

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 70 of 2023

STATE

-v-

MAIKA RAUNI

Counsel: Mr. E. Kotoilakeba for the State
Mr. I. Rusaqoli for the Accused

Date of Trial: 13 - 14 May 2025

Date of Judgment: 11 July 2025

JUDGMENT

(The complainant has been granted name suppression. I refer to her as “the complainant” in this Judgment.)

1. An Amended Information dated 28 October 2024 charged Mr. Maika Rauni (“the accused”) with a single count of rape, contrary to section 207(1) and (2) (a) and (3) of the Crimes Act 2009, the particulars of his alleged offending being that, on an occasion between the 1st of August 2022 and the 31st of August 2022, at Delaivadra village, Druadrua Island in the Northern Division, he penetrated the complainant’s vagina with his penis, the complainant being a child under the age of 13 years.
2. The accused pleaded not guilty and the matter proceeded to trial.

The prosecution case at trial

3. On the first day of trial, the prosecution sought to further amend the Information to charge a single count of digital rape contrary to section 207 (1) and (2) (b) and (3) of the Crimes Act. The proposed amendment was not opposed by the defence and the Information was amended accordingly, there being no embarrassment caused to the accused by the late amendment.
4. In outline, the prosecution case is that, at the time of the alleged offending in August 2022, the accused and the complainant were neighbours, and she was a good friend of the accused's younger sister ("Joana"). The complainant turned 12 years of age in April 2022, and the accused turned 20 years of age in that month. One night during the month of August 2022, the complainant was sleeping over at Joana's house when the accused returned home, switched off the light, removed her pants and penetrated her vagina as she lay face down. He did this for a few minutes and then kissed her on her lips and told her not to tell anybody.

The key issue

5. By the conclusion of the trial the sole issue for my determination had crystallised. In giving evidence in his own defence, the accused accepted that he had returned home one night in August 2022 when the complainant was sleeping over at his house, and that he had touched the complainant's vagina over her clothing. He denied penetrating her vagina. Given that the complainant was 12-years-old at that time, the only issue for my determination is whether the accused penetrated her vagina.

Evidence

6. The complainant testified that, as she was lying face down, the accused removed her pants and inserted his penis into her vagina causing her to feel pain in her vagina. He did this for a few minutes and then kissed her on her lips. He told her not to tell anyone.

7. In answer to my question, the complainant said that she did not see the complainant's penis go inside her vagina. She just felt pain in her vagina. She did not make any sound because she was lying face down and couldn't even move.
8. A few days later, the complainant told her cousin Adi what the accused had done to her.
9. In cross-examination it was put to the complainant that the accused had only touched her vagina over her clothes, and had not had sex with her. The complainant answered that she felt pain in her vagina.
10. Adi testified that, in September 2022, in the dining hall at school, the complainant informed her that, when she was sleeping at Joana's place, the accused came and told her to take off her clothes. That was the only thing that the complainant told her.
11. The prosecution relied on the accused's statements against interest in his record of interview under caution, the admissibility of which was not challenged.
12. The interviewing officer read the record of interview into the record by agreement.

Q/A: 109 and 110 are of particular relevance to the key issue of penetration:

"Q109: According to [complainant's] statement she mentioned that after you took off your pants you then inserted your erected penis into her vagina when she was lying face downwards. What can you say about this?"

A: No I did not do that to her. I only used my finger.

Q110: According to [complainant's] statement she mentioned that when you penetrated her vagina she felt pain. What can you say about this?"

A: No I did not use my penis and she did not feel any pain when I penetrated my finger."

13. In cross-examination, it was put to the interviewing officer that she had fabricated a number of the answers in the accused's record of interview, including answers 109 and 110. DC Seinitiki rejected that any part of the record of interview was fabricated.
14. Dr Tuivaga examined the complainant on 28 September 2022. In her professional opinion, the complainant's open vaginal orifice was consistent with vaginal penetration. It was not possible for her to say when that penetration had occurred or what had penetrated the complainant's vagina. When cross-examined on her finding that there were no injuries found in the complainant's genital area, Dr Tuivaga explained that any cuts would generally heal within one to two weeks unless the lacerations were very deep.
15. The accused testified that, on one night in August 2022, he touched the complainant's private parts on top of her clothes. When the complainant said "*enough*", he kissed her and left.
16. In examination-in-chief, the accused was taken through a number of inculpatory answers in his record of interview. He testified that the answers to the effect that he had digitally penetrated the complainant's vagina had been fabricated by the interviewing officer. He said that some of the questions were never asked. Other questions were asked, but the answers were not his. He gave evidence of the answers he had actually given to those questions. For example, the accused said that he did not give the recorded answer to Q 109. His actual answer was that he did not do anything to her. As for Q 110, he answered that he did not use his penis on her.
17. Under cross-examination, the accused agreed that he arrived home at night having been drinking after playing rugby at Subrail Park. He denied that he took off the complainant's pants and inserted his finger into her vagina. He stated that he touched her vagina on top of her clothes. He also accepted that he had kissed the complainant on her lips that night. The accused accepted that he had been given time to read over his record of interview and was asked whether he wished to add,

alter or correct anything, to which he replied “No”. He maintained that some of the questions and answers recorded were fabricated.

18. The accused’s sister Joana gave evidence in his defence. The complainant came for a sleepover in August 2022. She did not hear the complainant shout or make a noise. When she woke up, the complainant had already gone home. Joana said that the complainant was welcome to come for sleepovers because she was a friend.
19. The accused’s mother gave evidence that the complainant calls her grandmother. She recalled having questioned the complainant about coming for sleepovers: *“I told her why are you coming to sleep in my house when there’s plenty of us in this house and I have plenty sons.”* When the Court sought to clarify what she meant by that answer, the witness explained: *“My Lord, the reason why I said because I got plenty of sons and because of what has transpired already in the village, some stories about girls sleeping in house that has plenty sons and something occurred.”*

Closing submissions

20. I heard closing speeches on 14 May 2025.
21. The thrust of the defence case was that the complainant’s version that the accused penetrated her vagina was fabricated. Mr. Rusaqoli argued that the complainant had not liked being told by Joana’s mother not to make a habit of sleeping over, and it was this that motivated her fabricated allegation.
22. Mr. Rusaqoli made the point that Joana, who was sleeping next to the complainant, did not notice anything unusual happen that night. Also, the complaint to Adi had been limited to telling her that the accused removed her pants when she was sleeping over at his house.
23. Regarding the defence position that the record of interview was partially fabricated, Mr. Rusaqoli submitted that the interviewing officer took advantage of his client’s inexperience of police procedures.

24. Mr. Kotoilakeba reminded me of Corporal Senitiki's evidence about how the interview under caution was conducted and recorded. He asked, rhetorically, why the interviewing officer would selectively fabricate the record of interview.
25. When the Court queried whether it was open to the Court to convict the accused of the lesser offence of sexual assault in the event that it was not sure that the accused had penetrated the complainant's vagina, the parties were agreed that the lesser alternative is available.

Analysis

26. The prosecution must prove that the accused is guilty. The accused does not have to prove anything to me. The defence does not have to prove that the accused is innocent. The prosecution will only succeed in proving that the accused is guilty if I have been made sure of his guilt. If, after considering all of the evidence, I am not sure that the accused is guilty, my verdict must be not guilty.
27. Essentially, what it boils down to is whether I am sure that the complainant is a truthful and reliable witness whose evidence makes me sure that the accused is guilty as charged. Also, I must be sure that the accused's denials are untrue.
28. It follows that the prosecution case relies solely on my assessment of the complainant's reliability and credibility.
29. Since the accused elected to give evidence in his own defence, I remind myself that even if I reject his evidence the prosecution must still prove its case to the criminal standard.
30. I also remind myself that there is no burden on the defence to prove that the complainant had a motive to lie.
31. It would be wrong, however, for me to conclude that the complainant told the truth because there is no apparent reason for her to lie. There might be a reason for her to be untruthful that nobody knows about.

Recent complaint

32. In cases of rape and other sexual offences, evidence that the complainant made a complaint is admissible to show that her conduct in complaining was consistent with her evidence in the witness box. In order to be admissible, the complaint must have been made at the first reasonable opportunity. It is a matter for the court to determine whether the complaint was made as speedily as could reasonably be expected.
33. The fact that there was opportunity to make the complaint to others before it was made to the witness to whom it was made does not make it inadmissible.
34. In the present case, the complainant complained to her friend at school a few days after the alleged offending. She had not complained to Joana or Joana's mother, or her own mother, before she told Adi about what the accused did to her.
35. The complainant testified that she was scared to tell her own mum for fear of a beating. I accept that as a perfectly reasonable explanation. Also, it is perfectly understandable why she did not report the accused's offending to his sister and mother. The fact that she did not complain to anyone before she told her good school friend does not undermine her credibility. Nor does the fact that she only told Adi the brief details of what the accused did to her. No doubt, she would have been embarrassed to relay the full details of what was clearly an upsetting experience for her.
36. The complaint to Adi supports the complainant's credibility in relation to her evidence that the accused removed her pants.

Determination

37. The complainant was fifteen-years-old when she gave evidence at trial. Her description of what the accused did to her was unembellished and plausible.
38. I say plausible because I am sure that the accused had the opportunity to penetrate the complainant's vagina. Indeed, it was the defence case that he did, in fact, touch her vagina over her clothes.

39. I am sure that the complainant told the truth about the accused removing her pants. That is not something she could be mistaken about. I am also sure that she told the truth about feeling pain *inside* her vagina. Again, that is not something she could be mistaken about. The penetration lasted for a few minutes.
40. The motive for lying attributed to the complainant simply makes no sense. The evidence established that, even after Joana's mum's prescient concerns were voiced to the complainant, she continued to be welcomed to sleep over at her friend's house.
41. I find the accused's testimony of having touched the complainant's vagina over her clothing to be contrived in an attempt to minimise his reprehensible behaviour. It is completely undermined by his voluntary confession to having digitally penetrated the accused's vagina.
42. I am sure that he made those admissions and that they are true. I reject the accused's evidence that the interviewing officer fabricated certain questions and answers. His detailed evidence about the answers he actually gave was wholly implausible given the lapse of time between his police interview and trial.
43. The closing formalities of the record of interview have caused me pause for thought:

"Q117: Do you wish to add, alter or correct anything in this record of interview?"

A. No

Q118: Was there any force, inducement, or threat made to you?"

A. No

Q119: Is this the correct record of your interview?"

A. No

Q120: Did you give this record of your interview on your own free will?"

A. No

Q121: Can you now sign to acknowledge that there was no threat, force or false promise made to obtain your record of interview?

A. Yes.”

44. When she was asked about these curious answers, Cpl Senitiki said that it may have been a typing error. That is hardly a satisfactory explanation, but it seems to me that the only explanation for these obviously contradictory answers must be carelessness on the part of the interviewing officer. It would be a very odd state of affairs if a police officer intent on perverting the course of justice would record that the record of interview was not a correct record, and had not been given of the interviewee’s own free will.
45. Considering the whole of the record of interview in context, and the totality of the evidence, I am sure that the accused penetrated the complainant’s vagina with his finger and, on the same occasion, kissed her on her lips.
46. It follows from what I have said above that I am sure that the accused is guilty as charged, and I convict him accordingly.
47. 30 days to appeal to the Court of Appeal.



A handwritten signature in black ink, consisting of a stylized 'W' followed by a long horizontal line.

Hon. Mr. Justice Burney

At Labasa

11 July, 2025

Solicitors

Office of the Director of Public Prosecutions for the State

Office of the Legal Aid Commission for the Accused