

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

**Crim. Case No: HAC 16 of 2023**

**STATE**

vs.

**ERONI NAVUE**

**Counsel:** Ms. U. Tamanitoakula with Ms. P. Ram for the State  
Ms. A. Bilivalu with Mr. M. Waqavanua for Accused

**Dates of Hearing:** 04<sup>th</sup> and 05<sup>th</sup> March 2024

**Date of Closing Submission:** 25<sup>th</sup> March 2024

**Date of Judgment:** 28<sup>th</sup> March 2024

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**JUDGMENT**

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**Introduction**

1. The Director of Public Prosecution on the 7<sup>th</sup> of March 2023 filed this Information charging the Accused, Mr. Eroni Navue, with three counts of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act, one count of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes Act and one count of Rape, contrary to Section 207 (1) and (2) (c) of the Crimes Act for which the Accused pleaded not guilty. The particulars of the offences are:

***COUNT 1***

*Statement of Offence*

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

*Particulars of Offence*

*ERONI NAVUE on the 1<sup>st</sup> day of January, 2023, at Wainimala, Naitasiri in the Eastern Division, had carnal knowledge of ATECA LIKUKULA, by penetrating her vagina with his penis, without her consent.*

**COUNT 2**

*Statement of Offence*

**RAPE:** *Contrary to Section 207 (1) and (2) (a) of the Crimes Act 2009,*

*Particulars of Offence*

*ERONI NAVUE on the same occasion as Count 1, at Wainimala, Naitasiri in the Eastern Division, had carnal knowledge of ATECA LIKUKULA, by penetrating her anus with his penis, without her consent.*

**COUNT 3**

*Statement of Offence*

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

*Particulars of Offence*

*ERONI NAVUE on the same occasion s counts 1 and 2, at Wainimala, Naitasiri in the Eastern Division, had carnal knowledge of ATECA LIKUKULA, by penetrating her vagina with his fingers, without her consent.*

**COUNT 4**

*Statement of Offence*

**RAPE:** *Contrary to Section 207 (1) and (2) (c) of the Crimes Act 2009,*

*Particulars of Offence*

*ERONI NAVUE on the same occasion as counts 1, 2 and 3, at Wainimala, Naitasiri in the Eastern Division, had carnal knowledge of ATECA LIKUKULA, by penetrating her mouth with his penis, without her consent.*

## **COUNT 5**

### *Statement of Offence*

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

### *Particulars of Offence*

***ERONI NAVUE*** on the 1<sup>st</sup> day of January, 2023, at Wainimala, Naitasiri in the Eastern Division, on an occasion other than count 1, had carnal knowledge of ***ATECA LIKUKULA***, by penetrating her vagina with his penis, without her consent.

2. As a consequence of the plea of not guilty entered by the Accused to all these five counts, the matter proceeded to the hearing. The hearing commenced on 04.03.2024 and concluded on 05.03.2024. The Prosecution presented the evidence of four witnesses, including the Complainant, while the Accused gave evidence for the Defence. Subsequently, the Court heard the closing submissions of the learned Counsel for the Prosecution and the Defence; in addition to their oral submissions, both Counsels filed constructive written submissions. Having carefully considered the evidence adduced during the hearing and the respective oral and written submissions, I now pronounce the judgment on this matter.

### **Burden and Standard of Proof**

3. I first draw my attention to the burden and standard of proof. The Accused is presumed to be innocent until he is proven guilty. The burden of proof of the charge against the Accused is on the Prosecution. It is because the Accused is presumed to be innocent until he is proven guilty. The standard of proof in a criminal trial is "proof beyond reasonable doubt". The Court must be satisfied that the Accused is guilty of the offence without any reasonable doubt.

### **Elements of the Offence**

4. The main elements of the three offence of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act are:

- i) The Accused,
- ii) Penetrated the vagina of the Complainant with his penis,
- iii) The Complainant did not consent to the Accused to penetrate her vagina with his penis,
- iv) The Accused knew or believed or reckless that the Complainant was not consenting for him to insert his penis in that manner.

5. The main elements of the count of Rape contrary to Section 207 (1) and (2) (b) of the Crimes Act are;

- i) The Accused,
- ii) Penetrated the vagina of the Complainant with his fingers,
- iii) The Complainant did not consent to the Accused to penetrate her vagina with his fingers,
- iv) The Accused knew or believed or reckless that the Complainant was not consenting for him to insert his fingers in that manner.

6. The main elements of the Rape contrary to Section 207 (1) and (2) (c ) of the Crimes Act are:

- i) The Accused,
- ii) Penetrated the mouth of the Complainant with his penis,
- iii) The Complainant did not consent to the Accused to penetrate her mouth with his penis,
- iv) The Accused knew or believed or reckless that the Complainant was not consenting for him to insert his penis in that manner.

7. The first element is the identity of the Accused. It is the onus of the Prosecution to prove beyond a reasonable doubt that the Accused committed these offences against the Complainant. There is no dispute about the correctness of the identification. The Accused and the Complainant are known to each other. The Accused never raised the issue that the Complainant was mistaken in identifying the alleged perpetrator.

8. Evidence of the slightest penetration of the vagina/mouth of the Complainant with the penis/fingers of the Accused is sufficient to prove the element of penetration. In this matter, the Accused admitted that he penetrated the vagina of the Complainant with his penis in respect of the first count of Rape. He contends that the Complainant consented for him to penetrate his penis in that manner which the Complainant denies. Regarding the remaining four counts of Rape, the Accused denied any penetration as claimed by the Complainant.

9. Section 206 (1) of the Crimes Act defines the consent as:

*"The term "consent" means consent freely and voluntarily given by a person with the necessary mental capacity to give the consent, and the submission without physical resistance by a person to an act of another person shall not alone constitute consent."*

10. Accordingly, consent is a state of mind that can take many forms, from willing enthusiasm to reluctant agreement. In respect of the offence of Rape, the Complainant consents if she had the freedom and capacity to make a choice and express that choice freely and voluntarily. Consent obtained through fear, threat, the exercise of authority, use of force, or intimidation could not be considered consent expressed freely and voluntarily. A submission without physical resistance by the Complainant to an act of another person shall not alone constitute consent. Accordingly, the "capacity" is essential in making free and voluntary choices about consent.

11. If the Court is satisfied that the Accused had penetrated the vagina/mouth of the Complainant with his fingers/penis and she had not given her consent, the Court is then required to consider the last element of the offence. That is whether the Accused honestly believed, knew, or was reckless that the Complainant was freely consenting to this alleged sexual act. The belief in consent differs from the hope or expectation that the Complainant was consenting.

## Admitted Facts

12. The Prosecution and the Defence tendered the following Admitted Facts under Section 135 of the Criminal Procedure Act, they are:

1. *The Accused in this matter is Eroni Navue, 32 years old, Farmer of Lutu Village, Wainimala, Naitasiri [hereinafter referred to as "Eroni"].*
2. *The Complainant in this matter is Ateca Likukula, 32 years old, Administrative Officer of Lutu Village, Wainimala, Naitasiri [hereinafter referred to as "Ateca"].*
3. *Ateca is marriage to one Vilikesa Qio and resides at Lutu village, Wainimala, Naitasiri.*
4. *Eroni and Ateca are known to each other as Eroni and her husband, Vilikesa Qio are from the same village and are cousin brothers.*
5. *On the 1<sup>st</sup> of January 2023 on or about 7am, Eroni had went to Ateca's house at Lutu Village, Wainimala, Naitasiri.*
6. *On the same day, both Eroni and Ateca were inside the teacher's quarters of one Ms. Sosifina, School teacher of Muaira District School, Naitasiri.*
7. *Eroni penetrated Ateca's vagina with his penis on a mattress in a bedroom in Ms. Sosifina's teacher's quarters.*
8. *Ateca's mother-in-law, Monika Nauluqaqa confronted Eroni and mater was reported to Vunidawa Police Station on the same day.*
9. *The following documents are tendered by consent by the State and Defence counsel:*
  - a) *Photographic booklet compiled by DC 4786 Iliesa Kaivai dated 02 January 2023.*
  - b) *Photographic booklet compiled by DC 4786 Iliesa Kaivui dated 17<sup>th</sup> March 29023.*

## Trial issues:

10. *Count 1 Whether Eroni Navue penetrated Ateca Likukula's vagina without her consent?*
11. *Count 2, 3, 4 & 5 – Whether it is disputed in its entirety?*

### Prosecution's Case

13. The Complainant claims that the Accused committed these offences on the morning of the 1st of January, 2023. The accused is her husband's cousin, who lives in the same house with her children and mother-in-law while her husband is away working in Australia. On the morning of the 1st of January 2023, the Complainant was looking for the key to their kitchen. The Accused came from a drinking party and asked for money from the Complainant for his work at her 'yaqona' farm. Having found the key to the kitchen, she opened it and cooked rice. She then went to Sosifina's teacher's quarters to get frozen chicken from Sosifina's fridge.
14. According to the Complainant, she found the Accused was at the doorway of the teacher's quarters when she opened the fridge to get the chicken. The Accused started asking for money again. He then came behind and hugged her. While hugging her, he began to move backwards, telling the Complainant that she should not wait for her husband, who works in Australia. The Complainant told him he should not do such things as he is her brother-in-law. However, he moved backwards with her to the room, where he pulled her down on the mattress. He held her hands with his hands and removed her clothes, and penetrated her vagina with his penis. The Complainant resisted screaming and shouting for help from her mother-in-law, who lives a few meters from the locus. However, no one came to rescue her, and it was raining heavily.
15. The Accused then pulled her legs up and penetrated her anus. He kept one of his hands pressing on her chest. He inserted her vagina with the fingers of his free hand while still penetrating her anus with his penis. When he inserted his fingers into her vagina, it started to bleed from her vagina. It bled heavily. The Accused then took his fingers out and penetrated her mouth with his penis. The Accused was heavy as he was drunk; hence, the Complainant could not push him away. Having penetrated her mouth with his penis, the Accused once again penetrated her vagina with his penis. The Complainant then felt the Accused was getting weak. She then pushed him away and got out of the quarters. When she got up, she saw blood on her body, which she wiped off with the undergarment and left

the quarters half naked, only carrying the 'sulu'. She wore the 'sulu' when she exited the quarters and returned home.

16. The mother-in-law and the sister-in-law of the Complainant were at home when she returned. She straightway went to her room and called her sister-in-law to the room, where she told the sister-in-law that the Accused did something to her and that she needed to call the village headman and the Police. The village headman and his wife visited the Complainant's house to discuss this incident. The Accused also joined the discussion. The matter was then reported to the Police.

### **Defence's Case**

17. The Accused vehemently denies this allegation, claiming that the Complainant falsely made up this allegation as she was afraid that the villagers would find the extramarital relationship she was having with him while her husband was away in Australia. The Accused admitted that he had consensual sexual intercourse with the Complainant on the morning of the 1st of January 2023 at Sosifina's house when they went there to pick up the frozen chicken. However, he specifically declined to admit that he penetrated the vagina, anus and mouth of the Complainant with his penis without her consent. He further denied that he inserted her vagina with his fingers without her consent.

### **Evaluation of Evidence**

18. According to the evidence adduced by the Prosecution and the Defence, the Accused admitted that he penetrated the vagina of the Complainant with his penis in respect of the first count but denied the allegation that he did it without her consent. Hence, the main issue that the Court has to determine for the first count of Rape is whether the Complainant consented to the Accused to penetrate her vagina with his penis. The Accused denied the remaining counts of Rape, claiming it never occurred, and the Complainant falsely made it up.



19. Under such circumstances, the Court must consider all of the evidence adduced in the trial, including the evidence of the Accused, to determine whether the Prosecution has proven beyond reasonable doubt that the Accused committed this crime. In doing that, the Court must evaluate the evidence presented in the Court. The Accused is not required to give evidence. He does not have to prove his innocence as his innocence is presumed by law. However, in this case, the Accused decided to provide evidence. Therefore, such evidence presented by the Accused needs to be considered when determining the facts of this case.

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

*"If an explanation has been given by the accused, then it is for the jury to say whether on the whole of the evidence they are satisfied that the accused is guilty. If the jury think that the explanation given may reasonably be true, although they are not convinced that it is true, the prisoner is entitled to be acquitted, inasmuch as the crown would then have failed to discharge the burden imposed upon it by our law of satisfying the jury beyond reasonable doubt of the guilt of the accused. The onus of proof is never shifted in these cases; it always remains on the prosecution."*

21. Accordingly, if the Court believes the evidence given by the Accused is true or may be true, then the Court must find the Accused not guilty of the offences. If the Court rejects the Accused's version, that does not mean that the Prosecution has established that the Accused is guilty of the crime. Still, the Prosecution has to satisfy that it has established, on its evidence, beyond a reasonable doubt, that the Accused committed these offences as charged in the Information.

22. The Court is required to consider the testimonial trustworthiness of the evidence given by the witnesses. The evaluation of testimonial trustworthiness encompasses two primary assessments: the credibility of the witnesses and the reliability of the evidence given by the witnesses. The witness's credibility or veracity focuses on the witness's sincerity, whether the witness tells the truth or lies. The reliability concerns whether the evidence is free from mistakes, errors, and inaccuracies. A witness who is not credible could not be a reliable

witness. However, the evidence of an honest, credible witness may not be a reliable witness.

23. In evaluating the credibility and reliability of evidence, the Court must consider the 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. (*vide; Matasavui v State [2016] FJCA 118; AAU0036.2013 (the 30th of September 2016, State v Solomone Qurai (HC Criminal - HAC 14 of 2022).*)
24. It was the position of the Accused that he had consensual sexual intercourse with the Complainant on the morning of the 1st of January 2023, where he penetrated her vagina with his penis. According to the Complainant, the Accused hugged her from behind, saying she should not wait for her husband as he was working in Australia. While hugging her, he walked backwards with her to the room. The Complainant only told him he should not do such things as her brother-in-law. There is no evidence to suggest that the Accused forcefully dragged or pulled her to the room. To the Accused to walk backwards with the Complainant, she should also had to walk back with him unless he forcefully pulled or dragged her with him, thus creating a reasonable doubt about whether the Complainant willingly walked to the room with the Accused.
25. The Complainant persistently told the Court that she had been screaming and shouting for help from her mother-in-law when the Accused sexually assaulted her. She wanted to push him away, but he was strong and heavy. She felt weak when the Accused penetrated her vagina with his penis. Accordingly, it was the position of the Complainant that she was continuously resisting the Accused and trying to get herself free from his grip.
26. The Court heard the evidence of the Complainant stating that the Accused lifted her legs when she was lying facing upward after penetrating her vagina with his penis for about ten minutes. Having lifted her legs, the Accused penetrated her anus with his penis. According to the Complainant, one of the hands of the Accused was on her chest, pressing her down, and the other hand was holding her legs up. While he was still penetrating her anus with

his penis, the Accused penetrated the vagina of the Complainant with his fingers. The Complainant said that the Accused took his hand from her legs and penetrated her vagina with his fingers. He was still pressing her chest with his other hand.

27. The Complainant did not explain the bodily position of the Accused when he penetrated her anus with his penis and her vagina with his fingers at the same time. The Complainant was still keeping her legs up, which let the Accused penetrate her anus and vagina in the way she described. In the absence of any evidence explaining the position of the Accused, whether he was lying, sitting on his knees or leaning on the Complainant's legs, it appears that the Complainant was consciously and intentionally keeping her legs up for the Accused to penetrate her anus and vagina in the manner she explained. This inference leads to further doubt whether the Complainant consensually lifted her legs up, accommodating the Accused to penetrate her anus and vagina with his penis and fingers, or whether this incident never occurred as claimed by the Accused.
28. Furthermore, the Complainant admitted that when the Accused penetrated her vagina with his fingers, she had a chance to escape, but she could not do so as she felt weak. I am aware of the Complainant's claim that she continuously shouted and screamed, asking for help and wanting to escape from the Accused's assault. Nonetheless, this explanation fails to remove the above doubt whether she consciously and intentionally lifted her legs up, allowing the Accused to penetrate the anus and vagina with his penis and fingers simultaneously.
29. The Complainant alleged that the blood started to come out from her vagina when the Accused penetrated her vagina with his fingers. It bled heavily, leaving a big blood stain on the mattress. However, there is no medical evidence or finding to confirm that the penetration of the Accused's fingers had caused any injury in her vagina, causing such heavy bleeding. The Complainant categorically refused the suggestion of the learned Counsel for Defence that the cause of such heavy bleeding was her menstruation. Moreover, the Complainant admitted that there was a sanitary pad with her undergarments but explained that she had it because she had drunk grog the previous night. Considering the size of the blood stain found on the mattress and the absence of any evidence to

establish any significant injuries inside her vagina that caused such heavy bleeding, I am inclined to conclude that the Complainant was not truthful about the bleeding.

30. On the basis of her untruthfulness concerning the cause of the bleeding, I shall now consider whether the Court should disregard all of her evidence as untruthful. The Supreme Court of Fiji in Chandra v State [2015] FJS] FJSC 32; CAV21.2015 (the 10th of December 2015) discussed the principle of divisibility of credibility, where Dep JA observed:

*[78] In the past, the courts applied the maxim 'Falses in Uno Falses in Omnibus' - meaning "He who speaks falsely in one point will speak falsely upon all" - to a witness who gives false evidence. The present trend is instead of rejecting the totality of evidence, to act on that part of evidence which is true and reliable. This approach is known as divisibility of credibility.*

31. Accordingly, the Court could reject one part of a witness's evidence on the grounds of untruthfulness but still proceed to consider whether the remaining portion of the evidence is true and reliable.
32. When the Accused found the bleeding from the vagina, he took his fingers out. He then penetrated the Complainant's mouth with his penis. As per the evidence presented by the Complainant, these separate acts of penetration had occurred in seriatim. Suppose the Accused penetrated the anus of the Complainant with his penis before he proceeded to penetrate her mouth with his penis. In that case, his penis must be located around the lower body of the Complainant. To penetrate her mouth, the penis of the Accused either should have moved closer to her mouth, or her mouth should have moved closer to the penis of the Accused. There is no evidence of the body position of the Accused when he allegedly penetrated her mouth with his penis. It is not precisely clear whether the Accused moved closer to the mouth of the Complainant when she was lying on her back or whether the Accused pulled her mouth closer to his penis.

33. Significantly, the Prosecution did not provide any evidence explaining how did the Accused manage to penetrate the mouth of the Complainant with his penis. The Complainant merely stated that the Accused penetrated her mouth with his penis. The learned Counsel for the Prosecution perhaps thought it is better not to take trouble in explaining this incident any further, leaving a reasonable doubt whether the Complainant willingly opened her mouth or the Accused forcefully opened her mouth, or this alleged penetration never occurred as claimed by the Accused.
34. I am acutely conscious that a witness cannot be expected to possess a photographic memory and recall all the details of an incident. Usually, the sexual assault of this nature occurred suddenly and unexpectedly. Hence, a witness could be overtaken by the sudden and surprise event. Under such circumstances, it is unrealistic to expect the witness to recall all the details of the incident. ( vide; **Bharwada Bhoginbhai Hiribhai v State of Gujarat (1983) 3 SCC 217, at; 22, 223**) However, it is essential to provide the main details of the scope of the event or the fundamental aspects that constitute the alleged incident in evidence.
35. Besides forgoing discussion about the imprecision of the Complainant's evidence explaining the alleged incident, I observed certain contradictions between the evidence given by the Prosecution witnesses. The most striking contradiction observed by the Court is the evidence between the Complainant and her mother-in-law.
36. The Complainant stated during her evidence that she managed to push the Accused away when he penetrated her vagina with his penis the second time and fled the house half naked. She managed to clean the blood on her body with her undergarment and took only her 'sulu' with her. Once out of the house, she managed to wrap the 'sulu' around her lower body. She was emotional and weak when she walked back to her home. However, the mother-in-law explained in her evidence that she did not see any unusualness in the Complainant when she returned home from the Teacher's Quarters. The Complainant looked normal, and her clothes were in an orderly manner.

37. The above contradiction must be considered together with the evidence given by the Accused, where he claimed that the Complainant dressed up after they had consensual sexual intercourse at the Teacher's Quarters. The Complainant then left the Quarters, and the Accused followed her. The Prosecution tendered two photographs depicting the shorts and undergarment with a sanitary pad as Prosecution exhibits. The Complainant identified the shorts and undergarments as the clothes she wore that morning. However, no evidence exists to confirm whether the Investigators found these clothes at the Quarters or elsewhere. The absence of evidence regarding the location where the Complainant's clothes were found and the evidence of the Accused stating that the Complainant dressed up before she left the quarters influenced me significantly in my assessment of the discussed contradiction between the evidence of the Complainant and her mother-in-law, thus creating a reasonable doubt whether the Complainant actually left the Teacher's Quarters half naked as she claimed.
38. The Complainant had promptly informed her sister-in-law and mother-in-law that the Accused had done something to her, and she wanted to report it. I am mindful that a prompt complaint about a sexual assault does not automatically make it a true complaint. In the same manner, a late complaint does not automatically make it a false complaint.
39. The Prosecution presented the evidence of the Complainant's sister-in-law, mother-in-law and the village headman's wife as witnesses of the recent complaint. The three witnesses only stated that the Complainant told them that the Accused had done something to her and she wanted to report it.
40. The Supreme Court in **Raj v State [2014] FJSC 12; CAV0003.2014 (20 August 2014)** enunciated the purpose and the scope of the evidence of a recent complaint, where Gates CJ outlined that:

*[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.*

*[39] The complaint 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*

41. The Complainant had only told the three ladies that the Accused had done something to her. She had not explained to them any material facts of alleged sexual assault; hence, I find it difficult to consider the evidence of these three ladies as evidence of recent complaints based on the **Raj v State** (supra) guidelines.
42. The learned Counsel for the Defence argued that the reason for making this false allegation is because the Complainant feared that others would find her extramarital affair with the Accused. The learned Counsel for the Defence submitted in her written submission quoting an observation made by the Supreme Court of Canada in **R v Gerrard ( SCC 13 (19/04/2022))** that the existence of the Complainant's motive to lie is relevant in determining the credibility of the Complainant's evidence, especially where the Defence raised such a suggestion. The Supreme Court of Canada in **R v Gerrard (supra)** said that:

*"[4] Two of these factors warrant a few additional comments. Lack of evidence of a complainant's motive to lie may be relevant in assessing credibility, particularly where the suggestion is raised by the defence (R. v. Stirling, 2008 SCC 10, [2008] 1 S.C.R. 272, at paras. 10-11; R. v. Ignacio, 2021 ONCA 69, 400 C.C.C. (3d) 343, at paras. 38 and 52). Absence of evidence of motive to lie, or the existence of evidence disproving a particular motive to lie, is a common sense factor that suggests a witness may be more truthful because they do not have a reason to lie. That said, when considering this factor, trial judges must be alive to two risks: (1) the absence of evidence that a complainant has a motive to lie (i.e. there is no evidence either way) cannot be equated with evidence disproving a particular motive to lie (i.e. evidence establishing that the motive does not*

*exist), as the latter requires evidence and is therefore a stronger indication of credibility – neither is conclusive in a credibility analysis; and (2) the burden of proof cannot be reversed by requiring the accused to demonstrate that the complainant has a motive to lie or explain why a complainant has made the allegations (R. v. Swain, 2021 BCCA 207, 406 C.C.C. (3d) 29, at paras. 31-33)”*


43. I do not find any evidence pointing to or suggesting that the Complainant was concerned about such a fear, as submitted by the learned Counsel for Defence. Hence, I find no evidence to establish or disprove any *mala-fide* motive of the Complainant to make up this allegation falsely. As emphasized in **R v Gerrard (supra)**, the absence of evidence that a Complainant has a motive to lie or the absence of evidence disproving any particular motive to lie are not conclusive indicators of the credibility of the Complainant. Hence, I am not persuaded to pay much attention to this issue of *mala-fide* motive.
44. I closely observed the demeanour and manner in which the Complainant gave evidence during the hearing. I found a sudden change in her expression and demeanour when the learned Counsel for Defence asked her questions about her relationship with the Accused and the intimate messages she exchanged with him on Facebook Messenger.
45. Considering the foregoing evaluation of the Complainant’ evidence, I am not persuaded that the promptness with which she informed three close female members in her village that the Accused had done something to her enhanced the credibility and reliability of her evidence.

### **Conclusion**

46. In reaching my conclusion, I find the above evaluation of the Complainant’s evidence creates reasonable doubt about the credibility and reliability of her evidence, thus leading to further reasonable doubt about the truthfulness of her testimony. I accordingly conclude that the Prosecution failed to establish beyond reasonable doubt that the Accused committed these five counts of Rape as charged in the Information.



47. I shall now find that the Accused not guilty of three counts of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes act, one count of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes Act and one count of Rape, contrary to Section 207 (1) and (2) (c) of the Crimes Act and acquitted of the same accordingly.
48. Thirty (30) days to appeal to the Fiji Court of Appeal.



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

**At Suva**

28<sup>th</sup> March 2024

**Solicitors**

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.