

THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 301 of 2022

BETWEEN : **THE STATE**

AND : **LORIMA BOGIONO**

Counsel : Ms N Ali & Ms K Dugan for the State
Mr N Tuifagalele for the accused

Hearing : 6 & 7 May 2024

Closing addresses : 10 May 2024

Judgment : 15 May 2024

JUDGMENT

- [1] The complainant has been granted name suppression. Therefore, any public record of these proceedings must not contain any information that may lead to the identity of the complainant. She is referred to as 'RK' in this Judgment. I have deliberately avoided identifying details that may lead to identifying the complainant, such as the name of her parents or the name of her village.
- [2] The accused, Mr Lorima Bogiono, is charged with the following two counts:

Count 1

Statement of Offence

Rape: Contrary to Section 207(1) & (2)(c) of the Crimes Act 2009

LORIMA BOGIONO on an unknown date between the 1st day of September 2021 and the 31st day of December 2021 at Nasinu in the Central Division, penetrated the mouth of **RK** with his penis without her consent.

Count 2

Statement of Offence

Sexual Assault – Contrary to Section 210(1)(b)(ii) of the Crimes Act 2009

LORIMA BOGIONO on an unknown date between the 1st day of September 2021 and the 31st day of December 2021 at Nasinu in the Central Division, procured **RK** without her consent to witness an act of gross indecency by masturbating in the presence of the said **RK**.

- [3] Mr Bogiono denies having committed the offences.
- [4] Mr Bogiono is alleged to have raped the complainant on a date between 1 September 2021 and 31 December 2021 by penetrating the mouth of the complainant with his penis without the complainant's consent. Mr Bogiono is also alleged to have sexually assaulted the complainant over the same period by procuring the complainant to witness him masturbating in her presence without her consent.

Count 1 – Rape

- [5] The offence of rape has three elements: the penetration of a complainant's vagina, anus or mouth by the accused with their penis, finger or an object, the complainant not consenting to sexual penetration, and the knowledge of the accused that the complainant was not consenting.
- [6] Pursuant to s 207(2)(c) of the Crimes Act, the offence of rape occurs where a person penetrates the mouth of another person with the person's penis without the other person's consent. The slightest penetration is sufficient to establish the element of penetration.
- [7] According to s 206 of the Crimes Act, 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. Consent obtained by force or threat or intimidation, will not be considered as consent freely and voluntarily given. Consent or the absence of consent can be communicated by the words or acts of the complainant. The

knowledge of the accused that the complainant did not consent is a matter for inference from all the proven facts.

[8] To establish the offence of rape, the prosecution must prove the following elements beyond a reasonable doubt:

1. That on a date between 1 September 2021 and 31 December 2021, at Nasinu, in the Central Division, Mr Bogiono penetrated the complainant's mouth with his penis.
2. That the complainant did not freely and voluntarily consent to the penetration.
3. That Mr Bogiono knew that the complainant was not consenting.

Count 2 – Sexual Assault

[9] Sexual assault is an offence contrary to s 210(1)(b) and (2) of the Crimes Act.

[10] To establish the offence of sexual assault, the prosecution must prove the following elements beyond a reasonable doubt:

1. That on a date between 1 September 2021 and 31 December 2021, at Nasinu, in the Central Division, Mr Bogiono procured the complainant to witness an act of gross indecency by Mr Bogiono.
2. The complainant did not consent to witness the act of gross indecency.
3. Mr Bogiono knew that the complainant was not consenting.

Burden of proof and assessment of the evidence

[11] Mr Bogiono is presumed to be innocent until he is proven to be guilty. As a matter of law, the onus or burden of proof rests on the prosecution throughout the trial, and it never shifts to Mr Bogiono. There is no obligation or burden on Mr Bogiono to prove his innocence. Mr Bogiono chose to remain silent. He has a right to do so. No adverse inference will be drawn from this.

- [12] The burden is on the prosecution to prove the charges beyond a reasonable doubt. Each element of the charge must be proved but not every fact of the story. If there is a reasonable doubt, so that the Court is not sure of Mr Bogiono's guilt, or if there is any hesitation in my mind on any of the elements, Mr Bogiono must be found not guilty of the charges and, accordingly, acquitted.

Approach to the assessment of the evidence

- [13] I approach the evidence dispassionately, without sympathy or value-laden rules regarding how men and women should conduct themselves. It is entirely a matter for me to decide which witnesses are credible and reliable and which part of their evidence I accept as true.
- [14] The prosecution's case is dependent upon the complainant's evidence. She is 17 years old. Her evidence does not require corroboration. If her account of the alleged incidents are true, then Mr Bogiono is guilty of the charges. However, if her account is false or may be false then Mr Bogiono is not guilty.
- [15] The identity of Mr Bogiono is not an issue in this case. If I am sure that Mr Bogiono committed the two acts, penetrated RK's mouth with his penis and masturbated in her presence respectively, then consent is also not in issue. The complainant did not consent to these acts and Mr Bogiono would have known that this was the case. My determination of Mr Bogiono's guilt will turn on whether I accept that the prosecution has proven beyond a reasonable doubt that Mr Bogiono committed the two acts on the complainant.

Evidence

- [16] The accused did not admit any facts. That is his right. The prosecution must establish every element of the offence beyond a reasonable doubt.
- [17] The State called one witness, being the complainant. The State made two preliminary applications in respect to the complainant's evidence; being, that the evidence be provided in closed court and that a screen be placed between the complainant and the accused while the complainant provided her evidence. The accused did not object. The orders were granted.

[18] The complainant's evidence in examination-in-chief was as follows:

- i. RK is 17 years old and currently in year 12 at school.
- ii. In 2021, RK was 15 years old and in year 9. She was staying at her uncle's house in Valelevu. There were a number of relatives staying in the house, including her uncle and aunty, her grandmother, her grandfather, the accused, as well as others. The house had six bedrooms, RK had her own bedroom. The accused also had his own bedroom. RK was related to the occupants through her father. The owner of the house was a cousin of RK's father. The accused was the younger brother of the owner and, thus, also a cousin of RK's father. The accused was RK's uncle.
- iii. RK moved to Valelevu in January 2021 in order to start a new school. Prior to moving, RK had been living in Lau. It appears this was her first time living in Suva.
- iv. RK was asked whether anything unusual happened to her between September and December 2021. RK identified two incidents. The first incident she described as having occurred in the early evening at home in Valelevu. That day RK had gone to church with her grandfather and the accused. She returned to the house after 7pm. It appears that only a few relatives were home including the accused and RK's Aunty, the latter sleeping. There were also a number of people drinking yaqona on the porch – these people worked for her uncle's business.¹
- v. At this point the prosecution asked RK to sketch a drawing of the interior of the house to identify the different rooms. RK identified the 6 bedrooms, kitchen, living room and porch. She identified which bedroom belonged to which occupant. The sketch was produced as Prosecution Exhibit 1.
- vi. RK stated that after arriving home from church she was sitting in the living room when the accused asked her to light a mosquito coil. She prepared it and brought it to him in the bedroom. The accused was lying on the bed watching a video on his phone. RK did not know which movie the accused was watching. RK placed the coil by the side of the bed. As she did so, the accused grabbed her right wrist and pulled her onto the bed. With his other hand he then unzipped his shorts and took out his penis. He then grabbed RK's cheeks with his hand (RK demonstrated which

¹ Namely, the uncle who was the owner of the house.

part of her face had been grabbed) and pushed her head and face toward his penis. He told RK to suck his penis. She did not want to do so and tried to push him away (she said she did this twice) but he forced her by pushing her head down towards his penis, forcing her to suck his penis. She said he pushed her head down about 5 times.

- vii. He finally stopped when he discharged a white substance inside her mouth at which time he said *'it's okay, its set'*. He then gave RK his phone to take so that she could watch movies on the phone.
- viii. She confirmed to the prosecution that the accused did not ask for her consent to put his penis in her mouth.
- ix. She stated that the bedroom door was open when this happened. She stated that she did not scream or yell out for help because she was scared of the accused. She stated that the accused always spoke to her harshly. She stated that after the incident she went back to her room and cried. She was too scared to wake up her aunty to tell her what had happened or one of her other uncles' that was in the house. She explained, *'Because that's not my house'*. RK also stated that she did not speak to the other occupants of the house very much.
- x. The screen in the courtroom was removed temporarily whilst RK identified the accused as the person who had forced her to suck his penis.
- xi. RK was then asked whether she had told anybody at school about the incident. She stated that she had no friends at school. She was asked whether she spoke to her parents about it. RK stated that when she was staying at the Valelevu house she did not speak with her parents (they were staying in the village). She also stated that she was *'scared to tell them [I took them to mean the occupants of the house at Valelevu and RK's parents] because they will chase me out of the house and mum will hate me'*.
- xii. RK then spoke about the second incident. She stated that on another occasion, being a Saturday, her aunty had given her tablet to RK to watch a movie on. While she was in her room watching a movie, at about 12noon, the accused came into her room, closed the curtains, and then proceeded to pull out his penis and began rubbing it in front of her (she demonstrated the motion – it was clear by this description that the accused was masturbating). The door was left half open when

he did this. She saw white discharge coming out of his penis. While this happened he told her to take off her clothes. She did not want to do so and did not remove her clothes.

- xiii. RK was asked how she felt when the accused did this. RK stated that she did not like what he was doing and she stood up and left the room. Again, she stated that she did not raise the alarm or scream for help because she was scared of the accused.
- xiv. She stated that she left the room and *'I just went straight to Cunningham'*. RK left the house and caught a bus to Cunningham to stay with another uncle. She stayed with that uncle for 3 weeks and continued to attend school. Her uncle did not ask RK why she came to stay. RK stated that she did not tell her uncle what had happened because *'my uncle will get angry and will do something to them'*.
- xv. RK was asked whether she informed anyone at school about the two incidents. She stated:

My friends in school, form 6 and form 7, they are starting to notice that I don't talk a lot to them. And they always see that I go to the toilet and cry there. And during lunch they had called me to join them for lunch...And they were asking me what happened and I lied to them so I could be brought to the police station.²

- xvi. At this point the court clerk sought assistance on the translation to which Ms Dugan translated the words as follows, *'I had to lie to the form 6 and form 7 so that I can come out from that house in Valelevu'*.
- xvii. RK explained that she was crying in the toilets because she *'always remember the things that he [being the accused] had done to me'*.
- xviii. The story that RK created was that *'after school I was walking on the road and 5 boys pulled me and they were trying to do something to me'*, and *'they were pulling me to sniff glue using the cloth'*. The students informed the Assistant Principal of this, and the Assistant Principal spoke to RK who relayed the same story. RK was

² It was not clear from the question or RK's answer when she had this conversation with the students.

asked by the prosecutor why she made up this story. She stated that *'I was trying to make it known what he has been doing to me'*.

- xix. The Assistant Principal contacted the police as well as RK's aunty at the Valelevu house. The police came to the school the same day and spoke to RK. RK told the police the same story about the 5 boys. The police took RK to MSP Hospital at Samabula for a medical examination. She was given medication by the doctor.
- xx. After the medical examination RK went back to the Valelevu house (it is unclear whether she had been staying at this house before that day).
- xxi. RK returned to the police station the next day and spoke with a female police officer. RK's account here requires setting out:

She was asking me and I was crying and she just told me to just tell her the truth. And she knew that whatever I have told in school wasn't the truth and she wanted me to tell her the truth. And she asked me if anything had happened at home and then I told her yes.

- xxii. RK then told the police officer about the two incidents by the accused in the Valelevu house. After she did so, the police called Social Welfare who took RK to her uncle's house at Cunningham.

[19] In cross-examination, RK provided the following evidence:

- i. Before moving to Suva in 2021 RK had been staying in her village in Lau.
- ii. RK was asked about the story she initially told the police about the five boys. RK was asked to provide more details regarding the story that she had created. She stated, *'Those five young boys...they hold me and tried to do something to me'*. RK confirmed that the story was a lie.
- iii. It was put to her that as with the story about the 5 boys, the story about the accused was also a lie. RK stated that the story about the accused was true.
- iv. RK was asked about the details of the first incident. In particular, the position of the accused and RK on the bed. It was put to RK that given their positions

on the bed, as RK had described them, it was impossible for the accused to have forced his penis into her mouth. She answered in the affirmative.

- v. RK was asked about the medical report prepared when she was seen at MSP Hospital. RK stated that the doctor briefly checked her private parts. RK did not tell the doctor what had happened to her and did not sign any documents during the check-up.
- vi. The history recorded in the medical report was read to RK. It read (as relayed by defence counsel):

And the story that you related there, for the history that you were grabbed and drugged by 5 Itaukei students, yesterday afternoon while returning by a short cut from school there was no recollection of what was done to her, you agree with me that is what is written there.

- vii. RK stated that she did not relay the story to the doctor. She stated, *'This is the story that I told the police'*.
- viii. RK was then asked about her written police statement. She was questioned about the time she returned home from church at the time of the first incident. She stated that it was about 7pm. The church service ran from 4 to 5pm, the adults then had a *'little bit of grog'*, and they returned home at 7.30pm. She had a watch and therefore knew the time.
- ix. She stated in her written police statement that the accused was watching a devil movie when he was lying on the bed. It was put to RK that this was inconsistent with her evidence in court that she could not recall the movie. RK responded that she did not know the name of the movie but she thought it was a devil movie because there were zombies in the movie.
- x. Defence counsel turned to the second incident and RK's evidence that she immediately left the Valelevu house that day, after the second incident, to go and stay at Cunningham. Her written police statement was read to her in which she stated, *'after that incident on the second sometimes on some Friday soon after school I would go to my family in Vatuwaqa or*

Cunningham without informing'. It was put to RK that she did not leave the same day as she said in court. RK denied this.

- xi. RK was asked about why she did not tell her uncle at Cunningham about what the accused had done. RK stated, *'because my uncle is an angry person and if I told him he will come and punch him'*.
- xii. Defence counsel then turned to the timing of the report to the police. RK was asked if the report had occurred about the time her written police statement was signed, being 2 August 2022. RK stated that the report was made in 2021 before she finished form 3. Defence counsel asked RK whether she was unsure about this as the police statement was prepared in August 2022. RK responded:

This statement [being the police statement] I had made in 2021. When I went for the school holidays to the village my parents knew that I had made this statement in 2021. When I came back to school in the beginning of form 4 then they printed this, and they changed it to be like this.

- xiii. It was put to RK that she had made up the story about the accused and that it had not happened. RK denied this.

[20] In re-examination, RK stated:

- i. RK was asked about her evidence in cross-examination that, given their positions on the bed, it was impossible for the accused to have forced RK to put his penis in her mouth. She stated that it was not impossible and did in fact happen. RK was asked to demonstrate by the use of a table in court what had happened. She did so, demonstrating where the accused was lying on the bed and how he pulled her on the bed and proceeded to rape her.
- ii. She reiterated that the complaint to the police was made the same year that the incidents had happened (and not in 2022).

[21] At the close of the prosecution case, the Defence argued there was no case to answer. I determined that there was a case to answer. After a brief adjournment, Mr

Tuifagalele informed the Court that the accused had decided not to provide evidence or call any witnesses. That is, of course, his right.

Summary of the Evidence

- [22] RK was only 15 years old when the events in question are alleged to have happened. She had been brought up in her village and only moved to Suva in January 2021 in order to attend a new school. She moved to her paternal uncle's house which had six bedrooms. The house was full of relatives. However, it does not appear that RK was familiar with or close to these relatives.
- [23] Between September and December 2021 she describes two incidents that occurred to her in the house. The first incident occurred at about 7.30pm after she had returned home from church. There were a number of people at the house, most of them sitting on the porch. Some relatives also appeared to be home although RK's aunty was sleeping in one of the bedrooms. The accused asked RK to set up a mosquito coil. As RK was placing the coil in the bedroom, the accused who was lying on the bed, pulled RK onto the bed and proceeded to physically force her to suck his penis until he ejaculated. She tried to resist but he did not relent.
- [24] The second incident occurred in RK's bedroom. She was sitting on her bed when the accused came into her room pulled the curtains and proceeded to unzip his trousers, pull out his penis and masturbate in front of her until he ejaculated. She did not like what he had done and did not consent to it. The accused told RK to take her clothes off which she refused. RK left the bedroom, then left the house and went, the same day, to stay with another relative in Cunningham.
- [25] RK did not scream or raise the alarm with the occupants in the house on either occasion. She stated that the reason was that she was scared of the accused. Also, it was not her house and she did not know how the occupants would react.
- [26] It was sometime later, probably August 2022, that RK reported the matter. She did not do so of her own volition. The report arose because older students saw RK crying in the toilets and enquired about this. RK initially fabricated a story about being kidnapped by five boys. The students reported the matter to the Assistant Principal who escalated the matter to the police.

[27] The police spoke to RK the same day and arranged a medical examination. The next day the police advised RK that they did not believe her story and it was at this point RK told the police about the two incidents by the accused. This appears to be the date that RK first reported the alleged crimes that are the subject of this prosecution. RK stated in evidence that she reported the matter to the police in 2021 but her written statement to the police is dated 2 August 2022. Given the date of the written police statement, it is likely that she first reported the alleged offending in August 2022.

Analysis of Evidence and Determination

[28] I remind myself that the burden to prove the accused's guilt beyond a reasonable doubt lies with the prosecution throughout the trial and it never shifts to the accused. The Defence did not call any evidence. That is the accused's right.

[29] I keep 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, and the demeanour and deportment in court - see *Matasavui v State* [2016] FJCA 118; AAU0036.2013 (30 September 2016, *State v Solomon Qurai* (HC Criminal - HAC 14 of 2022).

[30] I heard from only one witness in this trial, being the complainant. If I accept her evidence as true, then the accused is guilty of the two offenses for which he has been charged. The evidence as provided by RK is as follows:

- i. On a date between September and December 2021, the accused penetrated RK's mouth with his penis and forced her to suck his penis. RK did not consent to the penetration and the accused would have been aware of this, not least from her efforts to resist. These facts satisfy the elements for rape under s 207(1) and (2)(c) of the Crimes Act.
- ii. On a date between September and December 2021, the accused came into RK's bedroom and masturbated in front of her. By doing so he procured RK to witness an act of gross indecency without her consent and he would have been aware that RK did not consent. I accept that the act of masturbation in the presence of RK constituted an act of gross indecency.

[31] I found RK's evidence to be believable. She gave her evidence in a manner that I considered to be natural and genuine and in keeping with a person of her age. RK was visibly embarrassed talking about the male anatomy and the circumstances pertaining to the first incident. RK was emotional at the times I would have expected her to be when retelling the two incidents. She was particularly emotional when she had to identify the accused in the courtroom. Her tears were genuine as was her emotion. In cross-examination RK was resolute and firm.

[32] That said, deliberately telling lies in court can also evoke strong emotions from a witness. It is, therefore, critical for the court to consider all the evidence to assess the veracity and truthfulness of a witness' evidence.

[33] The Defence argue that RK cannot be believed. They point to several inconsistencies in RK's evidence but the primary reason being the story RK fabricated about being kidnapped by five boys. The Defence argue that this story demonstrates that RK cannot be believed and has a propensity for storytelling.

[34] The Defence has identified the following inconsistencies:

- i. The Defense argue that the position of the accused and RK on the bed as described by RK in relation to the first incident means that it was physically impossible for the accused to have committed the offense. They point to RK accepting this in cross-examination. The fact that RK resiled from this admission in re-examination points to, according to the Defense, a significant contradiction. As I was listening to the particular exchange in cross-examination, I formed the view that RK was confused by the question which she answered in the affirmative – ie, in terms of the impossibility of the offence occurring as she described. Having since read the transcript, I am satisfied that I correctly perceived RK's confusion. It is helpful to set out the exchange:

Mr. Tuifagalele: Did you at any other time get up or stand up after you were lying on the bed?

RK: No My Lord.

Mr. Tuifagalele: So if you were unable to stand up from your position when you were lying down, I put it to you, and according to my instructions, that it will be very, very impossible for my client to actually do what you have alleged that he did on that particular night.

Clerk: Can you just repeat the question?

Mr Tuifagalele: If you had said yes to your position on the bed at that time, I put it to you, I put it to you, and my instructions, that it would be impossible for you to make that allegation against my client for what you said that he did that night. Yes or no?

RK: Yes.

It is not possible to take anything meaningful from RK's affirmative answer to the last question.

- ii. RK stated to the court that she left the Valelevu house immediately after the second incident, ie the same day, to go and stay with her uncle at Cunningham. In her written police statement she appears to have stated that she left some time later. She stated in the police statement, *'after that incident on the second sometimes on some Friday soon after school I would go to my family in Vatuwaqa or Cunningham without informing'*. This statement suggests that RK would regularly stay with relatives in Vatuwaqa and Cunningham. The context for this is unclear.
- iii. RK stated that she first reported the incidents to the police in 2021. The Defence position is that it was reported in August 2022 when the written police statement is said to have been signed by RK. The complainant was adamant that it was, in fact, in 2021, the same year that the incidents happened. RK provided an explanation for this and even confirmed in re-examination that it occurred in 2021. I accept that the report must have been in 2022. The information describes the alleged offences as having occurred between 1 September 2021 and 31 December 2021. The matter could not have been reported to the police before the incidents occurred. The other aspect to take from the timing of the report to the police is the delay. If the complaint was first reported by RK in August 2022, then this occurred at least 8 months after the two incidents occurred

- [35] This Court is permitted to take into consideration any inconsistencies to consider whether a witness is believable and credible. It is obvious that the passage of time can affect one's accuracy of memory. It cannot be expected that every detail will be the same from one account to the next. If there is an inconsistency, it is necessary to decide, firstly, whether the inconsistency is significant and, secondly, whether the inconsistency affects adversely the reliability and credibility of the witness. If it is significant, then it is for this Court to consider whether there is an acceptable explanation. If there is an acceptable explanation for the change, then this Court may conclude that the underlying reliability of the witness' evidence is unaffected. If the inconsistency is fundamental, then it is for this Court to decide to what extent it influences the reliability of the witness' evidence. As the Court of Appeal observed in *Mohammed Nadim and another vs. State* [2015] FJCA 130; AAU0080.2011 (2 October 2015) at [16]:

*[16] The Indian Supreme Court in an enlightening judgment arising from a conviction for rape held in **Bharwada Bhoginbhai Hirijbhai v State of Gujarat** (supra):*

Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses therefore cannot be annexed with undue importance. More so when the all-important "probabilities-factor" echoes in favour of the version narrated by the witnesses. The reasons are: (1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen; ... (3) The powers of observation differ from person to person. What one may notice, another may not. It is unrealistic to expect a witness to be a human tape recorder;

- [36] It also useful to set out the following passages from the recent decision by Rajasinghe J in *State v Chand* [2024] FJHC 108 (23 February 2024):

*30. Gnanlath JA in **State v Serelevu** [2018] FJCA 163; AAU141.2014 (the 4th of October 2018) has extensively discussed the issue of delay in reporting. His Lordship found that "the totality of the circumstance test" is the correct approach to evaluating the delay in reporting to determine the credibility of the evidence. An*

unexplained delay does not necessarily or automatically render the Prosecution case doubtful. Whether the case becomes doubtful depends on the facts and circumstances of the particular case.

31. *The delay in reporting the matter cannot be used as a stringent rule to discredit the authenticity of the Prosecution case. It only cautions the Court to seek and consider a satisfactory explanation for such a delay and then determine whether there was a possibility of embellishments or exaggeration in the facts explained in the evidence if there is an unsatisfactory explanation for the delay or unexplained delay. (vide: Masei v State [2022] FJCA 10; AAU131.2017 (3 March 2022)).*

- [37] It is necessary when assessing the veracity of a witness' evidence to look at the totality of the picture. As I do so, there are several aspects of RK's evidence that are perplexing. The most obvious, and concerning, is the story RK fabricated about the kidnapping. RK accepts that this story was untrue. However, she told and re-told the story on at least three occasions on the day in question (to older students, the Assistant Principal and then to the Police). She did not resile from this story until the next day. It was only after a police officer advised RK that she did not believe her that RK finally revealed the complaint against the accused. This does not reflect favourably on RK's credibility.
- [38] In order for the Court not to arrive at an adverse finding on RK's credibility arising from the fabricated story, requires a compelling explanation from RK for creating the story. She states that she did so in order for the true story to come out. However, the simpler way for this to have happened was for RK to reveal the accused's alleged offending from the outset when the students approached her. The fact that RK did not change her story until the police rejected the kidnapping story is not consistent with RK wishing to bring the two incidents to light.
- [39] The other aspect to this is that this Court is not aware why the police did not believe RK's story about the kidnapping. Also not provided in evidence are the details as to how the conversation between RK and police officer developed so as to reveal the two incidents with the accused. The police officer may have shed light on this, but the prosecution did not call the police officer to provide evidence.

[40] RK's story about the kidnapping creates a reasonable doubt about the veracity of her allegations against the accused. Her explanation for the fabricated story is difficult to believe, only serving to seed further doubts. The delay making the complaint is not damaging to RK's credibility. It is perfectly understandable that a person of RK's age would be afraid to report the sexual offending of a relative. However, what is damaging to RK's credibility is the story she created about the kidnapping and her subsequent failure to tell the police the allegation against the accused until after the police rejected her story.

Conclusion

[41] I must be satisfied beyond a reasonable doubt that RK is telling the truth about the two incidents in 2021. For the reasons stated, I am left with considerable doubt. I cannot be sure that RK is being truthful about the allegations against the accused.

[42] Accordingly, the Court is not satisfied beyond a reasonable doubt that the accused committed either of the offences contained in the two counts.

[43] In view of the above, I find the accused not guilty of count one of rape contrary to s 207(1) and (2)(c) of the Crimes Act, and not guilty of count 2 of sexual assault contrary to s 210(1)(b)(ii) of the Crimes Act. He is, accordingly, acquitted.




D.K.L. Tuqereqere
JUDGE

Solicitors:

**To: Office of Director of Public Prosecutions for the State
Tuifagalele Legal for the Accused**