day held at the village headman's house. PW2 stated that the purpose of the kava session at the village headman's house was not related to anything regarding the allegation against Makari. PW2 stated that he knows a person by the name of Mareta, and they come from the same village. PW2 did not agree with the proposition that he often has kava with Mareta, and had told Mareta about the allegation within the 1 month period in which Makari had admitted to him and when his statement was taken. PW2 maintained that he did not tell Mareta who was also present when he was relaying the story that Makario had come to his house, and Mareta then informed told the police about it. PW2 stated that he is not closely related to Makario, however their relationship in the village was fine. PW2 did not agree with the proposition that Makario does not often share personal things to him. PW2 agreed that the alleged admissions that Makario made to him were personal in nature. PW2 stated that Makario did admit to him of what he had done to JIL.

18. PW2 was not **re-examined** by the prosecutor.
19. Soon after PW2's testimony, both counsels then consented that the following documents be tendered as prosecution exhibits:

PE1 – Medical report of the complainant JIL by Dr. Radhika Elizabeth Menon dated 21.12.2022; and

PE2 – Forensic Report number 14/12/22 for Case number 60/12/22 by Nacanieli Gusu, Forensic Biologist, dated 28/02/2023.

PW3: JIL (complainant)

20. **PW3 JIL, the complainant, in examination-in-chief** testified that she is 14 years old, date of birth 7 July 2010, and live in Wainadoi with her 2 grandmothers, 2 uncles and an aunt. PW3 stated that she has lived in Wainadoi for 5 years and has 5 siblings who are younger than her. PW3 stated that attends Marist Convent in Lami and her school subjects are English, Maths, Social, Fijian, Health and Basic. PW3 stated that in 2022, she stayed in Wainadoi with her parents, siblings, and the rest of the family. PW3 stated that her mother's name is Alevina Durilala Matanimekewai, and does not know her father's name. PW2 stated that in 2022, she stayed with her mum and step-father Makario Turaganiqali. PW3 stated that in the morning of 21 December 2022, she was lying down on her bed, she then went inside the room and returned outside, and then her step-father came inside the room and called her, and signaled to her if it's ok, to which she replied 'yes' to him, and then he came outside and drank tea. PW3 stated that he then went to his workplace, and then she came out to have tea. PW3 stated that when she came out to have tea, her mother, aunt, uncle and 3 grandmothers were also present. PW3 stated that while having tea, her grandmother asked her aunt to ask her as to why her step-father had signaled, and she did not tell them anything. PW3 stated that her aunt then asked her again and then she told them what her step-father Makari did to her. PW3 stated that her aunt then stood up and went outside and told her uncle what she had just told her aunt. PW3 stated that her uncle then came and told them to change their clothes and go to report the matter to the Lami Police Station. PW3 stated that they then changed their clothes, got into the bus and proceeded to the Lami Police Station. PW3 stated that they gave their report at the Lami Police Station. PW3 stated that she told her aunt Mareta Katonivere that her step-father Makari had raped her. PW3 stated that her uncle's name is Tomasi Raisegadi. PW3 stated that her step-father Makari raped her after her small brother's birthday held on Sunday 18 September 2022. PW3 stated that her step-father raped her at night at a blue house beside their house situated 3 meters apart. PW3 stated that before being raped, she was sleeping in the house and then woke up by her step-father at about 12 o'clock. PW3 stated that her

step-father woke her up by touching her shoulder and shaking it, and told her to take him to the toilet. PW3 stated that she has never taken her step-father to the toilet, and that night she did not want to take him to the toilet. PW3 stated that she took her step-father to the toilet because her mother forced her to do so. PW3 stated that her mother was inside the room. PW3 stated that the toilet is located outside of the house and a bit far from the house beside the coconut tree. PW3 stated that upon reaching the toilet, she waited outside while her step-father went inside the toilet. PW3 stated that she waited outside for about 10 minutes and then her step-father asked her to come inside the toilet, which she did not want to, but did so because her step-father got angry and told her to come inside the toilet. PW3 stated that she stood very close to her step-father inside the toilet, and she was in there for about 7 minutes. PW3 stated that while inside the toilet, her step-father pulled her close to him and then told her what they are going to do in the village, and did not do anything else. PW3 stated that after 7 minutes inside the toilet, she then exited the toilet and he came out later. PW3 stated that they then came together and he told her to wait for him at that blue house while he boils the tea. PW3 stated that she waited at the blue house for 3 minutes while her step-father was outside in the kitchen boiling the tea. PW3 stated that the kitchen is located close and connected to the blue house. PW3 stated that after boiling the tea, her step-father then came inside the blue house, spread the bed, laid down and was on his phone, while PW3 was sitting beside the window. PW3 stated that her step-father then asked her to lie down but she did not want to and remained sitting there. PW3 stated that her step-father then angrily called her, and she stood up and went to sit beside him. PW3 stated that her step-father then told her to lie down beside him but she did not want to, however he got angry at her and she then lie down beside him facing up while he was on Facebook on his phone. PW3 stated that her step-father then played an adult movie on the phone and showed it to her while holding the phone. PW3 stated that people in the adult movie were having sex. PW3 stated that her step-father played the adult movie and showed it to her for about 2 minutes, and she knew that he will touch her and rape her. PW3 stated that her step-father then moved her closer to him and asked her whether her uncle Tomasi Raisegadi or cousin-brother Simione Matanimekewai had already touched her, to which she said 'no'. PW3 stated that her step-father then asked her if he could touch her, to which she said 'no', but he then raped her. PW3 stated that her step-father pulled out her trousers,

he also removed his trousers, held her breast and moved up to her and put his penis into her vagina, which she could feel it on her vagina. PW3 stated that her step-father was trying to put his penis into her vagina for 2 minutes. PW3 stated that her step-father raped her for about 6 minutes, and thereafter he told her to wear her clothes and take the lead home. PW3 stated that on the next day, she went to school and then told her friend Torika being the only person she trusts about being raped by her step-father. PW3 stated that after that particular rape, she was raped again 10 more times by her step-father. PW3 stated that the second time she was raped by her step-father was in her grandmother's room on a Saturday night after 1.

PW3 stated that on that second rape incident, her step-father woke her up and told her to go and lie down in her grandmother's room, which she did and took her blanket and pillow to that room and lay down on a mattress placed on the floor. PW3 stated that while lying down in the room, her step-father then entered the room with her small twin sister and told her twin sister to go to the toilet inside the house, and then he lay on top of her and told her not to talk because her grandmothers might hear him. PW3 stated that her step-father then pulled up her dress, removed his trousers, and then raped her by putting his penis into her vagina while she faced up, and she could feel his penis going inside her vagina. PW3 stated that this rape incident happened for 6 minutes. PW3 stated that her step-father was on top of her and he was forcing it, and she felt pain on her private part. PW3 stated that he stopped when he saw one of her grandmothers wake up and then told her to move back where the toilet is. PW3 stated that room where the second rape occurred does not have any door and it is an open room, and the toilet is also where they put their stuff that they don't use.

PW3 stated that the third rape incident happened at the waterfall at daytime. PW3 stated that they went to the waterfall to fetch firewood and she went with her step-father and siblings. PW3 stated that she did not want to go and collect firewood because she knew that her step-father will rape her again and also her mother had forced her to go with them. PW3 stated that while collecting firewood, her siblings were away from her, her and her step-father went under a big tree where he raped her again. PW3 stated that under the big tree,

her step-father removed his trousers, he then removed her trousers, and then put his penis into her vagina while she was lying down facing upwards. PW3 stated that she felt her step-father's penis go inside her vagina. PW3 stated that this rape happened for 7 minutes.

PW3 stated that the last rape incident happened at night after 12 before Wednesday in the living room. PW3 stated that her step-father switched off the light and then lay on top of her and told her not to talk nor make any sound, then he removed her trousers and his trousers, and then put his penis into her vagina. PW3 stated that she felt her step-father put his penis into her vagina. PW3 stated that this rape happened for 8 minutes while everyone was asleep.

PW3 stated that she told her aunt Mareta Katonivere about all these rape incidents on the same morning that that they had gone to the Lami Police Station to lodge the report, and when her step-father had signaled to her that everything was ok. PW3 confirmed that in all these incidents of rape, it was her step-father who had raped her.

PW3 stated that after lodging the rape complaint at the Lami Police Station, her and her aunt then got into a car and were taken to Suva and later to the hospital with Sergeant Maria for check up on any infection. PW3 stated that her step-father did not use anything else other than his penis to rape her 10 times.

21. When **cross-examined** by Mr. Verebalavu, PW3 stated 'no' to the proposition that in all the rape incidents she mentioned, there were always people around. PW3 agreed with the proposition that she had the opportunity to tell someone about the rape allegations but did not do so. PW3 agreed that she only related the rape allegations after her aunt had asked her on the morning of 21 December 2022. PW3 stated that she wanted to tell her aunty in response to the proposition that she did not willingly tell her aunt about the rape incidents. PW3 stated that during the second rape incident, everybody was asleep either in the sitting room and room, and it was an open room with no door. PW3 stated that there was nothing blocking the view from the room to the sitting room and vice versa, and the distance being not too far. PW3 recalls a bit of having given a statement to the police, and a woman police officer had taken down her statement. PW3 stated that she felt comfortable enough to relate

her story and to the best of her knowledge. PW3 stated that what she told the police were correct and had gone through the specific details. PW3 stated that the second rape incident lasted for 30 – 40 seconds and not 6 minutes, and the date 8 October 2022 noted in her statement is incorrect. PW3 stated that on the first rape incident on 18 September 2022, her step-father asked her mum if she could take him to the toilet so he just came and woke her up, and her mother was asleep then. PW3 stated that her aunt was present when she was medically examined at the hospital. PW3 stated that she could not recall telling the doctor who examined her that the latest rape incident was early that morning at 3am. PW3 stated that Makario had forcefully inserted his penis into her vagina and it was painful, and also true for the last rape incident. PW3 stated that she knows a person by the name of Tobia who resides in the same community where she stays. PW3 stated that she did not talk to Tobia after relating the rape incidents to her aunt. PW3 stated that Tobia did not come over to her house to talk to her about the allegations. PW3 stated that after relating the rape incident to her aunt, she did not talk to other family members regarding the same. PW3 stated that she cannot recall when her statement was taken by the police. PW3 stated that between the morning of 21 December 2022 when she told her aunt about the rape incident until 17 January 2023 when she gave her statement to the police, she did not talk to her family about the rape incidents. PW3 stated that her family members did not influence her to come up with these allegations. PW3 agreed that in her statement she told the police of incidents of her step-father Makari smacking her and also her younger brother, and this would happen sometime when she disobeys instructions given by her parents. PW3 stated that these smacking incidents were not witnessed by other family members. PW3 stated that she has gone to complain to the family members about being smacked by her step-father Makari. PW3 did not agree with the suggestion that the allegations that she stated in evidence is actually false. PW3 did not agree with the suggestion that the only reason that these allegations have been brought up against Makario was that her mother's family had influenced her to make up these allegations. PW3 did not agree with the suggestion that these allegations have been brought up is because of the way Makario treated her and dislike of him.

22. In **re-examination** by the prosecutor, PW3 stated that she did not tell anyone about the first

rape incident because she thought that they won't believe her and see it as a joke. PW3 stated that she told her aunt about the rape because she wanted to tell her and they are the only people that will believe what she says. PW3 stated that her step-father would smack her with a belt, and he would smack her without any reasons about 4 times.

23. Soon after PW3's testimony, the prosecution then closed its case, and Mr. Verebalavu informed the Court that he intends to make a submission of no case to answer, the hearing of which was then held and the Court ruled acquitting the accused of Count 2 Rape but ruled a case to answer for Count 1 Rape, and defence opted that the accused Makario Turaganiqali (DW1) and Nacanieli Gusu (DW2) testify under oath.

DEFENCE case via DW1 and DW2

DW1 – Makario Turaganiqali

24. **DW1 Makario Turaganiqali in examination-in-chief** testified that Alevina Matanimeke is his wife and they have been married for more than 10 years. DW1 stated that his wife has 2 children namely JIL and Iosefo Silivario from her previous husband, and their first biological child died at birth, and later had 3 children together namely Selina, Ana and Adrea. DW1 stated that they reside at Waikasinaura, Wainadoi where his wife's family live. DW1 stated that he stayed in a house with his family, 3 ladies who are his wife aunts, brother-in-law, his aunt's son, and 2 brother-in-laws and their wives. DW1 stated that the house has 2 rooms, and the inside of the house is as big as this courtroom. DW1 stated that the complainant JIL also stayed in that house. DW1 stated that he stayed in that house for 7 years since he got married to his wife. DW1 stated that JIL was in kindergarten when he started courting Alevina, and were residing in Qauia back then with his wife and her 2 children, sister-in-law and their children, brother-in-law and his wife. DW1 stated that the name of his brother-in-law is Tomasi Mua Rasegadi and his wife is Mareta Katonivere. DW1 did not agree that he first raped JIL on 18 September 2022. DW1 stated that he recalls 18 September 2022, and on that date a birthday function happened at home attended

by him and family including their aunties from Qauia and aunties staying in the house including some villagers who heard about the birthday celebration and came. DW1 stated that it was Iosefo's birthday which started after 12. DW1 stated that during the birthday they had lunch and children had ice cream and later went for a swim, and they did not consume kava. DW1 stated that the birthday celebration ended probably after 5 in the afternoon. DW1 stated that after the birthday celebration, he took their aunties back to Qauia with Alevina Matanimekewai in a vehicle. DW1 stated that those left at home after the birthday celebration were himself, his family, his 3 aunties and 2 brother-in-laws. DW1 stated that after dropping off his sister-in-law to Qauia, they then returned home and went off to sleep. DW1 stated that he woke up in the middle of the night then woke his wife first who was still breastfeeding their baby. DW1 stated that his wife then told him to wake one of the kids to go with him to the toilet which is about 5 meters away. DW1 stated that the reason he needed someone to accompany him to the toilet is because the place they are staying is really dark, near the graveyard and surrounded by forest, and the child can hold on to the torch. DW1 stated that JIL woke up and he asked her if she could accompany him to the toilet, but did not force her, and she replied for him to take the lead and she will follow him soon with a torch. DW1 stated that when he was in the toilet, JIL stood outside with the torch. DW1 stated that he was probably in the toilet for 6 minutes, and while inside, JIL asked him if she could take the lead because of the mosquito bites, to which he replied for her to take the lead. DW1 stated that after that he then went to the tap to wash his hand. DW1 stated that they went back into the house, JIL went back to sleep, and early in the morning at about 5 o'clock he woke JIL up to go and boil the tea. DW1 stated that when they went to boil the tea, JIL told him that she still wants to sleep. DW1 stated that he woke up JIL because she was already awake and being the eldest of all the children. DW1 stated that after JIL told him that she still wants to sleep, he took the lead outside, opened the door where he can look through from the house to the blue house where the kitchen is located, then opened the blue house including the two windows, put up the curtains, then spread the sheet inside the house for JIL to lie down while he went to boil the tea. DW1 stated that he spread the sheet inside the blue house. DW1 stated that while JIL lied down on the sheet, he went outside to light the fire and then came back inside the house to wash the kettle to then boil the tea. DW1 stated that the kettle was boiled outside the blue house

at the fire place. DW1 stated that it was sometime when he was outside, then JIL woke up and sat by the window, and then asked him as to whether he is going back to the main house, to which he replied 'no' and told her to lie down. DW1 stated that he then went to sit by the window and accessed Facebook via his phone. DW1 stated that while he was on his phone, JIL was lying down on the bedsheet and then she asked if she could have my phone. DW1 stated that he then off Facebook and JIL took his phone without him giving it to her. DW1 stated that JIL then turned the phone on and does not know whether she played YouTube or game on the phone. DW1 stated that he was with JIL in the kitchen until sunlight and her mother came to ask him as to JIL's whereabouts. DW1 stated that JIL then stood up and went into the house, and then her mother came and they chatted in the kitchen and by then it was daylight. DW1 stated that he did not do anything sexual in nature to JIL at that time, and all he knows is that they came to boil the tea and that is all. DW1 stated that he did not rape JIL in her grandmothers room, which is the second alleged incident of rape. DW1 stated that the room is located on the left side of the house, and the other room on the right side of the house. DW1 stated that the room on the left side of the house is occupied by his parents-in-law, while the room on the right is occupied by him and his family. DW1 stated that the room he occupies with his family has a door, while the other room does not have a door. DW1 stated that most of the time he sleeps in the room on the right side with his wife and baby, while his brother-in-law who is weak usually lie in the other room and if he doesn't use it then DW1's wife's older sister's son usually sleeps there. DW1 stated that adjacent to the room on the left, his wife's aunts usually lie there. DW1 stated that Tomasi and Mareta occupy the building next to the blue house. DW1 stated that JIL usually sleep inside the living room area of the house. DW1 stated that as to the third alleged incident of rape, they had gone to fetch firewood and returned back home, and he did not do any immoral behaviour as alleged by JIL. DW1 stated that only sometime he goes out with the children to fetch firewood, and JIL was never forced to join them. DW1 stated that he did not rape JIL on the morning of 21 December 2022 being the fourth alleged incident of rape. Dw1 stated that he did not signal to JIL that particular morning. DW1 stated that on that morning, he was waiting for his lunch being prepared by his wife to take to work, he then told JIL to hurry up that the bus is coming while standing outside putting on his shoe and JIL was lying down. DW1 stated that it was almost 7 o'clock. DW1

stated that he normally goes to work and board the bus at that time. DW1 stated that at that time he worked at Concrete Solution at Veisari. DW1 stated that he came to know about the allegations against him on the same day he had gone to work sometime in 2023, and signaled to JIL to hurry up. DW1 stated that he was on board the 5 o'clock bus with his wife Alevina when he was made known of the allegations against him through his wife's elder sister who lives in Qauia who had called via phone and informed his wife about the allegations. DW1 stated that his wife informed him that her elder sister called her and told her that she is in Wainadoi to take JIL to the Lami Police Station to report that he had raped JIL. DW1 stated that his wife then asked him in the bus that she has been told that he harassed JIL, to which DW1 replied, "Are you mad, I did not do that thing". DW1 stated that his wife asked him 3 times in the bus, he then told his wife to let them know to wait for them so that they can go and have a conversation in regards to that issue. DW1 stated that his wife then told him that her brother is said, "Tell that person if he comes here, I'll kill him", to which DW1 replied, "I don't care if they whack me or kill me, I will just go and talk to them". DW1 stated that when they reached Wainadoi, his wife kept begging him for him to go and sleep at his uncle's place and for her to go alone and have a talk with her brother. DW1 stated that when they reached Wainadoi, they walked up right to the village and she kept begging him not to go because she didn't want anything to happen. DW1 stated that he then came back and slept at his uncle *or momo Kusitino Waqanisanini's* house that night. DW1 stated that he knows Tobia who is his uncle *or momo Kusitino Waqanisanini's* son-in-law. DW1 stated that Tobia Matavura and his wife Bulou Naitoko and their children were at his uncle *or momo Kusitino Waqanisanini's* house. DW1 stated that when he reached his uncle *or momo Kusitino Waqanisanini's* house, he called them out, and they told him to come and he sat on the porch outside. DW1 stated that while on the porch, he talked to his wife on the phone, and his wife explained to him what had happened and the things he had been alleged to do. DW1 stated that they then went into the house, and Tobia Matavura and Bulou Naitoko asked him as to what was the problem. DW1 stated that he then explained to them that the reason why he came to sleep there is because his wife's brother did not want him to come back home because he had allegedly harassed JIL. DW1 stated that only that night he went to sleep at uncle *or momo Kusitino Waqanisanini's* house. DW1 stated that he did not make any admission regarding the

allegations against him to Tobia. DW1 stated that he only got to know Tobia well within the 2 years of him moving to and staying at Waikasinaura, Wainadoi. DW1 stated that his relationship with JIL being her step-father is always good from the time she was in kindergarten up and until she attended class 1 at Lami Marist Convent. DW1 stated that from the time she was in class 1, they were residing at Waikasinaura at the house belonging to her maternal grandparents. DW1 stated that his relationship with JIL began to change because he began disciplining the children, and he was rebuked for physically disciplining the children JIL and Iosefo Silivario who are his wife's two children from the previous marriage. DW1 stated that he was rebuked by his wife's mother and her two brothers for physically disciplining the children, and for him not to touch the children nor discipline them strictly because he is not their biological father. DW1 stated that he normally informs his wife for her to tell her mother that the children need to be disciplined in order for them to be well behaved. DW1 stated that the children are disciplined daily, only when they are disobedient or do not behave accordingly, only then he will physically hit them. DW1 stated that JIL at that time had grown to be a young girl and reports to her grandmother and uncles of her being physically disciplined. DW1 stated that JIL would speak back to him, and when they send her for errands, she doesn't listen, and she normally listens to her grandmother who usually support her. DW1 stated that his relationship with the rest of the family was never cordial even from the time he started courting his wife. DW1 stated that Tomasi Mua Rasegadi assaulted him in Qauia because he did not want him to court and marry Alevina. DW1 stated that he does not admit the allegation put against him.

25. In **cross-examination** by the prosecutor, DW1 stated that when he was dating Alevina, he then became aware that she had two children already, that is, JIL and Iosefo, and met them too, and spent sometime with them. DW1 stated that Alevina was not working when they were dating and living with her family members in Qauia who supported her and her children. DW1 stated that he had no issues with Alevina having JIL and Iosefo before they got married, and willingly took care of them as step-father. DW1 stated that he is a religious person and a catholic. DW1 stated that he has come across the phrase 'spare the rod, spoil the child', and based on his earlier testimony, this is why he disciplined JIL from time to time. DW1 stated that he did this to ensure that JIL did not turn out to be a spoilt

child. DW1 stated that when he married Alevina, he took the role as father figure very seriously. DW1 stated that he began disciplining JIL when she was in kindergarten, and continued disciplining her from when she was aged 6 to 12. DW1 stated that he disciplined JIL if she did something wrong. DW1 stated that his relationship with JIL changed when he moved to Wainadoi, and this change was regarding the fact that the family members in Wainadoi did not like the fact that he was disciplining JIL. DW1 stated that JIL started behaving differently like talking back. DW1 stated that the manner in which he disciplined JIL when she was 12 was harsh, and that is why Alevina's family members would rebuke him for disciplining JIL. DW1 stated that after disciplining JIL, Alevina's family members would remind him that he is not JIL's biological father, and this hurt him especially him being the father figure for JIL and to see that she grows into the young lady that she has become. DW1 agreed with the proposition that because Alevina's family disagreed with his methods of disciplining JIL, this caused his relationship with JIL to break. DW1 could not recall the last time he disciplined JIL in 2022 before Iosefo's birthday. DW1 stated that he is 34 years old, and was 32 at the time the allegation happened in September to December 2022. DW1 stated that he worked for the construction company for 1 year doing mainly labour work requiring one to be physically fit. DW1 stated that while working at the construction company, he lived with Alevina and the children at Wainadoi. DW1 stated that he has lived with Alevina and the kids at Wainadoi for 7 years, and for those 7 years the household toilet is located outside the house and about 5 meters away from the home. DW1 stated that there is a toilet inside the house located in JIL's grandparents room on the lefthand side of the house. DW1 stated that when he was working for the construction company, he got hurt on the tongue caused by a piece of wood while he was on the crane. DW1 stated that on the night after Iosefo's birthday, he did not wake JIL up to accompany him to the toilet, but woke her mother up first instead. DW1 did not agree with the suggestion that he did not wake his wife first that night. DW1 did not agree with the proposition that he woke JIL up to take him to the toilet, but she said 'no', and after she said 'no', Alevina then told her to take you. DW1 stated 'no' to the suggestion that he had gone to the toilet at around 12.00am at night. DW1 stated that JIL and him followed each other to the toilet, and he was in front. DW1 stated that JIL took the lead and did not wait outside the toilet. DW1 stated that he was the only one who used the

washroom that night and was with JIL. DW1 stated that he is afraid of the dark, and that is why he needed JIL, a 12 year old girl, to accompany him to the toilet. DW1 stated 'no' to the proposition that while JIL stood outside the toilet, he told her to come inside the toilet, but she did not want to and he growled at her so she came into the toilet. DW1 stated 'no' to the proposition that when JIL came into the toilet, he was still using the toilet, and then pulled JIL to stand really close to him and talked about the trip to his village. DW1 stated 'no' to the proposition that the reason why he wanted to go with JIL to the toilet so that he can have time with her. DW1 confirmed that at the time he had gone to the toilet with JIL, majority of the family members were asleep except his wife. DW1 agreed that around 5.00am in the morning, he had gone to wake JIL up to go and boil the tea, but she was already awake. DW1 did not agree that JIL said that she was still sleepy. DW1 stated 'no' to the proposition that after he had visited the toilet, he had forced JIL to go to the blue house, and JIL did not want to go but she listened because she was scared of him. DW1 stated 'no' to the proposition that from the toilet, him and JIL had gone to the blue house where he began prepping the kettle to boil, while JIL sat by the door. DW1 stated 'no' to the proposition that after he placed the kettle to boil, he entered the blue house and spread the bedsheet, laid down and began scrolling on Facebook, while JIL sat by the window, and he then told her to come and lie down, but she did not want to. DW1 stated 'no' to the proposition that after she had said 'no', he then growled at her again to come and lie down, and because she did not want to disobey him, she listened and went to lie down beside him. DW1 stated that JIL did not grab the phone, but just took it off him. DW1 did not agree with the suggestion that that did not happen, and stated that JIL took the phone off him. DW1 stated 'no' to the proposition that whilst holding on to the phone, he showed a pornographic movie to JIL, and the reason he made her watch the pornographic movie was to see whether she was sexually active. DW stated 'no' to the proposition that after watching the pornographic movie with JIL, he held her closer to him, and then asked her if her uncle Tomasi Rasegadi and cousin brother Simione Matanimekewai had already touched her, to which JIL said 'no'. DW1 stated that he did not tell JIL anything. DW1 stated 'no' to the proposition that he then asked JIL if he could touch her, to which she said 'no', but he did not listen. DW1 stated 'no' to the proposition that he then began to pull her trousers down, then he removed his trousers, then used his penis and penetrated JIL's

vagina, and because she did not want to disobey him, she allowed him to do what he wanted to do to her. DW1 stated 'no' to the proposition that after he was done, he then told her to put on her clothes and take the lead back to the other house, and not to tell anyone about what happened.

DW1 stated that he does not know about the second rape incident that JIL said happened after 1.00am inside his parents-in-law's room situated on the lefthand side inside the house. DW1 stated that everyone was asleep. DW1 stated 'no' to the suggestion that he noticed JIL sleeping away from everyone else, woke her up and told her to go into his parents-in-law's room, which she did because she did not want to disobey him. DW1 stated 'no' to the proposition that after JIL had lied down in that room, he then went and brought one of his twin daughters to the same room to use the toilet in that room, and while his twin daughter was using the toilet, he then removed JIL's dress, pulled his trousers down and forced his penis into JIL's vagina, which caused her pain. DW1 stated 'no' to the proposition that while putting his penis into JIL's vagina, he noticed one of the aunties had woken up, and told JIL to move further into the room so that the aunty would not see what he was doing to JIL. DW1 stated 'no' to the proposition that after he was done, he put his trousers back on, told JIL to put on her dress, took the twin daughter and left JIL in that room, and then in the morning before going to work, he signaled to JIL asking if everything was good between them. DW1 stated that he did not signal to JIL.

DW1 recalls being asked by his counsel regarding the alleged third rape incident that happened while he was fetching firewood with the children. DW1 stated that they went to fetch firewood, and does not know whether JIL had not wanted to go with them or otherwise. DW1 stated 'no' to the suggestion that JIL was forced to go with him to fetch firewood, and the reason why JIL did not want to go was because she knew that he would rape her again. DW1 stated that they were all together because he was the one cutting the firewood, and did not tell the children to go to a different spot and took JIL to another spot. DW1 stated 'no' to the suggestion that when he took JIL to a secluded spot, JIL did not want to be with him, but complied because she did not want to disobey him and to avoid being disciplined by him. DW1 stated 'no' to the proposition that at the secluded spot

under a big tree, he told JIL to remove her trousers, then he removed his trousers, made JIL to lie down on her back on the ground, then he laid on top of her, and put his penis into her vagina, and JIL felt his penis inside her vagina. DW1 stated 'no' to the proposition that after 7 minutes, he then told JIL not to tell anyone of what had happened.

DW1 stated 'no' to the proposition that the last rape incident happened in the early morning at about 12.00am of 21 December 2022 in the living when everyone was asleep. DW1 stated 'no' to the proposition that he saw JIL asleep in the living room, and he went and lie next to her and told her not to talk nor make a sound. DW1 stated 'no' to the proposition that he then pulled her trousers down, then he put his trousers down, and instead his penis into JIL's vagina, which lasted for about 8 minutes. DW1 stated 'no' to the proposition that after he was done, he then pulled his trousers back up and went to bed. DW1 stated that in the morning of 21 December 2022, he had seen the bus coming and called out to JIL to let her know of the same for her to go to school. DW1 stated 'no' to the suggestion that he did not tell JIL about the bus coming, but instead signaled to her that morning before he left for work asking her if everything is ok. DW1 agreed that on that morning there was no need for JIL to go to school as she was already on school holiday.

DW1 agreed that he had gone to Tobia's home after returning from work that day, and he is related to Tobia's wife. DW1 stated that the reason he went there was because his wife's brother did not want him to comeback, and if he returned home, he will punch him. DW1 stated that the reason why he went to Tobia and Bulou's home is to sleep in that house as his wife pleaded with him to go and sleep there because she did not want anything bad happening to him if he returned home. DW1 stated 'no' to the suggestion that because he felt safe there at Tobia's house, he could tell Tobia and Bulou about anything and did tell them that he had sexual intercourse with JIL, to which Tobia told him that by sunrise he should leave their house. DW1 stated 'no' to the suggestion that the reason why Tobia told him to leave by sunrise is because he has daughters in the house. DW1 stated 'yes' to the proposition that knowing that Alevina was a single mum with two kids, he stepped in as husband and financial support, and being a father figure to JIL despite him not being her biological father including disciplining JIL from when she was young until 12 years old.

DW1 stated 'no' to the proposition that when his relationship with JIL started breaking, he decided to have sexual relations with JIL and because she had developed into a young girl, and also created opportunities to be alone with JIL to develop sexual relations with JIL. DW1 stated 'no' to the proposition that he used the excuse of being a 32 year old physically fit and healthy man who is scared of the dark to have JIL, a 12 year old girl, accompany him to a toilet that was 5 meters away from the house at 12.00am at night, knowing that majority of the people in the house were asleep except his wife. DW1 stated 'no' to the proposition that he was able to get JIL alone with him because she would do whatever her told her to do, and if she doesn't then he would discipline her. DW1 stated 'no' to the proposition that he forced JIL into the toilet while using the toilet, and to go to the blue house to put the kettle to boil, laid a bedsheet and forced her to lie down with him and showed her pornographic movie to arouse her, and eventually penetrated JIL's vagina with his penis. DW1 stated 'no' to the proposition that he used the reason of putting the kettle to boil to hide his intention. DW1 stated 'no' to the proposition that he used the reason that his twin daughter needed to use the toilet inside his parents-in-law's room as a disguise to then penetrate JIL's vagina with his penis. DW1 stated 'no' to the proposition that on the 3rd incident of rape, he took JIL to a secluded area while fetching firewood and again penetrated JIL's vagina with his penis. DW1 stated 'no' to the proposition that on the 4th incident of rape, he again inserted his penis into JIL's vagina, and later that morning of 21 December 2022 signaled to JIL if everything is ok between the two of you. DW1 agreed that as JIL's step-father, he is supposed to protect and love her. DW1 stated 'no' to the proposition that he broke the trust that JIL had with him being her step-father, and abusing his role as step-father by penetrating JIL's vagina with his penis on all 4 occasions.

26. In **re-examination** by Mr. Verebalavu, DW1 stated that he did not use the toilet inside the house because it is only used by his in-laws as they are old. DW1 stated that he told Tobia and Bulou about the allegations against him.

DW2 – Nacanieli Gusu

27. **DW2 Nacanieli Gusu** in **examination-in-chief** testified that he is a scientific officer at the

Fiji Forensic Biology and DNA Laboratory Unit and has been in that position for 10 years. DW2 stated that he holds a Bachelor of Science majoring in Biology and Chemistry including a Postgraduate Diploma in Biology both attained from the University of the South Pacific. DW2 stated that as scientific officer, he carries out forensic examination on evidential exhibits or samples that are submitted to them, and also carry out forensic DNA analysis. DW2 stated that he is also responsible for managing all the forensic instruments that are used in the lab, and compiling reports for the investigators and court purpose. DW2 recalls having prepared a forensics report in relation to his case dated 28 February 2023, and can identify the same report if shown to him. Leave was then granted for DW2 to be shown the report. DW2 stated that the report has 3 pages and his signature is on all pages of the report. DW2 stated that this is a microscopic report that they compile for the purpose of reporting on the microscopic examination done for the intimate or sexual account swabs that were collected from the alleged victim during the medical examination. DW2 stated that the swabs were received on 22 December 2022 by one of their technical officer Mr. Ilai Hue. DW2 stated that once they receive a submission or case from the officers, the first process is the registration of the case, and this is where the case is given a lab reference number and exhibit submitted are assigned their exhibit numbers. After the registration process, the case is assigned to one of the officers to be the case officer. The first examination done for sexual assault cases is the examination of the swabs under the microscope to find out the presence of sperm heads or spermatozoa on the swab. After this examination under the microscope, the case officer then compiles a microscopic report, and he was that particular case officer. DW2 stated that they received 6 swabs for this case, which swabs were collected from the victim during the medical examination. DW2 stated that the acronyms 'HVS' and 'LVS' stand for 'High vaginal swab' and 'Low vaginal swab'. DW2 stated that HVS would be the interior or deeper region of the vaginal passage, and LVS would be the narrow region of the vaginal passage. DW2 stated that their findings were negative, that is, there were no sperm heads or spermatozoa on all the 6 swabs. DW2 stated that from his experience, it can take up to approximately 72 hours to get a positive result, but that would depend on other factors. DW2 stated that other factors that would affect the sperm uplifted from the victim are, (1) the victim had her shower right after the incident; (2) the alleged suspect did not ejaculate; or (3) used a condom; (4) environmental

conditions like heat or humidity that would affect the swab from the time of collection to the time of examination at the forensics lab; and (5) the sexual offence or assault did not occur. DW2 stated that if the victim had a shower that could probably affect the HVS, and depends on how the victim washed herself. DW2 stated that the samples were not contaminated, and they follow a very strict policy at the lab. All evidential samples submitted, they make sure and check that the packaging and containers from the receiving end, and also during all the processes at the lab, they follow a strict quality control standard operating procedures to ensure that they don't contaminate samples.

28. In **cross-examination** by the prosecutor, DW2 stated that the result would possibly be negative if the victim had showered and washed the area where ejaculation may have occurred, or if the accused had not ejaculated at all. DW2 opined that it is possible that the result would be negative as to the presence of spermatozoa or sperm head if the accused had not ejaculated in the vaginal area or anus of the victim.
29. In **re-examination** by Mr. Verebalavu, DW2 stated that it is possible that before ejaculation, the semen may come out of the male reproductive organ, and semen is the liquid medium that contain sperm.
30. Soon after DW2's testimony, the defence then indicated that they do not intend to call Alevina Matanimekewai, and closed its case.
31. Both counsels then submitted their closing submissions, and this is the Court's judgment on Count 1 Rape of the indictment.

ANALYSIS of the prosecution vis-à-vis defence evidence

32. Having carefully considered the entire prosecution and defence evidence including the *Admitted Facts*, I have found that:

- a) Pursuant to section 207(3) of the Crimes Act 2009, consent is not an issue in this

instant since the complainant JIL was below the age of 13 years during the alleged rape.

- b) PW3 JIL the complainant testified that 4 incidences of being raped by the accused Makario Turaganiqali who is her step-father married to her mother Alivina Durilala Matanimekewai.
- c) The identification and identity of the accused Makario Turaganiqali *a.k.a* Makario or Makari, is well substantiated and established.
- d) The accused Makario Turaganiqali *a.k.a* Makario or Makari was present with PW3 JIL during the respective alleged 4 incidences of rape, and I reject any evidence that suggest otherwise.
- e) PW3 JIL the complainant testified of the 4 specific instances of being raped by her step-father the accused Makario Turaganiqali *a.k.a* Makario or Makari. These 4 instances of rape, in chronological order of occurrence, are noted as follows:
 - 1) The accused and PW3 were together in the blue house where the accused showed PW3 pornographic movie of adults having sexual intercourse via his phone, and subsequently raped PW3 by inserting his penis into PW3's vagina.
 - 2) The accused told PW3 to go and lie down in his parents-in-law's room, which PW3 did, then the accused entered the same room with his twin daughter and told her to go and use the toilet inside that room, and then the twin left to go and use the toilet, the accused then raped PW3 by inserting his penis into PW3's vagina.
 - 3) The accused took PW3 JIL and the children to fetch firewood in the nearby bush, and while fetching firewood the accused took JIL to a secluded spot under a big tree and raped her by inserting his penis into PW3's vagina.

- 4) Whilst in the living room of their house on the early morning of 21 December 2022, the accused raped PW3 by inserting his penis into PW3's vagina, and later that same morning while on his way to work, signaled to PW3 inquiring whether it was ok between them. On that same morning, PW3 told her aunt PW1 Mareta Josivin Katonivere that the accused had raped her in the presence of PW1's mother-in-law and her younger sister.
- f) **PW3: JIL** the complainant is a credible and reliable witness, and her testimony remained consistent and was not heavily discredited nor unsettled via cross-examination. PW3 remained calm and composed while testifying, and her demeanour somewhat enhances her credibility and reliability as a witness, and I therefore attach immense weight to her testimony.
- g) PW1's testimony is that of recent complaint of rape by PW3, which testimony is consistent with that of PW3, thus reliable and credible, and concurrently enhances PW3's credibility.
- h) PW1's testimony held together with that of PW2, also enhance PW3's credibility and reliability of PW3's account.
- i) PW3's testimony held together with that of PW1 and PW2 are consistent, credible and reliable, and any discrepancy does not, in my view, render the prosecution evidence incredible and unreliable. In Nadim v State [2015] FJCA 130; AAU0080.2011 (2 October 2015) at paragraph 15, Prematilaka, J. stated:
- [15] It is well settled that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be discredited or disregarded. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witnesses. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of incidents, minor discrepancies are bound to occur in the statements of witnesses.*
- j) Based on the particular findings in a) – g) above, I therefore attach substantial

weight to PW3's, PW1's and PW2's testimonies, which respective testimonies were not heavily discredited nor unsettled during cross-examination, and their demeanour somewhat enhances their credibility and reliability as prosecution witnesses.

- k) I have carefully considered **PE1** – Medical report of the complainant JIL by Dr. Radhika Elizabeth Menon dated 21.12.2022, and decided not to rely on the same as it lacks the necessary proof and inconclusive.
- l) I reject DW1: Makario Turaganiqali's testimony on the basis that he is not a credible and reliable witness, and therefore attach lesser weight to his testimony, which in terms of probative value is, in my finding, heavily outweighed by the testimonies of PW1, PW2, PW3 including prosecution exhibit **PE1**.
- m) As for **PE2** – Forensic Report number 14/12/22 for Case number 60/12/22 by DW2 Nacanieli Gusu, Forensic Biologist, dated 28/02/2023 considered with DW2's testimony of DW2, basically show that no sperm head / spermatozoa were detected on the 6 samples obtained from PW3 during the medical examination. Having rejected DW1's testimony, DW2's account and **PE2** on standing on its own, provided no conclusive proof to exonerate DW1.
- n) Based on the above rationale, I therefore find that the prosecution has proved *beyond reasonable doubt* all elements of the offence of *Rape* in Count 1 of the indictment, in that:

Count 1 – **MAKARIO TURAGANIQALI** between the 8th day of September 2022 and the 21st day of December 2022, at Wainadoi, Namosi, in the Central Division, penetrated the vagina of **JIL**, a child under the age of 13 years, with his penis.

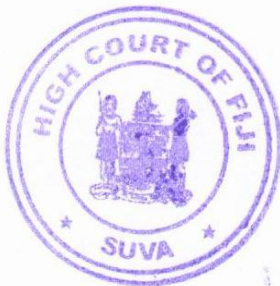
CONCLUSION

- 33. Based on the reasons highlighted above, I hereby find Makario Turaganiqali **guilty** of **Count 1 Rape** in the Amended Information by the Acting Director of Public

Prosecutions dated 2 August 2024 and filed on 5 August 2024, and **convict** him accordingly.

34. Makario Turaganiqali was found **not guilty** and **acquitted** of **Count 2 Rape** at the *no case to answer stage* of the proceedings.

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



.....
Hon. Mr. Justice Pita Bulamainavalu
PUISNE JUDGE

At Suva

23 May 2025

Solicitors

Office of the Director of Public Prosecutions for the State
Verebalavu Lawyers for the Accused