

IN THE MAGISTRATES COURT OF FIJI AT SUVA

CRIMINAL JURISDICTION

Criminal Case No. 1471 of 2021

STATE

-v-

ILAITIA TAMANI

Prosecution: Mr T. Namila – Director of Public Prosecutions

Accused: Mr Cakau. J – Vosorogo Lawyers

Date of Judgment: 24th of February, 2026

JUDGEMENT

1. The accused pleaded guilty to two counts of indecent assault and the matter proceeded to trial.

COUNT 1

STATEMENT OF OFFENCE

Indecent Assault: Contrary to Section 212(1) of the Crimes Act of 2009.

PARTICULARS OF OFFENCE

ILAITIA TAMANI also known as ASP ILAITIA TAMANI between the 1st day of March 2018 and 31st day of March 2018 at the Police Bands Unit in Suva, in the Central Division unlawfully and indecently assaulted **MEREANI LIKUWAQA** by hugging her from behind and kissing her on the cheek.

COUNT 2

STATEMENT OF OFFENCE

Indecent Assault: Contrary to Section 212(1) of the Crimes Act of 2009.

PARTICULARS OF OFFENCE

ILAITIA TAMANI also known as ASP ILAITIA TAMANI between the 1st day of July 2019 and 31st day of March 2019 at the Police Bands Unit in Suva, in the Central Division unlawfully and indecently assaulted **MEREEANI LIKUWAQA** by hugging her from the side and trying to kiss her.

The Burden of Proof and the Standard of Proof

2. Section 57 of the Crimes Act No. 44 of 2009 (Crimes Act) stipulates that the prosecution bears a legal burden of proving every element of an offence. The Section reads as follows:

- (1) *The prosecution bears a legal burden of proving every element of an offence relevant to the guilt of the person charged.*
- (2) *The prosecution also bears a legal burden of disproving any matter in relation to which the defendant has discharged an evidential burden of proof imposed on the defendant.*
- (3) *In this Decree (Act)—
"legal burden", in relation to a matter, means the burden of proving the existence of the matter.*

3. Section 58 (1) of the Crimes Act stipulates that a legal burden of proof on the prosecution must be discharged beyond reasonable doubt.

Legal Provisions and the Elements of the Offence

4. The prosecution must prove beyond reasonable doubt the following elements the accused as per the charge;

Indecent Assault

5. Section 212 (1) of the Crimes Act stipulates that:

"A person commits a summary offence if he or she unlawfully and indecently assaults any other person".

Case for the Prosecution

6. Prosecution called 1 witness during the course of the trial to prove its case.

Evidence of Mereani Liguwaga

7. Stated that the accused was the officer in the charge of the police band in 2017 and under his supervision she was an active member of the band as a police officer. Witness recalled that in June, 2017 the accused hugged her tightly and kissed her cheek inside the Fiji Police Band office and she felt

uncomfortable with this conduct. Witness further recalled that in sometimes in March 2018, the accused the accused hugged her from the side and kissed her cheek and she did not like as to what the accused did to her.

8. In cross examination the witness agreed that the alleged offences took place in 2017 and 2018, however she reported the matter in 2021.
9. Witness disagreed that the reason for the late reporting was that there were group of people who wanted the accused to be removed as the officer in charge of the police band.
10. At the end of the prosecution case, court found that there was a case to answer.
11. The accused after consulting his counsel chose to remain silent and called no witnesses as per his constitutional rights.

Analysis of evidence

Prosecution Case

12. The burden of proving each ingredient of the charge rests entirely on the prosecution and the burden of proof is beyond a reasonable doubt.
13. Therefore, it is necessary for the prosecution to prove all the elements of the charge beyond reasonable doubt.
14. This statutory provision of law is further relied upon the persuasive authority in the matter of **Woolmington v DPP [1935] AC 462** where it was held that :

“Throughout the web of the English criminal law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner’s guilt, subject [to the qualification involving the defence of insanity and to any statutory exception]. If at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given either by the prosecution or the prisoner, as to whether [the offence was committed by him], the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained” (per Viscount Sankey L.C. at pp. 481-482).

15. I have carefully reviewed all evidence before me which were, oral evidence on oath together will documentary evidence such as the photograph of the alleged crime scene.

16. It is not necessary to write verbatim proceedings and all evidence in this judgement but that does not mean I have not gone through all the evidence before me.
17. I have thoroughly revisited all the evidence before me and decided to put pertinent and salient features of it in my ruling.
18. Firstly in any late reporting in sexual offences, it's important for court to objectively look into the issue of late reporting.
19. In this matter the complainant was a police officer as well as the accused.
20. The matter got reported approximately 3 years after the alleged incident.
21. Hence, it is obvious that there was an issue of late reporting by the complainant to the police. The delay is about 3 years from the time of alleged offences which was in 2017 to 2018. 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 succinctly at paragraph 24 of the ruling which said:

*"[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 **Tuyford** 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.**" (my emphasis added)*
22. I noted that the complainant could not explicitly explain to the satisfaction of this court the reason for late reporting when as a police officer she could have promptly reported the incident at the first reasonable opportunity.
23. Thus late reporting in this matter affected the credibility and reliability as the court could not see any reasonable reason for the complainant in not reporting promptly since the complainant was not in control of the accused financially, socially as a dependent apart from their working relationship within the Fiji Police Force Band unit.
24. On the issue of corroboration in the matter of **Singh v State [2023] FJCA 49; AAU092.2017 (24 February 2023)** Fiji Court of Appeal stated;

*"It is now trite law that by section 129 of the Criminal Procedure Act, 2009 the common law requirement of corroboration in sexual cases was abolished. However, that does not mean that when there is corroboration of the complainant's evidence such evidence should be disregarded. **In fact evidence corroborative of the complainant's testimony, if available, would go to strengthen the prosecution case. No sensible and vigilant prosecutor should refrain from leading such corroborative evidence if and when available.**"(my emphasis)*

25. In this matter, prosecutor tried his best to get one state witnesses to whom the witness confided her account of story, but this witness did not turn up, thus prosecution closed its case with the complainants testimony only.
26. Whilst this court was not looking for corroborative evidence, the testimony of recent complaint could have bolstered the state's case by adding weight and consistencies towards state's evidence.
27. I have also observed the demeanor and forthrightness of the complainant carefully and found her not to be credible and evasive at times during the cross examination.
28. Based on my above reasons, I find that there was a lingering doubt in prosecution's case and therefore I find the accused not guilty on both counts of indecent assault and I acquit him accordingly.



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Yogesh Prasad
Resident Magistrate

Dated at Suva this 24th day of February, 2026