

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

**CRIMINAL CASE NO: HAC 168 OF 2023**

**STATE**

**-v-**

**RATU ORISI SERU**

**Counsel** : Ms. P. Ram for the State  
: Ms. Dean, A for the Accused

**Date of Trial** : 29 October, 2024  
**Closing Submissions** : 11 November, 2024 and 24 March, 2025  
**Date of Judgment** : 14<sup>th</sup> July, 2025

**JUDGMENT**

**[The name of the complainant will be suppressed and referred to as “LV”. Her mother’s name will be referred to as “SS”].**

1. On the date of trial, 29<sup>th</sup> October, 2024, the State filed an Amended Information reducing the offences from one count of Sexual Assault contrary to section 210(1)(a) of the Crimes Act, 2009 and two counts of Rape contrary to 207(1) and 2(b) of the Crimes Act, 2009 to only one count of Defilement of Young Person between 13 and 16 years of age contrary to section 215(1) of the Crimes Act, 2009.
2. The particulars of the offence reads, *“RATU ORISI SERU on the 9<sup>th</sup> day of September 2022, at Sawaieke Village, Gau, Lomaiviti, in the Eastern Division, had carnal knowledge of “LV” a young person above the age of 13 years and under the age of 16 years.”*
3. The Amended Information was read to the Accused and after confirming that he understood same, pleaded not guilty.

**Admitted Facts**

4. THE FOLLOWING ARE AGREED FACTS BETWEEN THE PROSECUTION AND THE DEFENCE UNDER THE PROVISIONS OF SECTION 135 OF THE CRIMINAL PROCEDURE ACT 2009.

### **IT IS AGREED THAT:**

5. The accused in this matter is Ratu Seru Orisi [herein referred to as "Mr Seru"], 23 years old, born on 13 March 2000, Farmer of Sawaieke Village, Gau Island.
6. The complainant in this matter is LV [herein referred to as "complainant"], 15 years old, born on 16 March 2007, student of Sawaieke Village, Gau Island.

**The complainant's birth certificate is tendered by way of consent of both the parties, it can be marked as Prosecution Exhibit 1 [PE1].**

7. Mr Seru and the complainant reside in the same village. Mr Seru is the complainant's nephew and therefore they are known to each other.
8. That Mr Seru is known to Ms Temalesi Laulotu [herein referred to "Ms. Laulotu"], 18 years old of Sawaieke Village, Gau Island.

### **INCIDENT**

9. On 09 September 2022, Mr Seru touched the complainant's breast and thereafter touched her vagina with his fingers.
10. That Mr. Seru and the complainant had sexual intercourse, that is, penile penetration of the complainant's vagina.

### **ISSUE:**

11. Whether the sexual intercourse that occurred on 09 September 2022 was consensual or not?

### **Prosecution Case**

12. During the trial, the Prosecution called two witnesses. PW1- LV, the complainant states that she lives at Sawaieke village, Gau with her parents and siblings. She has lived there since birth. The accused is her nephew and she has known him since she was young. She is related to the accused through her maternal side. The Accused's father would call her mother 'aunt'.
13. In 2022, she was a third former at Gau Secondary School. Prior to attending Gau Secondary School, she was at Sawaieke Primary School.
14. PW1 further states that on 9 September, 2022, she attended a church service at her village. She accompanied her cousin Tema and a friend by the name of Wame to the service which started at 7pm and finished at 9pm. After the church service, she joined her cousin Tema and friend Wame for a Kava session which was held at her uncle

Tuiyana's place in the village. She met the accused when they went to drink kava. That was not the first time, she met the accused as they both live in the same village.

15. After the kava session, she had sexual intercourse with the Accused at her uncle's house. She further states that the accused is older than her by 8 years. She also states that the accused has siblings by the names of Asaeli, Fereti (19 years old), Dikula (15 years old) and Tuvili. Asaeli is older than her, however, he is younger than the accused. The accused is the eldest in his family.
16. In 2022, the accused was a farmer. She would meet the accused everyday. That year she would travel to school in a truck. She wears a uniform to school. Her date of birth is 16 March, 2007. In September, 2022 she was 15 years old.
17. She also states that after she had sexual intercourse with the accused, her menstruation stopped and she was pregnant. Her mother noticed that she was pregnant in January, 2023.
18. Her child was delivered on 15 May, 2023. When she had sexual intercourse with the accused she was still attending school. She had not disclosed to the accused anything about her school.
19. During cross examination she confirmed that in 2022 she was attending Gau Secondary School. She also resides at Sawaieke village and she knows the accused. However, she was not aware of the accused age. The accused was aware that she attends Gau Secondary School and a third former. Accused knew that information because they are related to each other. She later states that she does not know if the accused knew of her age.
20. In re-examination she states that accused is the eldest child in his family. She has known the accused since she was a child.
21. PW2 – "SS" states that the complainant is her daughter. In 2022, her daughter was living with her cousin who is related to the accused. She was residing at Suva then. The distance from her cousin's house to the accused house would be like from the Court room to Suvavou House. During that year, her daughter was attending school. The latter would travel to school from her cousin's house.
22. It was around Christmas of 2022 that she returned from Suva. A woman from the village informed her that it was suspected that her daughter is pregnant. She enquired from her daughter and she denied being pregnant. She took her daughter to the Qarani and a doctor confirmed that her daughter was indeed pregnant. She then reported the matter to Police.
23. Her daughter gave birth to a child in June, 2023. She is sure of the month, her daughter gave birth to her child. She further states that her daughter LV was born at the Colonial

War Memorial Hospital but was raised in the village. When LV was born, the accused was already in Primary School.

24. No cross examination and re-examination.
25. Prosecution closed its case. No application from the Defence Counsel.
26. [The Court ruled that after listening attentively to evidence of the two Prosecution witnesses and bearing in mind section 231(1) and (2) of the Criminal Procedure Act, 2009 there is a prima facie case against the accused. The Court provided the accused with his rights and he opted to exercise his rights to remain silent.

### **Law**

27. Section 215 (1) and (2) of the Crimes Act, 2009 states;

*“215. (1) A person commits a summary offence if he or she unlawfully and carnally knows or attempts to have unlawful carnal knowledge of any person being of or above the age of 13 years and under the age of 16 years.*

*Penalty – Imprisonment for 10 years.*

*(2) It shall be sufficient defence to any charge under sub-section (1) if it shall be made to appear to the court that the person charged had reasonable cause to believe, and did in fact believe, that the person was of or above the age of 16...”*

### **Elements of the offence – Defilement**

28. For the accused to be found guilty of "**defiling a girl between the age of 13 and 16 years**", the prosecution must prove beyond reasonable doubt, the following elements:
  - (i) the accused
  - (ii) unlawfully
  - (iii) had sexual intercourse
  - (iv) with the female complainant
  - (v) who was or above 13 years and under 16 years.
29. "Sexual intercourse" has the same meaning as that ascribed for the offence of "rape". The sexual intercourse must be performed by the accused on the female complainant, who must be aged between 13 and 16 years old. The female complainant consenting to sexual intercourse with the accused, is no defence to the accused. The law was put there to protect young girls between 13 and 16 years old, from been "preyed upon" by men. In other words, the consent issue is totally irrelevant, in a defilement charge. The girl's consent does not protect a man from being prosecuted, for defiling them.

30. However, it is a defence to the offence of defilement, if:

- (i) it shall be made to appear to the court
- (ii) that the accused
- (iii) had reasonable cause to believe
- (iv) and did in fact believe
- (v) that the girl
- (vi) was of or above the age of 16 years old.

### **Analysis**

31. In this case, the act of sexual intercourse between the accused and the female complainant at the material time, were not disputed by the parties.

32. The defence to the offence of defilement cannot succeed as the accused is related to the complainant, they live in the same village and he is aware that she was in form 3 (at the time of the offending) attending Gau Secondary School. The complainant was also raised in the village.


33. [Furthermore, the complainant's birth certificate (Prosecution Exhibit No. 1) indicates that the complainant was born on 16 March, 2007. She would have been 15 years and 4 months at the time of the offence (9 September, 2022).

### **Conclusion**

34. I am satisfied beyond reasonable doubt that the Accused, Ratu Orisi Seru committed the offence of Defilement of Young Person between 13 and 16 years of age against the Complainant pursuant to section 215(1) of the Crimes Act, 2009. He is guilty as charged and convicted accordingly.

35. That is the Judgment of this Court.



  
Waleen M George  
Acting Puisne Judge  
**HIGH COURT OF FIJI**

At Suva this 14<sup>th</sup> July, 2025.

**Solicitors:** Office of the Director of Public Prosecutions, Suva  
Legal Aid Commission, Suva

