

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 187 of 2023

STATE

V

O.V [A JUVENILE]

Counsel : Mr. J. Nasa for the State.
: Ms. S. Shafique for the Juvenile.

Dates of Hearing : 28, 29, January, 02, 03, February, 2026
Closing Speeches : 06 February, 2026
Date of Judgment : 06 February, 2026

JUDGMENT

(The names of the juvenile and both the complainants are suppressed they will be referred to as "O.V", "M.D", and "R.T." respectively.)

1. The Director of Public Prosecutions charged the juvenile by filing the following amended information dated 22nd August, 2024:

FIRST COUNT

Statement of Offence

INDECENT ASSAULT: Contrary to section 212 (1) of the Crimes Act 2009.

Particulars of Offence

O.V sometimes in the year 2022 at Sigatoka in the Western Division, had unlawfully and indecently assaulted “M.D.” by kissing her on her mouth.

SECOND COUNT

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (b) and (3) of the Crimes Act 2009.

Particulars of Offence

O.V sometimes in the year 2022 at Sigatoka in the Western Division, had penetrated the vagina of “M.D.” with his tongue, who was a child under the age of 13 years.

THIRD COUNT

[REPRESENTATIVE COUNT]

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (b) and (3) of the Crimes Act 2009.

Particulars of Offence

O.V sometimes in the year 2022 at Sigatoka in the Western Division, had penetrated the vagina of “M.D.” with his fingers, who was a child under the age of 13 years.

FOURTH COUNT

(Representative Count)

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (a) and (3) of the Crimes Act 2009.

Particulars of Offence

O.V sometimes in the year 2022 at Sigatoka in the Western Division, had penetrated the vagina of “M.D.” with his penis, who was a child under the age of 13 years.

FIFTH COUNT

Statement of Offence

INDECENT ASSAULT: Contrary to section 212 (1) of the Crimes Act 2009.

Particulars of Offence

O.V sometimes in the year 2022 at Sigatoka in the Western Division, had unlawfully and indecently assaulted “R.T.” by kissing her on her mouth.

SIXTH COUNT

[REPRESENTATIVE COUNT]

Statement of Offence

SEXUAL ASSAULT: Contrary to section 210 (1) of the Crimes Act 2009.

Particulars of Offence

O.V sometimes in the year 2022 at Sigatoka in the Western Division, had unlawfully and indecently assaulted “R.T.” by touching her naked breasts.

SEVENTH COUNT

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (b) and (3) of the Crimes Act 2009.

Particulars of Offence

O.V sometimes in the year 2022 at Sigatoka in the Western Division, had penetrated the vagina of “R.T.” with his tongue, who was a child under the age of 13 years.

EIGHTH COUNT

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (b) and (3) of the Crimes Act 2009.

Particulars of Offence

O.V sometimes in the year 2022 at Sigatoka in the Western Division, had penetrated the vagina of “R.T.” with his fingers, who was a child under the age of 13 years.

NINTH COUNT

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (a) and (3) of the Crimes Act 2009.

Particulars of Offence

O.V sometimes in the year 2022 at Sigatoka in the Western Division, had penetrated the vagina of “R.T.” with his penis, who was a child under the age of 13 years.

2. In this trial, the prosecution called four witnesses and after the prosecution closed its case, this court ruled that the juvenile had a case to answer for count one (indecent assault), count two (rape), count three

(rape), count four (rape) and count seven (rape). There was no evidence in respect of counts five, six, eight and nine.

BURDEN OF PROOF AND STANDARD OF PROOF

3. As a matter of law, the burden of proof rests on the prosecution throughout the trial and it never shifts to the juvenile. There is no obligation on the juvenile to prove his innocence. He is presumed to be innocent until he is proven guilty. The standard of proof is one of proof beyond reasonable doubt.
4. The juvenile is charged with more than one offence, and there are two complainants. The evidence in respect of each offence and each complainant will be considered separately from the other, if the juvenile is guilty of one offence, it does not mean that he is guilty of the others as well. This also applies with the findings of not guilty.

ELEMENTS OF THE OFFENCE

INDECENT ASSAULT

5. To prove the first count the prosecution must prove the following elements of the offence of indecent assault beyond reasonable doubt:
 - (a) The juvenile;
 - (b) Unlawfully and indecently;
 - (c) Assaulted the complainant "M.D" by kissing her mouth.
6. The first element of the offence of indecent assault is concerned with the identity of the person who allegedly committed this offence.

7. The words “unlawfully” and “indecently” in respect of the second element of the offence simply means without lawful excuse and that the act has some elements of indecency that any right minded person would consider such act indecent.
8. Assault is the unlawful use of force on the complainant by kissing her mouth.
9. The juvenile has denied committing this offence. It is for the prosecution to prove beyond reasonable doubt that it was the juvenile who had unlawfully and indecently assaulted the complainant by kissing her mouth.
10. If this court is satisfied that the prosecution has proved all the elements of the offence of indecent assault beyond reasonable doubt, then this court must find the juvenile guilty. However, if there is a reasonable doubt with respect to any elements of the offence of indecent assault then this court must find the juvenile not guilty.

RAPE

11. To prove counts two, three, four and seven the prosecution must prove the following elements of the offences of rape beyond reasonable doubt:
 - (a) The juvenile;
 - (b) Penetrated the vagina of the complainant “M.D” with his tongue, finger and penis, and penetrated the vagina of the complainant “R.T.” with his tongue on different occasions respectively;
 - (c) The complainants were below the age of 13 years.

12. The slightest of penetration of both complainants vagina by the juvenile's tongue, finger and penis is sufficient to satisfy the act of penetration. As a matter of law a person under the age of 13 years does not have the capacity to consent. In this case, the complainants were 8 and 11 years respectively at the time of the alleged offending and therefore the complainants consent is not an issue in regards to these counts.
13. The first element of the offence is concerned with the identity of the person who allegedly committed these offences.
14. The second element is the act of penetration of both complainants vagina by the tongue, finger and penis.
15. The final element of the offence is the age of the complainants. It is not in dispute that the complainants were 8 and 11 years of age respectively during the period of the allegations which establishes that they were below the age of 13 years at the time of the alleged incidents.
16. In this trial, the juvenile denied committing the offences of rape he is charged with. It is for the prosecution to prove beyond reasonable doubt that it was the juvenile who had penetrated the vagina of both complainants with his tongue, finger and penis as alleged.
17. This court must be satisfied that the prosecution has proved all the elements of the offences of rape beyond reasonable doubt in order for this court to find the juvenile guilty. If on the other hand, this court has a reasonable doubt with regard to any of those elements concerning the offences, then this court must find the juvenile not guilty.
18. As a matter of law, I have to direct myself that offences of sexual nature as in this case do not require the evidence of the complainants to be

corroborated. This means, if this court is satisfied with the evidence given by the complainants and accept it as reliable and truthful then this court is not required to look for any other evidence to support the account given by the complainants.

ADMITTED FACTS

19. In this trial, the prosecution and the defence have agreed to certain facts titled as amended agreed facts. These facts are part of the evidence and I have accepted these admitted facts as accurate, truthful and proven beyond reasonable doubt.
20. I will now remind myself of the prosecution and defence cases. In doing so, it would not be practical of me to go through all the evidence of every witness in detail. I will summarize the important features for consideration and evaluation in coming to my final judgment in this case.

PROSECUTION CASE

21. The first complainant "M.D.," testified that in 2022, she lived with her father, mother, sister, brother and grandmother. They resided in a three bedroom house. The first bedroom was occupied by her grandmother, the second by her parents and younger sister, and the third by the juvenile.
22. One day in 2022, her father told the juvenile (her step brother) to assist with her homework. The complainant then entered the third bedroom with the juvenile. Upon entering, the juvenile placed her on a mattress on the floor and removed her pants and panty. At that time, the complainant was only wearing a t-shirt.

23. After removing her pants and panty, the juvenile inserted his index finger twice inside her “ika” which she said was used to “pee”. When shown a diagram of the female anatomy, the complainant identified the vagina as her “ika”. The complainant felt bad and attempted to move but was unable to do so. Upon further questioning, she explained that the juvenile was seated on the mattress when he inserted his finger into her vagina. The complainant was unable to recall what she did immediately thereafter.
24. The complainant further stated that on a second occasion, at night, she and the juvenile entered the second bedroom, which is normally occupied by her parents. At that time, her parents and younger sister were not at home. The complainant initially stated that she did not know where her grandmother and her brother, Manasa, were. However, upon further questioning, she clarified that her brother Manasa was in another room.
25. In the bedroom, the juvenile laid the complainant on a mattress, facing up, removed her pants and panty and licked her vagina. The complainant further stated that she felt bad and experienced pain. After putting her panty and pants back on, the complainant ran outside the house to meet her mother, who had returned from selling food. When questioned, “*Did you tell mum*” the answer was “*Yes*”. When asked “*What did you tell mum?*” *Do you recall saying anything or did you not say anything?* She responded “*I did not say anything.*” When asked why she did not complain to her mother, the complainant stated that the juvenile had told her not to tell anyone, otherwise he will kill her. Upon hearing this, the complainant became frightened. She could not recall where exactly the juvenile had made the threat.
26. On the third occasion, the complainant and her cousin “R.T.,” the second complainant, went to drink water in the kitchen. The juvenile came pulled

her into the first bedroom and locked the door with a nail from inside. Thereafter, the juvenile placed her on the mattress, removed her pants and panty, and also removed his pants before penetrating his “balls” in her vagina three times. According to the complainant it was painful. When asked to clarify what she meant by “balls” in the male anatomy diagram shown, the complainant identified the penis. After this, the juvenile kissed the complainant on her mouth. The complainant felt bad and she did not like what the juvenile had done. She could not recall what happened after this incident.

27. The complainant stated that she only complained to her mother after the juvenile had left their home for Suva to spend his December school holidays. One afternoon, after having her shower, she experienced pain in her vagina and informed her mother. Her mother asked, “*Who did that to you?*” The complainant then told her mother what the juvenile had done to her.
28. The complainant stated that she did not tell anyone after the first incident because the juvenile had told her “*not to tell anyone, otherwise he will punch her.*” The matter was reported to the police in January, 2023. The complainant recognized the juvenile in court.
29. In cross-examination, the complainant agreed that in 2022 she resided with her mother and father but did not know whether her grandmother also lived with them. The complainant further stated that she could not recall whether the juvenile and his brother, Robert were residing in the same house.
30. The complainant stated that she could not recall whether in 2022 her uncles, Amani and Tubuna, resided in her house, however, she agreed that it was only Petero who was staying with them. Upon further

questioning, the complainant agreed that the juvenile and his brother, Robert, were also residing in her house. When asked, *“The juvenile and Robert stayed from the beginning of January 2022 until the end of 2022?”* the complainant replied, *“Can’t recall.”*

31. The complainant denied that she used to sleep in her parents bedroom when her uncles were at home. When asked again whether in 2022 her grandmother resided at the house throughout the year, the complainant agreed.
32. In 2022, the complainant stated that she did not know whether her brother, Manasa, was attending school. She agreed that the juvenile used to treat her like his real sister but denied that he cared about her. She further agreed that in 2022 her grandmother, the juvenile, and Robert resided with her. The complainant stated that she did not know whether her grandmother washed the juvenile’s clothes, but agreed that her grandmother cooked for the juvenile and Robert.
33. In relation to the first incident, the complainant agreed that her father, Robert, and grandmother were at home. According to her, the house was not large and the rooms were very close to each other. She agreed that there was no threat from the juvenile when she was at school, since the juvenile was attending another school, however, she did not inform her school teacher or her best friend about what the juvenile had done.
34. The complainant stated that she did not shout or yell when the juvenile inserted his finger into her vagina. She maintained that although she did not shout or yell, the juvenile had inserted his finger into her vagina.
35. In relation to the second incident, the complainant stated that she did not know whether her mother, father, and grandmother were at home that night, but her brother Manasa was at home. She maintained that the

juvenile had licked her vagina even though she had not shouted. She also maintained that although she had not told her mother about what the juvenile had done, the incident had occurred.

36. In relation to the third incident, the complainant stated that she did not know whether the juvenile and Robert were in the house. When asked, "*So the juvenile was not present?*" the complainant replied, "*Can't recall.*" She agreed that she obeys her mother. The complainant denied that her mother had told her to lie to the police by saying that the juvenile had inserted his finger into her vagina, however, she agreed that her mother had told her to inform the police that the juvenile had licked her vagina. She denied that her mother had asked her to make false reports against the juvenile and stated that it was not true that her mother disliked the juvenile.
37. The complainant agreed that her mother was not happy about the juvenile going to school in 2023 from her home. She agreed that her mother had accompanied her to the hospital, but she could not recall whether her mother was the one speaking to the doctor.
38. The complainant agreed that "R.T." was her cousin but denied that "R.T." used to come to her house with her parents. When asked whether "R.T." used to come with her mother, the complainant stated that she did not know. When it was put to her that "R.T." never came alone to the house, the complainant stated that she had come with her grandmother.
39. The complainant stated that she could not recall whether her grandmother was at home when she went with "R.T." to drink water in the kitchen. She agreed that after the juvenile left for Suva she did not immediately inform her mother and father about what the juvenile had done.

40. In re-examination, the complainant clarified that it was after she told her mother that her vagina was painful that her mother became unhappy about the juvenile returning home after the school holidays. Upon further questioning, the complainant agreed that she had told her mother the juvenile had licked her vagina, and this was what her mother told her to tell the police.
41. The second complainant, "R.T.," testified that in 2022 she was living with her parents, brother, and sister, and attended the same school as her cousin, "M.D."
42. On one occasion in 2022, after attending church, she went to the house of "M.D." That night, while lying on a mattress in the living room, the juvenile came and removed her pants before leaving. Later, at about midnight, while she was asleep, the juvenile returned, removed her pants and panty, and she woke up to see him. She stated that she recognized the juvenile from the light which was little bit bright.
43. She attempted to move him but was unable to do so because he was strong. The juvenile then used his hands to spread her legs and braced them with his own. He then bowed down and penetrated her vagina with his tongue, which she described as painful. She attempted to push him away with her hands but was unable to do so because he was heavy. The complainant began to cry and the juvenile left.
44. He then went into his grandmother's bedroom. The complainant did not disclose the incident to anyone in the house because the juvenile had threatened her, saying that if she told anyone he would punch her. She stated that this threat was made after he had penetrated her vagina with his tongue.

45. On the following morning, while she was in the kitchen with “M.D.”, the juvenile came and pulled “M.D.” into the grandmother’s bedroom. The complainant attempted to open the door but found it locked from inside, and she heard “M.D.’s” voice saying “*don’t.*” Later, the matter was reported to the police.
46. In cross-examination, the complainant agreed that on that night the juvenile’s brother, Robert, was at home, but “M.D.’s” parents were not, however, her grandmother was at home. The next day, the complainant went to school but did not tell her best friends or her teacher that the juvenile had “*licked her vagina.*”
47. The same day, the complainant met her parents. The juvenile was not present, yet she did not tell her parents about the incident because she was scared of what the juvenile had told her. Upon further questioning, the complainant agreed that she could have told her mother.
48. The complainant maintained that even though she did not tell anyone about what the juvenile had done, the juvenile had in fact done it. She also maintained that whatever she told the court was done by the juvenile to her. The complainant denied that “M.D.’s” mother, Anaseini, had told her to make a false complaint against the juvenile.
49. The complainant further stated that she was able to see the juvenile in the living room because the light was “*a little bit bright.*” She said she was certain it was the juvenile who had licked her vagina in that light.
50. The third witness, Anaseini Kubukubua, the mother of the first complainant, informed the court that she is married to the juvenile’s father and that the first complainant is her daughter. The juvenile is her stepson.

51. In 2022, she was living with her mother-in-law, Marawaqa, her husband, Orisi Vunisa, three of her children including “M.D.,” the juvenile, and the juvenile’s brother, Robert.
52. One Saturday in 2022, her daughter “M.D.” told her that her “*ika*,” meaning her vagina, was often painful. The witness asked, “*Does someone touch your vagina?*” The complainant replied, “*Yes.*” The witness then asked, “*Who was it?*” After staring for a while, the complainant said it was the juvenile.
53. On the same day, “M.D.” told the witness that the juvenile had also done the same thing to “R.T.” When the witness spoke with Alumita, the juvenile’s mother, she told Alumita not to send the juvenile to her house as a result of what she had been told by her daughter. The next day, the witness and her daughter went to see “R.T.,” who agreed that the juvenile had also done bad things to her. On Monday, the matter was reported to the police.
54. In cross-examination, the witness stated that she would sell food from around 5 p.m. to 6 p.m. for dinner. In her absence, her mother-in-law used to be at home with the juvenile and his brother, Robert.
55. When it was put to the witness that when her husband had told her that the juvenile and Robert would stay with them, she was not happy about it, the witness stated that she had agreed for the two children to come over. However, at the time her husband was not working and she was the only one employed.
56. The witness maintained that after her daughter had told her about what the juvenile had done, she decided that the juvenile should not return home. She stated that she used to cook food for the juvenile and sometimes her mother-in-law would cook as well. As for the washing of clothes, the

juvenile washed his own clothes. The witness stated that she did not know whether the grandmother used to give the juvenile money. Sometimes she would speak with the juvenile herself, and sometimes she would tell her husband to speak to him. The witness stated that she liked the juvenile.

57. The witness agreed that she had gone to the police station on 23 January 2023. She denied that she had told "M.D." to lie to the police by saying that the juvenile had touched her vagina. She stated that she only told "M.D." to tell the truth about whatever had been done to her.
58. The witness also denied that she had told "R.T." to lie to the police by saying that the juvenile had touched her, or that she had told "R.T." to lodge a false police complaint against the juvenile so that he would not return home.

RECENT COMPLAINT DIRECTION

59. Complainants of sexual offences may react in different ways to what they may have gone through. Some in distress or anger may complain to the first person they see. Some due to fear, shame or shock or confusion, may not complain for some time or may not complain at all. A complainant's reluctance to complain in full as to what had happened could be due to shame or shyness or cultural taboo when talking about matters of sexual nature.
60. A late complaint does not necessarily signify a false complaint and on the other hand an immediate complaint does not necessarily demonstrate a true complaint. It is a matter for this court to determine what weight is to be given to the fact that on 21st January, 2023 the first complainant "M.D" told her mother Anaseini Kubukubua that her vagina was paining. When

questioned by her mother if someone had touched her vagina the complainant said it was the juvenile.

61. This is commonly known as recent complaint evidence. The evidence given by Anaseini Kubukubua is not evidence of what actually happened between the complainant and the juvenile since Anaseini was not present and she did not see what had happened.
62. This court is, however, entitled to consider the evidence of recent complaint in order to decide whether the complainant is a credible witness. The prosecution says the complainant was 8 years in 2022. She was vulnerable and naive about what her 16 year old step brother was doing to her. To add to her misery the juvenile had threatened her not to tell anyone about what he was doing to her otherwise he will kill her. The effect of the juvenile's conduct on the complainant was such that she was only able to tell her mother about what the juvenile had been doing to her when her vagina started to pain shows that the complainant is likely to be truthful.
63. On the other hand, the defence says, the complainant made up false allegations against the juvenile. The complainant did not tell her mother anything of importance but told her that her vagina was paining which could be for many reasons. The complainant conveniently took the name of the juvenile since he was not present at home and her mother Anaseini had a dislike for the juvenile and therefore she should not be believed.
64. It is for this court to decide whether the evidence of recent complaint helps this court to reach a decision. The question of consistency or inconsistency in the complainant's conduct goes to her credibility and reliability as a witness. It is for this court to decide whether the complainant is reliable and credible. The real question is whether the

complainant was consistent and credible in her conduct and in her explanation of it.

65. The final witness, Dr. Ashna Devi, testified that she graduated with an MBBS degree from the University of Fiji in 2019. She completed her internship at the CWM Hospital and is currently employed as a Medical Officer at the Cuvu Health Centre.
66. On 23 January 2023, the witness examined the complainant, "M.D.," at the Sigatoka Hospital. According to the witness, the patient was accompanied by a police officer and her mother. Upon vaginal examination, the witness made the following medical findings:
 - a) Hymen not intact;
 - b) No other bruises or injuries noted.
67. The witness stated that there can be other causes for the hymen not being intact, however, in this case, penetration could be the major cause. The Fiji Police Medical Examination Form of the first complainant was marked and tendered as prosecution exhibit no. 1.
68. In cross-examination, the witness agreed that the mother of the patient had initially relayed the history to her, however, the information was subsequently confirmed by the patient. The witness explained that there can be many causes for the hymen not being intact, such as penetration by objects, penis, fingers, vigorous exercise, riding a bicycle, or falling and so on.

DIRECTION ON EXPERT EVIDENCE

69. This court has heard the evidence of Dr. Ashna Devi who had been called as an expert on behalf of the prosecution. Expert evidence is permitted in a criminal trial to provide the court with information and opinion which is within the witness expertise. It is by no means unusual for evidence of this nature to be called and it is important that this court should see it in its proper perspective. The medical report of the complainant is before this court and what the doctor said in her evidence as a whole is to assist this court.
70. An expert witness is entitled to express an opinion in respect of his or her findings and I am entitled and would no doubt wish to have regard to this evidence and to the opinions expressed by the doctor. When coming to my conclusion about this aspect of the case this court should bear in mind that if, having given the matter careful consideration, this court does not accept the evidence of the expert it does not have to act upon it. Indeed, this court does not have to accept even the unchallenged evidence of the doctor.
71. The evidence of the doctor relates only to part of the case, and that whilst it may be of assistance to this court in reaching its decision, this court must reach a decision having considered the whole of the evidence.
72. This was the prosecution case.

DEFENCE CASE

73. At the end of the prosecution case, the juvenile was explained his options. He could have remained silent but he chose to give sworn evidence and be

subjected to cross examination. The juvenile also called two witnesses. This court must also consider the defence evidence and give such weight as is appropriate.

74. The juvenile informed the court that in 2022 he resided with his father, stepmother Anaseini Kubukubua, younger brother Robert, step-siblings Manasa, Miriama, Maraia, uncles Niko and Petero, and his grandmother.
75. In 2022, his father was doing shift work. For the day shift, his father would leave home at 6 a.m. and return at 6 p.m. For the night shift, his father would leave home at 6 p.m. and return at 7 a.m. the following day. His stepmother sold food at the market, she would leave at 7 a.m. and return at 7 p.m.
76. According to the juvenile, the house they lived in was small. The first bedroom was occupied by his grandmother, the second by his stepmother and father, and the third by him and his brother Robert. All his step-siblings slept in the living room. The first complainant also lived in the same house and was in Year 3.
77. The juvenile stated that he always spoke to “M.D.,” but she did not speak to him. He described his relationship with his stepmother as very bad, saying she was always mean to him and did not like him or his brother Robert. His stepmother did not speak directly to him, instead, she would tell his father, who would then speak to him and his brother.
78. The juvenile explained that the reason he moved to his father’s home in Sigatoka was because his mother had asked his father to accommodate him and his brother, to which his father agreed. During school holidays, however, he would go to his mother in Suva.
79. The juvenile denied threatening the first complainant and denied committing the offences alleged by her. He stated, *“I can’t do that, I respect*

her. I don't look at her as my stepsister but as my real sister." When asked, *"Why did she then report this matter against you?"* he replied, *"She reported this matter because my stepmother didn't like us."* He further stated that there was no occasion at night when he was alone with the first complainant in the house.

80. The juvenile also stated that during the school holidays he used to go to his mother in Suva. He was supposed to return to Sigatoka to continue his studies in 2023, but his stepmother did not want him to.
81. The juvenile said that "R.T." was his cousin, who sometimes came to his house on weekends with her parents. In 2022, "R.T." stayed overnight with her parents at his house, and they all slept in the living room. He stated that his relationship with "R.T." was good. He denied threatening "R.T." and denied the allegations raised against him. He stated, *"I can't do that."* When asked, *"Why would R.T. report this allegation against you?"* he replied, *"My stepmother and R.T.'s mother were really good friends."*
82. In cross-examination, the juvenile agreed that he had moved to Sigatoka with his father's family in 2019. He stated that he had known "R.T." for a long time. Before the allegation in 2022, he had spent three years with his father's family in Sigatoka. During those years, his relationship with "M.D." was always good. Upon further questioning, however, he stated that although the relationship was good, "M.D." did not speak to him, not even a single word.
83. The juvenile stated that he shared a good, cordial, and respectful relationship with "R.T.," who was his younger cousin. He maintained that he had no grudges against either of the complainants, and they had no grudges against him. He stated that the three of them shared love between them.

84. The juvenile maintained that the police report made by the complainants against him was false because his stepmother did not like him. When questioned further, he stated that his stepmother had sat down with “M.D.” and told her what to say in respect of each incident, which was then reported to the police. He also stated that his stepmother did the same with “R.T.” because she was good friends with “R.T.’s” mother. When asked whether he was present during those instances, the juvenile stated that he was not.

85. The juvenile denied threatening both complainants and denied committing the offences alleged. The juvenile was referred to his caution interview dated 27th March, 2023 to show that the juvenile had evaded answering some questions when interviewed by the police:

“Q.34 According to “M.D” you also licked her vagina. Can you explain?”

Ans: We don’t talk to each other a lot.”

86. The juvenile did not agree that when he was interviewed by the police he failed to answer the question asked. However, the juvenile agreed that he did not tell the police officer in his caution interview that his stepmother, Anaseini, had fabricated the allegations through the complainants.

87. The father of the juvenile, Orisi Vunisa Senior, testified that he is married to Anaseini Kubukubua and they have five children, one of whom is the first complainant. The juvenile is his son from his first marriage.

88. In 2022, the witness was living with his wife Anaseini, his mother, his cousin Petero Waqa, the juvenile, Robert, the first complainant, and his two children from his marriage to Anaseini. In 2022, the witness was employed as a security supervisor, which involved three shifts. Sometimes, he would leave home at 7 a.m. and return at 6 p.m. Anaseini was selling food, leaving home at 6 p.m. and returning at midnight.

89. According to the witness, his wife Anaseini did not have a good relationship with the juvenile in 2022. She would not give his son what he wanted, and she never cooked for the children during school days. His mother or the children themselves would cook their lunch. The dirty clothes of the children were also not washed by Anaseini for weeks, and the witness would tell his mother or the children to wash them.
90. The witness also stated that in 2022 the juvenile and the first complainant were never alone in the house, either during the day or at night. During the school holidays, "M.D." used to go to her grandmother's house in Navosa. The first complainant did not complain to him about the allegations raised against the juvenile.
91. "R.T." is the niece of the witness. When she used to come to the house, she was accompanied by her parents, and they would sleep in the living room. At no time did "R.T." spend a night in his house without her parents. He stated that "R.T.'s" mother and Anaseini used to meet and talk.
92. In cross-examination, the witness agreed that he came to court for the purpose of saving his son. However, he denied that he was in court to berate or belittle his wife, Anaseini. He stated that in 2019 he was working as a security guard, and in 2022 he was employed at the Fijian Resort as a security officer working different shifts.
93. Upon further questioning, the witness agreed that when he was at work he had no knowledge of whether the first complainant and the juvenile were alone at home.
94. The witness agreed that in some instances Anaseini would cook for the children, and sometimes his mother would cook as well. He agreed that in his evidence he had mentioned that Anaseini never cooked for the children. In respect of washing the children's clothes, the witness maintained that

Anaseini would wash only her own children's clothes and not those of the juvenile and Robert.

95. The final defence witness, the juvenile's grandmother Marawaqa, stated that in 2022 she was residing with her son, Orisi Vunisa Senior, and his family.
96. The witness stated that sometimes Anaseini did not cook for the children when they went to school. However, Anaseini and the juvenile were on speaking terms, and Anaseini would tell the juvenile to do things. The juvenile always respected "M.D." The witness stated that she did not know whether the juvenile and "M.D." were ever alone in the house at night. Her observation was that Anaseini was not happy to see the juvenile and his brother Robert at home, and she did not give them things. She stated that "R.T." would come and stay overnight with her parents, but never without them.
97. In cross-examination, the witness agreed that Anaseini was a busy woman who worked hard to supplement her son's earnings, so the witness would help cook food. She agreed that sometimes Anaseini would cook for the children and the two boys, and sometimes she would cook for everyone.
98. The witness maintained that Anaseini would only wash her own children's clothes and not those of the juvenile and Robert. The witness further stated that she did not know anything about the allegations raised against the juvenile.
99. This was the defence case.

ANALYSIS

100. The prosecution states that both complainants and the juvenile are known to each other. The juvenile is the step-brother of the first complainant and the cousin of the second complainant. The complainants were cousin sisters. The juvenile and the first complainant resided in the same house.
101. In 2022, the complainants were aged 8 and 11 years respectively, while the juvenile was 16 years old. The prosecution alleges that the juvenile took advantage of both complainants, sexually abusing the first complainant on several occasions during 2022 and the second complainant once, when she stayed overnight at the juvenile's house.
102. The first complainant described three separate incidents. On the first occasion, she stated that her father had asked the juvenile to assist her with homework. When she entered the juvenile's bedroom, he placed her on the mattress, removed her pants and panty, and penetrated her vagina with his finger. She stated that she felt bad and attempted to move but was unable to do so.
103. On the second occasion, the juvenile laid her on the mattress, removed her pants and panty, and licked her vagina. She described the act as painful. After dressing, she ran outside to meet her mother, who had returned from selling food, but did not disclose the incident because the juvenile had threatened her, saying *"not to tell anyone, otherwise he will kill her."*
104. On the third occasion, while the complainant and her cousin "R.T." were in the kitchen, the juvenile pulled her into the grandmother's bedroom, locked the door, placed her on the mattress, removed her clothing, and penetrated her vagina with his penis three times. She stated that she felt bad and did not like it. Afterward, the juvenile kissed her on the mouth.

The second complainant testified that she saw the juvenile pull the first complainant into the bedroom, attempted to open the door, but found it locked, and heard the first complainant's voice saying "*don't.*"

105. After the juvenile left for Suva to spend his school holidays, the first complainant disclosed the matter to her mother, stating that her vagina was painful. When asked if someone had touched her, she mentioned the juvenile. Her mother, Anaseini, then informed the juvenile's mother, Alumita, and requested that the juvenile not be sent to her house during the 2023 school year.
106. The prosecution submits that the juvenile continued his unlawful conduct against the first complainant on several occasions. It emphasizes that the complainant was only 8 years old at the time, and although she could not recall the precise dates of the incidents, she was able to provide relevant and consistent details of the juvenile's conduct.
107. In respect of the second complainant, she testified that while lying on a mattress in the living room, the juvenile removed her pants. Later that night, he again removed her pants and panty, spread her legs, and penetrated her vagina with his tongue. She described the act as painful and stated that she attempted to resist but was unable to do so because the juvenile was strong and heavy. She began to cry, and the juvenile left. She did not disclose the incident immediately because the juvenile had threatened her, saying "*not to tell anyone, otherwise he would punch her.*" The matter was reported to the police on 23 January 2023 after both complainants revealed the abuse.
108. On the other hand, the defence submits that the allegations are false and were initiated by the first complainant's mother, Anaseini, who did not want the juvenile to live with the family. The juvenile denied committing

the offences and stated that the complainants' accounts were not possible or probable.

109. The defence argues that both complainants were free agents who had every opportunity to disclose the alleged incidents to family members, friends, or teachers, but did not do so because nothing had occurred. It submits that Anaseini was the mastermind behind the allegations, having influenced both complainants to falsely implicate the juvenile.
110. The defence further contends that Anaseini spoke to the doctor when the first complainant was examined, and therefore the court should not rely on her recent complaint evidence. It argues that the first complainant's inability to express herself to the doctor raises suspicion and affects her credibility.
111. The defence also submits that if the allegations were true, both complainants would have shouted or cried out to alert other family members, but they did not. It emphasizes that the complainants were not restrained, continued attending school, and delayed reporting the matter to the police, which undermines their credibility.
112. The defence highlights that the medical report is inconclusive, as the doctor stated that there are multiple possible causes for the hymen not being intact.
113. Finally, the defence submits that the complainants testimony is inconsistent and riddled with doubt. It argues that they were coached to further Anaseini's motive of removing the juvenile from the house, and therefore their evidence should not be believed.

DETERMINATION

114. At the outset I would like to mention that the evidence of the first complainant not related to the amended information has been disregarded completely. I remind myself that the burden to prove the juvenile's guilt beyond reasonable doubt lies with the prosecution throughout the trial and it never shifts to the juvenile. Even if the defence version is rejected, the prosecution must still prove this case beyond reasonable doubt. I further remind myself that both complainants were under 13 years of age at the relevant time, therefore, the issue of consent does not arise.
115. In this case, there are two competing versions, one advanced by the prosecution and the other by the defence. This court must consider all the evidence adduced in order to determine whether the prosecution has proven beyond reasonable doubt that the juvenile committed the offences alleged. It is not the role of the court to decide which side is more acceptable in isolation, but rather to assess the credibility, reliability and consistency of the evidence as a whole.
116. This court has kept in mind the following factors when determining the credibility and reliability of a witness such as promptness/spontaneity, probability/improbability, consistency/inconsistency, contradictions/omissions, interestedness/disinterestedness/bias, the demeanour and deportment in court [and the evidence of corroboration where it is relevant] see *Matasavui v State* [2016] FJCA 118; AAU0036.2013 (30 September 2016, *State v Solomone Qurai* (HC Criminal - HAC 14 of 2022).
117. Brennan J in *Liberato and Others v The Queen* ((1985) [1985] HCA 66; 159 CLR 507 at 515 has discussed the appropriate approach to be taken where

there are conflicting versions of evidence given by the prosecution and the defence witnesses. Brennan J held that:

“When a case turns on a conflict between the evidence of a prosecution witness and the evidence of a defence witness, it is commonplace for a judge to invite a jury to consider the question; who is to be believed? But it is essential to ensure, by suitable direction, that the answer to that question (which the jury would doubtless ask themselves in any event) if adverse to the defence, is not taken as concluding the issue whether the prosecution has proved beyond reasonable doubt the issue which it bears the onus of proving. The jury must be told that; even if they prefer the evidence for the prosecution, they should not convict unless they are satisfied beyond reasonable doubt of the truth of that evidence. The jury must be told that, even if they do not positively believe the evidence for the defence, they cannot find an issue against the juvenile contrary to that evidence if that evidence gives rise to a reasonable doubt as to that issue. His Honour did not make clear to the jury, and the omission was hardly remedied by acknowledging that the question whom to believe is “a gross simplification.”

118. This court has also taken into account the observations made by the Court of Appeal in *Rokocika v The State* [2023] FJCA 251; AU0040.2019 (29 November 2023) regarding what the juvenile told the court. At paragraph 45 the Court of appeal had stated as follows:

The Liberato direction covers three points on the spectrum of belief regarding what the accused has said — positive belief (first aspect), positive disbelief (third aspect), and neither actual belief nor rejection of the accused’s account (second aspect): Park v R [2023] NSWCCA 71 at [102]–[103].

119. I have also kept in mind the observations made by Prematilaka RJA sitting as a single judge of the Court of Appeal in *Josaia Naikalivou vs. The State*, AAU 017 of 2022 (26th March, 2024) at paragraph 9 as follows:

In Murray v The Queen (2002) 211 CLR 193 at 213 [57] Gummow and Hayne JJ, in the High Court of Australia made it clear that it is never appropriate for a trial judge to frame the issue for the jury's determination as involving a choice between conflicting prosecution and defence evidence: in a criminal trial the issue is always whether the prosecution has proved the elements of the offence beyond reasonable doubt. In R v Li (2003) 140 A Criminal R at 288 at 301 it was again held that the issue can never be which of the cases is correct or who of the complainant and the accused is telling the truth. This seems to be what exactly the trial judge had done in the judgment.

120. The defence argument, apart from denial, is that there was a motive on the part of the first complainant's mother, Anaseini, to influence both complainants to make false allegations against the juvenile. The defence submits that Anaseini did not want the juvenile to remain with her family in Sigatoka and therefore orchestrated the allegations to achieve that outcome.
121. In respect of the above contention, I have directed my mind to the *Jovanovic* direction to remind myself that the juvenile has no burden to prove a motive or reason for the complainants to lie.
122. The Court of Appeal in *Rokocika's* case (supra) from paragraphs 32 to 34 made a pertinent observation in respect of the above as follows:

In R v Jovanovic (1997) 42 NSWLR 520 Sperling J set out a draft direction that emphasised that:

"It would be wrong to conclude that X is telling the truth because there is no apparent reason, in your view, for X to lie. Sometimes it is apparent. Sometimes it is not. Sometimes the reason is discovered. Sometimes it is not. You cannot be satisfied that X is telling the truth merely because there is no

apparent reason for X to have made up these allegations. There might be a reason for X to be untruthful that nobody knows about’.

[33] The same has been stated as follows in NSW Criminal Trial Courts Bench Book at 3-625:

‘If the defence case directly asserts a motive to lie on the part of a central Crown witness, the summing-up should contain clear directions on the onus of proof, including a direction that the juvenile bears no onus to prove a motive to lie and that rejection of the motive asserted does not necessarily justify a conclusion that the evidence of the witness is truthful: Doe v R [2008] NSWCCA 203 at [58]; Jovanovic v R (1997) 42 NSWLR 520 at 521–522 and 535. The jury should also be directed not to conclude that if the complainant has no motive to lie then they are, by that reason alone, telling the truth: Jovanovic v R at 523.

[34] NSW Criminal Trial Courts Bench Book also states that:

‘A motive to lie or to be untruthful, if it is established, may “substantially affect the assessment of the credibility of the witness”: ss 103, 106(2)(a) Evidence Act 1995. Where there is evidence that a Crown witness has a motive to lie, the jury’s task is to consider that evidence and to determine whether they are nevertheless satisfied that the evidence given is true: South v R [2007] NSWCCA 117 at [42]; MAJW v R [2009] NSWCCA 255 at [31].’

123. There is no dispute that the juvenile and the first complainant were step-siblings and resided in the same house. The second complainant was also related to the juvenile as his cousin. Before proceeding further, it is necessary to resolve the issue of whether the evidence of the first complainant—that the juvenile penetrated her with his finger and what

she described as his “balls” into her “ika,” the place where she urinates from meets the requirements of section 207 of the Crimes Act 2009. To satisfy this provision, the prosecution must establish that the juvenile, with his finger or penis, penetrated the vulva, vagina, or anus of the complainant.

124. At the time of the alleged incidents, the complainant was 8 years of age and in Year 3. At the time of giving evidence, she was 11 years of age and in Year 7. Considering her age, the passage of time, and her level of education, I am satisfied that the complainant used incorrect terminology when referring to her vagina and the juvenile’s penis. It is apparent that she was confused and therefore unable to explicitly articulate the biological or medical terms for the male and female reproductive organs. This is understandable and acceptable given her age and educational background. The precise medical distinction is not material in view of the evidence adduced.
125. The Court of Appeal in *Vilikesa Volau v State* [2017] FJCA 51; AU0011.2013 (26 May 2017) from paragraphs 13 to 15 made a pertinent observation in respect of the above as follows:

12. Before proceeding to consider the grounds of appeal, I feel constrained to make some observations on a matter relevant to this appeal which drew the attention of [the] Court though not specifically taken up at the hearing. There is no medical evidence to confirm that the Appellant’s finger had in fact entered the vagina or not. It is well documented in medical literature that first, one will see the vulva i.e. all the external organs one can see outside a female’s body. The vulva includes the mons pubis (‘public mound’ i.e. a rounded fleshly protuberance situated over the public bones that becomes covered with hair during puberty), labia majora (outer lips), labia minora (inner lips), clitoris, and the external openings of the urethra and

vagina. People often confuse the vulva with the vagina. The vagina, also known as the birth canal, is inside the body. Only the opening of the vagina (vaginal introitus i.e. the opening that leads to the vaginal canal) can be seen from outside. The hymen is a membrane that surrounds or partially covers the external vaginal opening. It forms part of the vulva, or external genitalia, and is similar in structure to the vagina.

13. *Therefore, it is clear one has to necessarily enter the vulva before penetrating the vagina. Now the question is whether in the light of inconclusive medical evidence that the Appellant may or may not have penetrated the vagina, the count set out in the Information could be sustained. It is a fact that the particulars of the offence state that the Appellant had penetrated the vagina with his finger. The complainant stated in evidence that he 'poked' her vagina which, being a slang word, could possibly mean any kind of intrusive violation of her sexual organ. It is naïve to believe that a 14 year old would be aware of the medical distinction between the vulva and the vagina and therefore she could not have said with precision as to how far his finger went inside; whether his finger only went as far as the hymen or whether it went further into the vagina. However, this medical distinction is immaterial in terms of section 207(b) of the Crimes Act 2009 as far as the offence of rape is concerned.*

14. *Section 207 (b) of the Crimes Act 2009 as stated in the information includes both the vulva and the vagina. Any penetration of the vulva, vagina or anus is sufficient to constitute the actus reus of the offence of rape. Therefore, in the light of Medical Examination Form and the complainant's statement available in advance, the prosecution should have included vulva also in the particulars of the offence.*

Nevertheless, I have no doubt on the evidence of the complainant that the Appellant had in fact penetrated her vulva, if not the vagina. Therefore, the

offence of rape is well established. It is very clear that given the fact that her body had still not fully developed at the age of 14, cries out of considerable pain of such penetration would have drawn the attention of the Appellant's wife to the scene of the offence.

TURNBULL DIRECTIONS

126. Although this is a case of recognition as opposed to identification the defence has taken the position that the second complainant made a mistake in thinking that it was the juvenile who had sexually abused her in the living room at night for someone else so she had identified the wrong person in court.
127. The defence contention is that the case against the juvenile in some respect depends on the correctness of the identification of the juvenile which the defence alleges to be mistaken. I have therefore taken special care on the evidence of identification because it is possible that an honest witness can make a mistaken identification. An apparently convincing witness can be mistaken and so can a number of such witnesses. I wish to also remind myself that mistakes in recognition, even of close friends and relatives, are sometimes made.
128. I have carefully looked at the following circumstances in which the second complainant had identified the juvenile in the living room at around midnight:
- a) *How long did the second complainant have the person she says was the juvenile under observation?*
- The complainant said the juvenile had penetrated her vagina with his tongue for a short while.

b) At what distance?

According to the complainant she was lying down face up her legs were spread apart by the juvenile. This suggests very close proximity between the complainant and the juvenile.

c) In what light?

According to the complainant there was light which was little bit bright.

(d) Did anything interfere with that observation?

The complainant did not say there was any obstruction or interference she was sure it was the juvenile who had penetrated her vagina with his tongue that night.

(e) Had the witness ever seen the juvenile before?

The second complainant and the juvenile are cousins and they are known to each other. The complainant had stayed for the night in the house of the juvenile.

129. I must remind myself of the following specific weaknesses which appeared in the identification/recognition evidence of the second complainant. The complainant did not say where the light was coming from. She was also not specific when she said the juvenile had penetrated her vagina with his tongue for a short while.

130. I have given the above directions as a matter of caution after the defence counsel raised the issue of identification of the juvenile by the second complainant.

131. Based on the above guidelines, I would like to state that the second complainant did not make a mistake in recognizing the juvenile. The

complainant and the juvenile are closely related and the second complainant would stay at the house of the juvenile whenever her grandmother would ask this complainant to go to church together. Moreover, the juvenile had removed the complainant's pants earlier in the evening and she had recognized the juvenile then as well.

132. In view of the above, this court accepts that it was the juvenile and no one else and there was no mistake made by the second complainant in recognizing the juvenile that night.

LATE REPORTING

133. Furthermore, there is an issue of late reporting by both complainants to the police. Admittedly, from the evidence it is not possible to correctly ascertain the specific length of delay. What is before the court is the year of the allegations which is 2022, reported to police on 23rd January, 2023 promptly after Anaseini came to know about the sexual abuses on both complainants. In law the test to be applied in such a situation is known as the totality of circumstances test. The Court of Appeal in *State v Serelevu (2018) FJCA 163; AAU 141 of 2014 (4th October, 2018)* had explained this issue as follows:

*"[24] In law the test to be applied on the issue of the delay in making a complaint is described as "the totality of circumstances test". In the case in the United States, in **Tuuford** 186, N.W. 2d at 548 it was decided that:-*

"The mere lapse of time occurring after the injury and the time of the complaint is not the test of the admissibility of evidence. The rule requires that the complaint should be made within a reasonable time. The surrounding circumstances should be taken into consideration in determining what would be a reasonable time in any particular case. By

applying the totality of circumstances test, what should be examined is whether the complaint was made at the first suitable opportunity within a reasonable time or whether there was an explanation for the delay.”

“[26] However, if the delay in making can be explained away that would not necessarily have an impact on the veracity of the evidence of the witness. In the case of Thulia Kali v State of Tamil Naidu; 1973 AIR.501; 1972 SCR (3) 622:

“A prompt first information statement serves a purpose. Delay can lead to embellishment or after thought as a result of deliberation and consultation. Prosecution (not the prosecutor) must explain the delay satisfactorily. The court is bound to apply its mind to the explanation offered by the prosecution through its witnesses, circumstances, probabilities and common course of natural events, human conduct. Unexplained delay does not necessarily or automatically render the prosecution case doubtful. Whether the case becomes doubtful or not, depends on the facts and circumstances of the particular case. The remoteness of the scene of occurrence or the residence of the victim of the offence, physical and mental condition of persons expected to go to the Police Station, immediate availability or non-availability of a relative or friend or well wisher who is prepared to go to the Police Station, seriousness of injuries sustained, number of victims, efforts made or required to be made to provide medical aid to the injured, availability of transport facilities, time and hour of the day or night, distance to the hospital, or to the Police Station, reluctance of people generally to visit a Police Station and other relevant circumstances are to be considered.”

134. Firstly, I note that the juvenile was significantly older than both complainants. At the time of the alleged incidents, he was 16 years of age, whereas the complainants were 8 and 11 years respectively. The juvenile

resided in the same house as the first complainant, while the second complainant would occasionally stay overnight at that house.

135. Secondly, the juvenile had threatened both complainants with harm. In my considered judgment, these threats instilled fear in their minds and prevented them from immediately disclosing what had occurred. The opportunity for disclosure arose only when the first complainant experienced pain in her vagina and confided in her mother. By chance, the juvenile was not at home at that time. Both complainants then spoke about what the juvenile had done, and the matter was promptly reported to the police.
136. The late reporting, in my judgment, was beyond the control of the complainants. They were afraid of the juvenile's threats, and when the opportunity presented itself, they expressed themselves without hesitation against his conduct.
137. I accept that both complainants were victims of circumstances which resulted in a delayed complaint to the police. Their fear of the juvenile and his threats of harm compounded the delay. The age of the complainants and the prolonged abuse of the first complainant cannot be overlooked. It took time for the first complainant to disclose the matter to her mother, which in turn led to the second complainant's disclosure.
138. In these circumstances, the delay in reporting is reasonable and does not undermine the credibility of the complainants.
139. Prematilaka, RJA sitting as a single judge in the Court of Appeal in *Ram Krishna vs. The State, criminal appeal no. AAU 123 of 2022, (12 April, 2024)* made an important observation about the jurisprudence and the reasoning behind late reporting from paragraph 28 to 33 as follows:

[28] The Doctrine of Recent Complaint: Anti-Feminist Narratives in Evidence Law by Eoin Jackson says:

As noted by the academic Wigmore, the origin of the doctrine of recent complaint lies in the medieval expectation that a victim of rape would raise a 'hue and cry' in order to make the community aware that a violation had occurred. Stanchi, writing in the Boston College Law Review, discusses how this can be linked to the historical mistrust of female witnesses, with the promptness of the complaint being equated to an alleviation of some of this mistrust..... For example, Heffernan has noted how the doctrine continues to operate on the assumption that a victim will report an incident of sexual assault as soon as is reasonably possible. This ignores a myriad of factors a victim may be feeling, such as fear, humiliation, and intimidation..... A personal connection to the abuser will naturally hinder victims from promptly reporting the incident, given they may need to weigh up the effect reporting the assault has not just on them, but on the relationships within their broader social and familial circle.....The outdated perception that a victim will immediately report a traumatic incident does not take into account the various psychological and personal factors at play and other complexities, in particular those that arise where the victim is familiar with their abuser..... While it is logical for a victim to consult with someone they perceive to be knowledgeable about the matter at hand, yet the doctrine of recent complaint ignores this in favour of a blanket presumption that an immediate disclosure will be made..... The recent complaint doctrine strictly focuses on the idea of reporting as soon as reasonably possible in the context of the mind-set of the victim, as opposed to enquiring as to whether there are any excuses that would justify an otherwise 'unreasonable delay'.

[29] According to Jackson in recent times, the doctrine has been modified to allow for a 'reasonable excuse' justification. This justification would allow for the prosecution to argue that the victim had a reasonable excuse for

delaying in making a complaint. In assessing this excuse, the judge could take into account the emotional state of the woman namely that she was not in a psychological state to make a complaint at the first available opportunity, the nature of the relationship between the juvenile and victim, and the factual context of the charge itself. It would also account for cases where the victim consults with someone they know prior to making a complaint. This justification would allow for a more inclusive version of the doctrine of recent complaint to be embedded into jurisprudence. It would allow for a version of the doctrine grounded in an emphasis and understanding of the complexities that can arise in the aftermath of a sexual assault. It does not remove the time element, but merely adds nuance sufficient to prevent it from being the determining factor when considering the veracity of testimony.

[30] Australian Law Reform Commission states that: 'The psychological literature shows that delay is the most common characteristic of both child and adult sexual assault. Significantly in the context of this Inquiry, the 'predictors associated with delayed disclosure' reveal differences in reporting patterns depending upon the victim's relationship with the abuser. For example, where the victim and defendant are related, research suggests there is a longer delay in complaint. Since complainants are routinely cross-examined by defence counsel about delays in complaint in ways that suggest fabrication, 'it is likely that evidence about a complainant's first complaint would answer the type of questions that jurors can be expected to ask themselves'.

[31] For example, a Bench of 05 judges of the Supreme Court of Philippines including the Chief Justice in People of the Philippines, Plaintiff-Appellant vs. Bernabe Pareja y Cruz, Juvenile-Appellant G.R. No. 2021223 quoted the following observations from People v. Gecom, 324 Phil. 297, 314-315 (1996)⁴ (G.R. No. 182690 - May 30, 2011) in relation to why a rape victim's deferral in reporting the crime does not equate to falsification of the

accusation. 'The failure of complainant to disclose her defilement without loss of time to persons close to her or to report the matter to the authorities does not perforce warrant the conclusion that she was not sexually molested and that her charges against the juvenile are all baseless, untrue and fabricated. Delay in prosecuting the offense is not an indication of a fabricated charge. Many victims of rape never complain or file criminal charges against the rapists. They prefer to bear the ignominy and pain, rather than reveal their shame to the world or risk the offenders' making good their threats to kill or hurt their victims'

[32] The Court of Appeal in R v D (JA) [2008] EWCA Crim 2557; [2009] Crim LR 591 held that judges are entitled to direct juries that due to shame and shock, victims of rape might not complain for some time, and that 'a late complaint does not necessarily mean it is a false complaint'. The court quoted with approval the following suggested comments in cases where the issue of delay in, or absence of, reporting of the alleged assault is raised by a defendant as casting doubt on the credibility of the complainant. 'Experience shows that people react differently to the trauma of a serious sexual assault. There is no one classic response. The defence say the reason that the complainant did not report this until her boyfriend returned from Dubai ten days after the incident is because she has made up a false story. That is a matter for you. You may think that some people may complain immediately to the first person they see, whilst others may feel shame and shock and not complain for some time. A late complaint does not necessarily mean it is a false complaint. That is a matter for you.'

[33] Thus, as much as a late complaint does not necessarily mean that it is a false complaint, it is nothing but fare for the judges to direct themselves that similarly an immediate complaint does not necessarily demonstrate a true complaint. Thus, a late complaint does not necessarily signify a false

complaint, any more than an immediate complaint necessarily demonstrates a true complaint.

140. After carefully considering the evidence adduced by both the prosecution and the defence, I find the evidence of the two complainants to be truthful and reliable. Each gave a comprehensive account of what the juvenile had done to them respectively. They were able to withstand cross-examination and were not discredited as to the core of their allegations.
141. Although the first complainant was unable to recall precisely who was present in the house at the time of the incidents, or where each family member was located, this does not affect the reliability of her evidence. It is understandable that passage of time and the frequency of the juvenile's conduct affected her memory. Both complainants remained steadfast in their accounts of what the juvenile had done to them, and they were coherent and articulate in describing their experiences. I am satisfied that they told the truth in court. The medical findings were also consistent with the history provided, namely that the first complainant had been sexually assaulted.
142. It is well established that individuals differ in how they react to traumatic events. Some display obvious signs of distress, while others do not. The fact that the complainants did not shout, yell, or immediately disclose the incidents is explained by the circumstances. The alleged perpetrator was their elder step-brother, aged 16 at the time, who had threatened them with harm and was constantly around them. Their young age at the time is an important consideration. In my judgment, the juvenile's behaviour in the bedrooms and living room, coupled with his threats, instilled fear in the complainants.
143. It was only when the juvenile was away in Suva and the first complainant experienced pain in her vagina that she disclosed the matter to her mother,

Anaseini. When questioned by her mother whether someone had touched her, she fearlessly identified the juvenile. Upon learning that the juvenile had also engaged in similar conduct towards the second complainant, Anaseini, acting as a concerned parent, questioned her, which led to the police report. The fact that the second complainant did not disclose the incident immediately cannot be held against her, given the threats she had received. In any event, consent is not an issue in this case.

144. I also accept the evidence of the second complainant that she saw the juvenile forcefully pull the first complainant into the grandmother's bedroom, and that she heard the first complainant say "don't." This is a reasonable inference that the juvenile was engaging in an untoward conduct against the first complainant.
145. I observed that both complainants expressed strong views against the conduct of the juvenile and articulated clearly what he had done to them.
146. I reject the defence assertion that Anaseini had a motive to falsely frame the juvenile. That submission is far-fetched and amounts to an attempt by the juvenile to divert attention away from the allegations. I accept the evidence of Anaseini that she told the first complainant to inform the police about what the juvenile had done.
147. Finally, I take into account that it is not expected of an 8-year-old child, confronted with an unexpected sexual encounter, to provide every detail of what had happened. The complainant's inability to do so does not undermine her credibility.
148. The observations of the Supreme Court in *Anand Abhay Raj vs. The State, CAV 0003 of 2013 (20th August, 2014)* at paragraph 39 is crucial here:

The complainant need not disclose all of the ingredients of the offence. But it must disclose evidence of material and relevant unlawful sexual conduct on the part of the Juvenile. It is not necessary for the complainant to describe the full extent of the unlawful sexual conduct, provided it is capable of supporting the credibility of the complainant's evidence.

149. What the first complainant told her mother was material and relevant to the unlawful sexual conduct of the juvenile. The decisive aspect of the recent complaint evidence is to show consistency of the first complainant's conduct with her evidence given at trial. In *Raj's* case (supra) the Supreme Court at paragraphs 37 and 38 stated the following about recent complaint evidence:

[37] Procedurally for the evidence of recent complaint to be admissible, both the complainant and the witness complained to, must testify as to the terms of the complaint: Kory White v. The Queen [1998] UKPC 38; [1999] 1 AC 210 at p215H. This was done here.

[38] The complaint is not evidence of facts complained of, nor is it corroboration. It goes to the consistency of the conduct of the complainant with her evidence given at the trial. It goes to support and enhance the credibility of the complainant.

150. Furthermore, I accept the opinion of Dr. Devi that the history narrated by Anaseini, and confirmed by the first complainant, was consistent with her medical findings. Dr. Devi stated that penetration could have contributed to the hymen not being intact, and I find this opinion to be credible and supportive of the complainant's account.

LESSER OFFENCE

151. I have also directed my mind to the lesser offence of sexual assault in respect of the second count of rape the juvenile is charged with. The law provides that when a person is charged with an offence and the court is of the opinion that he is not guilty of that offence but guilty of a lesser offence, the court may find the juvenile guilty of that lesser offence. In this regard, I direct myself that if this court finds the juvenile not guilty of rape then it should consider the lesser offence of sexual assault.
152. I have once again carefully examined the evidence in respect of the second count of rape. I am satisfied that the licking of the first complainant's vagina, after the juvenile laid the complainant on the mattress facing up, and removed her pants and panty is not rape but sexual assault. Any right minded person would consider the conduct of licking the vagina to be sexual in nature.
153. In the circumstances, this court is satisfied beyond reasonable doubt that there is evidence to sustain the charge of sexual assault and not of rape as charged.
154. In view of the above, the juvenile is found not guilty of rape in count two but guilty of the lesser offence of sexual assault.
155. Moreover, I reject the defence of denial by the juvenile as implausible when considered against the totality of the evidence. The assertion that the juvenile had not done anything to the complainants is not worthy of belief.
156. The juvenile did not tell the truth. He gave a version of events which was not believable. He was not forthright, particularly in cross-examination. It

was apparent to me that he was opting not to answer questions fully and was at times evasive. His claim that he did not do anything because he respected and loved his sisters was not credible.

157. The juvenile fabricated a story that his stepmother, the mother of the first complainant, disliked him and therefore used the complainants to implicate him. This is not believable. The juvenile was diverting attention to his stepmother in order to avoid responsibility. He had been living with his stepmother and family since 2019, and over the years he did not raise any issues about her until after the police report was lodged by the complainants.
158. When the juvenile was caution interviewed, the facts were fresh in his mind, yet he did not tell the police about this alleged motive. I accept that this assertion of a motivation by Anaseini is an afterthought. The other two defence witnesses did not support the juvenile in this regard. Both Orisi Senior and Marawaqa stated that Anaseini at times did not cook for the children and that Marawaqa did the cooking.
159. This does not amount to specific targeting of the juvenile. I also reject the claim by the defence witnesses that Anaseini only washed her own children's clothes and not those of the juvenile. This is far-fetched, particularly as it was not disputed when Anaseini told the court that the juvenile washed his own clothes.
160. It was accepted by Marawaqa that Anaseini was a busy woman who worked hard to supplement her husband's income by selling food at night, and therefore Marawaqa sometimes assisted in cooking and washing. This does not cast any doubt on Anaseini's credibility.
161. I do not believe the juvenile or the two defence witnesses in their assertion that Anaseini disliked the juvenile and concocted a story through the

complainants to keep him away from the family. That evidence is unreliable. Marawaqa herself told the court that Anaseini used to speak with the juvenile and told him to do things, and no doubt this suggests an element of mutual respect between the two. This is a positive factor which cannot be ignored. I accept the evidence of Anaseini that she liked the juvenile.


162. In addition, I give no weight to the juvenile's evidence that he did not do anything to the complainants and that he was falsely targeted by his stepmother. This was an attempt to avoid responsibility for his actions.
163. The father of the juvenile also did not tell the truth in court. His evidence was designed to ridicule his wife, Anaseini, with the view of saving his son. It was apparent to me that this witness had carefully thought about what he would say. He had no knowledge of what was happening in his house because he was frequently absent due to shift work. I give no weight to his evidence.
164. I accept the evidence of Marawaqa to the extent that she was not aware of the incidents and that Anaseini was hardworking and doing everything possible to look after all the children in the family. I also accept that the juvenile respected his stepmother and that they were on speaking terms, contrary to what the juvenile and his father told the court. It is implausible that throughout 2022 "R.T." never stayed at the juvenile's house alone. This aspect of the evidence given by the defence witnesses is, in my assessment a deliberate attempt to hide the truth in order to save the juvenile.
165. The defence has not succeeded in creating a reasonable doubt in the prosecution's case in respect of count One Indecent Assault, the lesser offence of Sexual Assault in count two, count three Rape, count four Rape, and count seven Rape.

CONCLUSION

166. This court is satisfied beyond reasonable doubt that the juvenile sometimes in the year 2022 had unlawfully and indecently assaulted “M.D.” by kissing her mouth. This court is also satisfied beyond reasonable doubt that the juvenile had acted unlawfully that is without lawful excuse in what he did to the complainant. The act of the juvenile has some elements of indecency that any right minded person would consider such conduct indecent in nature.
167. This court is satisfied beyond reasonable doubt that the juvenile sometimes in the year 2022 had unlawfully and indecently assaulted “M.D.” by licking her vagina. This court is also satisfied beyond reasonable doubt that the juvenile had acted unlawfully that is without lawful excuse in what he did to the complainant. The act of the juvenile has some elements of indecency that any right minded person would consider such conduct sexual in nature.
168. This court is also satisfied beyond reasonable doubt that the juvenile sometimes in the year 2022 had penetrated the vagina of “M.D.” with his fingers and penis and on all occasions the complainant was under 13 years of age.
169. This court is also satisfied beyond reasonable doubt that the juvenile sometimes in the year 2022 had penetrated the vagina of “R.T.” with his tongue, and the complainant was under 13 years of age.
170. In view of the above, I find the juvenile guilty of count one - indecent assault, sexual assault being lesser offence of count two, and rape being counts three, four and seven. Due to lack of evidence the juvenile is

acquitted of two counts of rape being counts eight and nine, one count of indecent assault being fifth count, one count of sexual assault being count six.

171. This is the judgment of the court.

A handwritten signature in black ink, appearing to read 'Sharma', with a horizontal line underneath the name.

**Sunil Sharma
Judge**

At Lautoka

06 February, 2026

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Juvenile.