

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 54 of 2024

STATE

-v-

SHEIK KARIM

Counsel: Ms. E. Thaggard for the State
Ms. R. Raj with Mr. S. Driu for the Accused

Date of Trial: 5 – 7 May, 13 June, 11 July 2025

Date of Judgment: 12 August 2025

JUDGMENT

1. Mr. Sheik Karim (“the accused”) is charged with two counts: (i) Indecent Assault, contrary to section 212 (1) of the Crimes Act 2009, the particulars being that, between 1 January 2024 to 28 April 2024, at Seaqaqa in the Northern Division, he unlawfully and indecently assaulted the complainant by caressing her backside and her clothed breast (count 1); (ii) Rape, contrary to section 207 (1) and (2)(a) of the Crimes Act 2009, the particulars being that, on 27 April 2024, at Seaqaqa in the Northern Division, he penetrated the complainant’s vagina with his penis without her consent.

The prosecution case in outline

2. In January 2024, the complainant went to live with her aunty Sarafina and cousins at Natua Housing, Seaqaqa. They rented a flat from the accused, who lived in the

flat next door. On the afternoon of 27 April 2024, her aunty went to drink grog, leaving the complainant, her younger sister and four younger cousins home alone. Aunty Sarafina told the children not to go anywhere, and to close the door.

3. That evening, the accused knocked on their door and told the children to go and sleep at his place. They went to the accused's place, where the complainant lay on the settee, and the other children lay on a mat in the sitting room. The accused removed the complainant's pants and undergarment, lay on top of her, and inserted his penis in her vagina. She felt pain inside. The complainant kicked the accused. He fell down, and she ran outside. She returned when she could not find her aunty.
4. Later, her aunty came and took them home. In the morning, she told her aunty what the accused had done to her.
5. Before this incident, the accused used to tell her to take things to the kitchen. He would then touch her bum and breasts over her clothes. This first happened just after they moved in.
6. At the time of the alleged rape, the accused was 79 years of age, and the complainant was 13 years 9 months old.

The defence case in outline

7. The accused brought the children to his place on the evening of 27 April 2024 because he was concerned about them being left home alone. He did not rape the complainant. He was incapable of having an erection. He never touched the complainant inappropriately. The story was fabricated at the instigation of Sarafina.

Prosecution evidence

8. The complainant testified that her aunty Sarafina went to drink grog at around 1pm on 27 April 2024. She instructed the children not to go anywhere, and told the complainant to prepare tea for her cousins.
9. They went to sleep at around 7pm. Their landlord, Sheik Karim, knocked on the main door. When the complainant opened the door, he told them to go to the other

side and sleep in his sitting room. The complainant told him that they were not allowed to go to him. He told her not to stay alone as they were small children. She informed her cousins that the landlord wanted them to sleep at his place. She closed the door, but he knocked hard on the door and told them to go to that side, so they went to that side. This was probably around 9pm.

10. The complainant lay on the settee and the other children lay down on the mat. As she was lying down, she could feel the accused touching her back. She turned and saw him by the kitchen tube light. He held both her hands and tried to remove her clothes. She told him to move. He was able to remove her blue pants and her underwear. He was wearing a suluvatoga and boxers. He lay on top of her and removed his boxers. When she told him to move, he tried to use his penis on her. He was moving on top of her. He inserted his penis, and she felt pain in her vagina. In answer to a direct question whether the accused's private part felt hard or soft, the complainant answered "*Hard.*" He did it four or three times. She kicked him and he fell down.
11. The complainant stood up, wore her clothes and went outside to call her aunty to come. When she could not find her aunty, she returned to the accused's house. The accused was sitting outside, and asked her why she had run outside. He said that he was going to smoke a cigarette, and she went inside to sleep.
12. At around 10pm, her aunty knocked on the door and told them to return home.
13. In the morning, she told her aunty what the accused had done to her the night before. Her aunty was angry and told her off. She then went to report the matter to the police.
14. Before that incident, the accused would send her to do chores. In the kitchen, when his wife was outside, he used to touch her bum and breasts. He first did this within a few days of them moving in.
15. In cross-examination, the complainant said that her mother and grandmother were supporting her aunty with rent and household bills. Her aunty worked, and the complainant would assist with household chores. She confirmed that she was a

bit scared of her aunty, as she was strict and used to scold her. She wouldn't do anything to upset her aunty.

16. The complainant agreed that there was a disagreement between her aunty and her grandmother arising from her aunty bringing a man to their home. The accused and her grandmother disapproved of this because they were all girls in the house.
17. On the night of 27 April 2024, the accused told them to go to his place because they were all alone at home. They went with him, and the accused locked their flat. When her aunty came later, she asked the accused why he had locked the flat. He told her that it was due to her bringing that man home. Her aunty was really angry with the accused.
18. When it was suggested to the complainant that it was her aunty who told her to make the allegation against the accused, the complainant denied that. She also denied that it was a false allegation.
19. When asked whether she had suffered any injuries, the complainant said that she heard the doctor say that she got injured, but she did not see those injuries herself. She felt a sting when the doctor put something on her.
20. When Ms. Raj suggested that the accused had never touched her breasts, the complainant responded that it had happened.
21. Ms. Sarafina Drabola testified that, from January 2024 to April 2024, she was staying at Natua Housing, Seaqaqa in a flat rented from the accused. Her niece, the complainant, was also staying with her and her children.
22. At around 8pm on 27 April 2024, she left her 4 children and 2 nieces home alone and went to drink grog. She returned home at around 2am to 3am. When she reached home, she found that her door was locked. She saw the children's shoes in front of the landlord's door. When she realised that the children were at the landlord's house, she did not like it because she had talked with them not to go anywhere, and to stay at home.
23. She knocked on the landlord's door and the complainant opened the door. When she saw the children, she asked who had said for them to come there when she

had told them to stay home. The complainant replied that the accused said for them to go there.

24. When they were having tea the next morning, the complainant told her that the accused had touched her and tried to have sex with her. She was angry, and took the complainant to the Seaqaqa Police Station to report the matter. In February 2024, the complainant had informed her that the accused always sweet talked to her: *“like dirty talk”*. The witness had thought that the accused was just joking.
25. Prior to 27 April 2024, her relationship with the accused had been okay. There were no disagreements between them.
26. In cross-examination, it was suggested to Ms. Drabola that her mother and the accused had not liked her seeing a man who came to her flat. Ms. Drabola replied that the man visiting there was her relative and friend. She agreed that she had been angry to find her flat locked when she returned home. She also agreed that she had an argument with the landlord when she saw the children at his place. The accused did not tell her why he had locked her flat and taken her children and nieces to his place. She denied that the accused had informed her not to bring any man to the flat because there were children staying there. She did not know about any conversations between her mother and the accused.
27. Ms. Drabola agreed that, on the morning of 28 April 2024, she had confronted the accused, and he told her she was making false allegations.
28. The witness accepted that there was an inconsistency between her testimony and her witness statement. She had testified in her evidence-in-chief that the complainant told her that the accused had tried to use his penis on her, whereas her statement records that the complainant had told her that he had penetrated her vagina with his finger and his penis. The witness stated that what is recorded in her statement is what the complainant had told her.
29. When Ms. Raj suggested to the witness that she told the complainant to make a false allegation because she was angry with the accused, the witness denied that.
30. Dr Viliame Nasila is a Consultant in obstetrics and gynecology at Labasa Hospital. He obtained his Masters in obstetrics and gynecology in 2011.

31. By reference to the Police Medical Examination Form, Dr Nasila confirmed that he examined the complainant on 28 April 2024. He found no signs of trauma. Remnant of hymen was noted. He explained that remnant of hymen would be an indication that penetration had taken place, but that penetration could have been at any time prior to the examination. It was Dr Nasila's opinion that it was unlikely that forceful penetration could occur without leaving any injuries. He said that there should be trauma if there was forceful penetration. When the Court sought to clarify whether his findings were consistent with the history provided to him, Dr Nasila said that there was consistency in terms of penetration, but not forceful penetration.
32. When Ms. Thaggard asked Dr Nasila whether penetration of the vulva can occur without leaving any signs of trauma, he answered that would not be penetration. If it was forceful, there could be some indication of trauma.
33. When Ms. Raj cross-examined Dr Nasila about the recorded history, he confirmed that the complainant told him that there was ejaculation. He also confirmed that it was recorded that the complainant had been sexually assaulted by another person, and this could account for the remnant of hymen.
34. Dr Nasila explained that there is a spectrum of trauma. The most severe trauma would be lacerations, which may take up to 3 weeks to heal. Slight abrasions or minor cuts may take 1 to 2 weeks to heal. Inside the vaginal lining has good healing properties, so mild trauma heals very well.

Defence Evidence

35. The accused elected to give evidence in his case.
36. He testified that there is a two-room flat in his house, which was rented out. Sarafina, her four children, the complainant, and her sister were living there.
37. The accused denied that he had penetrated the complainant's vagina with his penis on 27 April 2024. He also denied having indecently assaulted her on an earlier occasion by touching her backside and breasts.

38. When asked why the complainant would make allegations against him, the accused said that he did not understand why she was making those allegations. He said that he always treated the complainant and the other children as his own children.
39. At around 8pm on 27 April 2024, he told the children that, if they are afraid, they can sleep in his sitting room.
40. When asked about penetrating the complainant's vagina with his penis, the accused said that he was not capable of doing such a thing. He recounted his medical history. He has been prescribed tablets. His private part has shrunk and is small.
41. When asked again why the complainant would make the allegation that he had penetrated her vagina with his penis, the accused said that Sarafina was trying to hide her issues and putting allegations on him. Sarafina was not looking after the children. She was roaming around here and there, and that's the reason. Sarafina's mother had told him that, if Sarafina brings a man to the flat, he is to lock the premises or chase him away. The reason he locked the house was so that Sarafina does not bring the man to the flat.
42. The accused said that Sarafina had come to his place at around 2 to 2.30am. She got angry with him, and he told her that it was her mother's instructions.
43. Under cross-examination, the accused said that Sarafina would often leave the children home alone when she went out to drink grog. He had informed her mother about this, and she told Sarafina that she was supposed to look after the children and not go drinking grog.
44. The accused maintained that it was the children who had gone to tell him that they were afraid when Sarafina left them alone on the evening of 27 April 2024. That evening was the first time that the children had gone to sleep at his place. He did not seek Sarafina's permission for the children to go to his place because she had already left.
45. The accused said that he and his wife went to their room after the children went to sleep.

46. The accused's 73-year-old wife testified that, on the evening of 27 April 2024, the children living in the flat inside her house told her husband that they were scared. Her husband replied that if they were afraid they could come to their side. They brought their bedding and slept in the sitting room. When she went to sleep with her husband, the children were still awake. She and her husband were sleeping when Sarafina came at around 2am to 2.30am. Her husband woke up and talked a lot with Sarafina, but she did not understand what they were talking about. They were exchanging words in a bitter way.
47. The witness said that her husband had not been able to get an erection for almost 8 years. When Ms. Raj pressed her on whether they had tried to see if he may be able to, she replied that they tried 3 to 4 years before, but it did not work.
48. In cross-examination, the witness said that the children had called to them from their room. They were speaking in the i-taukei language, which she understands a "*little bit*". She then said they were also speaking in Hindustani. They were using both languages. That was the first time the children had called her husband to say that they were afraid. The children were usually left home alone.
49. The witness said that she went to sleep at around 11pm, and did not wake up until Sarafina woke them at around 2am to 2.30am.
50. Dr Kumar testified that he was in his third year of practice. The accused's case was handed to him when he became the Acting Senior Medical Officer at Seaqaqa Health Centre. The accused suffers with various health issues for which he is prescribed medications. He is under the care of the Consultant Urologist. When questioned whether his health conditions and medications would affect his ability to engage in sexual activity, Dr Kumar said that there was a "*significant risk about 3.5% risk for erectile dysfunction*". Dr Kumar's letter dated 24 April 2025 was adduced as DE-1.
51. In cross-examination, Dr Kumar was asked whether benign prostate hyperplasia affects erectile function. He answered that the Consultant Urologist was better placed to explain that. Dr Kumar also explained that he was unable to comment on whether the accused had erectile dysfunction in April 2024.

52. When the Court sought to clarify the level of risk of suffering erectile dysfunction as a result of diabetes, Dr Kumar said that it would be about 1 in 1500.
53. After a long adjournment to accommodate his limited availability, given that he is the sole Consultant Urologist in Fiji, Dr Rajeev Patel testified on 13 June 2025. He is a specialist urologist based at CWM Hospital.
54. The accused has been under his care at Seaqaqa clinics and Labasa Hospital clinics since 2020. He presented with an enlarged prostate, which caused him to go to the bathroom more often due to a weak stream.
55. The accused had first complained about erectile dysfunction last year (2024). It was raised in connection with an allegation against him. The accused told him that he had been unable to get an erection for 8 years. He went through a questionnaire with the accused, on which he scored poorly. In other words, his answers were indicative of erectile dysfunction. When the Court sought to clarify whether this, in effect, amounted to self-reporting, Dr Patel confirmed that to be the case. He explained that there are no objective tests, such as ultra-sound scans or injections, available in Fiji. When Ms. Raj asked Dr Patel to opine on whether it is likely that the accused is suffering from erectile dysfunction, Dr Patel said, given his risk-factors, including age, he may have erectile dysfunction, or may not. Dr Patel added that he could not express an opinion about when the accused's erectile dysfunction may have started. Dr Patel's letter dated 1 October 2024 was adduced as DE-2.
56. In cross-examination, Dr Patel confirmed that the first time he had assessed the accused for erectile dysfunction was after the Legal Aid Commission requested him to conduct an assessment. He said that even if fancy tests are conducted, they will only establish the condition at the time of the test. It is hard to diagnose retrospectively.

Closing submissions

57. Defence counsel argue that the absence of any visible injuries found by the examining doctor clearly indicates that there was no penetration of the

complainant's vagina/vulva. They rely on Dr Nasila's opinion that recent forceful penetration would certainly have caused trauma to the complainant's genitalia.

58. The defence further submit that there was a motive for the complainant to make a false allegation against the accused at the instigation of her aunt. Sarafina was angry with the accused because she didn't like how he kept telling her about the man who was always at her flat. The complainant went along with the fabrication because she was scared of her aunt.
59. Regarding the complaint evidence, the defence highlights an inconsistency between Sarafina's testimony that the complainant told her that the accused had *tried* to use his penis on her, whereas it was recorded in her witness statement that the complainant told her that the accused *had* penetrated her vagina with his penis and his finger.
60. The main plank of the defence case is that the accused was incapable of having an erection and, therefore, incapable of penetrating the complainant with his penis.
61. The prosecution submits that sufficient credible, reliable and trustworthy evidence has been adduced to prove the charges to the criminal standard.
62. Ms. Thaggard submits that the accused knew that the children were often left alone when Sarafina went to drink grog. He was able to exploit this to take the children to his flat to act on his perverted urges.
63. Ms. Thaggard further submits that the absence of trauma to the complainant's genitalia does not mean that there was no penetration. The complainant gave direct evidence that she felt pain *inside* her private parts when the accused inserted his penis. Ms. Thaggard submits that it is quite plausible that the accused only went to the extent of penetrating the complainant's vulva. The complainant's evidence that she told the accused to move, and that she kicked him, establishes that she was not consenting to that penetration.
64. It is submitted that the fact that she initially said in evidence that the complainant told her that the accused tried to use his penis on her, before saying that the account she gave in her witness statement about what the complainant had told her was the truth, does not undermine Sarafina's credibility.

65. The defence theory about the complainant's motive to lie is far-fetched.
66. Regarding the issue of erectile dysfunction, the prosecution makes the point that the accused never complained to Dr. Patel about erectile dysfunction until after the allegation of rape was made against him. Also, the assessment conducted was subjective and could not determine the date of onset of any erectile dysfunction.

Legal Directions/Warnings

67. The prosecution must prove that the accused is guilty. The accused does not have to prove anything to me. The defence does not have to prove that the accused is innocent. The prosecution will only succeed in proving that the accused is guilty if I have been made sure of his guilt. If, after considering all of the evidence, I am not sure that the accused is guilty, my verdict must be not guilty.
68. I remind myself that if the accused's denials are, or may be, true, I must find him not guilty. Even if I reject the accused's evidence, I must not find him guilty unless the prosecution has made me sure of his guilt.
69. Since the defence has advanced Sarafina's alleged discord with the accused arising from his interference in her relationship with a man, and the complainant's fear of her aunty Sarafina, as motives for the complainant to have lied about the accused sexually assaulting and raping her (and for Sarafina having lied about the complainant having complained to her about what the accused did to her), I warn myself that the accused bears no onus to prove a motive to lie, and rejection of the motive asserted does not necessarily justify a conclusion that the complainant's evidence is truthful. A motive to lie or be untruthful may substantially affect the assessment of the credibility of a witness, but it would be wrong to conclude that the complainant told the truth because there is no apparent reason for her to lie. There might be a reason for her to be untruthful that nobody knows about.
70. The prosecution has placed reliance on the complainant's complaint to her aunt Sarafina as supporting her credibility. I remind myself that a complaint is not evidence of truth. Also, just because a person gives a consistent account about an event does not necessarily mean that account must be true.

71. Having said that, in cases of rape and other sexual offences, evidence that the complainant made a complaint is admissible to show that her conduct in complaining was consistent with her evidence in the witness box. In order to be admissible, the complaint must have been made at the first reasonable opportunity. It is a matter for the court to determine whether the complaint was made as speedily as could reasonably be expected.

Analysis and resolution

72. The issue I must determine boils down to whether I am sure that the complainant is a truthful and reliable witness whose evidence, considered separately in connection with each count, makes me sure that the accused is guilty as charged. Also, I must be sure that the accused's denials are untrue.
73. It is convenient to begin with the contested issue of who instigated the sleepover in the accused's sitting room on the evening of 27 April 2024.
74. Both the accused and his wife say that it was the children who called to the accused saying that they were scared. This prompted the accused to invite them to sleep at his place.
75. The complainant testified that it was the accused who insisted that the children should sleep at his place.
76. I am sure that the complainant told the truth about this. Her account of aunty Sarafina instructing the children not to leave the house when she left them alone rings true. They were young children (too young to be left under the supervision of the 13-year-old complainant), and it is to be expected that Sarafina would not want them wandering around outside after dark. On the defence case, Sarafina was a strict disciplinarian. The complainant confirmed that she was scared of her aunty. In those circumstances, it is highly likely that the complainant would have been very reluctant to ignore her aunty's clear instructions. This lends weight to her evidence about her closing the door on the accused, and only relenting when he insisted that the children sleep at his place.
77. I find the accused's account to be wholly contrived. Firstly, he had never before invited the children to stay at his place despite, on his case, it being a regular

occurrence that the children would be left alone when Sarafina went to drink grog. Secondly, there was simply no need for the children to be taken to his sitting room out of concern for their safety. They were under the same roof in his house, separated from his place by a partition. In the event of any danger or alarm, he was close at hand to protect the children. Thirdly, I cannot accept that any altruistic good neighbour would take 6 young children out of their home without clearing that with their parents or other relatives in advance. Despite what he says was a collaborative relationship with their grandmother, the accused did not say that he sought her guidance or permission on taking the children to his place, as might reasonably be expected if his account were true.

78. I attach no weight to Mrs. Bi's evidence about how the children came to sleep in her sitting room. Whilst she claims to have overheard the conversation between her husband and the children, it was my impression of her evidence that she was merely repeating what her husband had told her to say. This manifested in her shifting position about what she heard. She said she did not understand the i-taukei language, then she said that she understood a little. Finally, she said that the children were also speaking in the Hindustani language.
79. Having rejected the accused's stated reason for taking the children to sleep in his sitting room, I turn to consider his true reason.
80. The answer lies in the complainant's testimony about what the accused did to her. She testified that, whilst his wife was sleeping in their room, the accused forced himself upon her as she lay on the settee. Her evidence about the accused lying on top of her, removing her undergarment and using his hard penis to cause pain inside her private parts was cogent and plausible.
81. It is not in dispute that the accused had the opportunity to accost the complainant. At one point, Ms. Raj appeared to suggest that the other children in the room would have overheard if what the complainant said was true. No doubt Ms. Raj was taken by surprise when the complainant said that her sister had, indeed, heard what was going on inside the sitting room. Her sister was not called as a prosecution witness and I, of course, disregard totally the complainant's evidence about what her sister heard. Nevertheless, this provides a good illustration of the

risks of embarking on this type of speculative line of cross-examination. In any event, I have no difficulty in rejecting the suggestion that the alleged offending could not have happened without the other young children in the room being aware of it.

82. The complainant's evidence that the accused's wife was in her room when she was raped finds support in Mrs. Bi's evidence that she went to sleep at around 11pm, and slept through to the time she was awakened by Sarafina's arrival.
83. I am not attracted by the defence argument that the medical evidence about the absence of injuries to the complainant's genitalia casts doubt on whether the accused penetrated her. If Dr Nasila's evidence is to be understood as a blanket statement that non-consensual penetration *always* causes trauma or injuries, I reject that evidence. It is contrary to the experience of the courts. It is also contrary to common sense. There are simply too many variables for it to be reasonably open to any medical practitioner to say that non-consensual sex *always* causes injuries.
84. I also reject the defence argument that the complainant's evidence about having suffered injuries undermines her credibility. As I understand her evidence, she overheard the examining doctor say that she had injuries. She did not say that she herself saw any injuries to her genitalia. Rather, she felt a stinging sensation when a medical instrument was put on her private parts.
85. Turning to the defence of fabrication, and more particularly the suggested motives for lying.
86. The suggestion that Sarafina instructed the complainant to make up an elaborate story about sexual assault and rape spanning an extended period, and the complainant going along with that out of fear of her disciplinarian aunty, does not stand up to scrutiny.
87. Firstly, there is simply no evidence to support the defence theory. When it was put to the complainant and Sarafina, they both denied that the allegations were fabricated at Sarafina's instigation.

88. Secondly, the ascribed motive of anger borne of the accused's interference in Sarafina's relationship is, indeed, far-fetched. Had Sarafina been angered by any prolonged interference, as suggested by the defence, she could have simply moved out, as she did after the allegations were made on 28 April 2024.
89. Thirdly, there was simply insufficient time for such an elaborate story to have been concocted. I accept that the complainant told Sarafina about the incident at breakfast time on 28 April 2024. It is common ground that there was a report to police, and the complainant was medically examined before lunchtime on 28 April 2024.
90. I do not doubt that Sarafina was angry with the accused for having taken the children to his house, and locked her out of her own home. To my mind, most reasonable people would be angry about what the accused did. That is a very different thing, however, from accepting that her anger may have caused her to make up wicked lies against the accused.
91. I reject the suggested motives to lie.
92. The evidence supports that the complainant told Sarafina about the alleged offending on the morning of 28 April 2024, that is within a few hours of the alleged offending. Whilst it may be unclear precisely what she told Sarafina, the gist of it - that she had been sexually abused by the accused - was abundantly clear. In a case such as this, however, where there is an immediate report made to the police, the prior complaint does not materially support the complainant's credibility.
93. Turning finally to the main plank of the defence case. It is argued that the accused could not have raped the complainant in the manner alleged because he was unable to get an erection.
94. I remind myself at this juncture that the accused does not have to prove that it was, or may have been, impossible for him to get an erection sufficient to penetrate the complainant to the slightest degree.
95. The problem for the defence is that the evidence adduced does not come close to establishing that it was, or may have been, impossible for him to get an erection

on 27 April 2024. He may have had risk factors for erectile dysfunction, but that is neither here nor there.

96. The accused testified that he had been unable to get an erection for 8 years. This is what he told Dr Patel. For the reasons he explained, Dr Patel could not lend any support to the accused's self-reported condition. Those reasons are succinctly set out in Dr Patel's letter to defence counsel dated 1 October 2024 (DE-2):


“Advanced investigations frequently referenced in medical literature to assess erectile dysfunction are not available in Fiji ...Without these tests a definitive physiological or organic cause for the reported erectile dysfunction cannot be objectively established within Fiji. Furthermore, it prevents an objective verification of the patient's reported duration of the condition.”

97. Set against the accused's evidence is the complainant's evidence that his penis was “hard” when he put it inside her private parts on 27 April 2024.
98. I find the complainant to be an honest and reliable witness. She gave evidence in a calm and measured way. She was clear and coherent in her recollection. Her descriptions of what the accused did to her were unembellished and plausible. She was not shaken in cross-examination.
99. I accept the complainant's evidence that the accused indecently assaulted her in early 2024 by caressing her backside and breasts over her clothing. That is entirely consistent with the accused having taken an inappropriate sexual interest in the complainant after she moved into his flat.
100. I find that such touching was unlawful and contrary to the ordinary standards of respectable people in this community. It was indecent.
101. I am sure that the complainant told the truth about the manner in which the accused penetrated her private parts without her consent on 27 April 2024. Quite understandably, the complainant was not able to describe the extent to which she was penetrated. Her evidence does not make me sure that the accused penetrated her vagina, but it does make me sure that he penetrated her vulva with his penis, at least slightly. I am also sure that the accused knew very well that the

complainant did not consent to what he did to her. She told him not to do it, and she kicked him off her.

102. It follows from what I have said above that I am sure that the accused is guilty as charged, and I convict him accordingly.

103. 30 days to appeal to the Court of Appeal.



Hon. Mr. Justice Burney

At Labasa

12 August 2025

Solicitors

**Office of the Director of Public Prosecutions for the State
Office of the Legal Aid Commission for the Accused**