

IN THE HIGH COURT OF FIJI AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 289 of 2022

The State –v- Uraia Kolomavu

For the State: Mr. S. Seruvatu and Ms. L. Latu

For the Accused: Mr. P. Gade

Date of Trial: 1st July to 8th July 2024

Date of Judgment: 04 October 2024

“The name of the complainant is suppressed. Accordingly, the complainant will be referred to as “MSW”

JUDGMENT

1. The Accused, Uraia Kolomavu is charged with the following offences in the Amended Information filed on the 25th of June 2024:

AMENDED INFORMATION BY THE
DIRECTOR OF PUBLIC PROSECUTIONS

URAIA KOLOMAVU is charged with the following offences:

COUNT ONE
[REPRESENTATIVE COUNT]

Statement of Offence

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

Particulars of Offence

URAIA KOLOMAVU, between the 26th day of December 2020 and the 31st day of December 2020, at Naloto Village, in Verata, Tailevu in the Eastern Division, penetrated the vagina of MSW with his penis without her consent.

COUNT TWO
[REPRESENTATIVE COUNT]

Statement of Offence

RAPE: Contrary to section 2017 (1) and (2) (a) of the Crimes Act 2009

Particulars of Offence

URAIA KOLOMAVU between the 1st day of January and 31st January 2021, at Naloto village, in Verata Tailevu, in the Eastern Division, penetrated the vagina of **MSW** with his penis, without her consent.

COUNT THREE
[REPRESENTATIVE COUNT]

Statement of Offence

RAPE: Contrary to section 2017 (1) and (2) (a) of the Crimes Act 2009

Particulars of Offence

URAIA KOLOMAVU between the 1st day of February 2021 and 28th February 2021, at Naloto village, in Verata Tailevu, in the Eastern Division, penetrated the vagina of **MSW** with his penis, without her consent.

COUNT FOUR
[REPRESENTATIVE COUNT]

Statement of Offence

RAPE: Contrary to section 2017 (1) and (2) (a) of the Crimes Act 2009

Particulars of Offence

URAIA KOLOMAVU between the 1st day of March 2021 and 31st March 2021, at Naloto village, in Verata Tailevu, in the Eastern Division, penetrated the vagina of **MSW** with his penis, without her consent.

COUNT FIVE
[REPRESENTATIVE COUNT]

Statement of Offence

RAPE: Contrary to section 2017 (1) and (2) (a) of the Crimes Act 2009

Particulars of Offence

URAIA KOLOMAVU between the 1st day of April 2021 and 30th April 2021, at Naloto village, in Verata Tailevu, in the Eastern Division, penetrated the vagina of **MSW** with his penis, without her consent.

COUNT SIX
[REPRESENTATIVE COUNT]

Statement of Offence

RAPE: Contrary to section 2017 (1) and (2) (a) of the Crimes Act 2009

Particulars of Offence

URAIA KOLOMAVU between the 1st day of May 2021 and 31st May 2021, at Naloto village, in Verata Tailevu, in the Eastern Division, penetrated the vagina of **MSW** with his penis, without her consent.

COUNT SEVEN
[REPRESENTATIVE COUNT]

Statement of Offence

RAPE: Contrary to section 2017 (1) and (2) (a) of the Crimes Act 2009

Particulars of Offence

URAIA KOLOMAVU between the 1st day of June 2021 and 28th day of June 2021, at Naloto village, in Verata Tailevu, in the Eastern Division, penetrated the vagina of **MSW** with his penis, without her consent.

COUNT EIGHT
[REPRESENTATIVE COUNT]

Statement of Offence

RAPE: Contrary to section 2017 (1) and (2) (a) of the Crimes Act 2009

Particulars of Offence

URAIA KOLOMAVU between the 1st day of July 2021 and 31st July 2021, at Naloto village, in Verata Tailevu, in the Eastern Division, penetrated the vagina of **MSW** with his penis, without her consent.

COUNT NINE
[REPRESENTATIVE COUNT]

Statement of Offence

RAPE: Contrary to section 2017 (1) and (2) (a) of the Crimes Act 2009

Particulars of Offence

URAIA KOLOMAVU between the 1st day of August 2021 and 31st day of August 2021, at Naloto village, in Verata Tailevu, in the Eastern Division, penetrated the vagina of **MSW** with his penis, without her consent.

COUNT TEN
[REPRESENTATIVE COUNT]

Statement of Offence

RAPE: Contrary to section 2017 (1) and (2) (a) of the Crimes Act 2009

Particulars of Offence

URAIA KOLOMAVU between the 1st day of September 2021 and 25th day of September 2021, at Naloto village, in Verata Tailevu, in the Eastern Division, penetrated the vagina of **MSW** with his penis, without her consent.

2. The Accused was initially produced in the Nausori Magistrate's Court facing 10 counts of Rape contrary to section 207 (1) of the Crimes Act 2009, on the 12th of August 2022. The case was transferred to the High Court and he was remanded in custody.
3. The Accused faces a representative charge on each count, meaning that the State only has to prove that one act of unlawful sexual intercourse happened within the time period of each count before the Court in order to establish that count beyond a reasonable doubt.
4. The Accused was first arraigned in the High Court on the 26th of August 2022 and directions were given for the filing of the Information and for disclosure to be served.
5. On the 11th of October 2022, the Accused entered a not guilty plea to all 10 counts in the original Information filed on the 15th of September 2022.
6. The Amended Information was filed on the 25th of June 2024 and the Accused maintained his not guilty plea so the Court directed the parties to attend to pretrial conference and to finalise any agreed facts.
7. The parties have filed the following Agreed Facts as per section 135 of the Criminal Procedure Act 2009.
8. Agreed Facts
 - (a) The name of the person charged is Uraia Kolomavu, 36 years of age and resides in Naloto village, Verata, Tailevu.
 - (b) The complainant is one MSW and resides at Lautoka Police Barracks.
 - (c) There is a domestic relationship between the Accused and the Complainant. The Accused is the Complainant's step-father. Thus there is no dispute as to the identification of the Accused in this matter.
 - (d) The Complainant was raised by her mother and her maternal grandparents with her younger sister from the time she was born until, the period her mother, Filomena Loulou, got into a relationship with the Accused, and her mother then left them (complainant and her younger sisters) to live with the Accused.

- (e) The Accused's house consisted of two bedrooms, a sitting room and a kitchen. The toilet and bathroom were located outside.
 - (f) The complainant on 25th September 2021, had gone to Vitawa village, Rakiraki to attend her grandmother, Bulou Vani Viko's funeral.
 - (g) The Complainant has an aunt (mother's sister) namely Ana Raiwaki Waqa who resides at Lautoka Police Compound with is family who has also attended the funeral at Vitawa village, Rakiraki on 25th September 2021.
 - (h) The Accused was interviewed under caution on 7th January 2022 by PC 2979 Isikeli.
 - (i) The Accused was formally charged on 11th August 2022 by WPC 5252 Iinieta.
 - (j) The following document is not disputed and is hereby tendered by consent as prosecution Exhibit - Birth Certificate of MSW.
9. The matter was fixed for Trial from the 1st of July to the 5th of July 2024.
10. On the first date scheduled for trial, defence counsel advised that they were not ready to proceed and made an application for the trial to be deferred as he was recently instructed and it appeared to him that the Accused had an alibi and he sought permission to file fresh alibi notice as per his fresh instructions.
11. The Trial was then deferred to Thursday the 4th of July and spilled over to the following week. The Accused filed a Notice of Alibi and the State advised that only one of the two proposed alibi witnesses was willing to give a statement, therefore only one alibi statement was disclosed.
12. The State called 2 witnesses, the complainant MSW and Ana Raiwaki Waqa.

The evidence for the State

13. The Complainant is the daughter of Filomena Loulou and at all material times, Filomena Loulou was married to the Accused, Uraia Kolomavu. There is therefore a

domestic relationship between the Accused and the complainant, that of step-father and step-daughter.

14. The complainant lived with her grandparents in Vitawa, Rakiraki, Ra, until her mother and the Accused came on Christmas 2019 to ask for her to come and live with them and to continue her education at Tailevu North College.
15. The Accused and his family had gone to spend Christmas in Rakiraki however the complainant did not accompany them that day and she followed on the 26th of December, travelling by bus on her own and the Accused picked her up from Korovou Town.
16. The complainant testified that the Accused then had unlawful sexual intercourse with her over the period from 26th December 2020 to the 25th of September 2021. Her testimony has been recorded in the transcript and is summarised as follows: -

Count	Date	Particulars
1.	26/12/2020 to 31/12/20	Uraia Kolomavu between 26 th December 2020 to 31 December 2021 penetrated the vagina of MSW with his penis, without her consent.
2.	1/1/21 to 31/1/21	Uraia Kolomavu between the 1 st of January 2021 and 31 January 2021, penetrated the vagina of MSW with his penis, without her consent.
3.	1/2/2021 to 28/2/21	Uraia Kolomavu, between the 1 st of February 2021 and 28 February 2021, penetrated the vagina of MSW with his penis, without her consent
4.	1/3/2021 to 31/3/2021	Uraia Kolomavu between the 1 st of March 2021 to 31 st March 2021, penetrated the vagina of MSW with his penis, without her consent
5.	1/4/2021 to 30/4/2021	Uraia Kolomavu between the 1 st of April and 30 April 2021, penetrated the vagina of MSW without her consent
6.	1/5/21 to 31/5/2021	Uraia Kolomavu, between the 1 st of May and 31 May 2021 penetrated the vagina of MSW without her consent
7.	1/6/2021 to 28/6/2021	Uraia Kolomavu, between the 1 st of June 2021 and 28 June 2021 penetrated the vagina of MSW without her consent
8.	1/7/2021 to 31/7/2021	Uraia Kolomavu, between the 1 st of July 2021 to 31 July 2021 penetrated the vagina of MSW without her consent.
9.	1/8/2021 to 31/8/2021	Uraia Kolomavu between the 1 st of August 2021 to 31 August 2021 penetrated the vagina of MSW without her consent.
10.	1/9/2021 to 25/9/2021	Uraia Kolomavu between the 1 st of September 2021 to 25 September 2021 penetrated the vagina of MSW without her consent

17. In her testimony, the Complainant testified that the Accused began having sex with her without her consent as soon as she arrived in his home on the 26th of December 2021, and he threatened her to have sex by pointing to a cane knife and an axe lying inside the room.
18. She testified that the Accused forced her to sleep with him in his room while her mother and 3 stepbrothers slept in the main room. He would have sex with her late at night and early in the morning when everyone else slept.
19. When this was happening, he would threaten her not to tell anyone what happened, otherwise he would do something to her and her mother. He controlled the phone and did not allow her to call anyone without also being able to hear through speaker phone. He was the only one with a phone in the home and he would strictly control who called.
20. He would do this in all the time that she stayed with the Accused and her mother, in his village, Naloto, Verata, Tailevu.
21. She maintained that at no time did she ever consent to having sex with the Accused. She did not tell anyone about what was happening to her, not even her mother or anyone else in the village. She maintained that, at all the time that she lived in the village, she did not get to know anyone as the Accused kept a strict control over her and kept a close watch over her when he was at home.
22. In her testimony she stated that the Accused treated her like his wife as he forced her to sleep with him every night and he had sex with her as well.
23. Under cross examination she confirmed that she did not report the matter to the Police Station, which was very close to her school, Tailevu North College, in Korovou Town. She also confirmed that she did not inform a teacher at her school who was related to her family in marriage, about what was happening to her.

24. She maintained her evidence under cross examination.
25. The other witness called by the State, Ana Raiwaki Waqa, is the aunt of the complainant and she met her at the village in Rakiraki when they came for the funeral of her grandmother.
26. This witness was the first person that the complainant complained to, and MSW also told her that she did not want to return with her mother and the Accused. The witness then took MSW with her to Lautoka and the matter was then reported to the Police there.
27. She met the complainant at Vitawa Rakiraki, Ra at the funeral on the 26th of September 2021 and straight after the funeral, the complainant approached her, and she appeared frightened and told her that she did not want to return with her mother and the Accused and she had been hiding from them as they were getting ready to return to Tailevu.
28. She maintained her evidence under cross examination and denied concocting this story with the complainant. She confirmed that she would call her sister from time and would also talk to the complainant, but she did not tell her that anything was wrong or complained to her about anything that was happening to her.
29. That was the close of the State's case. The Court found that the Accused had a case to answer on all 10 counts. The Accused elected to give evidence under oath and to call 2 witnesses.

The evidence for the Defence

30. The Accused's evidence is that he denies all the allegations made against him as encapsulated in the 10 counts of the Information.
31. He testified that in the festive period from Christmas to January he did not sleep in the village as he was driving, and he was instead sleeping in Nausori.

32. In January 2021, he testified that for the whole month he was building a house in Lobau, Vuci, Nausori for Navitesh Chand. He built that house for four weeks, camping there for 3 weeks and later for one week, Navitesh hired a car to take the Accused from Vuci to the village.
33. For the month of February 2021, he testified that he was building a house at Namoli settlement for Emori Rasalala. He did this from February 1st to 28th and he also continued this in the month of March 2021.
34. In April he was working and then he left for Suva to spend the weekend and celebrate his birthday in Suva. He was in Suva when the lockdown happened and during this period he stayed at Bryce Street, Raiwaqa.
35. He also testified that from the 1st of June to 28th June 2021, he was in Suva.
36. For the month of July 2021, he stated that he was in Namena building a house for one Alifereti. He maintained that he always slept with his wife in their room while the complainant and the other children slept in the living room.
37. In August and September, he was in the village however he denied having sexual intercourse with the complainant at all. He slept with his wife inside their room and did so until they left for Rakiraki for the funeral.
38. He also testified that his wife had her own phone and during the lockdown he would video call his home but most of the time the complainant would be on the phone, so he told her to find out what she was doing.
39. Under cross examination he maintained his testimony he denied having sexual intercourse with the complainant at any time. He stated that he always slept with his wife when he was at home, and he did not threaten the complainant at any time to have sex with her.

40. Under cross examination, he also maintained that his house was just close by to his father's house and all his relatives there knew his wife and the complainant so they could complain to them.
41. The only witness called by the Accused was Navitesh Nand, mechanic of Vuci. In 2021 he ran a small garage in Korovou and at that time he was building his house. He was referred to the Accused as a person who could build his house, so he engaged the Accused to build his house. The Accused brought 4 other boys from the village as labour to build the house.
42. They spent 3 weeks at his home building the house and later he hired a car and gave it to the Accused so that they could go to the village to sleep and return to the job site.
43. That was the defence case and at the close of the defence case, directions were given for the filing of submissions.
44. The parties have filed submissions, and I am grateful to counsel for their assistance.

Submissions for the State

45. The State submits that the Accused is charged with 10 counts of Rape contrary to section 2017 (1) and (2) (a) of the Crimes Act 2009, as per the amended Information filed on 25th June 2024.
46. The State submits that the State bears the burden of establishing the following elements of the offence of Rape, beyond a reasonable doubt: -
- (a) The Accused person, Uraia Kolomavu
 - (b) Penetrated the vagina of MSW with his penis
 - (c) Without her consent, and
 - (d) Uraia Kolomavu knew or believed the complainant was not consenting or didn't care if she was consenting or not.

The charges are representative counts therefore the State only has to prove that one act of sexual intercourse happened within the time period of each count.

47. The State concedes that in 2021, the Government ordered partial and full lockdowns in response to the Covid 19 pandemic and from 26th April 2021 to 3rd May 2021 there was a full 14-day lockdown. This bolsters the testimony of the complainant that he returned in time for mother's day and he remained with them through June and July until September when they all went to the funeral in Vitawa Rakiraki Ra.
48. The alibi evidence provided does not exonerate him, even the alibi witness provided for January confirmed that even though the Accused built his house through the month of January and he stayed with him in Vuci, he did spend one week at home. Under cross examination, the Accused confirmed the he took the complainant to school on the first day of school.
49. The State submits that the Accused was in the village from the 1st to the 24th April 2021 and in the month of May he returned to the village on Mothers' Day. He was in the village from June, July, August and September 2021.
50. The State submits that the State has established all of the counts on the Information beyond a reasonable doubt.

The submissions for the Accused

51. The Accused submits that the State bears the evidential and legal burden of proof at all times throughout these proceedings.
52. In this case, the Accused has denied all the allegations of sexual intercourse with the complainant.
53. At the end of the Trial there are now two different versions of what happened before the Court. The Accused Uraia Kolomavu denies having sexual intercourse at any time with the complainant.
54. The Accused relies on State vs TR [2021] FJHC 60; HAC 184/2020 (21 January 2021) and submits that the evidence of the complainant is not credible and the Court must reject her evidence as it is improbable, considering the circumstances of the case.

55. He also cites the following cases: -

- State vs Solomone Qurai [2022] FJHC 275; HAC 14 of 2022 (6 June 2022)
- State vs Sakenasa Natoga [2022] FJHC 194; HAC 261 of 2020 (4 May 2022)
- Matasavui vs State [2016] FJCA 118; AAU 00036 of 2013 (30 September 2016)

56. The recent complaint witness conceded under cross examination, that she would call the complainant's mother and she would also talk to the complainant. A no time during these calls would the complainant or her mother complain to her about what the Accused was doing to her.

57. The State bears the legal burden of establishing all 10 counts of Rape on the Information, and it also bears the burden of disproving the alibi defence raised by the Accused, as per section 57 of the Crimes Act 2009.

58. The standard of proof on the State, is proof beyond a reasonable doubt, as per section 98 of the Crimes Act 2009.

59. The Accused submits that the State has failed to discharge its duty beyond a reasonable doubt, therefore the Accused is entitled to be acquitted.

Analysis

60. The Accused is charged with the offence of Rape contrary to section 207 of the Crimes Act 2009, which provides: -

"The offence of rape

207.-(1) Any person who rapes another person commits an indictable offence.

Penalty– Imprisonment for life.

(2) A person rapes another person if-

1. (a) the person has carnal knowledge with or of the other person without the other person's consent; or
2. (b) the person penetrates the vulva, vagina or anus of the other

person to any extent with a thing or a part of the person's

body that is not a penis without the other person's consent; or

3. (c) the person penetrates the mouth of the other person to any extent with the person's penis without the other person's consent.

(3) For this section, a child under the age of 13 years is incapable of giving consent.”

61. The State alleges that on the dates and times in question, the Accused Uraia Kolomavu had sexual intercourse with MSW without her consent. At the time Uraia Kolomavu knew that MSW was not consenting to the sexual intercourse or he was reckless as to whether or not she was consenting to the acts of sexual intercourse.

62. The burden is on the State to prove each count beyond a reasonable doubt. The Accused elected to give evidence although he does not have to prove or disprove anything.

63. Each of the 10 counts, is a representative count therefore the State only has to establish that one act of sexual intercourse happened within the time period of each individual count.

64. The State has to establish that on at least one occasion within the time period of each of the 10 counts, the Accused had sexual intercourse with the complainant without her consent.

65. Consent is defined in law, and this is at section 206 (1), (2) of the Crimes Act 2009 which provides: -

“(1) 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.

(2) Without limiting sub-section (1), a person's consent to an act is not freely and voluntarily given if it is obtained—

- (a) by force; or
- (b) by threat or intimidation; or
- (c) by fear of bodily harm; or
- (d) by exercise of authority; or
- (e) by false and fraudulent representations about the nature or purpose of the act; or
- (f) by a mistaken belief induced by the accused person that the accused person was the person's sexual partner."

66. In this instance the Court has seen the complainant give evidence and she appeared to be a witness of truth. Her evidence was clear and was unshaken in cross examination. She was very clear that the Accused had sexual intercourse with her and she did not give her consent at any time and he obtained her consent by threats and intimidation.

67. In this case, the complainant who had lived all her life with her grandparents, within the period of a few days, was informed that she would be leaving to go and live with her mother and her mother's new husband and her step siblings in a new village where she knew no one. This no doubt would have placed her in a vulnerable position more susceptible to this offending. I found that her evidence was compelling and had the ring of truth around it. She did not exaggerate or minimise anything and her testimony was largely unshaken in cross examination.

68. The Accused denies the allegations in totality and furthermore has called Navitesh Chand as an alibi witness for the month of January. He also testified that in the months of April to June he was locked down in Suva.

69. In assessing the alibi evidence, it is clear that he was not away from the village for the whole month of January. Navitesh Chand himself has confirmed that the Accused only stayed at his home for three weeks while he spent the last week of January commuting from Naloto village to Vuci to build his house. The evidence also established that for

every month of the dates on the Information, he was at home for at least part of the time.

Court's Findings

70. After hearing the evidence and considering the submissions from the parties, the Court make the following findings: -

- (a) The Accused was present in the village, Naloto, Verata, Tailevu on at least a part of each month of the 10 month period between December 26 2020 to 25 September 2021.
- (b) When he stayed in the village, he stayed in his own home, with his wife (the complainant's mother), the complainant and his three sons.
- (c) The Court finds that the Accused had the opportunity to commit the offences and the complainant's evidence has established that on each month the Accused committed at least one act of sexual intercourse with her, without her consent.

71. Uraia Kolomavu, the Court finds that the State has discharged its burden and you are convicted on all 10 counts of Rape. The Court will hear from you on your plea in mitigation.



A handwritten signature in black ink, consisting of a large, stylized loop and a vertical stroke, positioned above a horizontal dashed line.

Mr. Justice U. Ratuveli
Puisne Judge

cc: *Office of the Director of Public Prosecutions*
Legal Aid Commission.