

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**Criminal Case No.: HAC 29 of 2024**

**STATE**

**V**

**AMINIASI NATOBU**

**Counsel** : Mr. V. Koroinivalu for the State.  
: Mr. F. Daveta and Ms. Tuimanono for the  
Accused.

**Dates of Hearing** : 11, 12 February, 2026  
**Closing Speeches** : 17 February, 2026  
**Date of Judgment** : 17 February, 2026

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**JUDGMENT**

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*(The name of the complainant is suppressed she will be referred to as "R.V")*

1. The Director of Public Prosecutions charged the accused by filing the following information dated 25<sup>th</sup> March 2024:

**COUNT ONE**

*Statement of Offence*

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

*Particulars of Offence*

AMINIASI NATOBU on the 16<sup>th</sup> day of January 2024 at Nadi, in the Western Division, unlawfully and indecently assaulted “R.V” by touching her shoulder.

**COUNT TWO**

*Statement of Offence*

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

*Particulars of Offence*

AMINIASI NATOBU on the 16<sup>th</sup> day of January, 2024 at Nadi, in the Western Division, unlawfully and indecently assaulted “R.V” by fondling her breast.

**COUNT THREE**

*Statement of Offence*

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

*Particulars of Offence*

AMINIASI NATOBU on the 16<sup>th</sup> day of January, 2024 at Nadi, in the Western Division, unlawfully and indecently assaulted “R.V” by massaging her buttocks.

**COUNT FOUR**

*Statement of Offence*

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

*Particulars of Offence*

AMINIASI NATOBU on the 16<sup>th</sup> day of January, 2024 at Nadi, in the Western Division, penetrated the vagina of “R.V” with his fingers, without her consent.

**COUNT FIVE**

*Statement of Offence*

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

*Particulars of Offence*

AMINIASI NATOBU on the 21<sup>st</sup> day of January 2024 at Nadi, in the Western Division, unlawfully and indecently assaulted “R.V” by touching her stomach.

2. In this trial, the prosecution called two witnesses and after the prosecution closed its case, this court ruled that the accused had a case to answer in respect of the alternative count of common assault in count one, two counts of sexual assault, one count of rape and one count of indecent assault as charged.

**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 accused. There is no obligation on the accused to prove his innocence. An accused is presumed to be innocent until he or she is proven guilty. The standard of proof is one of proof beyond reasonable doubt.

## **ELEMENTS OF THE OFFENCE**

### **COMMON ASSAULT**

4. To prove the alternative offence of common assault in count one the prosecution must prove the following elements beyond reasonable doubt:
  - (a) The accused;
  - (b) Unlawfully;
  - (c) Assaulted the complainant by touching her shoulder.
5. The first element of the offence of common assault is concerned with the identity of the person who allegedly committed this offence.
6. The word “unlawfully” in respect of the second element of the offence simply means without lawful excuse.
7. Assault is the unlawful use of force on the complainant by the act of touching her shoulder.
8. In respect of the count of common assault the accused has denied committing this offence. It is for the prosecution to prove beyond reasonable doubt that it was the accused who had unlawfully assaulted the complainant by touching her shoulder.
9. If this court is satisfied that the prosecution has proved all the elements of the offence of common assault beyond reasonable doubt, then this court must find the accused guilty of the offence of common assault. However, if there is a reasonable doubt with respect to any elements of the offence of common assault then this court must find the accused not guilty.

## **SEXUAL ASSAULT**

10. To prove counts two and three the prosecution must prove the following elements of the offence of sexual assault beyond reasonable doubt:
  - (a) The accused;
  - (b) Unlawfully and indecently;
  - (c) Assaulted the complainant by touching her breast and buttocks respectively.
  
11. The first element of the offences of sexual assault is concerned with the identity of the person who allegedly committed this offence.
  
12. The words “unlawfully” and “indecently” in respect of the second element of the offence of sexual assault means without lawful excuse and that the act has some elements of indecency that any right minded person would consider such conduct indecent.
  
13. The final element of assault is the unlawful use of force on the complainant by the accused touching her breast and her buttocks respectively. In this regard this court has to consider:
  - (a) whether the force used in touching the breast and the buttocks of the complainant in the context of what the accused was doing to the complainant sexual in nature; and
  - (b) if the answer is yes, whether, in view of the circumstances and/or the purpose in relation to the force used, was in fact sexual in nature.

14. In this trial, the accused has denied committing the offences of sexual assault as alleged. It is for the prosecution to prove beyond reasonable doubt that it was the accused, who had unlawfully and indecently assaulted the complainant by touching her breast and buttocks respectively.
15. If this court is satisfied beyond reasonable doubt that the prosecution has proved all the elements of the offences of sexual assault as explained above, then this court must find the accused guilty. If on the other hand, there is a reasonable doubt with regard to any of those elements concerning the offences of sexual assault, then this court must find the accused not guilty.

### **RAPE**

16. To prove count four the prosecution must prove the following elements of the offence of rape beyond reasonable doubt:
  - (a) The accused;
  - (b) Penetrated the vagina of the complainant with his fingers;
  - (c) Without her consent;
  - (d) The accused knew or believed the complainant was not consenting or didn't care if she was not consenting at the time.
17. In this trial, the accused has denied committing the offence of rape. It is for the prosecution to prove beyond reasonable doubt that it was the accused who had penetrated the vagina of the complainant with his fingers without her consent and the accused knew or believed the complainant was not consenting or didn't care if she was not consenting at the time.
18. The first element of the offence is concerned with the identity of the person who allegedly committed this offence.

19. The second element is the act of penetration of the complainant's vagina by the fingers.
20. The third element of consent means to agree freely and voluntarily and out of her free will. If consent was obtained by force, threat, intimidation or fear of bodily harm or by exercise of authority, then that consent is no consent at all. Furthermore, submission without physical resistance by the complainant to an act of another shall not alone constitute consent.
21. If this court is satisfied that the accused had penetrated the vagina of the complainant with his fingers and she had not consented, then this court is required to consider the last element of the offence that is whether the accused knew or believed that the complainant was not consenting or did not care if she was not consenting at the time.
22. To answer the above this court will have to look at the conduct of both the complainant and the accused at the time and the surrounding circumstances to decide this issue.
23. If this court is satisfied beyond reasonable doubt that the prosecution has proven beyond reasonable doubt that the accused had penetrated his fingers into the complainant's vagina without her consent then this court must find the accused guilty as charged.
24. If on the other hand, there is a reasonable doubt with regard to any of those elements concerning the offence of rape, then this court must find the accused not guilty.
25. The slightest of penetration of the complainant's vagina by the accused fingers is sufficient to satisfy the act of penetration.

## **INDECENT ASSAULT**

26. To prove count five the prosecution must prove the following elements of the offence of indecent assault beyond reasonable doubt:
  - (a) The accused;
  - (b) Unlawfully and indecently;
  - (c) Assaulted the complainant by touching her stomach.
  
27. The first element of the offence of indecent assault is concerned with the identity of the person who allegedly committed this offence.
  
28. 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.
  
29. Assault is the unlawful use of force on the complainant by the act of touching her stomach.
  
30. In respect of the count of indecent assault the accused has denied committing this offence. It is for the prosecution to prove beyond reasonable doubt that it was the accused who had unlawfully and indecently assaulted the complainant by touching her stomach.
  
31. 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 accused guilty of the offence of indecent assault. However, if there is a reasonable doubt with respect to any elements of the offence of indecent assault then this court must find the accused not guilty.

32. As a matter of law, I direct myself that offences of sexual nature as in this case do not require the evidence of the complainant to be corroborated. This means, if this court is satisfied with the evidence given by the complainant and accepts it as reliable and truthful then this court is not required to look for any other evidence to support the account given by the complainant.
33. In this case, the accused has been put to his defence for the alternative offence of common assault in count one, two counts of sexual assault (counts two and three), one count of rape (count four) and one count of indecent assault (count five). I have borne in mind that the evidence in each count is to be considered separately from the other. It is not to be assumed that because the accused is guilty of one count that he must be guilty of the others as well. This also applies to the outcome of not guilty.

#### **ADMITTED FACTS**

34. In this trial, the prosecution and the defence have agreed to certain facts titled as Admitted Facts. These facts are part of the evidence and I have accepted these admitted facts as accurate, truthful and proven beyond reasonable doubt.
35. 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**

36. The complainant testified that the accused is her uncle. In 2022, she resided with her parents and siblings in Natalau village, where the accused also lived, two houses away from her family home.
37. On 16 January 2024, the complainant was washing clothes at the accused's house. The accused had gone to drop his wife at Sabeto. Upon returning, he found the complainant coughing and offered to massage her, which she declined. The accused then went outside.
38. After having her shower, the complainant lay on her stomach in the sitting room. She was alone in the house. Around midday, she felt someone touch her shoulder down to her buttocks, before being turned to face up. She saw it was the accused, who continued to touch her breasts while restraining her legs. The accused covered her mouth with his hand, removed her pants and inserted his two fingers in her vagina.
39. The complainant became frightened and began to cry. The accused told the complainant not to tell anybody about what he had done. The complainant went to her home, but did not tell anyone.
40. Later that afternoon, the accused called the complainant on her mobile phone, asking her to his house for dinner. Attempting to forget the incidents, she believed it would not be repeated. When the complainant went to the accused's house, he was normal. The complainant subsequently told her best friend, Sitiveni, about what the accused had done.

41. A few days later, the complainant went to her aunt's house at Waqadra. The accused came looking for her there. The complainant got frightened, she again contacted Sitiveni, who accompanied her to the Namaka Police Station, where she reported the matter. The complainant did not consent to the accused's acts.
42. In cross-examination, the complainant stated that the accused often visited her house seeking assistance with household chores, since his wife her aunt was unwell.
43. She further stated that her parents had agreed she could live with the accused to help with household chores. When questioned that the accused had his household rules which the complainant had to follow such as sleeping times, and time to switch off the lights, she disagreed.
44. Upon further questioning, she stated that as she was falling off to sleep, the accused touched her shoulder which frightened her. She maintained that the accused had touched her shoulder, her breasts and buttocks.
45. With respect of the fourth count, alleging the penetration of her vagina by the accused's fingers, the complainant stated "*I saw it and I felt it.*" She further maintained that the accused had done what she described to the court. After the incidents, she ran home but did not tell anyone, as she was afraid due to their family relationship.
46. When it was put to her that the accused had not touched her stomach on 21 January 2024, she maintained that he had.
47. After the matter was reported to the police, she was taken to the hospital for a medical examination. She explained that when she returned to the

accused's house after the incidents on 16 January, she did not confront him because she was scared. When it was suggested that she did not confront him because nothing had happened, she replied "*No, all these things had happened*".

48. The complainant denied bringing these allegations due to the accused's strict rules or upbringing. She stated that the accused did not have any rules in the house, and that the accused's upbringing was acceptable, but she reported because of his conduct.
49. In re-examination, she clarified that on 21 January 2024, she was sleeping at the accused's house. At about 4 am, she woke up to find the accused touching her stomach with oil.
50. The final witness, Sitiveni Naquna, testified that one afternoon he received a call from the complainant requesting to meet. According to the witness, from the complainant's tone she appeared frightened.
51. When they met, she was crying uncontrollably. Upon asking what had happened, she told him the accused had touched her from the shoulder downwards while she was resting, and further touched her breasts and vagina. She said she tried to resist but could not. The witness observed that she was crying while narrating the events.
52. As a result, the complainant did not want to remain in the village and asked to go to her aunt's house in Waqadra. The witness took her there. A few days later, the complainant again called him, stating that the accused had come to her aunt's house. The witness met her, and thereafter a police report was lodged at Namaka Police Station. He testified that the complainant appeared scared.

53. In cross-examination, the witness agreed that he and the complainant were best friends. He denied helping the complainant by concocting lies against the accused or instigating the police report.
54. In re-examination, the witness stated that it was the complainant who wanted to report the matter to the police.

#### **RECENT COMPLAINT EVIDENCE**

55. Complainants in sexual offence cases may react differently to what they may have gone through. Some, in distress or anger, may complain to the first person they see. Others, due to fear, shame or shock, or confusion, may delay making a complaint 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.
56. 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 the weight to be given to the fact that the complainant told Sitiveni Naquna a few days after the incidents, that the accused had sexually touched her.
57. This is commonly known as recent complaint evidence. The evidence given by Sitiveni is not evidence of what actually happened between the complainant and the accused since Sitiveni was not present and did not see what had happened between the complainant and the accused.
58. This court is, however, entitled to consider recent complaint evidence when assessing the credibility of the complainant. The prosecution submits that

the complainant told Sitiveni, a few days after the incidents that the accused had sexually abused her. She provided relevant and significant information about the accused's conduct, sufficient to alert Sitiveni that something unexpected had occurred.

59. The prosecution further argues that the court should take into account the distressed state of the complainant when she relayed the incident to Sitiveni. It was not expected that she would disclose every detail to her male best friend. Nonetheless, she conveyed crucial information, which supports the likelihood that her account was truthful.
60. On the other hand, the defence contends that the complainant made up a story against him since he was a strict person with strict standards of upbringing. According to the defence, she wished to live freely, without restrictions, and therefore portrayed herself as a distressed individual seeking sympathy. The defence submits that the accused is the true victim in this matter, and the complainant, being the daughter of a Church Deacon, lied to Sitiveni to protect her own image and therefore she should not be believed.
61. It is for this court to decide whether the evidence of recent complaint helps in reaching a decision. The question of consistency or inconsistency in the complainant's conduct goes to her credibility and reliability as a witness. It is a matter for this court to decide whether it accepts the complainant as reliable and credible. The real question is whether the complainant was consistent and credible in her conduct and in her explanation of it.
62. This was the prosecution's case.

## **DEFENCE CASE**

63. At the close of the prosecution's case, the accused was informed of his options. He could have remained silent, but he chose to give sworn evidence and be subjected to cross examination. This court must therefore consider his evidence, and give such weight as is appropriate.
64. The accused testified that he resides at Natalau village with his wife, his namesake and other individuals who occasionally visit his home every now and then. He stated that he has no blood relationship with the complainant's parents, although the family referred to him as "Ta," meaning dad.
65. The accused denied committing the offences alleged by the complainant. When asked why she might make such allegations, he explained "*I have a rule in my house that everybody who lives in my house is supposed to be home before 12 midnight.*"
66. In cross-examination, the accused acknowledged that in 2024 he was living with his wife, namesake and the complainant. He denied being related to the complainant and rejected the suggestion that her father was his cousin.
67. The accused agreed that he was interviewed by police in the ITaukei language and that he answered voluntarily. He stated that the complainant began staying with him from 2024, and not in November 2023 as recorded in his caution interview.
68. The accused further testified that on 21 January 2024, at about 4 am he returned home from a grog session. He agreed that in February 2024 the complainant left his house and went to Waqadra. He denied committing

any of the alleged offences, maintaining he did not do anything to the complainant.

69. This was the defence case.

### **ANALYSIS**

70. The prosecution submits that the complainant and the accused were known to each other, residing in the same village. The accused is the complainant's uncle, and the complainant often stayed at his house to assist with the household chores, as his wife was unwell.
71. On 16 January 2024, the complainant was alone in the accused's house. After completing her chores, she had her shower, and was lying on her stomach in the sitting room. Around midday, she felt someone touch her shoulder down to her buttocks, before being turned over to face up. She saw that it was the accused, who continued to touch her breasts while restraining her legs. He then covered her mouth with his hand, removed her pants, and forcefully penetrated her vagina with his two fingers.
72. The complainant became frightened and began to cry. The accused told the complainant not to tell anyone. She went to her home, but did not tell anyone about the incident
73. In the afternoon, the accused called the complainant on her mobile phone asking her to his house for dinner. The complainant tried to forget the incidents, she thought it would not be repeated. When the complainant went to the accused's house, he behaved normally.

74. On 21 January 2024, at about 4 am while sleeping at the accused house the complainant woke up to see the accused touching her stomach with oil. She later told Sitiveni Naquna, about what the accused had done.
75. A few days later, the complainant went to her aunt's house in Waqadra. The accused came looking for her there. The complainant was frightened to see the accused so she again contacted Sitiveni, who accompanied her to Namaka Police Station, where she reported the matter. The complainant did not consent to the accused's acts.
76. On the other hand, the defence contends that all the allegations are false and made up story. The defence urges the court to view the evidence objectively, describing this as a case of a young girl living in the accused's house who disliked his strict rules and upbringing. The accused had no blood relationship with the complainant, yet accommodated her at the request of her father, who struggled to support his large family.
77. The defence argues that the complainant, in expressing her dislike of the accused's strict rules made up the allegations of sexual abuse. The accused did not do anything to the complainant as alleged.
78. The defence further submits that the complainant's failure to immediately inform her parents, who lived only two houses away, is suspicious and uncharacteristic of a genuine sexual offence victim. Since there was no blood relationship between the complainant and the accused, the defence argues there was no reason for her to fear family shame or disruption of family bonds.

79. The defence also points out that the complainant returned to the accused's house for dinner after the alleged incident, without confronting him, undermines her credibility.
80. Furthermore, Sitiveni Naquna was only narrating what the complainant told him and her emotional state as dramatized by her. The defence submits that Sitiveni, being the complainant's best friend, was not independent and leaned in her favour, thereby supporting false allegations against the accused.
81. The defence characterizes this case as a betrayal of trust by the complainant. It argues that the chain of events she described must be examined closely, and that at no point could the accused have committed the acts alleged.
82. Finally, the defence submits that the accused, a senior citizen who provided shelter to the complainant, has been repaid for his kindness with false allegations. According to the defence, the allegations are a fabricated and well-constructed story, using the accused's strict household rules as a weapon against him. The defence urges the court not to believe the complainant.

### **DETERMINATION**

83. I once again remind myself that the burden to prove the accused guilty beyond reasonable doubt lies with the prosecution throughout the trial, and it never shifts to the accused. Even if the defence version is rejected, the prosecution must still prove this case beyond reasonable doubt.

84. There are two distinct versions before the court, one advanced by the prosecution and the other by the defence. This court must consider all the evidence adduced to decide whether the prosecution has proven, beyond reasonable doubt, that the accused committed the alleged offences. It is not the role of this court to decide who is more acceptable between the complainant and the accused.

85. 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 accused 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.”*

86. 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).

87. The defence has also contended that the complainant did not tell the truth in court when she raised several allegations against the accused. In respect of this contention, I have directed my mind to the *Jovanovic* direction and remind myself that an accused bears no burden to prove a motive or reason for a complainant to lie.
88. The Court of Appeal in *Rokocika v The State* [2023] FJCA 251; AU0040.2019 (29 November 2023) from paragraphs 32 to 34 made a pertinent observation in respect of the above as follows:

*In R v Jovanovic* (1997) 42 NSWLR 520 Spering 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 accused 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].’*

89. After carefully considering the evidence adduced by the prosecution and the defence, I accept the complainant’s evidence as truthful and reliable. She provided a comprehensive and consistent account of the accused’s conduct. The complainant also withstood cross-examination and was not discredited as to the main version of her allegations.
  
90. The complainant struck me as an unsophisticated and shy, and introverted villager who nonetheless expressed herself clearly and spoke against the accused’s acts in a concise manner. She remained steadfast in her account, of what she had encountered, and I have no doubt that she told the truth in court. It is also noteworthy that she was fearful of the accused, residing in his house at the time of the alleged incidents.

91. I accept that the complainant could not speak out against the conduct of the accused when she immediately went home after the first incidents because she had felt uncomfortable to relay the incidents against her uncle. At the very least she was hopeful that the incidents were one off, not to be repeated by the accused.
92. Moreover, this court cannot ignore the fact that individuals differ in how they react to traumatic experiences. Some display obvious signs of distress, while others do not. The complainant's failure to immediately inform her parents after leaving the accused's house does not mean that nothing happened.
93. It is apparent that, out of innocence and hope that the accused would not repeat his actions, the complainant returned to his house. The accused's response upon her return was normal, so the complainant did not confront him.
94. The complainant reacted to the accused's conduct when he tested her patience by touching her stomach with oil while she was sleeping. At this point, I note that the complainant did not specify whether her clothes were removed or whether the accused's hand went beneath them.
95. In view of the evidence, particularly the mention of oil, I conclude that the accused's hand, covered in oil, touched the surface of the complainant's stomach. In my considered judgment, this conduct was contrary to ordinary standards of decency. I accept the accused's evidence that he arrived home at 4 am on the 21<sup>st</sup>, which supports the complainant's version that it was around 4 am when the accused touched her stomach with oil in his hand.

96. I also observed that the complainant held a strong view against the accused's conduct. She clearly stated that she did not consent to what the accused had done to her.
97. The complainant as a result of her dislike towards the accused's conduct, promptly left his house and went to Waqadra to stay at her aunt's house. This further demonstrates her resentment of the accused's behaviour. She also promptly informed Sitiveni, both by mobile phone and in person, that the accused was sexually abusing her.
98. Although she did not provide complete detail to Sitiveni regarding the penetration of her vagina by the accused's fingers, touching of her buttocks and stomach these omissions did not affect her credibility. The complainant was scared of the accused and the fear of what had occurred cannot be ignored. However, she provided relevant and significant information about the accused's conduct, sufficient to alert Sitiveni that something unexpected had occurred is understandable considering the circumstances of the complainant.
99. Sitiveni gave reliable and credible evidence about what the complainant had told him. I have also taken into account that it would not be expected of a complainant, who had experienced an unexpected sexual encounter, to disclose every detail to a male best friend, particularly when the alleged perpetrator was a close relative.
100. What the complainant told Sitiveni was material and relevant to the unlawful sexual conduct of the accused. I also accept Sitiveni's evidence regarding the distressed state of the complainant when she narrated her experience to him. I have no doubt that Sitiveni honestly narrated what he had heard and observed.

101. From the evidence, it is obvious to me that Sitiveni was the most appropriate person upon whom the complainant could rely. Sitiveni reciprocated this trust by taking her to her aunt's house and subsequently to the police station, where she lodged her report. The decisive aspect of this recent complaint evidence is that it demonstrates consistency between the complainant's conduct with her evidence at trial.

102. I have also taken into consideration the observations of the Supreme Court in *Anand Abhay Raj vs. The State*, CAV 0003 of 2013 (20<sup>th</sup> August, 2014) at paragraph 39 as follows:

*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 Accused. 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.*

103. The defence in his submissions raised the issue of late reporting. 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 (4<sup>th</sup> October, 2018)* had explained this issue.

104. Firstly, I would like to state that the accused was a person of authority in the house he was the uncle of the complainant and both were living in the same house at the time of the allegations.

105. Secondly, the complainant was frightened of the accused. The accused had told the complainant not to tell anyone about what he had done. When the accused abused the complainant on 21 January, 2024 the complainant could not take it anymore, she left the accused's house on 2 February,

2024 and the following day the matter was reported to the police. It is noted that the complainant had promptly reported the matter to the police when the opportunity presented itself.

106. On the other hand, I do not believe the accused's denial contains any strand of honesty. His account appeared carefully rehearsed. He presented a version of events that is neither tenable nor plausible when considered against the totality of the evidence. He portrayed himself as someone assisting the complainant's family by accommodating her and doing them a favour. He specifically referred to the complainant's sister staying at his house after completing Form 7. As he had no children of his own, he sought to present this as an act of goodwill.
107. He was assertive that it was his house in which the complainant resided, subject to his strict rules. The accused was judgmental about the complainant's sleeping time, the time to switch off the lights and so on, all of which had to adapt to his rules. The accused's denials lack reliability and are unworthy of belief.
108. This court accepts the evidence of the prosecution witnesses as reliable and credible. On the other hand, the defence of denial is rejected as untenable and implausible.
109. The defence has not succeeded in creating a reasonable doubt in the prosecution's case.

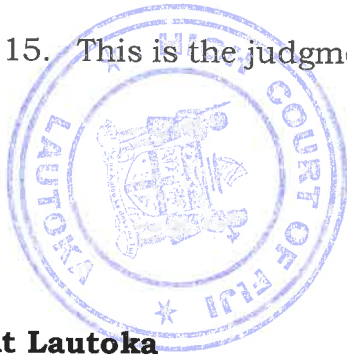
## **CONCLUSION**

110. This court is satisfied beyond reasonable doubt that the accused on 16 January 2024, unlawfully that is without lawful excuse assaulted the complainant by touching her shoulder. Furthermore, the accused on the

same day unlawfully and indecently assaulted the complainant by touching her breasts, and her buttocks.

111. In respect of the above counts this court is satisfied beyond reasonable doubt that the accused had acted unlawfully that is without lawful excuse and indecently in what he did to the complainant. The acts of the accused in the above counts have some elements of indecency that any right minded person would consider such conduct indecent and sexual in nature respectively. Finally, the complainant did not consent to the above mentioned acts of the accused.
112. This court is satisfied beyond reasonable doubt that the accused on 16 January 2024, penetrated the vagina of the complainant with his fingers without her consent. The accused knew or believed the complainant was not consenting or didn't care if she was not consenting at the time.
113. This court is also satisfied that the accused on 21 January 2024, had unlawfully and indecently assaulted the complainant by touching her stomach. In respect of the above count this court is satisfied beyond reasonable doubt that the accused had acted unlawfully that is without lawful excuse and indecently in what he did to the complainant. The act of the accused in the above count have some elements of indecency that any right minded person would consider such conduct indecent in nature. The complainant did not consent to the above mentioned act of the accused.
114. In view of the above, I find the accused guilty of the alternative offence of common assault in count one, two counts of sexual assault, one count of rape and one count of indecent assault as charged and he is convicted accordingly. Due to lack of evidence the accused is acquitted of the offence of indecent assault in count one.

115. This is the judgment of the court.



**Sunil Sharma**  
**Judge**

**At Lautoka**

17 February, 2026

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Messrs Daveta Advocates, Lautoka, for the Accused.**