

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO: HAC 40 OF 2024**

**STATE**

**v**

**JT**

Counsel : Ms E. Cabemaiwai with B. Navunicagi for State  
Ms D. Prasad with Ms L. Taukei for Defence

Dates of Hearing: 02 September 2025

Date of Judgment: 26 September 2025

(The names of the Juvenile delinquent and the Complainant are suppressed. The Juvenile is referred to as JT and the Complainant as CC)

**JUDGMENT**

1. JT is charged with multiple counts of sexual offences on the following information filed by the Director of Public Prosecutions:

**COUNT 1**

*Statement of Offence*

**RAPE**: contrary to section 207 (1) and (2) (c) and (3) of the Crimes Act 2009.

*Particulars of Offence*

JT on the 01<sup>st</sup> day of August, 2023 and 31<sup>st</sup> day of August, 2023 at Sigatoka in the Western Division, penetrated the mouth of CC.

**COUNT 2**

*Statement of Offence*

**ATTEMPTED RAPE:** contrary to section 208 of the Crimes Act 2009.

*Particulars of Offence*

JT between the 01<sup>st</sup> day of August, 2023 and 31<sup>st</sup> day of August, 2023 at Sigatoka in the Western Division, had attempted to obtain carnal knowledge of CC, a child under the age of 13 years old.

**COUNT 3**

*Statement of Offence*

**ATTEMPTED RAPE:** contrary to section 208 of the Crimes Act 2009.

*Particulars of Offence*

JT on the 01<sup>st</sup> day of August, 2023 and 31<sup>st</sup> day of August, 2023 at Sigatoka in the Western Division, had attempted to penetrate the anus of CC, a child under the age of 13 years old, with his penis.

2. JT pleaded not guilty to the charges. At the ensuing trial, the Prosecution presented the evidence of the Complainant and her mother and closed its case. The Court found no evidence to maintain Count 2. Therefore, JT was acquitted on Count 2. There was *prima facie* evidence to maintain Counts 1 and 3. JT was put to his defence on those counts. Upon being explained the rights in his defence, JT exercised his right to remain silent and adduced no evidence in defence.
3. On Count 1, JT is charged with Rape contrary to Section 207(2) (c) of the Crimes Act. The Prosecution alleges that JT penetrate the mouth of CC with his penis. Section 207(2) (c) of the Crimes Act states that a person rapes another person if the person penetrates the mouth of the other person to any extent with the person's penis without the other person's consent.
4. CC was 5 years old at the time of the alleged offences. The Defence does not dispute the age of CC. The law says that a child under the age of 13 years has no mental capacity to give consent to any form of sexual activity. Accordingly, CC is incapable of giving consent to any form of sexual activity. Therefore, the Prosecution has no burden to prove that the alleged sexual conduct occurred without the consent of CC. All that the Prosecution must prove is that JT was engaged in the sexual conduct with CC as alleged in the information.

5. On Count 3, JT is charged with Attempted Rape contrary to Section 208 of the Crimes Act. The Prosecution alleges that JT attempted to penetrate the complainant's anus with his penis. The Prosecution has to prove beyond reasonable doubt that the conduct of JT was deliberate and not accidental and more than merely preparatory to the commission of the offence.
6. The Prosecution bears the burden to prove all the elements of each offence and that burden must be discharged beyond reasonable doubt. The burden never shifts to JT at any stage of the trial. The presumption of innocence in favour of JT prevails until the charge is proved beyond reasonable doubt. JT is under no obligation to prove his innocence or prove anything at all.
7. The salient parts of evidence led in this trial can be summarized as follows.

#### Evidence for Prosecution

#### CC (The Complainant)

8. CC had come to Court with her parents. Her father, Cawi Tuilolo, was seated beside her when she gave evidence. Her mother Lusiana Cawi is the 2<sup>nd</sup> witness for Prosecution.
9. CC said that she has three siblings. She is schooling and is at Class 2 at Nakaikovo Dharam School in Sigatoka. She is in Court to talk about the bad things JT did to her in 2023. She was five years old at that time. JT kissed her and tried to put his penis in her 'bum-bum' and then he put his penis in her mouth. The boys use penis for 'peeing'. She showed the back (buttocks) of the doll when she was told to show the *bum-bum*. She said that the 'bum-bum' is used for 'pooping'.
10. When the alleged incident occurred, CC was living in Sigatoka with her mother in a house next to JT's house. JT did all these bad things in his room when she went to JT's house in 2023. They were neighbors. Only JT and his mother were home at that time. JT's mother was hanging the clothes outside. She used to go to JT's house five times a day. JT used to show her fruits and things like. She would go to JT's house to take those fruits. CC identified JT in Court.

11. Under cross-examination by Ms. Prasad, CC said that she did not tell JT's mother about what JT did because JT told her to not tell anybody about it. But she told her friend Annabelle a few days later. When she told Annabelle, Annabelle told her to tell her mother. She picked the word penis from her mother when she overheard the conversation her mother had with Emi (the State Counsel) the day before her evidence. Her mother did not tell her to use that word in Court. Nobody told her to use this word in Court.
12. When she told her mother about the incident, she used the word '*rara*', the Fijian meaning of which is '*the private part*'. When a diagram of a male was shown, CC pointed to the penis in that diagram. She said that JT took her to his room and closed the door. JT forced her to open her mouth, but she could not remember how he forced her. Her mother came to know about the incident when her friend's mother told her mother. She forgot what she told the police. She agreed that she must have forgotten some things that happened on that day. When it was suggested that JT did not put his penis in her mouth, she denied. She told the police that JT kissed her mouth.

PW2 - Lusiana Gonekalou (Lusiana)

13. Lusiana is the biological mother of CC. Osea Cawi is her husband. Lusiana said that she was summoned by the Court to give evidence on what CC shared with her about a sexual abuse that took place way back in 2023 when CC was still five years old.
14. The information about the sexual abuse was first conveyed to her on 9 August 2023 by Pacisepa Osborne, a Secondary School Teacher in Sigatoka Valley Secondary School where she taught before. When she heard about the incident, she sat with CC and had a discussion with her. She asked CC about what she had shared with Pacisepa the day before. In her reply, CC told her that *JT took his penis and put it in her mouth. JT also kissed her, and he also tried to insert his penis from her bum.* At first, she was shocked. She conveyed this information to her husband who was in Suva.
15. She went to Pacisepa's house so that they could go together to JT's house to inform JT's parents about what they heard. At JT's house, JT's mother was informed about what CC

had told them. JT's mother was shocked and assured that she would ask JT and inform his dad about it.

16. After a few days, JT and her mother visited her in a morning to seek forgiveness. JT's mother, after talking to JT, admitted the incident. JT also admitted and sought forgiveness. She informed JT's mother that she needed some time so that she could discuss the matter with her husband because the matter was very sensitive. She told them to come again. But they never came back. They waited for some time for them to come and discuss what needs to be done. The matter was eventually reported to police in September 2023.
17. She knew JT and his family for a long time. They were neighbours and close family friends. They had spent all this time living next to them. As a mother, she trusted JT and his family. She identified JT in Court.
18. Under cross-examination by Ms. Prasad, Lusiana said that she had known JT and his family since January 2015 and maintained a good relationship. JT's mother used to babysit CC when CC was two years old. She confirmed that there had never been any complaints by CC about JT until this incident. CC informed everything about the alleged incident voluntarily. Before anything was related to her either by Pacisepa Osborne or CC herself, CC did not show any signs of discomfort or trauma. The incident was reported to police in September a month after the incident because she had to wait for her husband to come from Suva where he worked.
19. Lusiana explained why she did not go to the police station right after receiving the information in the following terms:

*“JT and his mother had come to our house to seek forgiveness. And I told them, I have to let my husband know. My husband has to be home. He needs to be present here, right! And since it involves my daughter, she's only five, and their child, both the parents should have come with him. And both of us should have been present there for us to discuss the matter”.*

*“JT and his mother entered the house, they sat down, she started crying. She cried for some time, and then she started saying, I am sorry. I had asked my son about the event, and he admitted to it. We are here knowing that what he did is wrong. And we are here to seek for your forgiveness. We know that he was not supposed to do that. And then after that, he told JT to ask for forgiveness as well. But when JT was asking for forgiveness, willingly, like he was not having eye contact with us, he was looking around. So, to me, as a mother, I felt that he was not sincere with his apologies. And also, I informed them that I need to let my husband be present, because that is a matter regarding our daughter, so both of us should be there if they are coming to ask for forgiveness”.*

#### Analysis/ Evaluation

20. There is no dispute that JT and CC were neighbours/ friends and known to each other for a considerable time. This is indeed a case of recognition. There was a reasonable basis for a dock identification where CC positively identified JT in Court.
21. The Defence completely denies the allegation. In its closing submission, the Defence labeled the Prosecution case to be one of ‘misrepresentation of facts’.
22. CC was 7 years old at the time of her ‘evidence’. The Court ran a competency test and was satisfied that CC is competent to give evidence at the trial. Although CC’s ‘evidence’ was not under oath, she was intelligent, and her evidence was intelligible. She understood the need to tell the truth in Court. She was confident and straightforward. She maintained her consistency. Her demeanour is consistent with that of an honest child witness.
23. The circumstances under which the alleged offences came to light confirm the truthfulness of the complaint that CC had belatedly made to her mother. CC explained why she did not complain immediately - JT had told her not to tell anybody. However, CC had told her friend and that’s how the matter was eventually reported to her mother-Lusiana.
24. The evidence of Lusiana is consistent, credible and believable. There was nothing before this Court to reject her evidence. Lusiana confirmed what she heard from CC. The

complaint she had received was spontaneous or it had come naturally. When Lusiana heard about the incident from Pacisepa, she had had a discussion with CC to know about what she (CC) had shared with Pacisepa the day before. Lusiana had not put any leading questions or pressure to obtain the answers. CC had informed everything about the alleged incident voluntarily. The complaint Lusiana had received was consistent with the allegation and it bolstered the credibility of CC.

25. According to Lusiana, the CC had not shown any signs of a trauma or discomfort before the matter was relayed to her either by Pacisepa Osborne or the CC herself. Given the nature of the sexual assault, CC's conduct does not suggest that the alleged assault never took place. The fact that there had never been any complaint against JT before this incident also does not suggest that the alleged assault never took place. There are no typical rapes, typical rapists or victims of rape.
26. I am satisfied that the conduct of CC as it came out in evidence is consistent with that of a genuine rape victim.
27. The admission made, and the apology tendered by JT to Lusiana also bolstered the credibility of the version of events of the Prosecution's case. Lusiana's evidence that JT's mother visited her with JT where JT admitted to the alleged sexual conduct and that he sought forgiveness, was not repudiated on an evidential basis.
28. Lusiana received the information on 9 August 2023 and the matter was reported to police a month later in September. Lusiana lucidly explained the reason for the delay. She had waited for her husband to come from Suva where he worked because it was a sensitive matter. Making a complaint of sexual nature against a child whose family was closely associated with her family for a long time would not have been easy for Lusiana as a responsible mother. Going by the disposition of JT when he sought forgiveness, Lusiana thought that JT was not genuine in his apology. She waited for JT and his family to come again and waited for her husband to come home from Suva. The delay is reasonably explained. There was no suggestion that Lusiana or CC made up this allegation.
29. The denial of the Defence is not evidence based and not tenable. I accept the version of events of the Prosecution's case. CC said that JT put his penis in her mouth and tried to

put his penis in her *bum-bum*. The relevant sexual organs were explained in intelligible language for the Court to be satisfied that JT penetrated the mouth of CC with his penis and that he attempted to penetrate her anus with his penis.

30. The 1<sup>st</sup> and the 3<sup>rd</sup> Counts are made out as charged in the information beyond a reasonable doubt. I find JT guilty on Counts 1 and Count 3. JT is convicted accordingly. JT is acquitted on count 2 on which no evidence was available.



A handwritten signature in black ink, appearing to read "Aruna Aluthge".

Aruna Aluthge

Judge

26 September 2025

Solicitors:

Office of the Director of Public Prosecutions for State  
Legal Aid Commission for Defence