

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

**Crim. Case No: HAC 150 of 2024**

**STATE**

**v**

**VAIONE TEGU**

**Counsel:** Mr. J. Singh & Ms. K. Dugan for the State  
Ms. O. Grace & Ms. S. Naidu for the Accused

**Date of Trial:** 19 – 22 May 2025

**Date of Closing submission:** 23 May 2025

**Date of Judgment:** 27 June 2025

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**JUDGMENT**

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**Caveat** – The alleged victim and PW2 shall herein be respectively referred to as **‘CLOE’** and **‘TAMMY’** pursuant to the Name Suppression Order.

1. **Vaione Tegu**, the accused, is indicted with the offence of *Rape*, laid out as follows in the Information by the Director of Public Prosecutions dated 19 June 2024 and filed on 20 June 2024:

*Statement of Offence*

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

*Particulars of Offence*

**VAIONE TEGU** on the 10<sup>th</sup> day of May 2024 at Nasinu, in the Central Division, penetrated the vagina of **CLOE** with his tongue, without her consent.

2. Vaione Tegu pleaded *not guilty* and tried for the aforesaid *Rape*, and this is the Court's judgment.

**Burden & Standard of proof**

3. 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 the indictment.

**Physical and fault elements of Rape**

4. *Rape* is contrary to section 207(1) & (2)(b) 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 –*

(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; ...*

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

206. *In this Part –*

(1) *The term “consent” means consent freely and voluntarily given by a person with the necessary mental capacity to give the consent, and the submission*

*without physical resistance by a person to an act of another person shall not alone constitute consent.*

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

*(a) by force; or*

*(b) by threat or intimidation; or*

*(c) by fear of bodily harm; or*

*(d) by exercise of authority; or*

*(e) by false and fraudulent representations about the nature or purpose of the act; or*

*(f) by a mistaken belief induced by the accused person that the accused person was the person's sexual partner.*

5. The physical and fault elements for *Rape*, in this instant, are:

- i) A person i.e. the accused Vaione Tegu;
- ii) Penetrated the complainant CLOE's vagina with his tongue;
- iii) Without the complainant's consent [ See ss. 206(1) - (2) ]; and
- iv) Did so intentionally and / or recklessly

[ i.e. fault element – see Crimes Act 2009, s.23(1) - (2); and Tukainiu v State [2017] FJCA 118; AAU0086.2013 (14 September 2017) at paragraphs 31 - 34 per Prematilaka, JA - *reckless.* ]

6. In Tukainiu v State (supra), at paragraphs 31 – 34, Prematilaka, JA held:

*[31] Therefore, since section 207(2)(a) (i.e. the law creating the offence of rape) does not specify a fault element for the physical element i.e. the act of penetration without the victim's consent (amounting to a circumstance), section 23(2) would become applicable and recklessness becomes the fault element for the physical element of rape. This is the same with section 207(2)(b) and 207(2)(c) as well, though not applicable in this case.*

*[32] Section 14 states inter alia that in order for a person to be found guilty of committing an offence the existence of the physical element and the require fault element in respect of that physical element must be proved (by the prosecution). Fault elements of an offence could be intention, knowledge, recklessness or negligence but the law creating the offence may specify any other fault element as well [vide section 18(1) and (2)]. Therefore, I conclude that the prosecution in a case of rape has to establish (a) carnal knowledge (i.e. penetration to any extent); (b) lack of consent on the part of the victim; and (c) recklessness on the part of the accused as defined in section 21(1).*

*[33] Section 21(1) states, ‘A person is reckless with respect to a circumstance of – (a) he or she is aware of a substantial risk that the circumstance exists or will exist; and (b) having regard to the circumstances known to him or her, it is unjustifiable to take the risk.’*

*[34] If recklessness is a fault element for a physical element of an offence, proof of intention, knowledge or recklessness will satisfy that fault element [vide section 21(4)]. Therefore, in a case of rape the fault element would be established if the prosecution proves intention, knowledge or recklessness as defined in sections 19, 20 or 21 respectively. The presence of any one of the three fault elements would be sufficient to prove the fault element of the offence of rape.*

### **Admitted Facts**

7. The **Admitted Facts** between the prosecution and defence dated 18 March 2025 are as follows:

- 1) The complainant’s name is suppressed subject to the name suppression order.
- 2) The accused’s name is Vaione Tegu [ hereinafter referred to as “Vaione” ].
- 3) The complainant and Vaione share a domestic relationship as he is her uncle.
- 4) On 10<sup>th</sup> May 2024, Vaione came to the complainant’s house to use the bathroom.

8. At trial on 19 – 22 May 2025, prosecution called 4 witnesses i.e. PW1: CLOE (Complainant), PW2: TAMMY, PW3: Tomu Vanika, and PW4: Meredani Tuivakaca, while the defence only called 1 witness, that is, DW1: Vaione Tegu, the accused, who gave sworn testimony.

9. Closing submission by both counsels was held on 23 May 2025, and this is the Court’s judgment.

### **PROSECUTION case via PW1, PW2, PW3 & PW4**

#### **PW1 – CLOE (Complainant) [ name suppressed ]**

10. **PW1 CLOE, the complainant, in examination-in-chief**, testified that she is 15 years old, date of birth 28/08/2008, and will be turning 16 in August 2025, lives in Narere with her mum Meredani, dad Tomu, sister and brother. PW1 stated that she attends Baulevu High School and

in Form 5. PW1 stated that she does not enjoy going to school because her marks dropped. PW1 stated that her mum works in Tamavua and her father works at the store. PW1 stated that she is not going to school at the moment, and hasn't been going to school since March 2024, as she always wakes up late. PW1 stated that when her parents go to work, all of them siblings stay at home, and the elder sibling looks after them, and she cleans the house. PW1 stated that in her free time she likes to wash clothes, and she cooks at home. PW1 stated that she likes cooking chicken curry and rice at home being taught by her mum. PW1 stated that at home she shares a close relationship with her elder brother Joseva. PW1 stated that she knows a person by the name of Vaione Tegu who is her in I-Taukei, "*Ta Lailai*" or uncle from her father's side of the family, and lives in Tailevu, married and has children. PW1 stated that she has known her Ta Lailai Vaione Tegu for a very short time, and her relationship with him was bad because in I-Taukei, "*E ca baleta o koya e vakasagai au va ca*" [ English translation – 'It's bad because he mistreated me'. ] PW1 stated that her Ta Lailai Vaione Tegu mistreated her last year i.e. 2024. PW1 stated that on 10 May 2024 her Ta Lailai Vaione Tegu came to her house, and those present at the house then were herself, her father and her sister's daughter Joana. PW1 stated that her father was at the garden at that time where he plants dalo and cassava and situated right below from the house. PW1 stated that when her Ta Lailai Vaione Tegu came to her house that day, it was only her and Joana who were present in the house, and she was doing in I-Taukei, "*Masimasi the dishes in the kitchen*" [ English translation – 'Cleaning or washing the dishes in the kitchen' ], while Joana was lying around in the sitting room. PW1 stated that her Ta Lailai Vaione Tegu knocked on the door, Joana opened the door, and while PW1 was in the kitchen her Ta Lailai Vaione Tegu came and asked her and Joana if he could use the toilet. PW1 stated that she said "yes" to her Ta Lailai Vaione Tegu, while she remained washing the dishes in the kitchen and Joana having tea. PW1 stated that after her Ta Lailai Vione Tegu came out of the toilet, he then shut her mouth and dragged her into the bathroom, and took of all her clothes, and at that time she wore a t-shirt, shorts, bra and panty. PW1 stated that her Ta Lailai Vaione Tegu took off all her clothes inside the bathroom, he then put her leg up on top of the timber, knelt down and started to lick up her "*vatu*". PW1 stated that a girl has the *vatu* located at the bottom and used for pee. Leave was then granted by the Court for PW1 to be shown 2 human like dolls. PW1 then indicated which doll is the female or girl doll, and stated that the female doll is wearing nothing, and a cloth on the doll's hair. PW1 then indicated which doll is the male or

boy doll, and stated that the male doll is wearing a black panty. PW1 then demonstrated via the female doll where her Ta Lailai blocked her mouth by placing the palm of her right hand on the area where the mouth and face of the female doll is located. PW1 stated that when her Ta Lailai had put his hand on her mouth, she wanted to scream out but couldn't, and at that time her Ta Lailai did not tell her anything. PW1 stated that when her Ta Lailai blocked her mouth and took her to the bathroom, Joana was peeping. PW1 stated that when her Ta Lailai took off her clothes and put her leg on a timber, she then demonstrated how high the timber was from the floor of the bathroom by pointing at a particular point on the witness box in the courtroom relative to the floor level to indicate the distance from the floor to that point on the witness box, which is approximately less than 1 meter and appears to be about 80 cm to 90 cm. PW1 stated that her Ta Lailai Vaione Tegu put her left leg up on the timber, knelt down and licked up. PW1 then demonstrated via the female doll to show how her Ta Lailai Vaione lifted her left leg and placed it on the timber by lifting or adjusting the left leg of the female doll at an angle of about 90 degrees, and the same was also shown to the defence counsels and Vaione Tegu. PW1 stated that her Ta Lailai Vaione Tegu knelt down, and demonstrated this by holding and facing the female and male dolls together, the female doll's left leg being raised as noted earlier, while the male doll is positioned in a manner showing the male doll kneeling and facing the female doll, which demonstration was also shown to the defence counsels and Vaione Tegu. PW1 stated that her Ta Lailai Vaione Tegu licked her *vatu*, which word '*vatu*' she learned from her maternal side from Naitasiri and taught by her mum. PW1 stated that when her Ta Lailai was licking her *vatu* in the bathroom, he did not say anything to her, and she did not say anything to him, but she told him not to do it, however he kept on doing it. PW1 stated that after that she came out, entered the room and got dressed, while her Ta Lailai came out and ran off. PW1 stated that she came out of the bathroom because her dad came into the house and heard him calling. PW1 stated that when she heard her dad calling, she was wearing a towel and came out of the bathroom, while her Ta Lailai Vaione Tegu put on the towel and ran with it. PW1 stated that when she went inside the room and her Ta Lailai ran off with the towel, her father went to drink water. PW1 stated that her father saw her at that point in time, and he then slapped her a few times, and did not tell her anything while slapping her. PW1 stated that her father slapped her because he saw her and her Ta Lailai. PW1 stated that she told her father about what had happened in the bathroom, and after that her father called her mum who was at work. PW1

stated that her mum came back from work at 5 o'clock, and she told her mum everything about her Ta Lailai, and the next morning they went to report the matter at Nasinu Police Station. PW1 stated that when her Ta Lailai had blocked her mouth and took her into the bathroom, Joana was peeping because of what they were doing in the bathroom, and she lied down and was peeping from the living room. PW1 stated that she understands the word 'peeping' in the I-Taukei language is '*vakairoiro*'.

11. In **cross-examination** by defence counsel Ms. Grace, PW1 stated that her house is made out of timber and corrugated iron. PW1 stated that as you enter the backdoor, there is the toilet, then the kitchen, and then the living room, and the bedrooms. PW1 stated that the bathroom has a door, a curtain hanging on the door. PW1 stated that her Ta Lailai does not come home some weekend to sleep, and last year he did not bring some tavioka to her home. PW1 stated that her other uncle Joji Vaniqa lives around that area. PW1 does not recall her Ta Lailai going to sleep at her uncle Joji Vaniqa's house last year. PW1 recalls that last year she was with Simran and Karawa's daughter before she met her Ta Lailai Vaione. PW1 stated that her, Simran and Karawa's daughter met her Ta Lailai Vaione somewhere near the canteen, where he was sleeping near the canteen at the shortcut. PW1 stated that when they him at that time, her Ta Lailai Vaione woke up and asked them about his phone, and thereafter they went to get his phone from Joji Vaniqa's wife who had had the phone. PW1 stated that after they got the phone, they together with her Ta Lailai Vaione went to her home for her Ta Lailai Vaione to use the bathroom. PW1 stated that she went home with Simran and Karawa's daughter, and when they got home, Joana was at home. PW1 stated that she uses Facebook and has a Facebook account, and uses her mother's phone to access Facebook. PW1 stated that she has blocked her Ta Lailai Vaione as friend on Facebook, and he was neither her friend on Facebook. PW1 stated that she does not send videos to her Ta Lailai Vaione via Messenger. PW1 stated that she does not send videos of herself naked to her Ta Lailai Vaione. PW1 stated that when they got home with her Ta Lailai Vaione for him to use the bathroom, he then went straight to the bathroom. PW1 stated that while her Ta Lailai was in the bathroom, Simran, Karawa's daughter and herself were in the sitting room. PW1 stated that whilst in the sitting room, she gave tea to Joana. PW1 stated that she did not enter the bathroom with her towel when her Ta Lailai was in the bathroom. PW1 stated that she did not enter the bathroom with her phone, and showed a video

of her naked to her Ta Lailai on her phone. PW1 stated that she did not take off her clothes. PW1 stated that her Ta Lailai did not tell her that he can't do anything to her because he is married and with children, and being her Ta Lailai or uncle. PW1 stated that she did not place the phone that she had on a timber in the bathroom when her Ta Lailai was in the bathroom. PW1 stated that she heard her father coming from the outside of the house, and she then exited the bathroom, and at the same time met her father as he entered the house. PW1 stated that when she saw her father, she then walked to her bedroom, and her father followed her to her bedroom. PW1 stated that her Ta Lailai always treats her and Joana well, but not like his daughters. PW1 did not agree with the suggestion that because her Ta Lailai Vaione treats her well, he would not shut her mouth with his hand. PW1 stated that her Ta Lailai dragged her on the day he came to her house to use the bathroom. PW1 stated that her Ta Lailai licked her *vatu* on the day he came to use the bathroom. PW1 stated that her Ta Lailai Vaione left the house when her father was talking to her in the room. PW1 stated that Simran, Karawa's daughter and Joana had left and were no longer in the sitting room at that moment. PW1 stated that when she came out of the bathroom, she only had her towel on.

12. PW1 was not re-examined by the prosecutor.

**PW2 – TAMMY [ name suppressed ]**

13. **PW2 TAMMY**, in **examination-in-chief**, testified that she is 2 years old, schooling and in class one at Narere, but does not know her teacher's name. PW1 stated that she lives in Narere with her mum Mere and dad Tata Mana, CLOE, Tubuna, Moni and Liti. PW2 stated that she likes going to school, she listens to her teacher, and knows what a lie is, which she learnt in Narere. PW2 stated that she knows what the truth is, and she learnt this in Narere, and it is good to always tell the truth, and it is good to lie. PW2 stated that the prosecutor had lied to her when told that the prosecutor was holding a chocolate when in fact PW2 identified what the prosecutor was holding as a pen rather than a chocolate. PW2 stated that the prosecutor was lying to her instead of telling her the truth when the prosecutor told her that she was standing when in fact she was sitting down. PW2 promised to tell the Court the truth. PW2 stated that she likes going to school and has friends in school. PW1 stated that her favourite colours are orange,

green, purple and white, and her favourite food is watermelon. PW2 stated that she lives in Narere and she knows CLOE. PW2 stated that she can tell the Court who CLOE is and said that “*T Tai kissed CLOE in the bathroom*”, and she saw T Tai kiss CLOE. PW2 stated that T Tai kissed CLOE on her *vatu*. Leave was then granted by the Court for PW2 to be shown the female doll. PW2 then held the female doll and pointed at the genital area of the same doll with her right finger to demonstrate where the so called *vatu* is located on CLOE who is being depicted by the female doll. PW2 confirmed that that is the part that T Tai kissed CLOE.

14. In **cross-examination** by defence counsel Ms. Naidu, PW2 stated that her house has a backdoor which leads to the bathroom and toilet, and beside which is the kitchen, and then the living room and bedroom. PW2 stated that CLOE has friends, and CLOE came home one day with Simran and Karawa’s daughter who CLOE’s friends. PW2 stated that when they came, she was with them in the sitting room, and CLOE then gave her tea. PW2 stated that after a while, she then saw CLOE come out of the bathroom wearing a towel. PW2 stated that she cannot see anything in the bathroom from the sitting room. PW2 stated in Taukei, “*O koya e kisiva non vatu*” [ English Translation – ‘He kissed her *vatu*’. ] in response to the defence counsel’s suggestion that she did not see T Tai kiss CLOE. PW2 stated that her father then came into the house, and CLOE was now in the room, and her father then went to talk to CLOE, while she remained in the sitting room with Simran and Karawa’s daughter. PW2 stated that she saw her father walk into CLOE’s room, and she could hear her father talking to CLOE in the room while she was in the sitting room, and she did not go anywhere else from the sitting room.

15. PW2 was not re-examined by the prosecutor.

### **PW3 – Tomu Vaniqa**

16. **PW3 Tomu Vaniqa**, in **examination-in-chief**, testified that he is employed as a security doing night shift for 3 years. PW3 stated that he is married with 4 children namely, Joseva 25 years old; Unaisi Sorova 24 years old; Jeke Malele 21 years old; and CLOE 17 years old. PW3 stated that he lives at Omkar, Narere, with his wife Meredani, Jeke Malele, Unaisi, CLOE and TAMMY his granddaughter. PW3 recalls 10 May 2024, and in the early morning after 8.00 am

of that date he went to his plantation, while CLOE and TAMMY were left at home. PW3 can't recall at what time he left his plantation. PW3 stated that when he went back home and entered the house, he saw TAMMY looking through a hole. PW3 stated that he then asked TAMMY as to what she was looking at, and she replied, "Taitai kissed CLOE". PW3 stated that soon after that he saw CLOE come out with the towel. PW3 stated in I-Taukei, "*Au rai ga yani kina matanikatuba au sa raici CLOE ni sa curu mai tuba main a katuba ni valenisili. Au a qai tukuna vei CLOE a cava e yaco*". [ English translation – 'I looked at the door and I saw CLOE coming out of the door of the bathroom. Then I said and asked CLOE as to what had happened.' ] PW3 stated the CLOE he saw is his child and PW3 also mentioned the full name which is suppressed. PW3 stated that CLOE was holding the towel to cover herself and come out of the bathroom. PW3 stated that when he asked CLOE as to what had happened, she did not reply to him. PW3 stated that he then saw Vaione come out too from the bathroom with the towel on. PW3 stated that CLOE and Vaione came out of the same door of the bathroom. PW3 stated that after Vaione came out of the bathroom with the towel on, he was shocked, and he then saw Vaione pick up his clothe and gumboot and ran off. PW3 stated that at time he was really shocked as to what he did to him, and stated in I-Taukei, "*Keirau veiwekani tikoga, qai cakava vei au o koya nai tovo ya, nai tovo vakasisila*". [ English translation – 'We are related, and he did this behaviour to me, this filthy and indecent behaviour.' ] PW3 stated that he found out that Vaione had done a filthy and indecent behaviour and said in I-Taukei, "*Ni'u raici rau beka I valenisili ni rau cakava nai tawelu e yagodrau me rau curu mai tuba.*". [ English translation – 'Maybe or perhaps because I saw them in the bathroom and putting on the towel on their bodies while exiting or coming out.' ] PW3 saw them exiting the bathroom. PW3 stated that he did not ask CLOE why they were exiting out of the bathroom, but waited for her mum to ask her. PW3 stated that after Vaione ran away from the house, he was shocked and did not know what to do, and waited for CLOE's mum to come home and ask her. PW3 stated that he did not ask CLOE anything at that point in time. PW3 stated that Vaione was only wearing a towel and no other clothing. PW3 stated that Vaione's mother is his dad's cousin, and so he is his cousin-brother. PW3 stated the term 'vatu' refers to in I-Taukei, "*Oya na keitou i cavuti*". [ English translation – 'That is our traditional totem.' ] PW3 stated that he hails from Delasui, Tailevu, and his ancestors use the term 'lewa vatu', which he does not know its meaning. PW3 stated that his family does not use the word 'vatu'.

17. In **cross-examination** by defence counsel Ms. Grace, PW3 stated that him and Vaione are related. PW3 stated that Vaione is a farmer and sells his product at Nausori market. PW3 stated that sometimes when Vaione comes to sell his produce, he comes to their house to sleep, and sometime he will bring cassava to his home. PW3 stated that as you enter the backdoor of his house, there is the bathroom and toilet, and next is the kitchen, and then the living room and bedroom. PW3 stated that the bathroom and toilet are together but in separate rooms. PW3 stated that the bathroom has a door and there is a curtain hanging in front of the bathroom doorway. PW3 stated that on that day when he got back, he met CLOE by the bathroom doorway, and CLOE had a towel around her. PW3 stated that when he saw CLOE, CLOE then went straight to the bedroom and he followed her. PW3 stated 'no' to the suggestion that when he turned, he saw Vaione getting dressed in the kitchen. PW3 stated that CLOE has friends by the name of Simran and Karalo's daughter who sometimes come to his home. PW3 stated 'yes' to the suggestion that when he walked in just before he saw CLOE wearing a towel, he assumed that something filthy had happened. PW3 stated that when he followed CLOE, he did not ask her anything. PW3 does not recall giving his statement to the police. PW3 stated that only his wife went to the police station. Leave was then granted by the Court for PW3 to be shown the handwritten version of his statement to the police. PW3 then identified his signature at the bottom of page 3 of the statement, and recalled giving his statement to the police. PW3 confirmed that earlier he said that when he followed CLOE to the room, he did not tell her anything. Line 25 to 27 of PW3's statement was then read out, 'I then questioned CLOE what happen, CLOE then replied, "Vaione vesuki au; vatarai au", which means, Vaione captured her then touch her indecently.', to which PW3 responded saying in I-Taukei, "*Au a tukuna vua, me waraki nona nana ga*". [ English Translation – 'I told her to wait for her mother.' ] PW3 stated that his daughter CLOE has access to a phone, and does not know whether she has a Facebook account. PW3 stated that he was not shown or being shown by someone of a nude picture of her daughter via phone. PW3 stated that if someone is seated in the sitting room, he or she cannot see the inside of the bathroom. PW3 stated that where he is staying is a squatter settlement, and the people know each other there, and his brother also live close by. PW3 stated 'yes' to the suggestion that he would protect his family and daughter. PW3 stated that when his wife arrived, he then asked her to ask CLOE as to what had happened.

18. In **re-examination** by the prosecutor, PW3 stated that he followed CLOE and told her to wait for her mother.

#### **PW4 – Meredani Tuivakaca**

19. **PW4 Meredani Tuivakaca**, in **examination-in-chief**, testified that she works as cleaner for the lawyer Mr. Khan, married, and has 4 children. PW4 stated that CLOE is her youngest daughter and she will be 16 years old in August 2025, born in Suva and her date of birth is 28/08/2008. PW4 stated that when CLOE was born, she was registered under PW4's name in Suva, and she has her birth certificate and would be able to recognize it if given the opportunity to see it again. Leave was then granted by the Court for PW4 to be shown a birth certificate. PW4 then confirmed that the birth certificate shown to her is that of her daughter CLOE and her name is also written in the same birth certificate. PW4 agreed to have CLOE's birth certificate tendered as prosecution exhibit duly marked prosecution exhibit 1 – [ **PE1** ]. PW4 stated that CLOE is currently not attending school, but did so previously from class 1 to 8, and when she sat for her exam her mark dropped, and stopped going to school last year i.e. 2024 when she was in class 8. PW4 stated that at home, her family always care and love each other, and speak in Fijian or I-Taukei, in the Naitasiri dialect. PW4 stated that she knows what the word 'vatu' mean, and it comes from her husband's side. PW4 stated that 'vatu' means in I-Taukei, "*Nai balebale ni 'vatu' sai koya na noda i yaya ira se tikina tabu*". [ English translation – 'The term 'vatu' in I-Taukei means the private part.' ] PW4 stated that 'private part' in I-Taukei is, "*Nai yaya sara ga o koya me vakayagataki*". [ English translation – 'The thing that is used.' ] PW4 stated that what she meant is girls 'private part'. PW4 stated in I-Taukei that the location of the girl's private part is, "*Magana*". [ English translation – 'Vagina.' ] located at the bottom, it is inside, and is used for, "*Era vakayagataka na tagane mera veicakavi kina se mera veicai kina na tagane kei na yalewa*". [ English translation – 'It is used by men to have sexual intercourse with a female.' ] PW4 stated that at home she uses the term 'vatu' is used to refer to the vagina or female private part, and likewise by her children, and taught to them by her husband. PW4 recalls 10 May 2024 and she was at work on that day, leaving home for work at 8 o'clock, while her husband, CLOE

and TAMMY remained in the house, and returned home from work after 7 in the evening. PW4 stated that when she arrived home, she met TAMMY her granddaughter who told her that Taitai kissed CLOE. PW4 stated that after hearing this, she then called both TAMMY and CLOE and asked them. PW4 stated that she asked CLOE then she told her that her Tata Lailai or uncle came home and wanted to go to the toilet, and after that she opened the door and he entered, then he went to the toilet, and after that CLOE went to wash the dishes on the sink, and while washing the dishes her Tata Lailai came and held her mouth tightly and dragged her to the bathroom. After that he then took off her clothes, then lifted her leg up, he knelt down and licked up her vagina. PW4 stated that CLOE is her child. PW4 stated that CLOE was crying when she was telling her the story. PW4 stated that after CLOE told her this information, she went to report the matter that same evening, and then said the next morning at the Nasinu Police Station.

20. In **cross-examination** by defence counsel Ms. Naidu, PW4 stated that CLOE's friends are Simran and Karalo's daughter. PW4 stated 'no' to the suggestion that on 10 May 2024 CLOE went to the store. PW4 stated that CLOE came home alone after returning from the store, and not with Simran and Karalo's daughter. PW4 stated that her bathroom has a door and a curtain drawn on top. PW4 stated that she has never been shown any nude pictures or video of her daughter CLOE on other peoples' phone. PW4 stated that she does not always discuss 'private part' with her children and family.

21. PW4 was not **re-examined** by the prosecutor.

22. After PW4's testimony, the prosecutor then closed the State's case, and defence counsel Ms. Grace indicated that there will be no submission of no case to answer, but opted that the accused Vaione Tegu testify under oath.

### **DEFENCE case via DW1**

#### **DW 1 – Vaione Tegu**

23. **DW1 Vaione Tegu**, in **examination-in-chief**, testified that he currently lives at Delasui village in Tailevu, a farmer, and not married. DW1 recalls 10 May 24. DW1 stated that on the morning of 10 May 2024, he was lying down at the driveway on the road, that is, the driveway down to Tomu. DW1 stated that he then woke up, and CLOE, Karalo's daughter and Simran were standing beside him, and he asked them about his phone as it was missing. DW1 stated that Simran then replied that they have taken the phone to Joji's wife, and then they followed each other to go and get his phone and return it to him. DW1 stated that he was standing when they gave him the phone, and then he followed them to Tomu's house. DW1 stated that when they reached Tomu's house, he then asked CLOE if he could use the bathroom, and she said yes, and he then asked her for a towel. DW1 stated that CLOE calls her Ta Lilai or uncle and knows her well because they are related, and at most times when he sells his produce he usually go to them during the weekend. DW1 stated that he talks with CLOE when he always go to her home, and when she talks to him then he replies. DW1 stated that they don't talk about anything, and when he is at home, when she offers him to drink tea, that is the time he replies to her. DW1 stated that on 10 May 2024, after he asked for a towel, he then went to use the bathroom, and while inside the bathroom, CLOE brought her phone and towel and played a video of herself and showed it to him and put it on top of the timber. DW1 stated that when she showed her the phone, she took off all her clothes, and he told her that he can't do anything because he is married. DW1 stated that after he told her that, CLOE then heard her father enter the backdoor. DW1 stated that when CLOE's father came in, she then tried to cover herself with the towel that she brought with her and then exited the bathroom. DW1 stated that that was not the first time he saw the video as they are friends on Facebook, and at times she would send him video of herself. DW1 stated that when CLOE covered herself with a towel and exited the bathroom, he then covered himself with the towel and also exited the bathroom then he met Tomu outside standing in the middle of the kitchen. DW1 stated that at that time CLOE went straight to her bedroom after exiting the bathroom. DW1 stated that he did not do anything to CLOE in the bathroom. DW1 stated that he did not lick CLOE's vatu. DW1 stated that he did not kiss CLOE in the bathroom. DW1 stated that Tomu turned to him and questioned him as to what did he do, and he replied that he used his bathroom. DW1 stated that there was no one else present in the house when he saw Tomu. DW1 stated that Simran and Karalo's daughter went out and left, while CLOE and TAMMY were there. DW1 stated that when he exited the bathroom, TAMMY

was sitting in the sitting room with a cup of tea. DW1 stated that after Tomu asked him as to what did he do, Tomu then followed CLOE into the bedroom, then DW1 put on his clothes inside the kitchen, went outside to put on his white gumboot and went straight to the village. DW1 stated that in the bathroom CLOE showed him the video of herself removing her clothes and playing with herself on her female private part. DW1 stated that h wants to inform the Court today that he is helping out at home looking after his parents who are both sick including his children who are still schooling.

24. In **cross-examination** by the prosecutor, DW1 stated that he is CLOE's uncle and CLOE's father's cousin-brother. DW1 stated that he has known CLOE from the time she was born and they have a good relationship, and she respects him being her uncle. DW1 stated 'no' to the suggestion that CLOE would do what he asks of her. DW1 stated that he would go to CLOE's home every now and then, and they would talk to each other, respect her, and when she only talks to him, he then replies, and so would not talk to CLOE that often. DW1 stated that CLOE is his friend on Facebook and she would send him videos. DW1 stated that they were friends on Facebook account, and she continued sending him videos, but did not do anything and deleted the videos from his Messenger because his children usually take his phone and use it. DW1 stated 'yes' to the proposition that he did not tell anybody about CLOE sending him videos. DW1 stated that CLOE sent hi videos a lot of time, and he deleted it. DW1 stated 'yes' to the proposition that despite receiving the videos from CLOE on numerous occasions, he chose not to tell anybody about it. DW1 agreed that him being CLOE's uncle, he had a duty to inform her parents or any elder in the family of the videos CLOE was sending to him, but despite such duty, he did not tell anyone about those videos. DW1 stated that CLOE sent the videos to him and his other friends in response to the suggestion that CLOE never sent him any videos of such nature and that is why he did not tell anyone. DW1 agreed that he was interviewed by the police, and did not tell the police that CLOE sent him videos when given the opportunity to say something about the complaint by CLOE. DW1 agreed that it would be proper to tell the police that CLOE sent him videos, but he did not tell that to the police. DW1 stated that he did not inform the police because he was scared as this is the first for him to go through this case because he did not know how it was going because they were both naked in the bathroom, that is why he was scared to inform the police, in response to the suggestion that CLOE never sent

him the videos at any point in time, that is why he did not tell the police when they questioned him. DW1 stated that it was right to tell the police of the videos having being alleged of raping CLOE. DW1 stated 'no' in response to the proposition that he is lying to the Court and about CLOE sending him videos. DW1 agreed that on 10 May 2024 he was at CLOE's house. DW1 stated that prior to going to CLOE's house, he drank the night time and slept on the driveway. DW1 stated that after they finished drinking kava from one of his sisters then he met few of his friends on the road, and they drank together that night. DW1 stated that his sister's name is [ name suppressed ] and she lives in Omkar, Narere. DW1 stated that he reached his sister's house at about 6 to 7 o'clock in the evening. DW1 stated he drank grog with his sister [ name suppressed ], his brother Laulaba Pio and wife. DW1 stated that the grog finished around 12 midnight, and he was drinking grog from 6.00 pm to 7.00 pm to 12.00 am / midnight. DW1 stated that he met those boys at the road close to the driveway where he was sleeping. DW1 stated that the 3 of them drank alcohol on the road. DW1 stated that he couldn't recall their names, and all he knows is that they are from that place. DW1 stated that a female friend who stays around there bought the alcohol. DW1 stated that there was a female drinking with him that night. DW1 stated that he can't recall the time that he slept on the driveway, and then he woke up around 10 to 11 in the morning. DW1 stated that he slept on that driveway all throughout the night and woke up at around 10.00 to 11.00 am in the morning. DW1 agreed with the suggestion that after he woke up, he went to CLOE's house to go and have a bath. DW1 stated 'no' to the proposition that when he arrived at CLOE's house, only CLOE and TAMMY were at the house. DW1 stated 'yes' to the proposition that Tomu had gone to the farm and the mother had gone to work. DW1 stated 'no' to the proposition that when he arrived at the house, CLOE was washing the dishes when he then asked for the towel. DW1 stated 'yes' to the proposition that TAMMY was in the sitting room. DW1 stated 'yes' to the proposition that he then took a towel and went to the bathroom. DW1 stated 'no' to the proposition that after a while, he came and covered CLOE's mouth and dragged her to the bathroom. DW1 stated 'no' to the suggestion that he covered CLOE's mouth and dragged her into the bathroom. DW1 stated 'yes' to the proposition that his version of the event is that he was in the bathroom having a shower, and whilst in the bathroom then CLOE brought the phone and showed him a video and put the phone on the timber, and then she took off all her clothes, and he told her "I can't because I am married". DW1 stated that he was having a bath when CLOE entered the

bathroom, and the bathroom door was not locked, but a curtain was hanging there. DW1 stated that the bathroom has a half-door with the curtain hanging to cover it, and he locked that half-door by pulling the door and put down the curtain. DW1 stated that he did not do anything to CLOE when she entered the bathroom, but put on his towel, and she took off all her clothes and put the phone on top of the timber. DW1 stated that he was scared when he saw CLOE take off her clothes inside the bathroom, and at the same time she took off her clothes, her father also entered from the backdoor of the house. DW1 stated that CLOE was in the bathroom with him before her father entered the house for not more than 30 seconds. DW1 stated 'yes' to the proposition that during those 30 seconds, he said that CLOE entered the bathroom, took off her clothes and placed the phone with the video on the timber. DW1 stated 'yes' to the proposition that being the adult at that point in time, he should have chased CLOE away from inside the bathroom, but did not do so. DW1 stated that he did not tell CLOE's father about what CLOE did to him inside the bathroom, when her father walked into the house. DW1 agreed that it was his duty to tell CLOE's father of what she did in the bathroom. DW1 stated that he only told CLOE's father that he only used his bathroom. DW1 did not agree with the proposition that when CLOE's father entered the house, he ran out of the bathroom, and along the corridor and then outside the house. DW1 agreed with the proposition that when he came out of the bathroom, he only his towel on and not wearing any other clothing. DW1 stated 'no' to the proposition that he could not wear his clothing because he ran out of the house. DW1 stated that he did not leave the house without wearing anything, however, when he came out from the bathroom, he was wearing a towel, then he went to the kitchen and put on his pants and t-shirt, and then went outside to wear his white gumboot, and then walked straight to the village. DW1 stated that he did not tell the police that CLOE came into the bathroom, undressed herself, and showed him the video about her. DW1 stated that he was scared to tell the police as he has mentioned this is the first time for him to go through this case. DW1 stated 'no' to the suggestion that the reason why he did not tell the police because CLOE did not enter the bathroom, undress herself, and showed him the video. DW1 stated 'no' to the suggestion that he saw CLOE alone on that day, dragged her into the bathroom, took off her clothes, and put one leg on the timber, and licked her vagina.

25. Defence counsel did not **re-examine** DW1.

26. Defence then closed its case, both counsels then made closing submissions, and this is the Courts judgment on the offence of *Rape* in the indictment.

**ANALYSIS of the prosecution vis-à-vis defence evidence**

27. The physical and fault elements for *Rape* are:

- (i) A person i.e. the accused Vaione Tegu;
- (ii) Penetrated the complainant CLOE's vagina with his tongue;
- (iii) Without the complainant's consent [ See ss. 206(1) - (2) ]; and
- (iv) Did so intentionally and / or recklessly

28. Having carefully scrutinized the entire evidence, I find as follows:

- a) The identification and identity of the accused Vaione Tegu is well substantiated and established.
- b) Vaione Tegu is the complainant CLOE's (PW1) uncle, and on Friday 10 May 2024, Vaione Tegu went to CLOE's house to use the bathroom, as per the Agreed Facts dated 18.03.2025.
- c) PW1 CLOE (complainant) testified that while she was washing the dishes in the kitchen, her Ta Lailai Vaione Tegu came out of the toilet, then approached her and shut her mouth and dragged her into the bathroom, and took off all her clothes, and at that time she wore a t-shirt, shorts, bra and panty. PW1 testified that her Ta Lailai Vaione Tegu took off all her clothes inside the bathroom, he then put her leg up on top of the timber, knelt down and started to lick up her "*vatu*" or vagina.
- d) PW2 TAMMY testified that she saw Vaione Tegu kiss CLOE on her *vatu* or vagina.
- e) In State v Semisi Ravusou HAC 173 of 2020, at paragraph 21, Aluthge J held:

21. Accordingly, I come to the conclusion that the licking or oral stimulation of the vulva or the parts of the female external genitalia including mons pubis (Cunnilingus) amounts to penetration in terms of Section 207(1) and 2(b) of the Crimes Act. This finding I suppose is in conformity with the intention of the Legislature I have already adverted to. Otherwise a heavy burden shall have been imposed on the prosecution to prove a charge of Rape, perhaps without medical evidence, it will be next to impossible in a case where the complaint is unsure as to which part exactly of her genitalia that was actually penetrated. Harry (*supra*) is one of them confronted by Kulatunga J.

- f) Having carefully considered Justice Aluthge's reasoning in State v Semisi Ravusou (*supra*), I concur with such rationale and hold that, as a matter of law and fact, Vaione Tegu licking PW1's *vatu* or vagina amounts to penetration in terms of section 207(1) and 2(b) of the Crimes Act 2009.
- g) PW1 CLOE, the complainant, is a credible, reliable and truthful witness, and her demeanour while testifying has enhanced the credibility and reliability of her account. Thus, I attach immense weight to her account, believe and accept it as proving *beyond reasonable doubt* that on 10 May 2024, Vaione Tegu raped PW1 by licking PW1's vagina with his tongue, thus penetrated PW1's vagina with his tongue in accordance with State v Semisi Ravusou (*supra*) per Aluthge J.
- h) PW2 TAMMY is also a credible, reliable and truthful witness whose account directly supports PW1's account. PW2's demeanour at trial has also enhanced the credibility and reliability of her account, and I therefore attach considerable weight to her account, which account corroborates PW1's testimony.
- i) PW1's testimony held together with that of PW2, PW3 and PW4 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.*

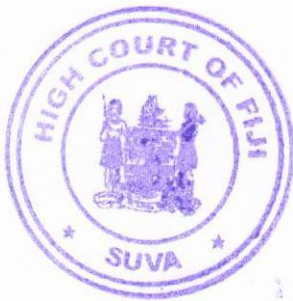
- j) I reject the account given by DW1 Vaione Tegu, and hold that he is not a credible and reliable witness, and I attach less weight to his testimony, which weight of evidence is heavily outweighed by the testimonies of PW1 held in conjunction with PW2, PW3 and PW4.
- k) Given a) – j) above, I accept and believe the testimonies of PW1, PW2, PW3 and PW4 as being credible, reliable and truthful, and concurrently reject that of DW1 Vaione Tegu.

### **CONCLUSION**

29. Based on the rationale stated above, I therefore find that the prosecution has proved *beyond reasonable doubt* that **Vaione Tegu** is indeed **guilty** of the charge of *Rape* in the Information by the Director of Public Prosecutions, and I **convict** him accordingly of the aforesaid indictment.

30. Bail is hereby revoked, and Vaione Tegu is therefore remanded in custody to await sentencing.

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



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

### **At Suva**

27 June 2025

### **Solicitors**

Office of the Director of Public Prosecutions for the State.

Legal Aid Commission for the Accused