

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 271 of 2023

STATE

v

- 1. NOA NAISUQE [JUVENILE]**
- 2. MOAPE TIKOMAIOSITERELIA NAIVUADAMANU [JUVENILE]**
- 3. SAULA VOSANALAWE [JUVENILE]**
- 4. WAME CAGICAUCAU [JUVENILE]**

Counsel: Mr. J. Singh for the State
Ms. R. Nabainivalu for the 1st Juvenile
Mr. I. Emasi for the 2nd & 4th Juvenile
Ms. S. Narayan for the 3rd Juvenile

Date of Trial: 1 – 21 May 2024

Date of Closing Submission: 7 & 28 August 2024 and 11 September 2024

Date of Judgment: 27 June 2025

JUDGMENT

Caveat – The alleged victim is herein referred to as **‘BOB’** pursuant to the Name Suppression Order.

- 1. Noa Naisuqe (1st accused), Moape Tikomaiositerelia Naivuadamanu (2nd accused), Saula Vosanalawe (3rd accused) and Wame Cagicaucou (4th accused) are**

all juveniles respectively charged with the 7 Counts of *Rape* and 1 Count of *Sexual assault*, laid out as follows in the Consolidated Information by the Acting Director of Public Prosecutions dated 11 April 2024 and filed on 12 April 2024:

COUNT 1

Statement of Offence

RAPE: Contrary to section 207(1), (2)(a) and (3) of the Crimes Act 2009.

Particulars of Offence

NOA NAISUQE, on an unknown date between 1st January 2018 and 31st December 2018, at Naqara village, Kadavu, in the Eastern Division, penetrated the anus of **BOB** with his penis, a child below the age of 13 years.

COUNT 2

Statement of Offence

RAPE: Contrary to section 207(1), (2)(a) and (3) of the Crimes Act 2009.

Particulars of Offence

NOA NAISUQE, on an occasion other than mentioned in count 1, at Naqara village, Kadavu, in the Eastern Division, penetrated the anus of **BOB** with his penis, a child below the age of 13 years.

COUNT 3

Statement of Offence

RAPE: Contrary to section 207(1) and (2)(c) and (3) of the Crimes Act 2009.

Particulars of Offence

MOAPE TIKOMAIOSITERELIA NAIVUADAMANU, on an unknown date between 1st January 2018 and 31st December 2018, at Naqara Village, Kadavu, in the Eastern Division, penetrated the mouth of **BOB** with his penis, a child below the age of 13 years.

COUNT 4

Statement of Offence

RAPE: Contrary to Section 207(1), (2)(c) and (3) of the Crimes Act 2009.

Particulars of Offence

SAULA VOSANALAWÉ, on an unknown date between 1st January 2018 and 31st December 2018, at Naqara village, Kadavu, in the Eastern Division, penetrated the mouth of **BOB** with his penis, a child below the age of 13 years.

COUNT 5

Statement of Offence

RAPE: Contrary to Section 207(1), (2)(a) and (3) of the Crimes Act 2009.

Particulars of Offence

SAULA VOSANALAWÉ, on an unknown date between 1st January 2018 and 31st December 2018, at Naqara village, Kadavu, in the Eastern Division, penetrated the anus of **BOB** with his penis, a child below the age of 13 years.

COUNT 6

Statement of Offence

RAPE: Contrary to Section 207(1), (2)(c) and (3) of the Crimes Act 2009.

Particulars of Offence

SAULA VOSANALAWÉ, on an unknown date between 1st January 2018 and 31st December 2018, at Naqara village, Kadavu, in the Eastern Division, penetrated the mouth of **BOB** with his penis, a child below the age of 13 years.

COUNT 7

Statement of Offence

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

Particulars of Offence

SAULA VOSANALAWA, on an unknown date between 1st January 2018 and 31st December 2018, at Naqara village, Kadavu, in the Eastern Division, unlawfully and indecently assaulted **BOB**, by taking his hand and making the said **BOB** touch his penis.

COUNT 8

Statement of Offence

RAPE: Contrary to section 207(1), (2)(c) and (3) of the Crimes Act 2009.

Particulars of Offence

WAME CAGICAUCAU, on an unknown date between 1st January 2018 and 31st December 2018, at Naqara village, Kadavu, in the Eastern Division, penetrated the mouth of **BOB** with his penis, a child below the age of 13 years.

2. As per the indictment, each accused person who are also juveniles, is respectively charged as follows:
 - Noa Naisuqe (1st accused) – Counts 1 & 2: Rape;
 - Moape Tikomaiositerelia Naivuadamanu (2nd accused) – Count 3: Rape;
 - Saula Vosanalawe (3rd accused) – Counts 4, 5 & 6: Rape; and Count 7: Sexual assault; and
 - Wame Cagicaucou (4th accused) – Count 8: Rape.
3. All 4 accused persons and juveniles pleaded *not guilty* and tried for the aforesaid offences, and this is the Court's judgment.

Burden & Standard of proof

4. Pursuant to sections 57 and 58 of the Crimes Act 2009 including Woolmington v DPP [1935] AC 462 at 481 (HL), the prosecution bears the burden to prove *beyond reasonable doubt* all elements of *Rape* in Counts 1, 2, 3, 4, 5, 6 and 8 and Count 7: Sexual assault in the indictment.

Physical and fault elements of Rape

5. Counts 1, 2 & 5 and Counts 3, 4, 6 & 8: Rape are contrary to section 207(1), (2)(a) & (c) and (3) of the Crimes Act 2009 which state:

Rape

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

(2) *A person rapes another person if –*

(a) *the person has carnal knowledge with or of the other person without the other person’s consent; ...*

(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*

206.- *In this Part –*

(3) *The term “penetrate” does not include penetrate for a medical, hygienic or law enforcement purpose only.*

(4) *If “carnal knowledge” is used in defining an offence, the offence, so far as regard that element of it, is complete on penetration to any extent.*

(5) *“Carnal knowledge” includes sodomy.*

6. The physical and fault elements for *Rape* in Counts 1, 2 & 5 are:

- i) A person i.e. the accused Noa Naisuqe and Saula Vosanalawe;
- ii) Penetrated the complainant BOB’s anus with his penis; and
- iii) Did so intentionally and / or recklessly

[i.e. fault element – see Crimes Act 2009, s.23(1) - (2); and Tukainiu v State [2017] FJCA 118; AAU0086.2013 (14 September 2017) at paragraphs 31 - 34 per Prematilaka, JA - *reckless.*]

7. In Tukainiu v State (supra), at paragraphs 31 – 34, Prematilaka, JA held:

[31] Therefore, since section 207(2)(a) (i.e. the law creating the offence of rape) does not specify a fault element for the physical element i.e. the act of penetration without the victim’s consent (amounting to a circumstance), section 23(2) would become applicable and recklessness becomes the fault element for the physical element of rape. This is the same with section 207(2)(b) and 207(2)(c) as well, though not applicable in this case.

[32] Section 14 states *inter alia* that in order for a person to be found guilty of committing an offence the existence of the physical element and the require fault element in respect of that physical element must be proved (by the prosecution). Fault elements of an offence could be intention, knowledge, recklessness or negligence but the law creating the offence may specify any other fault element as well [vide section 18(1) and (2)]. Therefore, I conclude that the prosecution in a case of rape has to establish (a) carnal knowledge (i.e. penetration to any extent); (b) lack of consent on the part of the victim; and (c) recklessness on the part of the accused as defined in section 21(1).

[33] Section 21(1) states, 'A person is reckless with respect to a circumstance of – (a) he or she is aware of a substantial risk that the circumstance exists or will exist; and (b) having regard to the circumstances known to him or her, it is unjustifiable to take the risk.'

[34] If recklessness is a fault element for a physical element of an offence, proof of intention, knowledge or recklessness will satisfy that fault element [vide section 21(4)]. Therefore, in a case of rape the fault element would be established if the prosecution proves intention, knowledge or recklessness as defined in sections 19, 20 or 21 respectively. The presence of any one of the three fault elements would be sufficient to prove the fault element of the offence of rape.

8. The physical and fault elements for *Rape* in Counts 3, 4, 6 & 8 are:

- i) A person i.e. the accused Moape Tikomaiositerelia Naivuadamanu; Saula Vosanalawe; and Wame Cagicaucou;
- ii) Penetrated the complainant BOB's mouth with his penis; and
- iii) Did so intentionally and / or recklessly

[i.e. fault element – see Crimes Act 2009, s.23(1) - (2); and Tukainiu v State [2017] FJCA 118; AAU0086.2013 (14 September 2017) at paragraphs 31 - 34 per Prematilaka, JA - *reckless.*]

Physical and fault elements of Sexual assault

9. Count 7: Sexual assault is contrary to section 210(1)(a) of the Crimes Act 2009 which state:

Sexual assault

210.-(1) A person commits an indictable offence (which is triable summarily) if he or she-

- (a) unlawfully and indecently assaults another person; ...*

10. The physical and fault elements for *Sexual assault* in Count 7 are:

- i) A person i.e. the accused Saula Vosanalawe;
- ii) Unlawfully and indecently assaulted the complainant BOB by taking BOB's hand and making BOB touch his penis; and
- iii) Did so intentionally.

Admitted Facts

11. The following facts are admitted as per the *Agreed Facts*:

- a) The complainant's name is BOB subject to a name suppression order, and a child having been born on 10 December 2011.
- b) The accused persons who are also juveniles are Noa Naisuqe [D.O.B – 29/11/2002]; Moape Tikomaiositerelia Naivuadamanu; Saula Vosanalawe [D.O.B – 12/09/2005]; and Wame Cagicaucou.

12. At trial, prosecution called 5 witnesses i.e. PW1: BOB (Complainant); PW2: Biliwaqa Donald Tokalau; PW3: Virisila Navusoata; PW4: Asaeli Rakatia; and PW5: Salanieta Galuvakadua, and tendered the birth certificate of BOB marked as prosecution exhibit 1 – [**PE1**].

13. Defence, on the other hand, called 7 witnesses i.e. DW1: Noa Naisuqe; DW2: Marisilina Bulou; DW3: Saula Vosanalawe; DW4: Wame Cagicaucou; DW5: Andrew Seroma; DW6: Moape Tikomaiositerelia Naivuadamanu; and DW7: Lenaitasi Nakarawa, who all gave sworn testimony.

PROSECUTION case via PW1, PW2, PW3, PW4 and PW5

PW1 – BOB (Complainant)

14. **PW1 BOB, the complainant**, in **examination-in-chief**, testified that he is 13 years old and

currently stays in Southern Cross, and his home is in Navia, Ba. PW1 stated that in Ba he stays with his uncle Nacani and aunty Salata including elder brother Viliwaqa and cousin Sikeli. PW1 stated that his mum resides in Kadavu, and his father has passed on. PW1 stated that he came to Ba last year i.e. 2023 for school purpose and currently attending Varavu Sanatan as a class 7 student. PW1 stated that he likes going to school to learn, and studying Maths, English, Social and Healthy Living. PW1 stated that his favourite subject is Basic Science, and he loves art and craft. PW1 stated that in art and craft he does drawing and answer questions. PW1 stated that his favourite teacher in school is Mrs. Kelu because if he asks her anything she will tell him. PW1 stated that his 2 best friends in school are Yushal and Akash, and they play in school, and his favourite sport is soccer, and favourite soccer player is Messi because he is a champion. PW1 stated that he is not a champion. PW1 stated that when he plays soccer he wins. PW1 stated that likes watching the movie The Great Wall which is an action movie, and he likes action movies. PW1 stated that his favourite actor is James Bond because he is very strong. PW1 stated that he likes eating food and his favourite food and drink is chicken chopsuey and pepsi including sausage and chips. PW1 stated that he knows what is a lie, and it is a lie to say that I am not in Southern Cross. PW1 stated that he knows what is the truth, and the truth is that he is staying at Southern Cross. PW1 stated that it is a lie that he is wearing a red shirt because he is in fact wearing a light blue shirt. PW1 stated that it is a lie that the chair he is sitting on is white in colour when it is in fact black in colour. PW1 stated that it is true that the painting on the ceiling is white in colour. PW1 stated that it is good to tell the truth, and not good to tell a lie. PW1 promised that he will tell the truth. PW1 stated that he knows what a 'good touch' is like a hug or hand shake. PW1 stated that he learnt what is a 'good touch' in school. PW1 stated that he learnt both 'good touch' and 'bad touch'. PW1 stated that he knows what is a 'bad touch' like if someone touches your breast. PW1 stated that if someone gives you the 'bad touch', you must tell the teacher. PW1 stated the he has been given the 'bad touch' by Noa, Moape, Saula and Wame. PW1 stated that Noa Naisuqe is a male and neighbour in Kadavu. PW1 stated that Wame Cagicaucou is a male and resides in his village i.e. Naqara village. PW1 stated that Moape Tikomaiositerelia is a male and their houses are close to each other. PW1 stated that Saula is a male and also resides in his village i.e. Naqara village.

PW1 stated that Saula touched his bum, he took his penis and put it in his anus, and PW1

demonstrated by moving his body to and from to show what Saula did when he put his penis into PW1's anus. PW1 stated that it was painful when Saula put his penis into his bum and moved his body. PW1 stated that he felt the pain on his bum. PW1 stated that he was fishing when Saula put his penis into his bum. PW1 stated that he was with another girl Sikiti when he was fishing. PW1 stated that he was with Sikiti and then Saula called him inside the mangrove where he then put his penis into PW1's bum. PW1 stated that he went to the mangroves when Saula called him from the mangroves. PW1 stated that he went to the mangroves because he thought by the tone that Saula used for them to go and feed the pigs. PW1 stated that when he went to Saula, Saula told him to pull his pants down, but can't recall what he was wearing that particular day. PW1 stated that after Saula told him to pull his pants down, PW1 then asked Saula why and then Saula told him to pull his pants down or he will punch him. PW1 stated that he then pulled down his pants and then Saula told him to bend down, and Saula took his 'polo' and inserted it inside his anus. PW1 stated that the 'polo' is the thing he uses to pee, and boys have the 'polo' which is located between the legs. Leave was then granted by the Court for a picture to be shown to PW1 for him to show the Court where the 'polo' is located. PW1 was shown the drawing before him and he stated that it is a drawing of a boy. PW1 then pointed at the genitalia area of the picture of a boy to show the Court where the 'polo' is located. PW1 then used a blue ballpoint pen and drew a circle on the picture of the boy where the 'polo' is located, which was then tendered by prosecution and marked prosecution exhibit 2 – [**PE2**]. PW1 stated that after Saula had put his balls in his bum, he then shook his body, while PW1 just bent down and kept quiet because Saula told PW1 to keep quiet. PW1 stated that Sikiti was fishing at that moment. PW1 stated that he did not tell anyone of what Saula did to him at the mangrove because Saula told him not to inform anyone. PW1 stated that he was scared of Saula. PW1 stated that this incident took place in 2018 when he was in class 1 and 6 years old.

PW1 stated Saula had done the 'bad touch' to him numerous times. PW1 stated that **Saula** did the 'bad touch' to him at the pig house, behind the rocks, and in the mountain.

PW1 stated that at the pig house, Saula told him to put his pants down and drink his *polo*. PW1 stated that he was in the pig house to feed the pig, and his mum told him to go and feed the pigs at the pig house. PW1 stated that he goes to the pig house alone. PW1 stated that when he

arrived at the pig house, Saula was already there in the pig house feeding the pig. PW1 stated that he went to the pig house to pour the food rubbish for the pig to eat. PW1 stated that after that Saula called him into the bush and told him to pull his pants down, which he did. PW1 stated that after he pulled down his pants, Saula took his ball out and put it in his mouth, and told him to move his head frontward and backward which PW1 demonstrated in Court, while Saula just stood there. PW1 stated that he was kneeling when Saula had put his balls or *polo* in his mouth. PW1 stated that Saula put his *polo* in his mouth for a long time, and he does not remember what Saula was wearing that moment. PW1 stated that after Saula had put his balls or *polo* in his mouth, then something white came out of his *polo*, and then Saula said enough and for them to go home. PW1 stated that he went home after that, but did not tell anyone of what Saula had done to him when arriving home. PW1 stated that he did not tell anyone at home of what Saula had to him in the pig house because Saula told him not to tell anyone.

PW1 stated that Saula gave him the 'bad touch' behind the rocks. PW1 stated that Saula told him to go behind the rocks, and Saula took off his clothes and put it on the ground, and after that Saula then told him to lie down and Saula then opened his trousers then put his *polo* inside his mouth, and Saula told him to move his head frontwards and backwards, while Saula was standing still. PW1 stated that Saula put his *polo* in his mouth behind the rocks for quite a long time, and then a white liquid came out of Saula's *polo*. PW1 stated that after the white liquid came out of Saula's *polo*, Saula then put his pants on again and told PW1 for them to go back. PW1 stated that soon after that, he went to the river and swam. PW1 stated that he did not tell anyone of what Saula did to him behind the rocks because Saula told him not to inform anyone. PW1 stated that this 'bad touch' incident happened behind the rocks just behind the mountain.

PW1 stated that when Saula put his *polo* in his mouth and bum, he was schooling at Naqara District School and stayed in the village which is just nearby to the school. PW1 stated that the first 'bad touch' incident happened was when he was swimming in the river; the second incident was in the pig house; and the third incident was behind the mountain.

PW1 stated that apart from the 3 incidents of 'bad touch' by Saula on him, the 4th incident of 'bad touch' by Saula was in front of the church. PW1 stated that in front of the church, Saula

told him to put his pants down, and then Saula drank his *polo*, and told PW1 to stand still. PW1 stated that during that time he was playing in front of the church with other children being Billywaqa, 2 girls and himself. PW1 stated that Saula's grandfather chased the 2 girls and his brother Billywaqa behind the chair, and then Saula pulled his pants down and then his brother came in and saw them, and Saula pulled his pants up and smiled. PW1 stated that after that Saula told PW1's brother for them to go and play, and that was the last 'bad touch' incident by Saula on him.

PW1 stated that **Noa** also gave him the 'bad touch' by pulling his pants down, took his ball and put it in PW1's bum, and this happened in the farm. PW1 stated that Noa's cousin told them to go and pull the cabbage, bean and things like that, and he went with Noa to the farm. PW1 stated that when they reached the farm, Noa told him to go to the bush, he pulled down PW1's pants and PW1 lied down on the ground. PW1 stated that he lied down facing the ground and Noa then laid on top of him on his back. PW1 stated that Noa then pulled his pants down, put out his *polo* and put it inside PW1's bum and PW1 felt pain inside his bum. PW1 stated that Noa put his *polo* or balls inside his bum for a long time. PW1 stated that when Noa put his balls inside his bum, he tried to move but Noa told him to stay still, and then Noa moved his body frontwards and backwards for a long time. PW1 stated that after that Noa told him to come out of the bush and go to the farm, and got the bean, cabbage, baigan and things like that, and then returned to the village. PW1 stated that when they went back to the village, he did not tell anyone what Noa had done to him at the farm.

PW1 stated that Noa gave him the 'bad touch' twice.

PW1 stated that the second time Noa gave him the 'bad touch' was beside the pig house. PW1 stated that him, Jekope and Buli were scrubbing the pig house, and his mum had sent him to the pig house. PW1 stated that Noa brought the bucket of pig food, and he called PW1 to feed the pig in Qarataima which is the place beside the pig house. PW1 stated that he and Noa then went to Qarataima where there is another pig house and fed the pig there, and after feeding the pig, Noa told him to go into the bush. PW1 stated that he then went to the bush, and at the bush Noa told him to put his pants down, took his *polo* and put it inside PW1's bum. PW1 stated that

when Noa put his *polo* inside his bum, he then jerked frontwards and backwards movement, and PW1 felt pain inside his bum. PW1 stated that he was kneeling when Noa put his balls inside his bum. PW1 stated that Qarataima is near the pig house. PW1 stated that when Noa and him went to Qarataima, and Noa putting his balls inside PW1's bum, Jekope and Buli remained scrubbing the pig house. PW1 stated that Noa put his balls inside his bum for quite a long time. PW1 stated that while Noa was putting his balls inside his bum, Noa told him to keep still and moved in front and back, and after that Noa told him, 'Let's go back home'. PW1 stated that when he went home, Jekope and Buli were already home after scrubbing the pig house. PW1 stated that when he arrived home, he did not tell anyone of what Noa did to him at Qarataima because Noa told him not to tell anyone.

PW1 stated that **Moape** did the 'bad touch' on him by Moape taking his ball and putting it in PW1's mouth at the old cement school beside the drain broken down by a digger. PW1 stated that he was playing rugby beside the teacher's house with Jekope, Buli, Biliwaqa and Liseo, when Moape called him to go to the school, which he did. PW1 stated that at the school, Moape told him to go under the desk located at the corner of the classroom and drink his *polo*. PW1 stated that he then went under the desk and drank Moape's *polo*. PW1 could not recall what Moape was wearing that day. PW1 stated that when he went under the desk and drank Moape's *polo*, Moape was lying down on his back on the floor, and did not saying anything to him. PW1 stated that he drank Moape's *polo* for a long time. PW1 stated that after he drank Moape's *polo*, Moape then told him, 'That is enough let's go home'. PW1 stated that the school is near the place where they were playing rugby. PW1 stated that when he went to the school with Moape, Jekope, Buli, Biliwaqa and Liseo remained playing. PW1 stated that after drinking Moape's *polo*, he went back to play again, and Moape went home. PW1 stated that he did not tell anyone when he was playing of what Moape did to him. PW1 stated that after playing rugby, he then went swimming with Jekope, Buli, Biliwaqa and Liseo. PW1 stated that Moape gave him the 'bad touch' once.

PW1 stated that **Wame** also gave him the 'bad touch'. PW1 stated that Wame told him to drink his *polo* in the second room of the same school already broken by a digger where Moape told him to drink his *polo*. PW1 stated that he was climbing a guava tree during the new year

celebration when Wame called him to go to the school where he was at. PW1 stated that Wame was bringing with him a bucket of mud to scare them with by throwing mud at them. PW1 stated that at the school, Wame told him to go under the desk, and when PW1 went under the desk, Wame had already put his pants down, and PW1 saw his ball, and Wame told PW1 to drink his ball. PW1 stated that he drank Wame's ball, while Wame was lying down on the floor and bracing himself against the floor, and did not say anything to PW1. PW1 stated that he drank Wame's ball for a long time, and after that he went back home. PW1 stated that when he went home, he did not tell anyone about what Wame did to him. PW1 stated that Wame did the 'bad touch' to him once.

PW1 stated 'no' when asked as to how long he has known Saula. PW1 stated that he knows Noa because they dinner together every afternoon in Noa's house situated on top at Soso. PW1 stated that he has dinner with Noa everyday because Noa's grandmother always care for them and have them for dinner everyday. PW1 stated that his relationship with Noa was good. PW1 stated that he has known Moape for a long time. PW1 stated that Noa is his paternal cousin or *tavale*. PW1 stated that Saula's father is his cousin. PW1 stated that Moape is his maternal cousin-brother. PW1 stated that his relationship with Moape was good. PW1 stated that Wame's father is his cousin-brother. PW1 stated that he addresses Wame as Wame; Moape as Moape; Noa as Noa; and Saula as Saula. PW1 stated that Saula, Noa, Moape and Wame are older than him, and would do what they tell him to do because if he refuses, they will do something to him. PW1 stated that he did not tell anybody after Saula, Noa, Wame and Moape gave him the 'bad touch'. PW1 stated that he does not know the year that Saula, Noa, Wame and Moape gave him the 'bad touch', but said that that they gave him the 'bad touch' during the long school holiday at the end of the year. PW1 stated that Ms. Navusoata reported the matter to the police and that is how the police came to know about the case. PW1 stated that Ms. Navusoata is his teacher at Naqara District School. PW1 stated that he told Ms. Navusoata about the 'bad touches' done to him by Noa, Saula, Wame and Moape. PW1 stated that he told Ms. Navusoata about the 'bad touches' in 2018. PW1 stated that Ms. Navusoata reported the matter to the police. PW1 stated that he felt bad when Saula, Noa, Moape and Wame gave him the 'bad touch'.

15. In **cross-examination** by defence counsel Ms. Nabainivalu, PW1 stated that he had told Ms.

Navusoata that Noa, Wame, Saula and Moape gave him the bad touches. PW1 stated that when Ms. Navusoata asked him, he told her everything including Noa giving him the 'bad touch' at the farm. PW1 stated that he was at the hospital, and whilst at the hospital the police came then Ms. Navusoata questioned him and he mentioned the names of Wame and the rest of the boys. PW1 agreed that it was in 2019 when he was in class 2 when he talked with Ms. Navusoata. PW1 stated that he told Ms. Navusoata that the bad touches happened in the previous year i.e. 2018. PW1 stated that he does not whether Noa was already in Suva during the 2018 school break, but Noa had done the 'bad touch' to him in the farm in the same year 2018. PW1 stated that he cannot recall being called by Ms. Navusoata because he was caught saying the word '*polipoli*' to Rodeo. PW1 stated that he knows Rodeo and he is 1 year younger than him. PW1 stated that he knows a boy named Asaeli who is also schooling in the same school as him and Rodeo, and Asaeli caught him and Rodeo sometime in 2019 under the blanket. PW1 stated that Asaeli then told Ms. Navusoata what he saw, and that was why Ms. Navusoata had called him and asked him about it. PW1 stated that he did not say anything when Ms. Navusoata asked him about him and Rodeo. PW1 stated that Ms. Navusoata asked him if anyone had done the 'bad touch' to him. PW1 stated that he cannot recalled telling Ms. Navusoata some stories about the 'bad touch'. PW1 stated that he cannot recall that he told Ms. Navusoata that Noa did not give him the 'bad touch'. PW1 stated that he cannot recall whether he was scared when Ms. Navusoata called to ask him. PW1 stated 'no' to the proposition that because he was scared, that is why he made the stories that Noa gave him the bad touches.

16. In **cross-examination** by defence counsel Ms. Narayan, PW1 stated that Saula gave him the bad touches 4 times. PW1 stated 'no' to the proposition that the first 'bad touch' by Saula was when he had gone fishing with Saula and Sikiti. PW1 stated 'no' to the proposition that yesterday he had told the Court that he had gone fishing with Saula and Sikiti. PW1 stated that Saula had also done the 'bad touch' while he was in the sea, and Saula took him into the mangrove and put his *polo* into PW1's bum. PW1 stated that he did not tell anyone about Saula putting his *polo* inside his bum. PW1 stated that he knows what is a 'good touch' and 'bad touch'. PW1 stated that Saula told him not to inform anyone or else he will do something to him. PW1 stated 'no' to the proposition that the reason why he did not tell anyone about the 'bad touch' during the fishing because it did not happen. PW1 stated that he can't remember giving a statement to the police

during the investigation. PW1 stated that he mentioned to the police that Saula gave him the 'bad touch' in the mangroves, and that is where Saula's dog Rambo died. PW1 stated that he told the police that Saula called him in to the mangroves. PW1 stated that second 'bad touch' from Saula was at the pig pen or pig house, and he did not tell anyone about it. PW1 maintained that Saula did the 'bad touch' on him. PW1 stated that Noa, Moape, Wame and Saula also did the 'bad touch' to him during the long school holiday in 2018, and Saula always did the 'bad touch' to him during the school days and school breaks. PW1 recalled giving a statement to the police in 2019, but cannot recall telling the police that the second incident took place in 2019. Leave was then granted by the Court for PW1 to be shown his statement to the police dated 10 July 2019. PW1 agreed that he stated in his statement that the second incident of 'bad touch' happened in 2019, and also agreed that he told the Court that the same incident took place in 2018. PW1 agreed that he told the Court earlier that the third incident of 'bad touch' that Saula gave him was behind the rock, and he did not tell anyone about it. PW1 maintained that Saula gave him the 'bad touch' behind the rock. PW1 stated that Saula was the one who called him there. PW1 stated that he told the police that he went behind the rock with Saula. PW1 maintained that Saula did it to him at the back of the rocks. PW1 agreed that he told the Court earlier that the fourth incident of 'bad touch' was in front of the church, and he did not tell anyone about it. PW1 maintained that Saula did it to him, and his brother Biliwaqa saw what Saula had done to him. PW1 stated 'no' to the proposition that Saula had not 'bad touched' him in front of the church. PW1 stated that he knows Rodeo who is younger than him. PW1 stated that he can recall asking Rodeo whether he knows how to '*polipoli*' or masturbate. PW1 stated that he knows Asaeli. PW1 stated that he can recall in 2019 being caught under the blanket with Rodeo. PW1 stated that Asaeli told Ms. Navusoata of what he saw, and that is why Ms. Navusoata called and asked him whether anyone had put his *polo* inside his bum. PW1 stated that he had told Ms. Navusoata that it was Saula, Noa, Moape and Wame who had put their *polo* inside his bum. PW1 stated that he was scared when Ms. Navusoata called and asked him because he was doing 'bad touch' with Rodeo. PW1 stated that Ms. Navusoata had questioned him and he informed Ms. Navusoata that Saula had 'bad touch' him with the rest of the boys. PW1 stated that in school, he wanted to relay the story, but then Saula had informed the students to beat him up. PW1 stated that when he was caught with Rodeo, then he relayed all this story.

17. In **cross-examination** by defence counsel Mr. Emasi, PW1 stated that he is in class 7 currently and attends school in Ba. PW1 stated that prior to going to Ba, he attended Naqara District School and his first year in that school was in 2018 and last year in 2023. PW1 stated that in the beginning of term 1 in 2023, he attended Naqara District School and the remainder of the terms, he attended school in Ba. PW1 agreed that the complaints against Moape and Wame are in regard to the 'bad touch' to PW1's mouth and not the bum. PW1 stated that when Ms. Navusoata asked him whether someone had put his *polo* in his bum, he said yes. PW1 stated that he told Ms. Navusoata that it was Saula, Noa, Moape and Wame. PW1 did not agree with the proposition that Wame and Moape did not give the 'bad touch' on his bum. PW1 stated that his conversation with Ms. Navusoata was at Naqara in Kadavu, and it was regarding the 'bad touch' with Rodeo. PW1 stated that he was scared when asked by Ms. Navusoata. PW1 stated that the police were not present when questioned by Ms. Navusoata in school. PW1 stated that the police came to ask him questions after being questioned by Ms. Navusoata, and the police questioned him on a different day. PW1 stated that he was taken for medical examination after being questioned by the police, and the social welfare was also present, but he cannot recall whether Ms. Navusoata was there as well. PW1 stated that female police officer Bulou was there and she recorded his statement. PW1 stated that the Ms. Navusoata was present the first time the police came, but not the next time police came. PW1 stated that police officer Bulou recorded his allegations against Wame and Moape, and agreed that he gave 3 statements to the police with regard to this matter. PW1 could not recall when he gave the first and second statements, which were respectively given on 10 July 2019 and 30 August 2019. PW1 agreed that his third statement is dated 20 November 2023. PW1 agreed that his second statement to the police dated 30 August 2019 was correct and true, he signed that statement and also his mother. PW1 stated that in the second statement he said that he was climbing a guava tree before Wame allegedly called him to go to the school. Leave was then granted by the Court for PW1 to be shown the I-Taukei version of his statement dated 30 August 2019. Upon going through the statement, PW1 confirmed that he did not mention climbing on a guava tree in that statement. PW1 stated that he was in the village when Wame called him to go to the school. PW1 stated that Wame and Moape gave him the 'bad touch' during the long holiday after term 3 in 2018. Leave was then granted by the Court for PW1 to be shown his statement dated 20 September 2023. PW1 stated that when Wame gave him the 'bad touch', he was not schooling with him at

Naqara District School. PW1 stated that he wasn't aware that Wame was in form 5 in Suva, but he was in Kadavu when Wame gave him the 'bad touch'. PW1 stated that he was playing rugby with Liseo, Sekope and Buli on the day that Moape allegedly called him to the school. PW1 agreed that he did not state in his statement to the police dated 30 August 2019 that he was playing rugby with Liseo, Sekope and Buli when Moape called him to go to the school. PW1 stated that when he was schooling at Naqara District School, Moape was not schooling there. PW1 stated that Moape was in the village during the holiday when he gave him the 'bad touch'. PW1 stated that all the time these bad touches took place, he did not raise the alarm with his mother, family members, friend and teachers. PW1 stated that he raised the allegations of bad touches against the 4 juveniles when Asaeli raised the complaint of him being caught with Rodeo. PW1 stated that he felt afraid when questioned by Ms. Navusoata. PW1 did not agree with the suggestion that he made all this up because he was caught with Rodeo.

18. In **re-examination** by the prosecutor, PW1 stated that Saula's dog died inside the mangroves, and he told this to the police. PW1 stated that he had informed the police the place where Saula's dog died, and that is the place where Saula had called him and had done the 'bad touch' to him. PW1 stated that he used the word 'mangroves' when he told this to the police, and he does not know any other term for 'mangrove'. PW1 confirmed stating earlier to the Court that all the bad touches from Noa, Wame, Saula and Moape were in the year end of 2018, and that Noa, Moape, Wame and Saula also did it to him on the long school holiday but sometimes Saula did the 'bad touch' to him during the school days and school break. PW1 stated that when he said that Saula did the 'bad touch' to him during the school day and school break, he meant that at the pig house Saula had told him to go there and told him to remove his pants, and Saula took his *polo* and put it inside PW1's bum. PW1 stated that Saula gave him the 'bad touch' during the long school break and also during school in term 1. PW1 stated that when he responded 'It seems like' to Ms. Narayan's question is because he was only aware of the incident happening in 2018, and so when Madam Narayan asked him about the incident happening in 2019, his response was 'It seems like'. PW1 stated that he did not tell anyone about the 'bad touch' that happened in front of the church because Saula told him not to tell anyone or otherwise, he might do something to him. PW1 confirmed that he asked Rodeo whether he knows how to '*polipoli*', and '*polipoli*' is what they use to urinate from. PW1 stated that their master told them to each

tell their story, master then proceeded to his desk and PW1 then told his story that Saula gave him the ‘bad touch’ in front of the church, Saula then told PW1’s classmates to beat him up.

PW2 – Biliwaqa Donald Tokalau

19. **PW2 Biliwaqa Donald Tokalau, in examination-in-chief**, testified that he is 14 years old and stays in Ba with his uncle Nacani Raisule and aunt Salata. PW2 stated that his siblings are BOB and Poasa and his parents are in Kadavu, and before coming to Ba he stayed at Naqara in Kadavu. PW2 stated that he is in class 8 at Varavu Sanatan School and started schooling there this year i.e. 2024. PW2 stated that before attending Varavu Sanatan School, he attended Naqara District School. PW2 stated that he moved to Ba this year i.e. 2024 because his uncle wanted them to move to Ba. PW2 stated that he has a brother named BOB and their relationship is good as they usually play together a lot, and his favourite sport is rugby and favourite rugby player is Frank Lomani. PW2 stated that his favourite food is chicken and chips and favourite drink is sprite. PW2 stated that he watches movies and his favourite movie is Tom and Jerry, and he likes Tom and Jerry because they usually play a lot. PW2 stated that his most favourite subject in school is English, and Vishal is his friend in school. PW2 stated that he knows what a lie is and that is to say what did not happen. PW2 stated that he knows what the truth is, that is, to say what has already happened. PW2 stated that it is a lie when the prosecutor said that his jacket is blue in colour when it is actually black in colour. PW2 stated that it is the truth that the chair he is sitting on is black in colour. PW2 stated that his favourite colour is blue. PW2 stated that it is not a good thing to lie, but it is a good thing to tell the truth. PW2 promised that he will tell the truth in Court today. PW2 stated that he knows what a ‘good touch’ is like shaking hand and playing. PW2 stated that he learnt about ‘good touch’ in school. PW2 stated that he knows what a ‘bad touch’ is like someone touching your ball and bum, and someone touching you and you don’t like it. PW2 stated that learnt about ‘bad touch’ in school. PW2 stated that if someone gives someone a bad touch, the person receiving the ‘bad touch’ must tell someone. PW2 stated that he knows why he is in Court. PW2 stated that he is in Court because he saw BOB and Saula. PW2 stated that he saw BOB standing and Saula was drinking his ball in front of the church. PW2 stated that when he came, all the chairs were outside and covered, and he saw BOB and Saula inside the tarpaulin. PW2 stated that after he saw BOB and Saula, they went out

to play. PW2 stated that BOB and Saula saw him, and there was no one else around that area, and Saula did nothing at that point in time. PW2 stated that BOB was standing and had his pants down when he saw BOB and Saula. PW2 stated that he did not tell anyone about what he saw Saula drinking BOB's polo because soon after that they went out to play and he had just forgotten about it. PW2 stated that it was daytime when he saw Saula drinking BOB's polo, but does not recall what BOB was wearing that day. PW2 stated that BOB was standing when he saw Saula drinking BOB's polo, and Saula was lying down. PW2 stated that it was just a short period of time when he saw Saula drinking BOB's polo.

20. PW2 was not cross-examined by defence counsels Ms. Nabainaivalu and Mr. Emasi. In **cross-examination** by defence counsel Ms. Narayan, PW2 stated that he saw BOB standing and Saula drinking BOB's polo, and he had told this to the police. PW2 stated 'no' to the proposition that the only thing he told the police was that he saw BOB pulling his pants up. Leave was then granted by the Court for PW2 to be shown his statement to the police dated 30 August 2019. PW2 confirmed that it is his statement and, in that statement, he said that Saula drank BOB's polo. PW2 stated 'no' to the proposition that the only reason it is not recorded is because he never mentioned it to the police. PW2 maintained that he saw Saula and BOB in response to the proposition that the only reason he never told the police is because he never saw BOB and Saula. PW2 stated 'yes' to the proposition that he stopped BOB from telling a story by the telling the teacher that it was an adult story.

21. PW2 was not **re-examined** by the prosecutor.

PW3 – Virisila Navusoata

22. **PW3 Virisila Navusoata**, in **examination-in-chief**, testified that she is currently a primary school teacher in Salove Primary School situated in Seaqqa, Macuata, Vanualevu, and has been a primary school teacher for 33 years. PW3 stated that as a primary school teacher, she teaches all subjects in the primary curriculum including Mathematics, English, general subjects which includes Elementary Science, Healthy Living, Social Science, and also Physical Education, Music and Arts, including teaching moral values. PW3 stated that before joining

Salove Primary School, she was at Naqara District School from 2015 to 2020. PW3 stated that with teaching, their main duty is to impart knowledge on their students, imparting learning, making sure that quality education is delivered to the children. PW3 stated that she also carries out the administration work in school, and also liaising with the community, the stakeholders, for the development of the school in order for better learning in the classrooms for their children. PW3 stated that actually according to the Ministry of Education, Naqara District School is a small school with a roll of about 50 to 60 students, and it is a boarding school, and in her time the number of students that were boarding at the school were 17 students. PW3 stated that for boarding students, there is a dormitory for them, and actually the building was divided into 2, one for the girls, and the other one for the boys. PW3 stated that the main focus for the dorm were for children who travel from Nabouwalu, and when space is available then second priority is given to Naqara village, and so during her time there, the dormitories catered for both children from Nabouwalu and Naqara villages. PW3 stated that students from year 1 to year 8 were able to stay in the dormitory. PW3 stated that in her experience in the 5 years she was teaching there, the students were well attended because she was there in school as a leader and needed to look after them, and make sure that they are well educated given the locality of the school. PW3 stated that BOB was a year 2 student at Naqara District School in 2019. PW3 stated that she got to know BOB when he enrolled into the school in 2018, that is when she started knowing BOB and his family. PW3 stated that BOB was a boarding student. PW3 stated that she can recall 24 June 2019. PW3 stated that on 24 June 2019, she was on duty at Naqara District School carrying out her role as headteacher and as a teacher. PW3 stated that actually on the particular morning on 24 June 2019, she was conducting the school assembly, and it was quite a lengthy assembly because after conducting devotion, she made some announcement and it was also a drug awareness week. PW3 stated that the announcements on how to keep up in school with their homework, their behaviour in classrooms and also in the dorm, responding to bells, and gave an awareness talk on child abuse. PW3 stated that while they were still in the assembly area, she gave her speech on child abuse because it was drug awareness week, and so at the end of her speech, she reminded the children that if there is any form of abuse done to them, they have to open up with it and they don't have to keep it to themselves because it can lead to serious problems, and it will definitely affect their education. PW3 stated that as a school teacher, their concern is their childrens' welfare so if something of that nature happens to a child

it will affect the child's learning. PW3 stated that after she made the announcements, a year 5 student namely Asaeli Rakatia approached her with a complaint. PW3 stated that Asaeli Rakatia is a boarding student, and he came up to her and told her that something happened in the dorm. PW3 stated that she asked Asaeli Rakatia and he said that he heard 2 boys talking then by listening in to their voice he could get that they were BOB and his friend a year 1 student Rodeo. PW3 stated that Asaeli Rakatia told her that he heard BOB asking Rodeo whether he knew how to kiss, and heard BOB telling Rodeo to take off his pants, and told Rodeo for Rodeo to suck his penis. PW3 stated that when she this news from Asaeli Rakatia, she firstly dismissed the students, and then asked Asaeli whether someone else was there with him, to which Asaeli said that there was another boy who heard the same conversation. PW3 stated that after that she called BOB and his friend Rodeo, and also the other boy who heard the same conversation as Asaeli Rakatia. PW3 stated that she called them because she wanted to know as to what Asaeli had told her had really occurred in the dorm that particular morning or not. PW3 stated that she asked BOB, and he told her that he told Rodeo to take off his pants and for them to do *'polipoli'*, which according to Asaeli that in their language *'polipoli'* means 'masturbation'. PW3 stated that they including Asaeli were with her in the room when she questioned them, and she then spent some time alone with BOB. PW3 stated that she spent some time with BOB because she wanted to make sure whether it was really the words that he told Rodeo for them to do *'polipoli'*. PW3 stated that she wanted to ask BOB on *'polipoli'*, and then told BOB that the matter will be taken to the social welfare officer. PW3 stated that actually it was in the afternoon after school then she asked BOB as she did not want to ask BOB in the morning because it will affect his learning throughout the day, but instead asked him in the afternoon. PW3 stated that she asked BOB as to where he heard those words like *'polipoli'*, to which BOB did not give any response, and then PW3 asked BOB if anything was done to him. PW3 stated that in the first place BOB did not mention any word, and then she comforted BOB and told him that he needs to open up if anything was done to him, and she will be there to assist him so that nothing of that sort happens to him in the future. PW3 stated that after comforting BOB, he then began telling her a story. PW3 stated that during the 8 weeks holiday, there was painting going on in the church and he was around the painting area around the church area, then an old man came and called a boy named Saula to assist him in painting. PW3 stated that BOB said that the seats of the church were all outside and covered with tarpaulin, and BOB and another small boy

Eparama got under the benches under the tarpaulin and the boy started crying, then Saula came to them and told the little boy to go and inform his parents as to why he cried. PW3 stated that BOB said that when the boy Eparama went, Saula got under the tarpaulin and told BOB for them to do *'polipoli'*. PW3 stated that BOB said that when they were under the tarpaulin, BOB's brother Biliwaqa came around and saw them under the tarpaulin. PW3 stated that when BOB was telling her this story, he was normal and also a bit reluctant to mention what happened to him. PW3 stated that being reluctant she meant that BOB did not open his mouth, and so when she asked him what else did Saula tell him, and BOB said that 'Saula told him to take off his pants'. PW3 stated that BOB said that Saula told him to take off his pants and suck his penis. PW3 stated that she then asked BOB that before he told her about the incident at the church, there was a cubs activity as the school has cub activities on Wednesdays and there was a combine cubs and scouts, and the teacher in-charge had asked them to tell a story, and so when it was BOB's turn, he told a story about an old man and the boy, and as soon as he mentioned the old man and the boy, his brother Biliwaqa shouted to the teacher in-charge that the story is an adult story. PW3 stated that she found out about this particular incident when the teacher in-charge of the cubs session brought BOB to her, after the children smacked BOB because of the adult story that he told them. PW3 stated that she did not ask BOB at the same moment when the teacher informed her about his story because BOB was feeling very sad. PW3 stated that when BOB was brought to her, he was crying and feeling sad. PW3 stated that BOB told her that the children smacked him because he said that the children said that it was an adult story. PW3 stated that she then asked BOB, was the story related to the incident that he told her that took place in the 8 weeks holiday outside the church. PW3 stated that BOB said that the story was related to the incident, but he did not mention the names of the old man and the boy. PW3 stated that after BOB told her this information, she then told BOB's mum's aunt who was there in the school for the children that whole week. PW3 stated that she told BOB's mum's aunt because BOB's mum told her that if anything regarding BOB from the school, she just goes and informs the old lady her aunt by the name of Anaseini. PW3 stated that when the complaint comes to them, they have to get the children and ask them to find out whether the issue is true, and then report it to social welfare, and PW3 reported the matter to social welfare, and for the safety of BOB and other children in the dorm, she went and told the guardian that BOB will be out of the dorm for a couple of weeks after the investigation is finalized. PW3 stated that upon

alerting the social welfare office, the social welfare officer then came to interview BOB and Rodeo, and after the interview the social welfare officer asked her if she can find out from BOB more about the incident. PW3 stated that she informed the social welfare office about this complaint on the day the story was revealed to her by Asaeli. PW3 stated that she was in the classroom when the social welfare officer came in to do the interview, and after the interview, the social welfare officer mentioned that Rodeo and BOB were heard by Asaeli in the dorm, and BOB did not open up to the social welfare officer. PW3 stated that after the social welfare officer interviewed BOB, the social welfare officer asked PW3 to find out more from BOB as he did not open up to the social welfare officer, and on that particular day PW3 asked BOB, and the whole story about the *'polipoli'* at the church came out. PW3 stated that after the story was told to her, she then went to see the old lady who was catering for the children who was also BOB's guardian because BOB's mother was in Suva, and PW3 told her the story and at the same time the old lady's nephew was with her in the kitchen, and so PW3 asked the nephew if he can also find out from BOB's mother whether the story BOB told her was a true story. PW3 stated that the police found out about this case through the social welfare officer because her job as a school teacher she just has to report the matter to the social welfare.

23. PW3 was not cross-examined by defence counsels Ms. Nabainaivalu and Mr. Emasi. In **cross-examination** by defence counsel Ms. Narayan, PW3 stated 'yes' to the proposition that she told the police that she had asked BOB in 2019 of anyone inserting his penis into BOB's bum, to which BOB said 'no one has done that'.

24. PW3 was not **re-examined** by the prosecutor.

PW4 – Asaeli Rakatia Junior

25. **PW4 Asaeli Rakatia Junior**, in **examination-in-chief**, testified that he is 17 years old and his date of birth is 27 March 2007. PW4 resides in MGM, Vatuwaqa, Suva, and is originally from Kadavu and moved to Suva last year i.e. 2023. PW4 stated that he attends MGM High School and in Form 4 studying B-Tech, English, Maths and Social. PW4 stated that his favourite subject is B-Tech or Basic Technology because of drawing. PW4 stated that he resides with the

caretaker namely Asaeli Rakatia who is his father, and his parents also stay at MGM High School. PW4 stated that he started studying at MGM High School this year i.e. 2024, and before that he studied at Kadavu Provincial Secondary School, and prior to that attended primary school at Naqara District School. PW4 stated that he attended Naqara District School for 8 years, and it is a village school. PW4 stated that he resided at Nabouwalu while attending Naqara District School. PW4 stated that he was boarding when attending Naqara District School. PW4 stated that he knows BOB and he hails from Naqara village. PW4 stated that he is in Court to tell the Court what happened to BOB who is also his brother. PW4 stated that he wants to tell the story of what BOB had done to Rodeo [child's name suppressed]. PW4 stated that he was lying down that early morning, then he saw BOB get up from his bed and walked past PW4's bed. PW4 stated that he had just woke up that morning, but cannot recall what time it was. PW4 stated that he saw BOB because the light was on and he saw BOB's face from the light right at the center of the dormitory. PW4 stated that BOB came, took the solar light, and went to Rodeo's bed. PW4 stated that he saw BOB coming to take the solar light and then went to Rodeo's bed which is just 3 beds away from PW4's bed. PW4 stated that where he is sitting in Court is his bed which is right on the side, and Rodeo's bed, in that dormitory it has 2 rows of bed, BOB's bed is just beside right where PW4's bed is situated. PW4 then pointed to the assessor's box, a distance of 4 to 5 meters from where he is sitting in Court in the witness box, to indicate the distance of where his bed is relative to that of Rodeo. PW4 stated that after seeing he saw BOB going to Rodeo's bed, he just laid down, and after quite some time he stood up and saw BOB had taken the solar light and put it down, and PW4 saw them inside the blanket. PW4 stated that after he saw BOB and Rodeo inside the blanket, he then approached and pulled the blanket from them so that he can see what BOB will do to Rodeo. PW4 stated that after he pulled the blanket, he saw BOB sucking BOB sucking Rodeo's polo. PW4 stated that Rodeo then pulled his pants and BOB went back to his bed. PW4 stated that he then told them not to do it because it is forbidden. PW4 stated that he cannot confirm how long it took him to approach BOB and Rodeo from the time he saw BOB go to Rodeo's bed. PW4 stated that he did not tell anyone of what BOB and Rodeo were doing. PW4 stated that after he saw what BOB and Rodeo were doing and BOB returning to his bed, he then just waited for sunrise and for the class to start so that he can relay the story to Ms. Navusoata the headteacher. PW4 stated that he told Ms. Navusoata of the story about BOB and Rodeo straight after the assembly. PW4 stated

that he told Ms. Navusoata that BOB had come and took the solar light and went to Rodeo's bed and place the solar light inside the blanket, and then PW4 went and pulled the blanket away and saw that BOB was sucking Rodeo's polo, and after that PW4 relayed the story to Madam Navusoata. PW4 stated that this particular incident took place in 2019.

26. PW4 was not **cross-examined** by defence counsels Ms. Nabainivalu, Ms. Narayan and Mr. Emasi.

PW5 – Salanieta Galuvakadua

27. **PW5 Salanieta Galuvakadua**, in **examination-in-chief**, testified that she is currently staying at the government quarters in Nabouwalu, Bua, Vanualevu with her husband and 3 children. PW5 stated that she is currently employed as a welfare officer 1 with the Department of Social Welfare in the Ministry of Women, Children and Social Protection, and has been a welfare officer with the said Ministry for 12 years. PW5 stated that as a welfare officer, her duties is to respond to child welfare cases, that is, cases of suspected harm, likely harm, or children who have been harmed or abused. PW5 stated that as welfare officer, once they receive a reported case of child abuse then they attend to the case to verify whether an abuse has taken place or not. PW5 stated in verifying whether an abuse has occurred, they interview the children and gather information on whether they have been abused or not. PW5 stated that for this case that is in Court, she was the attending welfare officer when the case was reported to her. PW5 stated that her qualification is Bachelor of Arts in Applied Psychology and Sociology as means to qualify as welfare officer. PW5 stated that they are taken through induction training conducted by the Ministry and child protection management cases. PW5 stated that the case was reported to her by Ms. Virisila Navusoata who was the school headteacher, and the report was about a sexual molestation case in school. PW5 stated that she attended to the case when she received the report. PW5 stated that she attended to the case the day after as she was in the neighbouring village of Nabouwalu, and she had to arrange for a boat in order to travel to the village where the report came. PW5 stated that she received the report on 25 June 2019. PW5 stated that she interviewed the victim who was involved in the case, and the victim being BOB. PW5 stated that after the interview, she referred the victim for counselling. PW5 stated that she asked BOB what happened and the validity of the report that was received. PW5 stated that during the

interview, the victim shared that another child was touching his private parts. PW5 stated that during the interview, she saw that the child was responding well to her questions, and whenever she asked questions about the incident, he was able to answer it very well. PW5 stated that she found out who was the other party involved in this case, being a 6 year old male by the name of Rodeo [child's name suppressed]. PW5 stated that she did not send BOB immediately for counselling at that time, but she referred him for counselling to the counselling agency that was present in Kadavu at that time. PW5 stated that she referred the victim to a counselling agency because it is one of the processes in attending to a child welfare case. PW5 stated that after the interview, she referred the case to the Kadavu Police Station. PW5 stated that she referred the case to the Kadavu Police Station on some other day, recalling that she had attended to the case on a Tuesday and then referred the case to the police 3 days later on a Friday. PW5 stated that she referred this case to the police 3 days later because she was attending the bose ni tikina for Ono in upper Kadavu, and when she returned back to Vunisea then she referred the case to the police. PW5 stated that the 'bose ni tikina' is the district council meeting. PW5 stated that during the initial interview it was only the headteacher who was present. PW5 stated that after she had referred the case to the police, she left the police to do their own investigation. PW5 stated that she attended to this case in 2019.

28. PW5 was not cross-examined by defence counsels Ms. Nabainivalu (1st juvenile); Ms. Narayan (3rd juvenile); and Mr. Emasi (2nd & 4th accused).

29. After PW5's testimony, the prosecutor then closed the State's case, and defence counsels Ms. Nabainivalu for the 1st accused Noa Naisuqe, and Mr. Emasi for the 2nd accused Moape Tikomaositerelia Naivuadamanu and 4th accused Wame Cagicaucou indicated that they will not be making a submission of *no case to answer*; however, defence counsel Ms. Narayan for the 3rd accused Saula Vosanalawe indicated otherwise, in particular, with regard to Count 7: Sexual assault.

30. The submission of *no case to answer* on Count 7: Sexual assault was held on 16 May 2024, and the Court ruled on 17 May 2024 that there was indeed a *no case to answer* on the said Count and acquitted the 3rd accused Saula Vosanalawe accordingly.

31. Despite the acquittal of the 3rd accused Saula Vosanalawe of Count 7: Sexual assault, all 4 accused persons were given their rights under section 231(2) of the Criminal Procedure Act 2009 in relation to *Rape* under Counts 1, 2, 3, 4, 5, 6 and 8 of the indictment to either (i) remain silent; or (ii) give sworn testimony; and/or (iii) call other independent witnesses.
32. Noa Naisuqe (1st accused)(DW1) opted to give sworn testimony and call his mother DW2: Marisilina Bulou as alibi. Moape Tikomaiositerelia (2nd accused)(DW6) also opted to testify under oath and call his uncle DW7: Lenaitasi Nakarawa as alibi. Saula Vosanalawe (3rd accused)(DW3) chose to give sworn testimony but did not call another witness. Wame Cagicaucou (4th accused)(DW4) chose to testify under oath and call his uncle-in-law DW5: Andrew Seroma as alibi.

DEFENCE case via DW1, DW2, DW3, DW4, DW5, DW6 and DW7

DW1 – Noa Naisuqe

33. **DW1 Noa Naisuqe**, in **examination-in-chief**, testified that he is currently 22 years old and staying at Jittu Estate, Suva. DW1 stated that in 2018 he was in class 8 in Naqara District School. DW1 stated that he does not agree with what BOB had told the Court earlier that DW1 and BOB went to the farm together, but instead DW1 always go to the farm with his friends. DW1 stated that at no time did he go to the farm with BOB. DW1 did not agree with what Bob had told the Court earlier that DW1 took out his ball and put it in BOB's bum, and he hasn't done all those types of things. DW1 did not agree with what BOB had told the Court earlier that DW1 told BOB at Qarataima to go to the bush. DW1 stated that at no time has he called BOB to the bush alone. DW1 stated that he did not take out his polo and out it inside BOB's bum at the bush. DW1 stated that ever since he was in class 8, every first week of school holiday break he comes to Suva to spend his holiday. DW1 stated that he spent the long school holidays with his family in Jittu Estate, Suva including the long school holiday in 2018. DW1 stated that his family members are his mum, sisters and brother.

34. In **cross-examination** by the prosecutor, DW1 stated that he is currently 22 years old and in

2018 attended Naqara District School. DW1 stated that he knows BOB who was also a student at Naqara District School in 2018. DW1 stated that he does not hang out together with BOB. DW1 stated that in 2018 he came to Suva during the first week of school holiday to spend the holiday. DW1 stated 'yes' to the proposition that he was in Naqara village in 2018 till the very end of 2018. DW1 agreed that at the end of 2018, he went to the farm to collect vegetables. DW1 stated that he went himself since he has a vegetable farm of his own. DW1 did not agree with the proposition that he went with BOB to the vegetable farm to collect vegetables. DW1 stated that at no point in time he went with BOB to the farm. DW1 did not agree that after the farm there is a place called Qarataima. DW1 agreed that there is a pig house at Naqara village. DW1 stated 'no' to the proposition that he would always go to the pig house to feed the pigs and clean the area, and he does not have a pig of his own. DW1 stated that he does not know places such as Qarataima because he hasn't been to those places. DW1 stated that he hasn't been to the pig house since he does not have a pig of his own. DW1 did not agree with the suggestion that he took BOB to the pig house sometimes during the long school holiday in 2018 because he was in Suva. DW1 did not agree with the suggestion that he then took BOB to the place called Qarataima. DW1 did not agree with the suggestion that at Qarataima he took out his balls and put it inside BOB's bum. DW1 stated he did not go with Jekope and Buli to the pig house. DW1 did not agree with the suggestion that after he had put his balls inside BOB's bum, he told Bob not to tell anyone. DW1 stated that in 2018 he was in class 8 and a senior student at Naqara District School, while BOB was in class 1. DW1 stated that he did not go with BOB to the vegetable farm to collect vegetables. DW1 did not agree with the suggestion that at the vegetable farm, he put his balls into BOB's bum, and told BOB not to tell anyone. DW1 stated that the only reason he is in Court today is because BOB told the police about him.

35. Defence counsel Ms. Nabainivalu did not **re-examine** DW1.

DW2 – Marisilina Bulou

36. **DW2 Marisilina Bulou**, in **examination-in-chief**, testified that Noa is her son and they currently reside at Veiquwawa or Jittu Estate in Suva for 10 years. DW2 stated that Noa attended Naqara District School, and his last year at that school was in 2018. DW2 stated that in 2018, Noa left Naqara village to come to her in Suva during the school holiday. DW2 stated

that her and Noa were at home in Suva together during the long school holiday in 2018. DW2 stated that Noa came to her in Suva at the end of 2018 so he can continue schooling in Suva. DW2 stated that in 2019, Noa attended John Wesley school.

37. In **cross-examination** by the prosecutor, DW2 stated that Noa Naisuqe is her son, and she has 4 children and Noa Naisuqe Junior is the youngest. DW2 stated that Noa Naisuqe came to Suva during the school holiday in 2018. DW2 stated that in the 2018 school holiday, Noa Naisuqe was in Suva. DW2 stated ‘yes’ to the proposition that since Noa Naisuqe is her youngest child, she wouldn’t want him punished for what he has done, and she’ll try everything in her power to save him as he is her youngest child.

38. Defence counsel Ms. Nabainivalu did not **re-examine** DW2.

DW3 – Saula Vosanalawe

39. **DW3 Saula Vosanalawe**, in **examination-in-chief**, testified that he is 18 years old and currently reside at Nabua. DW3 stated that in 2018, he was in class 7 at Naqara District School. DW3 stated ‘no’ to the proposition that BOB had earlier told the Court that DW3 went into the mangroves with BOB. DW3 stated that at no point in time did he go with BOB into the mangroves together. DW3 stated ‘no’ to the proposition that BOB had informed the Court that DW3 took his *polo* and put it inside BOB’s bum in the mangroves. DW3 stated that he does not know about what BOB had told the Court that he and BOB went to the pig house together. DW3 stated that he has never been to the pig house with BOB alone. DW3 stated ‘no’ to the proposition that BOB had informed the Court that he told BOB to drink his *polo* at the pig house. DW3 stated that at no time did he go with BOB behind the mountain. DW3 stated ‘no’ to the proposition that BOB had also informed the Court that DW3 took his *polo* and put it inside BOB’s mouth behind the mountain.

40. In **cross-examination** by the prosecutor, DW3 stated that in 2018 he attended Naqara District School. DW3 stated that he knows BOB the complainant. DW3 stated that when he was in class 7 in Naqara District School, BOB was in class 1. DW3 stated ‘no’ to the proposition that he use to hang out with BOB in school and during the weekends. DW3 agreed that there is a mangrove

plantation in Naqara village where people go fishing and swimming. DW3 stated that he sometimes goes swimming with his friends at the mangroves while staying at Naqara village. DW3 stated that in 2018, sometimes during the long 8 weeks holiday he would go to the mangrove plantation. DW3 stated 'no' to the proposition that BOB came to the mangrove plantation with Sikiti. DW3 stated that he does not know whether during the long 8 weeks school holiday in 2018, BOB visited the mangrove plantation with Sikiti to fish. DW3 stated 'no' to the suggestion that when BOB came to the mangrove plantation with Sikiti, he called BOB to the mangroves. DW3 stated 'no' to the suggestion that he called BOB into the mangroves and out his polo into BOB's bum. DW3 agreed that in Naqara village, there is a pig house. DW3 stated that they have their own pigs, and sometimes he would go and feed the pigs and also clean the pig house. DW3 stated that he would go every morning to clean the pig house, and sometimes he would go alone or with his sister. DW3 stated that apart from him and his sister, his grandfather would also clean the pig house. DW3 did not agree with the proposition that BOB would go and clean the pig house. DW3 stated 'no' to the proposition that BOB also went to clean the pig house sometime in 2018. DW3 stated 'no' to the suggestion that when BOB went to clean the pig house, he took BOB to the bush. DW3 stated 'no' to the further suggestion that after he took BOB to the bush, he then took out his penis and put it in BOB's mouth. DW3 stated that there are many mountains that has rocks on it in Naqara village. DW3 stated 'no' to the proposition that he often visits the mountains to go and play with his friends. DW3 stated 'no' to the proposition that he went with BOB to one of the mountains which has rocks on it. DW3 stated 'no' to the suggestion that when he took BOB to one of the mountains with rocks on it, he then took out his polo or penis and put it in BOB's mouth. DW3 stated 'I don't know' when asked to describe his relationship with BOB despite being in the same school. DW3 stated 'I don't know' in response to the proposition that had BOB not told the police about him, he would not be in Court today.

41. Defence counsel Ms. Narayan did not **re-examine** DW3.

DW4 – Wame Cagicaucou

42. **DW4 Wame Cagicaucou**, in **examination-in-chief**, testified that he resides in Narere with his parents, aunt and uncle Andrew Seroma who is the owner of the residence. DW4 stated that in

2018, he was in Form 5, first term in Dudley and second term in Sacred Heart, and residing at the Nasova police barracks with his uncle Andrew Seroma and his wife and their children. DW4 stated that his uncle Andrew Seroma is married to his aunt who is his father's older sister. DW4 stated that he came to live with his aunt and uncle at Nasova for school purpose. DW4 stated that he began living with his aunty and uncle during the holidays in 2015, that is the holiday after he completed his class 8. DW4 stated that he resided with his uncle and aunt at Nasova police barracks for a span of 4 years from Form 3 to Form 6. DW4 stated that when he was schooling in Suva, he stayed with his aunt and uncle Andrew Seroma at Nasova. DW4 stated that he left the Nasova police barracks in the beginning of 2020. DW4 stated that he never returned to Kadavu from the time he arrived in 2025 from Kadavu and before he returned to Kadavu in 2020 from Suva. DW4 stated that prior to coming to Suva in 2015, he was attending Naqara District School in Ono, Kadavu. DW4 stated that he left Kadavu for Suva in 2015, and returned to Kadavu in the beginning of 2020. DW4 stated that from the time he arrived in Suva in 2015 until 2020, he never returned to Naqara, Kadavu. DW4 did not agree with the proposition that during the long school holiday in 2018, he and BOB went together to the classroom destroyed by the digger. DW4 stated 'no' to the proposition that BOB had earlier told the Court that at the classroom that was destroyed by the digger, he had told BOB to go under the table and to drink his polo. DW4 stated that he was not present in Naqara village in Kadavu in 2018.

43. In **cross-examination** by the prosecutor, DW4 stated that he came to Suva in 2015 with his parents for school, and then his parents returned to Kadavu. DW4 stated that in 2015 all the way to 2020, he never went to Kadavu. DW4 stated that his parents always come from Kadavu to visit him in Suva. DW4 stated that he knows BOB the complainant. DW4 stated that when he was in class 8 in 2015, BOB was 4 years old. DW4 agreed that at Naqara village, there is a school destroyed by a digger. DW4 stated 'no' to the proposition that despite the school being demolished, there are still some furniture in the school. DW4 agreed that there is no door to the demolished building or school. DW4 stated that when he came from school in 2020, he then saw that it was demolished. DW4 stated 'no' to the proposition that in 2018 during the long school holiday, he was in Kadavu. DW4 stated 'no' to the proposition that while in Naqara during the long school holiday in 2018, he called BOB for the two of them to go to the

demolished school building. DW4 stated 'no' to the proposition that after he called BOB into the school, he then put his penis into BOB's mouth. DW stated that he is not related to BOB. DW4 stated that when BOB blamed him, that is why he is here in Court.

44. In **re-examination** by Defence counsel Mr. Emasi, DW4 stated that when his parents brought him to Suva to school, they lived with his uncle Andrew Seroma.

DW5 – Andrew Seroma

45. **DW5 Andrew Seroma**, in **examination-in-chief**, testified that he has been a police officer for the last 33 years and currently based at the Fiji Police Band section. DW5 stated that in 2018, he lived in the police quarters at Nasova, Suva, and started living there since 1992. DW5 stated that at present he is residing at Narere Stage 1, and moved to Narere Stage 1 from Nasova in the beginning of 2020. DW5 stated that in 2018, he lived with his wife, 4 daughters and Wame. DW5 stated that Wame is his wife's younger brother's son, and his full name is Wame Cagicaucou. DW5 stated that he began living with Wame in 2015. DW5 stated that Wame came all the way from the village in Kadavu to live with him to further his education. DW5 stated that Wame left his family to return to Kadavu in the beginning of 2020. DW5 stated that from 2015 until Wame left to return to Kadavu in 2020, he was always residing with him. DW5 stated that Wame never returned to Kadavu from the time he came to live with them in 2015 to the time he left for Kadavu in 2020.

46. In **cross-examination** by the prosecutor, DW5 stated that Wame Cagicaucou came to stay with him in 2015, and the only time he went back to his village was in 2020. DW5 stated 'no' to the proposition that Wame use to visit his parents during the long school holiday. DW5 stated that prior to Wame returning to Kadavu, he had lived with him for approximately 5 years, and his relationship with Wame was great, and he treated Wame like his own son. DW5 stated 'yes' to the proposition that he would do everything in his power to save Wame Cagicaucou in this case.

47. In **re-examination** by Defence counsel Mr. Emasi, DW5 stated that in 2018, Wame resided with him and family throughout the whole year.

DW6 – Moape Tikomaiositerelia Naivuadamanu

48. **DW6 Moape Tikomaiositerelia Naivuadamanu**, in **examination-in-chief**, testified that he'll turn 21 years in June 2024 and stays at Stage 1, Delainavesi. DW6 stated that in 2018 he was a Form 5 student at Lelean Memorial School, and living at Stage 1, Delainavesi, Suva, with his uncle Lenaitasi Nakarawa at his residence. DW6 stated that prior to living at Stage 1, Delainavesi, Suva, he lived at Naqara village in Kadavu. DW6 stated that the reason he came to live with his uncle in Suva is to further his education. DW6 stated that he finally left his uncle's residence in Delainavesi in 2019. DW6 stated that he always lived with his uncle Lenaitasi from the time he came to Suva to live with him in 2016 to the time he left in 2019. DW6 stated that between 2016 until the time he left his uncle's residence in 2019, he never left to go to Kadavu. DW6 stated that his parents came to see him in Suva during the school breaks in 2016 and 2019. DW6 stated 'no' to the proposition that BOB the complainant said that DW6 told BOB to drink his polo inside the school building destroyed by the digger. DW6 stated that he was never in Kadavu in 2018.
49. In **cross-examination** by the prosecutor, DW6 stated that he came to Suva in 2016, and before coming to Suva he stayed in Naqara village, Kadavu. DW6 knows BOB the complainant. DW6 stated that when he was in class 8 in 2015, BOB was still 4 years old. DW6 agreed that in Naqara, there is a school destroyed by a digger. DW6 stated that he does not know when that school was destroyed by a digger, and he was living in Suva when the hostel was destroyed. DW6 did not agree with the proposition that he went inside the school destroyed by a digger. DW6 stated 'no' to the proposition that there is a place where the children go and play. DW6 stated that the school that was destroyed by a digger is made of cement. DW6 stated that when he went to Suva in 2016, his parents went with him and then they returned back to the village. DW6 stated that from 2016 he spent about 5 to 6 years in Suva before returning to Kadavu. DW6 did not agree with the proposition that he did not go to Kadavu in 2019. DW6 stated that ever since he came to stay in Suva, he did not go back and visit his parents in Kadavu during the school holidays. DW6 stated 'no' to the suggestion that he was in Kadavu in 2018. DW6 stated 'no' to the suggestion that he called BOB to the school that was destroyed by the digger in 2018. DW6 stated 'no' to the suggestion that after calling BOB into the school, he then put his penis into BOB's mouth. DW6 stated 'no' to the suggestion that he put his penis into BOB's mouth.

after Noa, Saula and Wame told him that they have done it as well. DW6 did not agree with the proposition that when he was in Kadavu, Noa, Saula and Wame came to visit him. DW6 stated 'no' to the suggestion that when they visited him, they told him that BOB had sucked their penis. DW6 stated 'no' to the suggestion that after finding out that Noa, Saula and Wame had done it, he wanted to do the same thing himself. DW6 stated that he is in Court today because of BOB's allegations against him.

50. Defence counsel Mr. Emasi did not **re-examine** DW6.

DW7 – Lenaitasi Nakarawa

51. **DW7 Lenaitasi Nakarawa**, in **examination-in-chief**, testified that he has been a pastor for 30 years. DW7 stated that in 2018 he lived in Delainavesi with his family and Moape Naivuadamanu who is his nephew being his brother's son. DW7 stated that Moape came to school in 2016 at Lelean Memorial School. DW7 stated that Moape came from Naqara village, Ono, Kadavu in 2016, and left his family to return to Kadavu at the end of 2019 and beginning of 2020. DW7 stated that Moape was home with them the whole time until 2020. DW7 stated that Moape did not return to Naqara village in Kadavu in between the time he came to live with them in 2016 until he left in 2020. DW7 stated that Moape did not return to Kadavu even during the school holidays.

52. In **cross-examination** by the prosecutor, DW7 stated that after Moape arrived in 2016, he never left again for Kadavu. DW7 stated that Moape never went to visit his parents at all when he resided with him and his family, except in 2020. DW7 did not agree with the proposition that in 2018 Moape was in Naqara village, Kadavu.

53. Defence counsel Mr. Emasi did not **re-examine** DW7.

54. Defence then closed its case, both counsels then made closing submissions, and this is the Courts judgment on Counts 1 & 3: Rape and Count 2: Sexual assault in the indictment.

ANALYSIS of the prosecution vis-à-vis defence evidence

55. Saula Vosanalawe (3rd accused) was found *not guilty* of Count 7: Sexual assault on 17 May 2024 on a *no case to answer* pursuant to section 231(1) of the Criminal Procedure Act 2009.

56. The main issue for determination by this Court is whether the prosecution has proved *beyond reasonable doubt* all elements of *Rape* alleged against the 4 accused juveniles under the respective Counts noted as follows:

- Noa Naisuqe (1st accused juvenile) – Counts 1 & 2;
- Moape Tikomaositerelia Naivuadamanu (2nd accused juvenile) – Count 3;
- Saula Vosanalawe (3rd accused juvenile) – Counts 4, 5 & 6; and
- Wame Cagicaucou (4th accused juvenile) – Count 8.

57. The physical and fault elements for *Rape* in Counts 1, 2 & 5 are:

- i) A person i.e. the accused Noa Naisuqe and Saula Vosanalawe;
- ii) Penetrated the complainant BOB's anus with his penis; and
- iii) Did so intentionally and / or recklessly

[i.e. fault element – see Crimes Act 2009, s.23(1) - (2); and Tukainiu v State [2017] FJCA 118; AAU0086.2013 (14 September 2017) at paragraphs 31 - 34 per Prematilaka, JA - *reckless*.]

Refer also to paragraphs 6 – 7 herein.

58. The physical and fault elements for *Rape* in Counts 3, 4, 6 & 8 are:

- i) A person i.e. the accused Moape Tikomaositerelia Naivuadamanu; Saula Vosanalawe; and Wame Cagicaucou;
- ii) Penetrated the complainant BOB's mouth with his penis; and
- iii) Did so intentionally and / or recklessly

[i.e. fault element – see Crimes Act 2009, s.23(1) - (2); and Tukainiu v State [2017] FJCA 118; AAU0086.2013 (14 September 2017) at paragraphs 31 - 34 per Prematilaka, JA – *reckless.*]

Refer also to paragraph 8 herein.

59. Having carefully considered the entire evidence of the prosecution *vis-à-vis* defence, I find as follows:

Noa Naisuqe (1st accused juvenile)

60. Count 1: Rape – The complainant BOB testified that at the bush adjacent to the farm where they collect vegetables, Noa Naisuqe told him to pull down his pants, which he did, Noa Naisuqe then took out his *polo* or penis and put it inside his bum. This incident of rape happened during the long school holiday towards the end of 2018.

61. Count 2: Rape – The complainant BOB testified that at the bush at Qarataima, Noa Naisuqe told him to pull down his pants, which he did, Noa Naisuqe then took out his *polo* or penis and put it inside his bum. This incident of rape happened during the long school holiday towards the end of 2018.

62. Noa Naisuqe (1st accused juvenile)(DW1) denied raping BOB as per Counts 1 & 2, and testified that during the long school holiday in 2018, he was not in Kadavu but in Suva with his family at Jittu Estate, Suva, confirmed by his alibi, his mother Marisilina Bulou (DW2).

Moape Tikomaiosterelia Naivuadamanu (2nd accused juvenile)

63. Count 3: Rape – The complainant BOB testified that in the old cement school beside the drain broken down by a digger, Moape Tikomaiosterelia Naivuadamanu told him to go under the desk and drink his *polo* or penis, which BOB did whereby Moape Tikomaiosterelia Naivuadamanu penetrated BOB’s mouth with his penis. This incident of rape happened during the long school holiday towards the end of 2018.

64. Moape Tikomaiosterelia Naivuadamanu (2nd accused juvenile)(DW6) denied raping BOB as per Count 3, and testified that during the long school holiday in 2018, he was not in Kadavu but

in Suva staying at his uncle Lenaitasi Nakarawa's residence at Stage 1, Delainavesi, Suva, confirmed by his alibi, his uncle Lenaitasi Nakarawa (DW7).

Saula Vosanalawe (3rd accused juvenile)

65. Count 4: Rape – The complainant BOB testified that at the bush near the pig house, Saula told him to put his pants down and drink his *polo* or penis, which BOB did whereby Saula penetrated BOB's mouth with his penis until Saula ejaculated. This incident of rape happened during the long school holiday towards the end of 2018.

66. Count 5: Rape – The complainant BOB testified that in the mangroves, Saula told him to pull his pants down and bend down, which BOB did, and then Saula put his *polo* or penis inside BOB's anus. This incident of rape happened during the long school holiday towards the end of 2018.

67. Count 6: Rape – The complainant BOB testified that at the bush near the pig house, Saula told him to put his pants down and drink his *polo* or penis, which BOB did whereby Saula penetrated BOB's mouth with his penis until Saula ejaculated. This incident of rape happened during the long school holiday towards the end of 2018.

68. Saula Vosanalawe (3rd accused juvenile)(DW3) denied raping BOB as per Counts 4, 5 & 6, testifying that the said rape allegations did not happen at all.

69. Count 8: Rape - The complainant BOB testified that in the old cement school beside the drain broken down by a digger, Wame Cagicaucou told him to go under the desk and drink his *polo* or penis, which BOB did whereby Wame Cagicaucou penetrated BOB's mouth with his penis. This incident of rape happened during the long school holiday towards the end of 2018.

70. Wame Cagicaucou (4th accused juvenile)(DW4) denied raping BOB as per Count 8, and testified that during the long school holiday in 2018, he was not in Kadavu but in Suva staying at the Nasova police quarters with his uncle-in-law Andrew Seroma and family, confirmed by his alibi, his uncle-in-law Andrew Seroma (DW5).

71. PW1 BOB, the complainant, is a credible, reliable and truthful witness, and his demeanour while testifying has enhanced the credibility and reliability of his account. PW1's testimony was not heavily discredited nor unsettled in cross-examination. Thus, I attach immense weight to his account, believe and accept it as proving *beyond reasonable doubt* that between 1 January 2018 and 31 December 2018, BOB the complainant was raped by Noa Naisuqe (1st accused juvenile) as per Counts 1 & 2; Moape Tikomaiositerelia Naivuadamanu (2nd accused juvenile) as per Count 3; Saula Vosanalawe (3rd accused juvenile) as per Counts 4, 5 & 6; and Wame Cagicaucou (4th accused juvenile) as per Count 8, of the indictment.

72. PW1 BOB's (complainant) testimony held together with that of PW2: Biliwaqa Donald Tokalau; PW3: Virisila Navusoata; PW4: Asaeli Rakatia; and PW5: Salanieta Galuvakadua, are consistent, credible and reliable, and any discrepancy does not, in my view, render the prosecution evidence incredible and unreliable. In Nadim v State [2015] FJCA 130; AAU0080.2011 (2 October 2015) at paragraph 15, Prematilaka, J. stated:

[15] It is well settled that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be discredited or disregarded. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witnesses. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of incidents, minor discrepancies are bound to occur in the statements of witnesses.

73. I reject the testimonies of DW1: Noa Naisuqe and his alibi DW2: Marisilina Bulou; DW3: Saula Vosanalawe; DW4: Wame Cagicaucou and his alibi DW5: Andrew Seroma; and DW6: Moape Tikomaiositerelia Naivuadamanu and his alibi DW7: Lenaitasi Nakarawa, and hold that they are not credible and reliable witnesses, thus attaching less weight to their testimony, which weight of evidence are heavily outweighed by the testimony of PW1: BOB (complainant) testimony held in conjunction with that of PW2: Biliwaqa Donald Tokalau; PW3: Virisila Navusoata; PW4: Asaeli Rakatia; and PW5: Salanieta Galuvakadua.

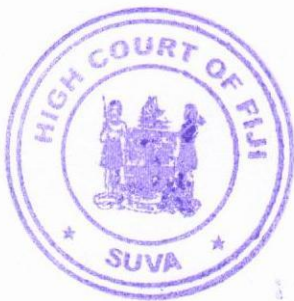
CONCLUSION

74. Based on the reasons articulated above, I find that the prosecution has proved *beyond reasonable doubt* that:

- a) **Noa Naisuqe (1st accused juvenile)** is guilty of *Rape* in Counts 1 & 2 of the indictment.
- b) **Moape Tikomaiositerelia Naivuadamanu (2nd accused juvenile)** is guilty of *Rape* in Count 3 of the indictment.
- c) **Saula Vosanalawe (3rd accused juvenile)** is guilty of *Rape* in Counts 4, 5 & 6 of the indictment.
- d) **Wame Cagicaucou (4th accused juvenile)** is guilty of *Rape* in Count 8 of the indictment.

75. Noa Naisuqe, Moape Tikomaiositerelia Naivuadamanu, Saula Vosanalawe and Wame Cagicaucou, shall remain on bail, and must attend Court on the date scheduled for purposes of hearing on mitigation and punishment bearing in mind the Juveniles Act (Cap 56).

76. Thirty (30) days to appeal to the Fiji Court of Appeal.



.....
Hon. Mr. Justice Pita Bulamainivalu
PUISNE JUDGE

At Suva

27 June 2025

Solicitors

Office of the Director of Public Prosecutions for the State.
Legal Aid Commission for all the juvenile accused persons.