

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 50 of 2024

STATE

-v-

FILIPO TUOCA

Counsel: Ms. E. Thaggard for the State
Mr. S. Raramasi for the Accused

Date of Trial: 23 - 25 June

Date of Judgment: 12 August 2025

JUDGMENT

1. Mr. Filippo Tuoca (“the accused”) is charged with four counts:
 - (i) A representative count of Indecent Assault, contrary to section 212 (1) of the Crimes Act 2009, the particulars being that, on unknown dates between 1 January 2020 to 31 December 2021, at Seaqaqa in the Northern Division, he unlawfully and indecently assaulted the complainant by touching her clothed breast (count 1);
 - (ii) A representative count of Rape, contrary to section 207 (1) and (2) (a) and (3) of the Crimes Act 2009, the particulars being that, on unknown dates between 1 January 2021 and 31 December 2021 at Seaqaqa in the

Northern Division, he penetrated the complainant's vagina with his penis, the complainant being a child under the age of 13 years (count 2);

- (iii) A representative count of Rape, contrary to section 207 (1) and (2)(a) of the Crimes Act 2009, the particulars being that, on unknown dates between 1 January 2022 and 31 December 2022 at Seaqaqa in the Northern Division, he penetrated the complainant's vagina with his penis without her consent (count 3);
- (iv) A representative count of Rape, contrary to section 207 (1) and (2)(a) of the Crimes Act 2009, the particulars being that, on unknown dates between 1 January 2023 and 31 December 2023 at Seaqaqa in the Northern Division, he penetrated the complainant's vagina with his penis without her consent (count 4).

The prosecution case in outline

- 2. The prosecution relies solely on the complainant's sworn testimony. She was born on 6 November 2008, and 16 years of age at trial.
- 3. When she was in class 5, aged 10 years, her mother had entered into a *de facto* relationship with the accused. The complainant was attending boarding school, and would return to stay with her mother and the accused at Nakavika village at the weekends. She slept in the same bedroom as her parents. Her mother went to sell produce at Labasa Market on most Fridays, and would return home on Saturday afternoon.
- 4. The accused started touching her breasts over her clothes when she was in class 6, in 2020. This happened when her mother was away at market and she was home alone with him. He raped her many times during the period 2021 to 2023, when she was home alone with him, by forcefully removing her shorts and underwear, and penetrating her vagina with his penis. She tried to push him away, but he was stronger than her, and he did not listen when she asked him to stop.

5. In 2024, the Assistant Principal suspected that the complainant was pregnant. She gave birth to the accused's daughter on 17 June 2024.

The defence case in outline

6. The complainant is a liar. The accused never indecently assaulted her or raped her. He is not the father of her baby daughter.

Prosecution evidence

7. The complainant testified that she was 10 years of age when her mother entered into a relationship with the accused. She was a boarding student in primary school. She would return home every Friday, and return to school on Sunday afternoon. On Fridays, her mum would normally be selling produce at Labasa Market, and she would return home on Saturday afternoon. When she got home from school on Fridays, her step-father would usually be at home.
8. The complainant testified that, when she was in Class 6, the accused used to touch her breasts on top of her clothes. He always told her not to tell anyone.
9. When she was in Class 7, she was doing her homework on her mattress inside the bedroom she shared with her parents when the accused pulled her hard and pushed her down on her mum's mattress. He then took off her pants and panty. She tried to pull up her pants, but he pulled them back down. She told him not to do it. After removing her pants and panty, he put his penis into her vagina. She was scared of the accused because he was stronger than her. He first started doing this when she was 12 years old. She can't recall how many times he did this, but it was every Friday.
10. The accused did the same thing to her when she was in Class 8. He put his penis into her vagina every Friday when her mum was at Labasa Market. She would always push him away and say that she did not want it. She was scared of him because he was much stronger than her. He told her not to tell anyone.
11. When she was in Form 3 at Seaqaqa Central College, the complainant stayed with her grandparents at Tikilo, about an hour's drive from her parent's home. She

used to spend some weekends at her mother's home to attend religious lessons. She would arrive on Fridays. When her mum was not around, the accused would pull her hands hard and push her on the mattress. He would take off her pants and panty. She tried to push him away and told him not to do it, but he didn't listen. He told her not to tell anyone. She was scared.

12. She never told anyone what the accused did to her. She did not tell her mum because her mum would not believe her. She did not tell her aunty because they were not close at that time. She was ashamed to tell anyone. The matter came to light when she was found to be pregnant. She can say that the accused is the father of her child, and no one else, because it was only him that did that to her.
13. The complainant now lives in Nakavika with her aunty. Her mum lives in Lakeba with the accused. They have lived together in Lakeba since the accused was bailed.
14. In cross-examination, the complainant said that she did not have a DNA report with her to prove that the accused is the father of her baby. When it was put to her that the accused is not the father of her child, the complainant maintained that he is the father.
15. The complainant accepted that she had mentioned to the examining doctor two names of men she had sex with. She explained that she did so because the accused told her not to mention his name as the one who impregnated her, but to give another name. He scared her not to tell anyone.
16. The complainant accepted that she was medically examined on 28 March 2024, the same day the matter was reported to the police. When it was put to her that she did not tell the doctor, or anyone else, about being raped by the accused because it never happened, the complainant replied that it happened.
17. When it was put to the complainant that she did not tell her teacher, or anyone else, about the accused touching her breasts in 2020 because it never happened, the complainant answered that he had scared her not to tell anyone.

Defence Evidence

18. I ruled against the defence half-time submission, and the accused elected to give evidence in his case.
19. He testified that he is 39 years of age, and earns his living from fishing and farming. He has been in a *de facto* relationship with the complainant's mother since 2018. The complainant was 9 years old at that time. His relationship with his wife's two daughters was all good.
20. When the complainant returned from boarding school on Fridays, his wife's sister and younger daughter would be at home. He was also there.
21. The accused denied ever touching the complainant's breasts in 2020. He denied ever penetrating the complainant's vagina with his penis during the period 2021 to 2023. The complainant's evidence is not true.
22. In cross-examination, the accused confirmed that he is still in a *de facto* relationship with the complainant's mother. Her usual place of residence is in Lakeba village with him.
23. When it was put to the accused that he was lying about not indecently assaulting and raping the complainant, he maintained that he really did not do anything. He also denied telling her not to tell anyone.
24. The accused denied that he made the complainant pregnant. He said that he did not tell her not to reveal that he was the father of her unborn baby.
25. The accused maintained that his relationship with his wife's daughters was all good.

Closing submissions

26. The prosecution submit that the complainant's testimony remained intact after cross-examination. She is a credible and reliable witness.
27. The defence case ought to be rejected. There was no suggestion that the complainant had a motive to lie.

28. Ms. Thaggard reminds the Court that no corroboration of the complainant's evidence is necessary. She argues that the Court must not draw any inferences against the prosecution flowing from the absence of corroborative evidence, such as recent complaint and DNA evidence.
29. Ms. Thaggard acknowledges that the accused had voluntarily provided a DNA sample for testing, but no testing was, in fact, done. She argues that, even if DNA results excluded the accused as the father of her baby, that would not disprove that the complainant was raped by the accused.
30. Ms. Thaggard cites the well-known jurisprudence on delayed reporting and argues that the complainant provided reasonable explanations for never having reported her abuse to anyone prior to the discovery of her pregnancy. She makes the point that, even now, the complainant's mother continues to support the accused.
31. In his comprehensive written submissions, the late Mr. Raramasi, who sadly passed away shortly after closing speeches, submits that the complainant's failure to report to anyone *"is a vital issue to prove that she did not like what the accused had done to her."*
32. It is submitted that the accused's denials were unshaken in cross-examination.
33. Reliance is placed on the absence of any medical report proving that the accused had sexual intercourse with the complainant, and the absence of any DNA report proving the accused's paternity of the complainant's baby.
34. In conclusion, it is submitted that the accused's testimony, and the absence of proof that he is the father of the complainant's child, creates a reasonable doubt whether he is guilty as charged.

Self-Directions/Warnings

35. 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.

36. I remind myself that if the accused's denials are, or may be, true, I must find him not guilty. Even if I reject the accused's evidence, I must not find him guilty unless the prosecution has made me sure of his guilt.
37. Since the prosecution has placed reliance on the absence of any motive for the complainant to lie, I warn myself that the accused bears no onus to prove a motive to lie. A motive to lie or be untruthful may substantially affect the assessment of the credibility of a witness, but it would be wrong 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.
38. In this case, the defence has placed heavy reliance on the fact that the complainant never complained to anyone about the alleged prolonged sexual abuse by the accused. I therefore warn myself that there may be many reasons why a complainant of a sexual offence might not immediately make a complaint, whether to family, teachers, friends or others. There can also be understandable reasons why someone does not involve the Police straight away, including a fear of the process that may follow and the impact it may have on their relationships, including with the accused. Research shows that complainants of sexual offences react in different ways. Some complain close in time to the alleged offending. Others do not. This can be because of shame, shock, confusion or fear of getting into trouble, not being believed, causing problems for other people, or because of a fear about the process that may follow. Importantly, there is no such thing as a "typical" response. Different people react to situations in different ways. A complaint made some time after the alleged offending does not of itself mean the complaint was untrue, just as an early complaint does not of itself mean it was true. This does not necessarily mean, however, that the amount of time taken to make a complaint is never relevant or cannot be relevant. That is a matter for me to judge on the facts of this case.

39. The defence also rely on the absence of certain evidence that one may have expected the prosecution to adduce. I remind myself that if evidence that might have been obtained and put before the Court is not here, it can have no bearing on the case one way or the other. The only thing that matters is the evidence that I do have. If that evidence is enough to prove guilt beyond reasonable doubt I must find the accused guilty, and if it is not enough, then I must find the accused not guilty.

Analysis and resolution

40. The issue I must determine boils down to whether I am sure that the complainant is a truthful and reliable witness whose evidence, considered separately in connection with each count, makes me sure that the accused is guilty as charged. Also, I must be sure that the accused's denials are untrue.
41. It is convenient to begin with the common ground that the complainant never complained about any sexual abuse by the accused, her step-father, prior to the discovery of her pregnancy. I am not in the least bit troubled by that. The relevant context is that the complainant was a vulnerable young child when the abuse allegedly began. The accused was much older, and in a position of authority. I accept her evidence that the accused told her not to tell anyone what he was doing to her. I can well understand that she felt ashamed to tell anyone what was happening to her. Also, her sense that her mother would not believe her has been borne out by subsequent events. As is sadly all too often the case, the complainant's mother has sided with her alleged abuser.
42. The late reporting does not cause me to doubt the complainant's credibility or the truth of her testimony.
43. There was nothing in particular about the manner in which the accused gave his evidence that causes me to doubt his denials. Then again, research and experience tell us that the way in which a witness gives evidence is not a good measure of whether the person is telling the truth or not.

44. In oath against oath cases such as this, it can be difficult to articulate why one account is accepted and the other rejected.
45. My starting point is to consider whether the complainant's evidence is plausible. Could her account of prolonged sexual abuse in her own home be true? Plainly, it could be true. Whilst the accused has pointed to the presence of others at home, including the complainant's aunt, it cannot realistically be argued that the accused did not have the opportunity to conduct a campaign of rape against the complainant. It is not disputed that she returned home on Fridays, and shared a bedroom with the accused whilst her mother was away at Labasa Market.
46. I find the complainant to be an honest and reliable witness. She gave evidence in a calm and measured way. She was clear and coherent in her recollection. Her descriptions of what the accused did to her were unembellished and plausible. She was not shaken in cross-examination. I am sure that her evidence about what the accused did to her over a period of 3 years is true.
47. It follows that I am sure that the accused's denials are untrue, and I reject them.
48. I accept the complainant's evidence that the accused indecently assaulted her in 2020, on more than one occasion, by touching her clothed breasts. I find that such touching was unlawful and contrary to the ordinary standards of respectable people in this community. It was indecent.
49. I am sure that the complainant told the truth about the manner in which the accused penetrated her vagina on many occasions in each of the years 2021, 2022 and 2023. As for the period when she was over the age of 13 years, I am sure that the accused did not consent to those penetrations. I am also sure that the accused knew very well that the complainant did not consent to what he did to her. She resisted the accused and told him not to do it.
50. Finally, I am also sure that the complainant became pregnant and gave birth to a baby daughter as a result of the accused raping her. Whilst there was no paternity test adduced in evidence – a point to which I shall return briefly below – I accept as truthful the complainant's evidence that she is sure that the accused fathered

her baby because he was the only one who did those things to her. She explained that the accused told her not to name him, and to give other names to the doctor. I accept that evidence. It is entirely consistent with the manner in which he was able to control the complainant over a long period in order to evade responsibility for his despicable offending.

51. It follows from what I have said above that I am sure that the accused is guilty as charged, and I convict him accordingly.
52. Before I finish, it is appropriate that I say a few words about the manner in which this case was investigated and prosecuted.
53. At the conclusion of her closing speech, I raised with Ms. Thaggard my concern that the prosecution had not adduced available DNA evidence. Ms. Thaggard informed me that, a week before trial, she had requested the police to get the paternity test done. The forensics team informed her that the complainant's sample had not been obtained, and it would take about 3 weeks to obtain the results. Given that the trial was near, the prosecution decided to just rely on the evidence of the complainant alone.
54. Leaving aside the fact that pregnancy is a seriously aggravating factor when it comes to sentencing in rape cases, I consider it wholly unsatisfactory that the police failed to follow a reasonable line of inquiry once the accused had volunteered his sample.
55. Whilst I, of course, accept Ms. Thaggard's point that paternity is not an element of rape, my concern is one of procedural fairness. As mentioned, the complainant testified that she had not had sexual intercourse with anyone other than the accused. Had the paternity test established that the accused was not the father, the defence could have deployed that at trial to undermine the complainant's credibility.
56. In the spirit of improving the quality of police investigations in serious sex crimes cases, I am compelled to observe that the handling of the forensic evidence in this

case is emblematic of the slipshod manner in which allegations of serious sexual offending are all too often investigated and prosecuted.

57. 30 days to appeal to the Court of Appeal.



A handwritten signature in black ink, appearing to be "W.D.", written over a horizontal dotted line.

Hon. Mr. Justice Burney

At Labasa

12 August 2025

Solicitors

**Office of the Director of Public Prosecutions for the State
Raramasi Law for the Accused**