

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 334 OF 2023

STATE

Vs

JONI FINAU

Counsel: Ms. U. Ratukalou & Ms. M. Mataika for State
Mr. W. Navuni for Accused.

Date of Hearing: 13th & 14th October 2025

Date of Closing Submission: 17th October 2025

Date of Judgment: 15th January 2026.

JUDGMENT

1. On 17 November 2023, the Acting Director of Public Prosecution filed this Information, charging the Accused, Mr. Joni Finau, with one count of Rape contrary to Section 207(1) and (2)(b) of the Crimes Act 2009. The particulars of the offence read as follows:

Particulars of Offence

JONI FINAU on 25th October 2023 at Vunisea in the Eastern Division penetrated the vagina of TERESA RAGECI with his without her consent.

2. The Accused pleaded not guilty to the offence; accordingly, the matter proceeded to a hearing. The hearing commenced on the 13th of October 2025 and concluded on the 14th of October 2025.

During the hearing, the Prosecution called six [6] witnesses, including the Complainant, and the Accused gave evidence for the Defence. Subsequently, the Court heard the closing submissions of the parties. In addition, the learned Counsel for the Defence filed a written submission. Having carefully considered the evidence presented at the hearing and the respective closing submissions of the parties, I now pronounce Judgment in this matter.

Burden and Standard of Proof

3. I first drew attention to the burden and standard of proof. The Accused is presumed innocent until proven guilty. The burden of proving the charge against the Accused lies with the Prosecution. The standard of proof in a criminal trial is "proof beyond reasonable doubt". The Court must be satisfied that the Accused is guilty of the offence beyond reasonable doubt.

Elements of the Offence

4. The main elements of Rape under Section 207 (1) (2) (b) of the Crimes Act 2009 are:
 - i) The Accused,
 - ii) Penetrated the vagina of the Complainant with his fingers,
 - iii) The Complainant did not consent to the Accused penetrating her vagina with his fingers,
 - iv) The Accused knew or believed or was reckless that the Complainant was not consenting for him to insert his fingers in that manner.
5. The first element concerns the identity of the Accused. It is the Prosecution's onus to prove beyond reasonable doubt that the Accused committed this offence against the Complainant. There is no dispute about the correctness of the identification. The Accused and the Complainant are known to each other. The Accused never raised the issue that the Complainant was mistaken in identifying the alleged perpetrator.
6. Evidence of even the slightest penetration of the Complainant's vagina by the Accused's fingers is sufficient to prove the element of penetration.
7. Section 206(1) of the Crimes Act defines consent as:

"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."

8. Accordingly, consent is a state of mind that can take many forms, from willing enthusiasm to reluctant agreement. In respect of the offence of Rape, the Complainant consents if she has the freedom and capacity to make a choice and to express it freely and voluntarily. Consent obtained through fear, threat, the exercise of authority, the use of force, or intimidation cannot be considered freely and voluntarily expressed. A submission without physical resistance by the Complainant to an act by another person shall not, of itself, constitute consent.
9. If the Court is satisfied that the Accused penetrated the Complainant's vagina with his fingers and that she did not consent, the Court must then consider the final element of the offence. That is, whether the Accused honestly believed, knew, or was reckless as to whether the Complainant was freely consenting to this alleged sexual act. The belief in consent differs from the hope or expectation that the Complainant was consenting.

Admitted Facts

10. The Defence tendered the following admitted facts under Section 135 of the Criminal Procedure Act 2009.
 1. *The Complainant's name is Teresa Rageci (hereinafter referred to as "Teresa").*
 2. *The Accused name is Joni Finau (hereinafter referred to as "Joni").*
 3. *Joni and Teresa are not related.*
 4. *Joni is employed as an Ultrasound Technician.*
 5. *On 25th October 2023, Joni was based at the Vunisea Subdivision Hospital as an Ultrasound Technician.*
 6. *On 25th October 2023, Teresa went to the Vunisea Subdivision Hospital for an x-ray scan.*
 7. *On 25th October 2023, Joni attended to Teresa's x-ray scan at the Vunisea Subdivisional Hospital.*
 8. *On 25th October 2023, Joni was arrested by the Police.*

9. *Joni was cautioned interviewed on 25th October 2023.*

10. *The Contents of the following documents are not disputed and hereby tendered by consent:*

a) *Photographic booklet dated 14/06/24.*

Prosecution's Evidence

11. The prosecution alleged that the Accused sexually assaulted the Complainant by penetrating her vagina with his fingers without her consent when she went to him for a scan required by her doctor at Vunisea Hospital, Kadavu, on the 25th of October 2023. The Complainant was a victim of an alleged abduction and sexual assault and was therefore referred to the hospital for a scan to ascertain whether she was pregnant. The Complainant went to the hospital on the 25th of October 2023 to have her scan done and met the Accused in the scan room with the prescription given to her by Doctor Sheemal. As testified by the Complainant, the Accused, while performing the scan, had penetrated her vagina with his fingers without her consent. The Accused told her that it was part of the examination when she resisted. He then told her that they should have sexual intercourse so as to clean the dirt he found inside her. He attempted to force her into a small room within the scanning room. As he was trying to force her, someone knocked on the door. The Accused then went and opened the door. It was Doctor Fane. The Complainant left the room using that opportunity.

12. The Complainant then met with Doctor Krishan and presented the scan report. The Accused handed her the scan report. After meeting Dr Krishan, she returned home and informed Kesaia of the incident she had encountered in the scan room. The matter was then reported to the Police. Doctor Fane then medically examined her and prepared the medical examination report.

Accused's Evidence

13. The Accused denied the allegation, stating that he did not insert his fingers into the complainant's vagina. He gave evidence explaining the procedure he adopted to scan the complainant to ascertain whether she was pregnant at that time. In doing so, he had to use his scan probe on her body and position it to reach her uterus, which was beneath the sheet covering her lower body. Hence, he had to move the sheet and reach her uterus, as it was essential to check the uterus so

as to ascertain whether she was pregnant. He explained that he only reached the symphysis region of her body with his scan probe and did not go beyond that.

14. When the Accused found that the Complainant was a victim of sexual assault, he enquired about the person who should have accompanied her to the scan. She replied that the person was at home.

Evaluation of Evidence

15. According to the evidence adduced by the Prosecution and the Defence, the Accused denied the allegation, stating that the alleged incidents had never occurred. Under these circumstances, the Court must consider all the evidence adduced at trial, including the evidence of the Accused, to determine whether the Prosecution has proven beyond reasonable doubt that the Accused committed the crime as charged. In doing so, the Court must evaluate the evidence presented. The Accused is not required to give evidence. He does not have to prove his innocence, as his innocence is presumed by law. However, in this case, the Accused chose to give evidence. Therefore, the evidence presented by the Accused must be considered when determining the facts of this case.

16. I will now evaluate the evidence to determine its evidential trustworthiness. The Court must consider two factors in assessing the testimonial trustworthiness of the evidence: the credibility of the witness and the reliability of the evidence. Credibility is linked to the correctness or veracity of the evidence, while reliability is related to the accuracy of the evidence. In doing that, the Court should consider the promptness/spontaneity, probability/improbability, consistency/inconsistency, contradictions/omissions, interestedness/disinterestedness/bias, the demeanor and deportment in Court and the evidence of corroboration where it is relevant. (*vide: Matasavui v State [2016] FJCA 118; AAU0036.2013 (the 30th of September 2016, State v Solomone Qurai (HC Criminal - HAC 14 of 2022).*)

17. Lord Reading CJ in **Abramovitch (1914) 84 L.J.K.B 397** held that:

"If an explanation has been given by the accused, then it is for the jury to say whether on the whole of the evidence they are satisfied that the accused is guilty. If the jury think that the explanation given may reasonably be true, although they are not convinced that it is true, the prisoner is entitled to be acquitted, inasmuch as the crown would then have failed to

discharge the burden impose upon it by our law of satisfying the jury beyond reasonable doubt of the guilt of the accused. The onus of proof is never shifted in these cases; it always remains on the prosecution.”

18. Accordingly, if the Court believes the Accused’s evidence is true or may be true, the Court must find the Accused not guilty of the offences. If the Court rejects the Accused’s version, that does not mean the Prosecution has established the Accused’s guilt. However, the Prosecution must still satisfy the Court that, on its evidence, it has established beyond a reasonable doubt that the Accused committed these offences as charged in the Information.
19. The learned Counsel for the prosecution challenged the credibility and reliability of the Accused's evidence, questioning the answers he had given during his caution interview with the Police.
20. Any statement made by the Accused outside the Court is not admissible in evidence against the Accused, as it amounts to hearsay. The exception to this rule is an admission made by the Accused outside the Court. The England Court of Appeal (Criminal Division) in **Storey and Anwar v R (1968) 52 Cr. App. R 334** discussed the evidentiary value of a statement by the Accused that contains explanations and excuses but no direct admission of the alleged offence. Widgery LJ in **Storey (supra)** held that:

“We think it right to recognize that a statement made by the accused to the police, although, it always forms evidence in the case against him, is not in itself evidence of the truth of the fact stated. A statement made voluntarily by an accused person to the police is evidence in the trial because of its vital relevance as showing the reaction of the accused when first taxed with the incriminating facts. If, of course, the accused admits the offence, then as a matter of shorthand one says that the admission is proof of guilt, and, indeed, in the end it is. But if the accused makes a statement which does not amount to an admission, the statement is not strictly evidence of the truth of what was said, but is evidence of the reaction of the accused which forms part of the general picture to be considered by the jury at the trial.”

21. According to the above passage by Widgery LJ in **Storey (supra)**, a statement by the Accused that does not contain an admission is not evidence of the truth of the facts. However, it may be used as evidence of the Accused's reaction when confronted with the allegation. Having considered the principles of admissibility of statements made by the Accused outside the Court,

as enunciated in **R v Pearce (1979) 69 Cr App R 365, CA**, which I discussed in detail in **State v Hussain [2021] FJHC 412; HAC187.2020 (21 December 2021)**, I find that a statement made to the Police, which contains no admissions or confessions, may be used as evidence of the Accused's reaction when the Police encountered him, to impeach the consistency of that reaction. The statement is not evidence of the truth of the facts stated in it. It is evidence of the Accused's behavior when he was confronted with the allegation by the Police.

22. In this case, the learned Counsel for the prosecution cross-examined the Accused regarding the admission made during his caution interview, which, as outlined above, does not fall within the principle of **R v Pearce (supra)**; hence, I disregard the Accused's answers to those questions.
23. Doctor Sheemal, in her evidence, stated that she requested the Accused to perform a scan to rule out pregnancy and to check for any other pathological findings in her pelvis. Prosecution exhibit 3, a copy of the scan request Form, states "*Abdo/pelvis scan and R o pregnancy of sexual assault*". Doctor Sheemal had signed the document. She recognized it in court and tendered it as evidence.
24. It is important to note that Doctor Sheemal explicitly stated in the scan request Form that the scan was to rule out pregnancy following a sexual assault, thereby expressly indicating that the Complainant was a victim of a sexual assault. However, in his evidence, the Accused stated that he became aware of the sexual assault when the Complainant began to struggle after he moved the scan probe towards her symphysis pubis region, removing the sheet covering her lower body. The Accused told the Complainant to stay still, or the image would disappear from the screen. She then told him that she had been sexually assaulted.
25. The Accused then asked the Complainant whether anyone had accompanied her to the scan. The Complainant then told him that the person who was supposed to be with her was at home. The Accused then testified that, at that moment, he realized that the standard protocol had been breached because she was unaccompanied by the Police during the scan, as required.
26. Since Doctor Sheemal had explicitly stated in the request Form about the sexual assault, it is impossible that the Accused was unaware of it until the Complainant told him during the course of the scan. Hence, I find the Accused's above narration to be untrue.

27. Accordingly, it is apparent that the Accused knew that the Complainant was a victim of a sexual assault and that conducting the scan of her uterus and pelvic area in the absence of any police officer or anyone accompanying her was a breach of proper protocol. Instead of stopping the scan and requesting an accompanying person, the Accused not only proceeded with the scan but also locked the door to the scan room.
28. Doctor Fane stated that she found the door to the scan room locked. She knocked on the door and pushed the handle, but there was no response from inside. She then left but felt something suspicious, so she returned and knocked on the door. The door was then opened, and a young lady suddenly rushed out of the room.
29. The Accused stated that he sometimes locked the scan room. However, if he found that scanning a victim of a sexual assault in the absence of a police officer or anyone else was a breach of protocol, as he claimed in his evidence, there is no justifiable reason for him to lock the door and carry out such a sensitive and intrusive scan on the complainant.
30. The learned Counsel for the Accused, in his closing submissions, emphasized the inconsistency in the evidence between the Complainant and other prosecution witnesses regarding the time of the incident. It is not unusual for individuals, when confronted with an incident of this nature, to be unable to state the time accurately. It is sufficient that the Complainant and other witnesses stated that the incident occurred during the daytime on the 25th of October 2023. Therefore, I do not find that this inconsistency affected the credibility and reliability of the Complainant's evidence.
31. The Defence sought to suggest that the Complainant might have misinterpreted the scanning procedure, believing that the Accused had penetrated her vagina with his fingers, possibly due to physical and psychological trauma. The Complainant was straightforward, consistent and coherent in explaining the incident. She specifically stated that she felt two [2] of the Accused's fingers being inserted into her vagina. He did this two [2] to three [3] times, entering and withdrawing them.
32. Although the Prosecution adduced no evidence to explain the scanning procedure usually used to rule out pregnancy, Ms. Mereoni Yabaki, the National Coordinator for Radiology Services in Fiji, specifically stated that no scanning procedures are performed, especially at sub-divisional

hospitals such as Vunisea, Kadavu, that involve checking and testing inside the vaginal area of females.

33. The Complainant did not report the incident immediately upon leaving the scan room. She walked past Doctor Fane without speaking to her. She then met Doctor Krishan but did not inform him of the incident. The Complainant explained that she was afraid, felt ashamed, and simply wanted to go home. There are no stereotypical behaviors among victims of crimes of this nature. Some victims report the matter to the first person they meet, while others, for various justifiable reasons, wait until they can safely relay the incident to someone. The Complainant explained the reasons for not reporting the incident to the two Doctors she met at the Hospital. Immediately after she returned home, the Complainant told Kesaia, whom she referred to as “mom”, about the incident she encountered in the scan room.
34. The Prosecution presented the evidence of Kesaia as a witness to the recent complaint. Gates CJ, in **Raj v State [2014] FJSC 12; CAV0003.2014 (the 20th of August 2014)**, defined the evidence of a recent complaint, outlining its scope and application. Accordingly, the evidence of the recent complaint is not evidence of the facts complained of but evidence that bears on the issue of consistency or inconsistency in the Complainant's evidence. Hence, the evidence from the recent complaint could enhance the credibility and reliability of the Complainant's evidence. The evidence of the recent complaint does not establish the facts of which the Complainant testified or disprove those facts. It only establishes the Complainant's consistency, showing that she has stated a similar version of events to the recent complaint witness. The Complainant is not required to disclose the details of the offence, covering all the ingredients. It is sufficient to explain the material and relevant alleged sexual conduct committed by the perpetrator.
35. In her evidence, Kesaia explained what the Complainant had revealed about this incident, which is consistent with the Complainant's evidence. Given the consistency between the Complainant's and Kesaia's evidence, I find that Kesaia's evidence further supports the credibility and reliability of the Complainant's evidence.
36. For the reasons outlined above, I conclude that the Complainant's evidence is credible and reliable; accordingly, I accept it as true. As discussed above, I find the Accused's evidence not credible and that it fails to raise any reasonable doubt about the Prosecution's evidence.

37. In conclusion, I find that the Prosecution has proven beyond reasonable doubt that the Accused committed the offence of Rape as charged in the Information. Therefore, I hold that the Accused is guilty of one count of Rape, contrary to Section 207 (1) (2) (b) of the Crimes Act 2009, and convict the Accused of the same accordingly.



A handwritten signature in black ink, appearing to be "R. D. R. T. Rajasinghe".

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Hon. Mr. Justice R. D. R. T. Rajasinghe.

At Suva

15th January 2026.

Solicitors.

Office of the Director of Public Prosecutions for the Prosecution.

Office of the Director of Legal Aid Commission for Accused.