

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 140 of 2022

STATE

V

KALISAVANI NAILOLO

Counsel : Mr. J. Nasa for the State.
: Mr. F. Singh and Ms. F. Kasa for the Accused.

Dates of Hearing : 25, 26, 27 August, 2025
Closing Speeches : 29 August, 2025
Date of Judgment : 02 September, 2025

JUDGMENT

(The name of the complainant is suppressed she will be referred to as "U.S")

1. The Director of Public Prosecutions charged the accused by filing the following amended information dated 10th May, 2024:

FIRST COUNT

Statement of Offence

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

Particulars of Offence

KALISAVANI NAIOLO on the 9th day of July 2022, at Nadi in the Western Division, had carnal knowledge of “U.S” without her consent.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

KALISAVANI NAIOLO on the 28th day of August 2022, at Nadi in the Western Division, had carnal knowledge of “U.S” without her consent.

THIRD COUNT

Statement of Offence

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

Particulars of Offence

KALISAVANI NAIOLO on the 2nd day of September 2022, at Nadi in the Western Division, had carnal knowledge of “U.S” without her consent.

2. In this trial, the prosecution called three witnesses and after the prosecution closed its case, this court ruled that the accused had a case to answer in respect of all the counts as charged.

BURDEN OF PROOF AND STANDARD OF PROOF

3. As a matter of law, the burden of proof rests on the prosecution throughout the trial and it never shifts to the accused. There is no obligation on the accused to prove his innocence. An accused is presumed to be innocent until he or she is proven guilty. The standard of proof is one of proof beyond reasonable doubt.

4. The accused faces three counts of rape, the evidence in respect of each count will be considered separately from the other if the accused is guilty of one count, it does not mean that he is guilty of the other counts as well. This also applies with the findings of not guilty.

ELEMENTS OF THE OFFENCE

5. In order to prove the above counts the prosecution must prove the following elements of the offence of rape beyond reasonable doubt:
 - (a) The accused;
 - (b) Penetrated the vagina of the complainant with his penis;
 - (c) Without her consent;
 - (d) The accused knew or believed the complainant was not consenting or didn't care if she was not consenting at the time.
6. In this trial, the accused has denied committing the offences of rape as charged. It is for the prosecution to prove beyond reasonable doubt that it was the accused who had penetrated the vagina of the complainant with his penis without her consent. The accused knew or believed the complainant was not consenting or didn't care if she was not consenting at the time.
7. The first element of the offence is concerned with the identity of the person who allegedly committed this offence. This element is not in dispute.
8. The second element is the act of penetration of the complainant's vagina by the penis.

9. The third element is of consent, which means to agree freely and voluntarily and out of her free will. If consent was obtained by force, threat, intimidation or fear of bodily harm or by exercise of authority, then that consent is no consent at all. Furthermore, submission without physical resistance by the complainant to an act of another shall not alone constitute consent.
10. If this court is satisfied that the accused had penetrated the vagina of the complainant with his penis and she had not consented, then this court is required to consider the last element of the offence that is whether the accused knew or believed that the complainant was not consenting or did not care if she was not consenting at the time.
11. To answer the above this court will have to look at the conduct of both the complainant and the accused at the time and the surrounding circumstances to decide this issue.
12. If this court is satisfied beyond reasonable doubt that the prosecution has proven beyond reasonable doubt that the accused had penetrated his penis into the complainant's vagina without her consent then this court must find the accused guilty as charged.
13. If on the other hand, there is a reasonable doubt with regard to any of those elements concerning the offences of rape, then this court must find the accused not guilty.
14. The slightest of penetration of the complainant's vagina by the accused penis is sufficient to satisfy the act of penetration.

15. As a matter of law, I have to direct myself that offences of sexual nature as in this case do not require the evidence of the complainant to be corroborated. This means, if this court is satisfied with the evidence given by the complainant and accepts it as reliable and truthful then this court is not required to look for any other evidence to support the account given by the complainant.

ADMITTED FACTS

16. In this trial, the prosecution and the defence have agreed to certain facts titled as admitted facts. These facts are part of the evidence and I have accepted these admitted facts as accurate, truthful and proven beyond reasonable doubt.
17. I will now remind myself of the prosecution and defence cases. In doing so, it would not be practical of me to go through all the evidence of every witness in detail. I will summarize the important features for consideration and evaluation in coming to my final judgment in this case.

PROSECUTION CASE

18. The complainant informed the court that she was born on 8th July 2009. She had been living with her grandmother from birth until year one in 2014. Following the death of her grandmother, the complainant's mother took her into her care, as there was no other person available to support her.
19. The complainant was taken by her mother to reside in Korovuto Settlement, Nadi, with the accused, her step father, and his children. The complainant continued with her education up to year 7.

20. On 9th July 2022, the accused had an argument with the complainant's mother at around midday, thereafter her mother packed her belongings and left the house with the complainant's siblings, leaving the complainant behind. According to the complainant, the accused was intoxicated at the time, and the argument was about his irresponsible spending without regard for the children's needs.
21. At around 2.30 pm, the complainant was in her bedroom with the door closed. The accused knocked on the door and subsequently entered. The complainant observed that the accused was heavily intoxicated. Upon entering, he began to touch her inappropriately. On that day the complainant was wearing a blue t-shirt, bra, pants and panty. Thereafter, the accused pushed the complainant onto the mattress that was placed on the floor. The complainant fell on her back, and the accused positioned himself over her, began removing her clothing, and continued to touch her.
22. This was the first time the complainant had experienced such a situation. She was fearful, as she understood that what the accused was doing to her was wrong. At that moment, the complainant began to cry. She attempted to call out for help, however, there was no one in close proximity as the nearest house was about 50 meters away. The complainant was lying on her back, facing upwards. The accused had completely undressed her, removed his own pants and penetrated his penis into her vagina. As a result of the pain, the complainant lost consciousness.
23. Upon further questioning, the complainant stated that she had attempted to push the accused away, but was unable to do so. She continued to cry for help but no one came, as there was no one nearby. When she regained consciousness, she experienced pain throughout her body and found herself completely naked.

24. The accused was not in the house when the complainant regained consciousness. When her mother returned home on the third day, the complainant immediately told her mother about what the accused had done to her. However, her mother did not believe her account.
25. In respect of the second incident, which allegedly occurred on Sunday evening, 28th August 2022, the complainant was preparing to attend church with her mother and siblings. However, she had forgotten to complete certain household chores, which angered her mother. As a result, her mother told her to stay at home and finish the tasks.
26. After her mother and siblings left for church, the complainant began cleaning the sitting room. After a short while, there was a knock on the front door. Upon opening it, she saw the accused, who entered the house. Upon learning that she was alone, the accused grabbed her right hand and forcibly dragged her into her bedroom. The complainant attempted to resist, but the accused had held her hand tightly. She was unable to free herself due to his strength.
27. On that day, the complainant was wearing a dress, bra, and panty. Once inside the bedroom the accused began touching her body, laid her on the mattress facing up, continued to touch and undress her. He removed all her clothing while she was crying. The accused removed his pants and penetrated his penis into her vagina. The complainant attempted to turn her body, but was unable to do so due to the accused's weight. The complainant did not consent to any of the accused's actions.
28. When the complainant's mother returned home, the complainant informed her of what the accused had done. However, her mother once again did

not believe her account. The complainant became angry and threw a knife at her mother. At that moment, the complainant felt like killing herself.

29. In relation to the third incident, the complainant testified that on 2nd September 2022, at about 6 am, she woke up and went to the bathroom to wash her face. At that time, her mother was outside the house, while her siblings were in the sitting room watching television.
30. When the complainant returned to her bedroom, the accused entered. He appeared angry and, without saying anything, tied both of her hands with a rope that was in the bedroom. According to the complainant, the rope was not tightly secured.
31. Shortly after, one of her siblings, Kili, entered the bedroom. The accused then took the complainant into his own bedroom. When asked how she was taken there, the complainant stated, *“He was just holding my hand, like holding and taking me in a gentle way.”*
32. The complainant did not resist. When asked to explain why, she stated: *“Because I just let him do whatever he wants because I know I will be going to school that’s where I am going to report everything that he is being doing to me.”*
33. While inside the bedroom, the accused closed the door. The complainant was wearing a t-shirt, bra, long pants, and panty. The accused then made her lie down on a mattress placed on the floor, and proceeded to remove her pants and panty. He then removed his own pants and penetrated her vagina with his penis for about two to three minutes.

34. The complainant did not resist but was crying throughout the incident. She did not consent to the accused's actions. While on the mattress, the accused tied the same rope once around the complainant's neck, when this was done she thought she was going to die. After the act of penetration, the accused untied the rope from her neck and left the bedroom.
35. The complainant wanted to tell her mother, but refrained from doing so, as her mother had not believed her on previous occasions. Instead, she disclosed the accused's conduct to her teacher, Salome, at school the same day.
36. During cross-examination, the complainant stated that she was unhappy when her mother brought her to Nadi following the death of her grandmother. When asked how she knew that the accused was not providing for the children's needs, the complainant explained that on some occasions they went to school without lunch, which made her feel sad and angry.
37. The complainant maintained that the house in Korovuto had three bedrooms, each with a door. In relation to the first incident, she stated that when the accused entered her bedroom, she was standing in the middle of the room. The complainant maintained that the accused pushed her and laid her on the mattress. At that point, she did not say anything to the accused. She further agreed that the accused lay on top of her and began undressing her. At that time, her hands were positioned at her sides.

38. The complainant denied that it would have been difficult for the accused to remove her t-shirt in that position. Upon further questioning, she stated: *“When he was removing my t-shirt, my hands were going up because he was dragging my t-shirt up.”*
39. The complainant did not yell but was crying throughout the incident. When asked how the accused had removed her pants while she was lying down, the complainant stated: *“He moved down and then pulled my pants.”* She confirmed that at the time, her legs were together. She did not resist because she was afraid and shivering. The complainant further stated that in order for the accused to penetrate her vaginally, he had spread her legs. Although she attempted to push him away while he was removing her pants, she did not scream or yell but continued to cry.
40. When it was put to the complainant that her mother did not believe her because the allegations were untrue, she denied this assertion, stating that the incidents had in fact occurred. She also denied that her allegations were motivated by anger over the accused using money instead of buying her a mobile phone. Following the incident on 9th July 2022, she went to school but did not disclose the matter to her teacher. She explained that she refrained from doing so because she was shy and feared that rumours would spread, leading to teasing from her peers.
41. In respect of the second incident on 28th August 2022, the complainant confirmed that she was wearing a dress on that day. She stated that the accused began undressing her while she was lying down. She agreed that she had been dragged by the accused from the living room to the bedroom, and although she tried to free her hand, he was holding it tightly.

42. As the accused laid her on the mattress, she attempted to push him away, but was unable to do so due to his weight. When questioned about how the accused removed her dress while she was lying on the mattress, the complainant explained that the dress was stretchable, easy to remove, and had no zip. The accused had pulled it from the bottom upward, causing her hands to lift as the dress was removed.
43. The complainant did not scream or yell when the accused was removing her dress and panty. She stated that it was incorrect to suggest she did not scream or yell because “nothing had happened.” On that evening, her mother and siblings were not at home. She did not report the incident to her teacher when she went to school.
44. In respect of the third allegation, which occurred on 2nd September 2022, the complainant agreed that her mother, the accused, and her siblings were all present at home that morning. According to the complainant, the accused tied her hands in front, with her hands closed together. She confirmed that when the accused approached her with the rope, she did not scream or yell while he was tying it around her hands.
45. The distance from her bedroom to the accused’s bedroom was approximately six to seven meters. As she walked from one bedroom to the other, her siblings were watching television. Despite seeing her sibling Kili, she did not scream, shout, or call for help.
46. The complainant denied that her teacher had asked whether she was going to participate in a tournament because the accused had not purchased her canvas. She further denied making false allegations against the accused, stating that everything she had told the court was correct.

47. In re-examination, the complainant explained that she did not shout or scream during the incidents because she was scared, and that it was the first time such things had happened to her.
48. The second witness, Salome Marama, informed the court that she is a primary school teacher with 21 years of experience. In the year 2022, she was teaching the complainant in Year 7. On 2nd September 2022, at about 3pm, following netball training, the students were waiting for transport to return home. At that time, the complainant approached the witness and stated that she might not be able to participate in the upcoming netball tournament. When the witness inquired as to why, the complainant responded that the money intended for the purchase of her canvas had been used by her father to buy alcohol.
49. The witness assured the complainant that efforts would be made to help her obtain a pair of canvas. Following this, the complainant asked, *“Madam, can I share something with you?”* The witness responded that she was free to share whatever she wished. The complainant then disclosed, *“My father is sexually abusing me.”*
50. Upon hearing this, the witness escorted the complainant to her classroom to ensure privacy. There, the complainant repeated her disclosure, stating that her father was sexually abusing her. The witness asked, *“What do you mean? Can you explain that to me?”* The complainant replied, *“He took out my clothes and penetrated his penis into my vagina.”*
51. The witness subsequently informed the Head Teacher, who instructed her to report the matter to the Child Protection Officer, Mrs. Silipa. This was done, and the matter was reported to the police. The witness stated that

she was familiar with the accused, who had previously attended parent-teacher interviews at the school. The accused's son, Kiloni, is also enrolled at the same school, and the accused regularly drops him at school. The witness recognized the accused in court.

52. In cross-examination, the witness testified that she had observed a decline in the complainant's academic performance. Although the complainant was an average student, she had been failing every subject. The witness further noted that the complainant had issues of absenteeism and had become unusually quiet, which was inconsistent with her prior behaviour, having known her since Year 4.
53. The final witness, Silipa Baleinayau, informed the court that she had been teaching at the complainant's school for the past four years. On the afternoon of 2nd September 2022, while in her classroom, she was approached by her colleague Salome, who requested her presence to discuss a serious matter.
54. Ms. Baleinayau, who also served as the Child Protection Officer at the school, stated that upon entering Salome's classroom, she was informed of the incident. She then interviewed the complainant, who reconfirmed what she had told Salome. The complainant disclosed that she had been sexually abused by her stepfather. The matter was subsequently reported to the police.
55. In cross-examination, the witness stated that she was a trained Child Protection Officer. She explained that in cases involving allegations of sexual abuse, the appropriate protocol is to report the matter to both the Social Welfare Department and the police.

RECENT COMPLAINT EVIDENCE

56. Complainants of sexual offences may react in different ways to what they may have gone through. Some in distress or anger may complain to the first person they see. Some due to fear, shame or shock or confusion, may not complain for some time or may not complain at all. A complainant's reluctance to complain in full as to what had happened could be due to shame or shyness or cultural taboo when talking about matters of sexual nature.
57. A late complaint does not necessarily signify a false complaint and on the other hand an immediate complaint does not necessarily demonstrate a true complaint. It is a matter for this court to determine what weight is to be given to the fact that the complainant on 2nd September 2022, told her school Teachers Salome Marama and Silipa Baleinayau that the accused had been sexually abusing her.
58. This is commonly known as recent complaint evidence. The evidence given by Salome and Silipa is not evidence of what actually happened between the complainant and the accused since these witnesses were not present and they did not see what had happened.
59. This court is, however, entitled to consider the evidence of recent complaint for the purpose of assessing the credibility of the complainant. The prosecution contends that the complainant told her school teachers nearly two months of the first incident and about 4 days from the second, since she was shy and fearful of becoming the subject of rumours or teasing by her peers.

60. The prosecution also urges this court to consider that the complainant was 13 years old at the time of the alleged incidents. The complainant had promptly informed her mother, only to be disbelieved. Despite this, the complainant eventually gathered the courage to complain to her teachers, which the prosecution submits is indicative of her truthfulness.
61. On the other hand, the defence contends that the complainant did not tell the truth to her school teachers. The complainant had a motive against the accused, stemming from his refusal to purchase a mobile phone and canvas for the complainant. The defence argues that the complainant had been unhappy since coming to live with the accused, and that it is evident she had been planning a false story against him. The defence further submits that the complainant, who was attending school, could have complained to her teachers at the first opportunity, or to her siblings who were always present with her. Accordingly, the defence maintains that the complainant is fabricating the allegations and should not be believed.
62. It is for this court to determine whether the evidence of recent complaint assists in reaching a decision. The issue of consistency or inconsistency in the complainant's conduct is relevant to her credibility and reliability as a witness. Ultimately, it is a matter for this court to decide whether it accepts the complainant as reliable and credible. The central question is whether the complainant was consistent and credible in both her conduct and her explanation of it.
63. This was the prosecution case.

DEFENCE CASE

64. At the end of the prosecution case, the accused was explained his options. He chose to remain silent and did not call any witnesses. This is his right and no adverse inference will be drawn from his decision to remain silent and not call any witness.
65. From the line of cross-examination, the defence took the position that the accused did not commit any of the alleged acts and that the complainant's account was fabricated. The defence further asserted that the complainant had become upset when the accused refused to buy her a mobile phone, and canvas. Accordingly she "cooked up" a story against him.
66. The defence further submitted that the complainant's narrative is improbable, and therefore she ought not to be believed.
67. This was the defence case.

ANALYSIS

68. The prosecution states that both the complainant and the accused are known to each other. The accused is the step father of the complainant and they were living under one roof. The complainant was 13 years old at the time of the alleged incidents.
69. The prosecution submits that her disclosure to her teachers on 2nd September 2022, was made in a private setting and was consistent in content when repeated to both Ms. Salome Marama and Ms. Silipa Baleinayau. The complainant described the abuse in clear terms, and her

account was not contradicted in any material way during cross-examination. The teachers acted promptly and appropriately in reporting the matter to the Head Teacher and subsequently to the police.

70. The prosecution further submitted that the accused was the sole breadwinner of the family and the person of authority in the house. There are three separate and distinct allegations of rape. In all instances the accused would forcibly penetrate the complainant's vagina with his penis and on each occasion the complainant did not consent to what the accused was doing to her.
71. The complainant was not only helpless but vulnerable as well. In the first two occasions the accused raped the complainant when she was alone in the house. This made the accused so bold that on the third occasion he not only used a rope to tie her hands but in that manner walked her to his bedroom. The accused acted as if nothing happened and he walked the complainant to his bedroom and performed forceful sexual intercourse in a quick session of two to three minutes.
72. The complainant had complained to her mother promptly but her mother did not do anything about it. The reason why the complainant did not complain to her teachers earlier was because she did not want to be the subject of any rumour and teasing by her peers. After the accused continued his unlawful conduct for the third time the complainant was able to gather enough courage to speak out and this she did by telling her school teachers the same day she went to school after the third incident.
73. The prosecution finally submitted that the complainant did not scream or shout or yell at the time of the allegations does not mean that she was consenting to the actions of the accused.

74. On the other hand, the defence argues that the complainant fabricated the allegations out of resentment and motivation, particularly because the accused refused to buy her a mobile phone and a pair of canvas (count three) and was spending money on himself only. It is also submitted that the complainant could have disclosed the matter earlier to her teachers or her siblings, but she did not as nothing as alleged had happened.
75. The defence also states that the complainant was unhappy to relocate from Suva to Nadi in the first place, and over time she turned her relocation into a personal vendetta against the accused. The complainant fabricated the entire story against the accused which is obvious from her narrative.
76. Furthermore, the complainant did not say that she was threatened by the accused on any occasion she was a “free agent” who used to go to school, be with her siblings and her teachers who would no doubt have listened to her. She did not inform, because nothing had happened.
77. Finally, the defence is asking this court to assess the complainant’s evidence objectively. The allegations are unfounded and baseless and therefore no weight ought to be given to the complainant’s evidence.

DETERMINATION

78. Having considered the evidence presented by both the prosecution and the defence advanced by the accused, this court now turns to the central issue: whether the complainant’s account is credible and reliable, and whether the prosecution has proved its case beyond reasonable doubt.
79. I would like to once again remind myself that the burden to prove the accused guilt beyond reasonable doubt lies with the prosecution throughout the trial and it never shifts to the accused. Even if I reject the

version of the defence still the prosecution must prove this case beyond reasonable doubt.

80. In this case, there are two different versions, one given by the prosecution and the other by the defence via its cross-examination of the complainant. This court must consider all the evidence to decide whether the prosecution has proven beyond reasonable doubt that the accused committed the offences alleged. It is not for this court to decide who is acceptable between the complainant and the accused.
81. This court has kept in mind the following factors when determining the credibility and reliability of a witness such as promptness/spontaneity, probability/improbability, consistency/inconsistency, contradictions/omissions, interestedness/disinterestedness/bias, the demeanour and deportment in court [and the evidence of corroboration where it is relevant] see *Matasavui v State* [2016] FJCA 118; AAU0036.2013 (30 September 2016, *State v Solomone Qurai* (HC Criminal - HAC 14 of 2022).
82. The defence argument, apart from a denial, is that the complainant was motivated to make false allegations against the accused, as she had requested a mobile phone and a pair of canvas which the accused did not purchase.
83. In respect of the above contention, I have directed my mind to the *Jovanovic* direction to remind myself that an accused has no burden to prove a motive or reason for a complainant to lie.

84. The Court of Appeal in *Rokocika v State*, AAU 40 of 2019 (29/11/2023) from paragraphs 32 to 34 made a pertinent observation in respect of the above as follows:

In R v Jovanovic (1997) 42 NSWLR 520 Sperling J set out a draft direction that emphasised that:

“It would be wrong to conclude that X is telling the truth because there is no apparent reason, in your view, for X to lie. Sometimes it is apparent. Sometimes it is not. Sometimes the reason is discovered. Sometimes it is not. You cannot be satisfied that X is telling the truth merely because there is no apparent reason for X to have made up these allegations. There might be a reason for X to be untruthful that nobody knows about’.

[33] The same has been stated as follows in NSW Criminal Trial Courts Bench Book at 3-625:

‘If the defence case directly asserts a motive to lie on the part of a central Crown witness, the summing-up should contain clear directions on the onus of proof, including a direction that the accused bears no onus to prove a motive to lie and that rejection of the motive asserted does not necessarily justify a conclusion that the evidence of the witness is truthful: Doe v R [2008] NSWCCA 203 at [58]; Jovanovic v R (1997) 42 NSWLR 520 at 521–522 and 535. The jury should also be directed not to conclude that if the complainant has no motive to lie then they are, by that reason alone, telling the truth: Jovanovic v R at 523.

[34] NSW Criminal Trial Courts Bench Book also states that:

‘A motive to lie or to be untruthful, if it is established, may “substantially affect the assessment of the credibility of the witness”: ss 103, 106(2)(a) Evidence Act 1995. *Where there is evidence that a Crown witness has a motive to lie, the jury’s task is to consider that evidence and to determine*

whether they are nevertheless satisfied that the evidence given is true: South v R [2007] NSWCCA 117 at [42]; MAJW v R [2009] NSWCCA 255 at [31].

85. There is no dispute as to the identification of the accused. The complainant and the accused are known to each other and they were living together at the time of the allegations.

LATE REPORTING

86. Although not raised by counsel, as a matter of caution, the court has directed its mind to the fact that there is a delay of nearly two months in reporting the first incident to the police. In law, the test to be applied in such a situation is known as the “totality of circumstances” test. The Court of Appeal in *State v Serelevu (2018) FJCA 163; AAU 141 of 2014 (4th October, 2018)* had explained this issue as follows:

*“[24] In law the test to be applied on the issue of the delay in making a complaint is described as “the totality of circumstances test”. In the case in the United States, in **Tuyford** 186, N.W. 2d at 548 it was decided that:-*

“The mere lapse of time occurring after the injury and the time of the complaint is not the test of the admissibility of evidence. The rule requires that the complaint should be made within a reasonable time. The surrounding circumstances should be taken into consideration in determining what would be a reasonable time in any particular case. By applying the totality of circumstances test, what should be examined is whether the complaint was made at the first suitable opportunity within a reasonable time or whether there was an explanation for the delay.”

“[26] However, if the delay in making can be explained away that would not necessarily have an impact on the veracity of the evidence of the witness. In the case of Thulia Kali v State of Tamil Naidu; 1973 AIR.501; 1972 SCR (3) 622:

“A prompt first information statement serves a purpose. Delay can lead to embellishment or after thought as a result of deliberation and consultation. Prosecution (not the prosecutor) must explain the delay satisfactorily. The court is bound to apply its mind to the explanation offered by the prosecution through its witnesses, circumstances, probabilities and common course of natural events, human conduct. Unexplained delay does not necessarily or automatically render the prosecution case doubtful. Whether the case becomes doubtful or not, depends on the facts and circumstances of the particular case. The remoteness of the scene of occurrence or the residence of the victim of the offence, physical and mental condition of persons expected to go to the Police Station, immediate availability or non-availability of a relative or friend or well wisher who is prepared to go to the Police Station, seriousness of injuries sustained, number of victims, efforts made or required to be made to provide medical aid to the injured, availability of transport facilities, time and hour of the day or night, distance to the hospital, or to the Police Station, reluctance of people generally to visit a Police Station and other relevant circumstances are to be considered.”

87. Firstly, I would like to state that the accused was a person of authority who exercised control over the complainant. He was the stepfather of the complainant and both were residing together at the material time.
88. Secondly, the actions of the accused, in my considered judgment, had instilled fear in the mind of the 13 year old complainant.

89. Thirdly, when the complainant promptly disclosed the first and second allegations to her mother, her mother did not believe her on both occasions. The complainant also did not tell her school teachers, as she was shy and fearful of rumours and teasing by her peers.
90. The slight delay in reporting was beyond the control of the complainant. When the opportunity presented itself, she opened up and complained to her school teachers.
91. I accept that the complainant was a victim of circumstances which resulted in a slight delay in lodging a complaint with the police in respect of the first incident. Considering the age of the complainant and the nature of the abuse she suffered, it took a while for her to gather the courage to speak out, which she ultimately did.
92. Prematilaka, RJA sitting as a single judge in the Court of Appeal in *Ram Krishna vs. The State, criminal appeal no. AAU 123 of 2022, (12 April, 2024)* made an important observation about the jurisprudence and the reasoning behind late reporting from paragraph 28 to 33 as follows:

[28] The Doctrine of Recent Complaint: Anti-Feminist Narratives in Evidence Law by Eoin Jackson says:

As noted by the academic Wigmore, the origin of the doctrine of recent complaint lies in the medieval expectation that a victim of rape would raise a 'hue and cry' in order to make the community aware that a violation had occurred. Stanchi, writing in the Boston College Law Review, discusses how this can be linked to the historical mistrust of female witnesses, with the promptness of the complaint being equated to an alleviation of some of this mistrust..... For example, Heffernan has noted how the doctrine continues to operate on the assumption that a victim will report an incident of sexual

assault as soon as is reasonably possible. This ignores a myriad of factors a victim may be feeling, such as fear, humiliation, and intimidation..... A personal connection to the abuser will naturally hinder victims from promptly reporting the incident, given they may need to weigh up the effect reporting the assault has not just on them, but on the relationships within their broader social and familial circle.....The outdated perception that a victim will immediately report a traumatic incident does not take into account the various psychological and personal factors at play and other complexities, in particular those that arise where the victim is familiar with their abuser.... While it is logical for a victim to consult with someone they perceive to be knowledgeable about the matter at hand, yet the doctrine of recent complaint ignores this in favour of a blanket presumption that an immediate disclosure will be made..... The recent complaint doctrine strictly focuses on the idea of reporting as soon as reasonably possible in the context of the mind-set of the victim, as opposed to enquiring as to whether there are any excuses that would justify an otherwise 'unreasonable delay'.

[29] According to Jackson in recent times, the doctrine has been modified to allow for a 'reasonable excuse' justification. This justification would allow for the prosecution to argue that the victim had a reasonable excuse for delaying in making a complaint. In assessing this excuse, the judge could take into account the emotional state of the woman namely that she was not in a psychological state to make a complaint at the first available opportunity, the nature of the relationship between the accused and victim, and the factual context of the charge itself. It would also account for cases where the victim consults with someone they know prior to making a complaint. This justification would allow for a more inclusive version of the doctrine of recent complaint to be embedded into jurisprudence. It would allow for a version of the doctrine grounded in an emphasis and understanding of the complexities that can arise in the aftermath of a sexual assault. It does not remove the time element, but merely adds nuance

sufficient to prevent it from being the determining factor when considering the veracity of testimony.

[30] Australian Law Reform Commission states that: 'The psychological literature shows that delay is the most common characteristic of both child and adult sexual assault. Significantly in the context of this Inquiry, the 'predictors associated with delayed disclosure' reveal differences in reporting patterns depending upon the victim's relationship with the abuser. For example, where the victim and defendant are related, research suggests there is a longer delay in complaint. Since complainants are routinely cross-examined by defence counsel about delays in complaint in ways that suggest fabrication, 'it is likely that evidence about a complainant's first complaint would answer the type of questions that jurors can be expected to ask themselves'.

[31] For example, a Bench of 05 judges of the Supreme Court of Philippines including the Chief Justice in *People of the Philippines, Plaintiff-Appellant vs. Bernabe Pareja y Cruz, Accused-Appellant* G.R. No. 2021223 quoted the following observations from *People v. Gecomo*, 324 Phil. 297, 314-315 (1996)⁴ (G.R. No. 182690 - May 30, 2011) in relation to why a rape victim's deferral in reporting the crime does not equate to falsification of the accusation. 'The failure of complainant to disclose her defilement without loss of time to persons close to her or to report the matter to the authorities does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated. Delay in prosecuting the offense is not an indication of a fabricated charge. Many victims of rape never complain or file criminal charges against the rapists. They prefer to bear the ignominy and pain, rather than reveal their shame to the world or risk the offenders' making good their threats to kill or hurt their victims'

[32] The Court of Appeal in *R v D (JA)* [2008] EWCA Crim 2557; [2009] Crim LR 591 held that judges are entitled to direct juries that due to shame and shock, victims of rape might not complain for some time, and that 'a late complaint does not necessarily mean it is a false complaint'. The court quoted with approval the following suggested comments in cases where the issue of delay in, or absence of, reporting of the alleged assault is raised by a defendant as casting doubt on the credibility of the complainant. 'Experience shows that people react differently to the trauma of a serious sexual assault. There is no one classic response. The defence say the reason that the complainant did not report this until her boyfriend returned from Dubai ten days after the incident is because she has made up a false story. That is a matter for you. You may think that some people may complain immediately to the first person they see, whilst others may feel shame and shock and not complain for some time. A late complaint does not necessarily mean it is a false complaint. That is a matter for you.'

[33] Thus, as much as a late complaint does not necessarily mean that it is a false complaint, it is nothing but fare for the judges to direct themselves that similarly an immediate complaint does not necessarily demonstrate a true complaint. Thus, a late complaint does not necessarily signify a false complaint, any more than an immediate complaint necessarily demonstrates a true complaint.

93. After carefully considering the evidence adduced by the prosecution and the defence advanced by the accused, I do not accept the complainant's evidence as truthful or reliable in respect of the third count only.
94. The reason for this conclusion is based on the fact that the complainant was not alone in the house at the material time. The complainant also stated that she saw Kili on two occasions: once in her bedroom, and again

when the accused, having tied her hands, was walking her from her bedroom to his. The complainant had seen her sibling, Kili, on both occasions, and if this narrative were truthful, there appears to be no reasonable explanation for her failure to disclose to Kili what the accused was allegedly doing to her.

95. Another aspect of the complainant's narrative concerns the alleged use of rope on two occasions. I find this portion of the complainant's evidence unconvincing. I do not accept that the accused tied her hands and walked her to his bedroom in full view of his children, or that he tied a rope around her neck while on the mattress, as these claims appear too far-fetched and inherently improbable.
96. In view of the above, this court is not convinced that the complainant's allegation is credible or reliable in respect of the third count.
97. However, in respect of counts one and two, this court accepts the evidence of the complainant as truthful and reliable. She testified that while she was alone in her bedroom, the accused entered and forcefully penetrated her vagina with his penis, without her consent on the first occasion. In respect of the other occasion (count two) the complainant testified that she was dragged by the accused into her bedroom where he forcefully penetrated his penis into her vagina.
98. The complainant gave a consistent account of what the accused had done to her. She was also able to withstand cross-examination, and she was not discredited with respect to the main version of her allegations in counts one and two. On the totality of the evidence, there was no indication of any motivation on the part of the complainant to falsely implicate the accused. I accept the complainant's denial that she wanted the accused to buy her a mobile phone.

99. I also accept that the complainant had informed her mother twice about what the accused had done to her, but her mother did not believe her. The complainant, without any prompting, disclosed the allegations to her school teachers, which is consistent with her evidence before the court.
100. Ms. Salome Marama and Ms. Silipa Baleinayau are both experienced educators and, in the case of Ms. Baleinayau, a trained Child Protection Officer. The complainant's account was consistent in material respects and was repeated voluntarily in a private setting with her teachers. The court accepts that the complainant's delay in reporting the matter is reasonably explained by her age, sense of fear, emotional vulnerability, and fear of being ridiculed or teased by her peers.
101. Furthermore, there is no requirement in law for a complainant to disclose every detail of the unlawful conduct of the accused, or to articulate the specific ingredients of the offences committed against her. I have also taken into account that it is not expected of a 13 year old child, who has experienced an unexpected sexual encounter, to recount every detail to whomever she meets. What the complainant disclosed to the two school teachers was sufficient to alert them that something serious had happened.
102. The observations of the Supreme Court in *Anand Abhay Raj vs. The State*, CAV 0003 of 2013 (20th August, 2014) at paragraph 39 is crucial here:
- The complainant need not disclose all of the ingredients of the offence. But it must disclose evidence of material and relevant unlawful sexual conduct on the part of the Accused. It is not necessary for the complainant to describe the full extent of the unlawful sexual conduct, provided it is capable of supporting the credibility of the complainant's evidence.*

103. While the defence raises concerns about motive and timing, these do not sufficiently displace the consistency and detail of the complainant's account. The court notes that the complainant's decision to confide in trusted school teachers reflects a credible and courageous response under difficult circumstances. The court is satisfied that the complainant's account is both consistent and credible. The evidence of recent complaint, while not proof of the act itself, supports the reliability and consistency of the complainant's evidence.
104. The court accepts that the complainant did not disclose the abuse immediately following the first incident. However, the explanation provided that she was shy, fearful of being teased, and lacked support from her mother is plausible and consistent with known behavioural responses of child victims of sexual abuse. The complainant's emotional state, as evidenced by her declining academic performance, absenteeism, and withdrawn behaviour, further supports the prosecution's narrative. There was no substantial delay in reporting which satisfies the totality of circumstances test.
105. The complainant remained steadfast in her account of the two incidents that occurred in her bedroom, and she was able to express herself clearly. I have no doubt in my mind that the complainant gave truthful evidence before the court in respect of counts one and two
106. I reject the defence assertion that the complainant had a motive to falsely implicate the accused, as far-fetched and unconvincing. On the evidence, I accept that there was no motive on the part of the complainant to falsely implicate the accused.

107. In respect of the contention that the complainant did not shout, yell, or scream, the court notes that experience has shown individuals differ significantly in how they respond to traumatic events. Some display obvious signs of distress, while others do not. It is important to note that the legal definition of consent is broad, and submission without physical resistance by the complainant to the act of another does not, by itself, constitute consent. The complainant testified that she was crying and attempting to push away the accused but she could not in my considered judgment was enough to suggest her continued resistance towards the conduct of the accused.
108. The court accepts that the complainant had not consented to what the accused had done to her in respect of counts one and two. It was observed that the complainant held a strong view regarding the conduct of the accused towards her, and she expressed herself clearly in stating that the accused had forcefully penetrated her vagina with his penis. The situation of the complainant ought to be considered holistically. This court accepts the evidence of the complainant and the two school teachers as reliable and credible. The court also accepts that what the complainant disclosed to the two school teachers reflects what she had experienced in respect of counts one and two.
109. Upon a review of all the evidence before this court, I am satisfied beyond reasonable doubt that the accused committed the acts alleged by the complainant. Having weighed the totality of the evidence, the court is satisfied that the prosecution has proved its case beyond reasonable doubt in respect of counts one and two.

110. In view of the above, the defence has not succeeded in raising a reasonable doubt in the prosecution's case in respect of these counts.

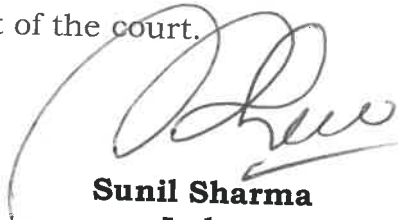
CONCLUSION

111. This court is satisfied beyond reasonable doubt that the accused on 9th July and 28th August 2022, respectively had penetrated the vagina of the complainant with his penis without her consent.

112. This court also accepts that the accused knew or believed the complainant was not consenting or didn't care if she was not consenting at the material time.

113. In view of the above, I find the accused guilty of two counts of rape being counts one and two as charged and he is convicted accordingly. Due to lack of evidence the accused is acquitted of count three for the offence of rape.

114. This is the judgment of the court.



Sunil Sharma
Judge



At Lautoka

02 September, 2025

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.