

IN THE HIGH COURT OF FIJI AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 310 of 2023

State –v- Apenisa Vasuinubu Vucago Hawea

For the State: Mr. V. Koroinivalu
For the Accused: Ms. S. Chand

Date of Trial: 17th February to 21st February 2025
Date of Judgment: 24th July 2025

JUDGMENT

1. The Accused faces the following charges on the Information filed on the 27th of October 2023:-

INFORMATION BY THE
DIRECTOR OF PUBLIC PROSECUTION

Count 1

Statement of Offence

SEXUAL ASSAULT: contrary to section 210 (1) (a) of the Crimes Act 2009

Particulars of Offence

APENISA VASUINUBU HAWEA on the 26th day of September 2023 at Kalabu Housing, Nasinu, Suva in the Central Division, unlawfully and indecently assaulted **KATEHRINE MOLIA**, by kissing her lips and neck and mouth.

Count 2

Statement of Offence

SEXUAL ASSAULT: contrary to section 210 (1) (a) of the Crimes Act 2009

Particulars of Offence

APENISA VASUINUBU HAWEA on the 26th day of September 2023 at Kalabu Housing, Nasinu, Suva, in the Central Division, unlawfully and indecently assaulted **KATHERINE MOLIA**, by rubbing her vagina with his fingers.

Count 3

Statement of Offence

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

Particulars of Offence

APENISA VASUINUBU HAWEA on the 26th day of September 2023 at Suva, in the Central Division, penetrated the vagina of **KATHERINE MOLIA** with his fingers, without her consent

2. The Accused was first produced in the Nasinu Magistrate's Court on the 26th of September 2023. The case was transferred to the High Court as the 3rd count was an indictable offence, and he was remanded in custody.
3. He was arraigned in the High Court on the 6th of October 2023, and directions were given for the State to file and serve Information and Disclosures and the matter was adjourned for plea. He was represented by counsel throughout.
4. On the 3rd day of November 2023, the Accused pleaded Not Guilty to all 3 counts on the Information, and the matter was adjourned for pretrial conference and Admitted Facts.
5. The parties then filed Admitted Facts and the pretrial checklist on the 7th of December 2023.
6. The parties filed the following Admitted Facts pursuant to section 135 of the Criminal Procedure Act 2009: -
 1. The name of the person charged is Apenisa Vasuinubu Vucago Hawea [Apenisa].
 2. Apenisa was born on 19 May 1988 and was 35 years old by September 2023.
 3. Apenisa is legally married to Katherine Molia [Katherine] who is the complainant.
 4. Katherine was born on 13 March 1989 and was 34 years old by September 2023.
 5. Apenisa and Katherine have seven children in total and their eldest child is Ana Peal (Ana).
 6. Ana was born on 3 February 2013 and was 10 years old by September 2023.
 7. Sometimes in November 2022, Apenisa, Katherine and their children resided with Apenisa's family in Deuba.
 8. On or before September 2023, Apenisa, Katherine and their children resided at Lot 12 Clifton Road, Kalabu Housing.
 9. On or before 2023, Apenisa and Katherine had separated.
 10. On 6 June 2023, Apenisa and Katherine had separated.
 11. On 6 June 2022, a domestic violence Restraining Order (DVRO) was issued against Apenisa, protecting Katherine.

12. Between 25 and 26 September 2023, sometime at night or in the early hours of the morning, two police officers from Valelevu Police Station visited their residence at Lot 12 Clifton Road, Kalabu Housing.
 13. On 26 September 2023, at around 5am, Apenisa and Katherine were escorted to Valelevu Police Station.
7. The matter was then fixed for Trial from the 17th of February to 21st February 2025. At the Trial the State called the following witnesses: -
- i. PW1 – Katherine Molia, the complainant
 - ii. PW2 – PC 8250 Kelepi
 - iii. PW3 – PC 8260 Salanieta Biu
8. The Accused testified under oath and he denied the allegations set out in the Information.

The evidence for the State

9. The main evidence for the prosecution was from the complainant. It is established from the Admitted Facts that the complainant and the Accused are married, with 7 children, however by 2023 they had separated, and the complainant and the children were living at Clifton Road, Kalabu Housing, Nasinu.
10. The complainant testified that around 2am on the morning of 26th September 2023 as she slept in one of the bedrooms of the house with her children, she woke to the smell of alcohol and she could see the shape of a person standing in the doorway of the bedroom.
11. She realised that it was her husband, and she called out his name. When she did this, he jumped over her and closed her mouth to prevent her from screaming. The Accused then came on top of her, and he started talking, apologising and crying. He took off her clothes and his clothes and as he did this, she struggled and fought, and she was telling him in the iTaukei language that what he was doing was not right and the children were sleeping there. He responded that he was her husband, and he had all the rights to do that and as he said that he kissed her face and neck and he was too strong for her. At that time, the children woke up so she told him that he should stop what he was doing because the children were awake.
12. When she told him that the children were awake, he turned to them and screamed at them to close their eyes and go back to sleep. When they did that, he turned back to her and he tried to have sexual intercourse with her and when he could not (according to her testimony, “he tried to insert himself, tried to have sexual intercourse but I kept pushing and kicking and he realised that he could not have sexual intercourse, so he used his hands inside.”¹)
13. She testified that she felt him insert his finger into her vagina. She screamed when he did this, and she called her eldest daughter to go and look for help. Her daughter then got up and ran outside. When her daughter Ana returned, the Accused stopped what he was doing. He stopped touching her and just sat there on the mattress.

14. She saw that her husband appeared drowsy and he sat there on the mattress not doing anything.
15. She took that opportunity to move her children into the next room with the pretense of getting them ready for school. Once she was in the other room, she then called the Valelevu Police Station.
16. Two officers from the Valelevu Police Station attended at the scene. She testified that initially they appeared to believe his allegations that she was having an affair and that he just came to visit the children. She then called the Women's Crisis Centre for assistance and finally they were both taken to Valelevu Police Station.
17. She maintained her evidence under cross examination, despite being vigorously challenged on her version of events, she was clear that the Accused sexually assaulted her and penetrated her with his finger that day.
18. The second witness PW2, PC 8250 Kelepi, based at the Valelevu Police Station. He attended at the scene at Clifton Road, and he brought the suspect and complainant to Valelevu Police Station.
19. The third witness PW3, was WPC 8260 Salanieta Biu, also of Valelevu Police Station. She was on duty at the Station on the morning in question and she received a report from the complainant relating to the incident. Later at Valelevu Police Station the complainant told her what the Accused did to her, that he came on top of her and was touching her.
20. At the close of the State's case, the Court found a case to answer for Counts 1 and 3 and he was acquitted on Count 2. He elected to give evidence under oath.

The evidence for the Accused

- The Accused testified that he had attended a function that evening and he was drinking kava, after which he had some beer and he thought to go and see his wife and children in Kalabu Housing.
22. He arrived at around 2 in the morning and he found the door unlocked. He entered the door and saw the babysitter lying down in the sitting room. He saw her asleep with the children in one of the bedrooms. And as he approached the door, she called his name.
 23. He entered and lay on her side and he apologised to her. As he apologised to her he tried to kiss her but she pushed him away and told him that what he did to her was wrong. He then told her in iTaukei that it is ok, that he is her husband and he just wanted to know whether she accepted his apology or not.
 24. He denied all of the allegations made against him, he only admitted that he attempted to kiss the complainant on the lips and to hug her to show her that he was sorry. He denied taking off her clothes nor that did he take off his own clothes.
 25. He maintained his evidence under cross examination.
 26. At the close of the defence case, the Court gave directions for written submissions, and the parties have also filed submissions.

Analysis

27. The Accused faces 1 count of Sexual Assault contrary to section 210 (1) (a) of the Crimes Act and 1 count of Rape contrary to section 207 (2) (b) of the Crimes Act 2009.

28. The relevant section provides as follows: -

“Sexual assaults

210 (1) A person commits an indictable offence (which is triable summarily) if he or she—
(a)unlawfully and indecently assaults another person; or

The offence of rape

(2) A person rapes another person if—

(b) the person penetrates the vulva, vagina or anus of the other person to any extent with a thing or a part of the person's body that is not a penis without the other person's consent;”

29. The State bears the burden of establishing beyond a reasonable doubt the following elements of the offence of Sexual Assault: -

- i. That on the 26th of September 2023, at Kalabu Housing, Nasinu
- ii. The Accused Apenisa Vasuinubu Vucago Hawea
- iii. Unlawfully and indecently assaulted Katherine Molia
- iv. By kissing her neck, mouth and neck

30. The State also bears the burden of establishing beyond a reasonable doubt the following elements of the offence of Rape: -

- i. That on the 26th of September 2023, at Kalabu Housing, Nasinu
- ii. The Accused Apenisa Vasuinubu Vucago Hawea
- iii. Unlawfully penetrated the vagina of Katherine Molia with his finger
- iv. Without her consent.

31. There is no dispute about the identity of the Accused and there is also no dispute that he was at the house that morning.

32. In his evidence he admitted that he wanted to talk to her, and he did come into the room. The complainant was clear in that he came on top of her and kissed her neck face and lips. She is clear that he did this without her consent, and he ignored her protests.

33. The Accused also admitted that he hugged her and tried to kiss her lips to demonstrate to her that he was sorry.

34. I find that the 1st count has been established beyond a reasonable doubt.

35. Regarding the 3rd count of digital rape, the only fact in dispute is whether Apenisa Vasuinubu Vucago Hawea unlawfully penetrated the vagina of Katherine Molia with his finger without her consent.


36. There are two different versions before the Court, the complainant's version and the total denial by the Accused. The first independent witness that the complainant talked to was PW3, WPC Salanieta of Valelevu Police Station. She did not tell her that she had been digitally raped, only that she had been sexually assaulted by the Accused.
37. This affects her credibility and leads to a reasonable doubt with respect to whether the Accused penetrated her or not. This doubt will be exercised in favour of the Accused and he is entitled to be acquitted on this count.

Apenisa Vasuinubu Vucago Hawea this is the verdict of the Court: -

1. For the 1st count of Sexual Assault, you are convicted as charged.
2. For the 2nd count of Sexual Assault, you are acquitted
3. For the 3rd count of Rape, you are acquitted.
- 4.

The Court will hear from you in mitigation for Count 1





Mr. Justice U. Ratuville
Puisne Judge

cc: Office of the Director of Public Prosecutions
Office of the Legal Aid Commission