

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 163 of 2023

STATE

V

ISEI NAMACAMACA

Counsel : Mr. Laisiasa Baleilevuka for the State
Ms. Losana Taukei with Ms. Varsha Rao for the Accused

Dates of Trial : 29-30 January 2025

Closing Submissions : 7 February 2025

Judgment : 25 June 2025

The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "URT".

JUDGMENT

[1] As per the Information filed by the Director of Public Prosecutions (DPP), the accused above named is charged with the following offences:

Count 1

Statement of Offence

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

Particulars of Offence

ISEI NAMACAMACA, between the 1st day of January 2021 and 31st day of December 2021, at Lautoka, in the Western Division, penetrated the mouth of **URT**, a child under the age of 13 years old, with his penis.

Count 2

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Act 2009.

Particulars of Offence

ISEI NAMACAMACA, between the 1st day of May 2023 and the 31st day of May 2023, at Lautoka, in the Western Division, unlawfully and indecently assaulted **URT** by massaging his buttocks.

Count 3

Statement of Offence

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

Particulars of Offence

ISEI NAMACAMACA, between the 1st day of May 2023 and the 31st day of May 2023, at Lautoka, in the Western Division, penetrated the anus of **URT**, a child under the age of 13 years, with his penis.

Count 4

Statement of Offence

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

Particulars of Offence

ISEI NAMACAMACA, between the 1st day of January 2023 and 31st day of December 2023, at Lautoka, in the Western Division, unlawfully and indecently assaulted **URT** by pulling down his pants and masturbating his penis.

- [2] Prior to the commencement of the trial, when the accused's plea was taken, the accused pleaded not guilty to the two counts of Rape (Counts 1 and 3), but pleaded guilty to the two counts of Indecent Assault and Sexual Assault (Counts 2 and 4 respectively). It is to be noted that this was consistent with the position taken by the accused when he first took his plea, upon service of Information, on 15 February 2024. The accused confirmed that he pleaded guilty to the said two counts on his own free

will and free from any influence. The accused also confirmed that he fully understood the nature of the charges against him and the consequences of his guilty plea.

- [3] Since the accused pleaded not guilty to the two counts of Rape the matter proceeded to trial. The ensuing trial was held over 2 days. Thereafter, the Learned Counsel for the State and Defence made their closing submissions.

The Burden of Proof and the Standard of Proof

- [4] Section 14 of the Crimes Act No. 44 of 2009 (Crimes Act) states as follows:

In order for a person to be found guilty of committing an offence the following must be proved –

(a) the existence of such physical elements as are, under the law creating the offence, relevant to establishing guilt;

(b) in respect of each such physical element for which a fault element is required, one of the fault elements for the physical element.

- [5] Section 57 of the Crimes Act provides that the prosecution bears a legal burden of proving every element of an offence. The Section reads as follows:

(1) The prosecution bears a legal burden of proving every element of an offence relevant to the guilt of the person charged.

(2) The prosecution also bears a legal burden of disproving any matter in relation to which the defendant has discharged an evidential burden of proof imposed on the defendant.

(3) In this Decree (Act)—

"legal burden", in relation to a matter, means the burden of proving the existence of the matter.

- [6] Section 58 (1) of the Crimes Act stipulates that a legal burden of proof on the prosecution must be discharged beyond reasonable doubt.

Legal Provisions and the Elements of the Offences

- [7] As could be observed the accused is charged with one count of Rape, contrary to Section 207 (1) and (2) (c) and (3) of the Crimes Act and one count of Rape, contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Act; one count of Indecent Assault, contrary to

Section 212 (1) of the Crimes Act and one count of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act.

[8] The first count against the accused is a charge of Rape, contrary to Section 207 (1) and (2) (c) and (3) of the Crimes Act; while the third count against the accused is a charge of Rape, contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Act.

[9] Section 207(1) of the Crimes Act reads as follows:

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

[10] Section 207(2) of the Crimes Act is reproduced below:

(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; or

(b) the person penetrates the vulva, vagina or anus of the other person to any extent with a thing or a part of the person's body that is not a penis without the other person's consent; or

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

[11] Section 207 (2) (c) makes reference to a person penetrating the mouth of the other person to any extent with the person's penis without the other person's consent.

[12] Section 207 (2) (a) makes reference to carnal knowledge, which is an archaic or legal euphemism (synonym) for sexual intercourse. In layman's terms, having carnal knowledge with or of the other person, as stated in Section 207 (2)(a), means having penile-vaginal sexual intercourse with that other person or having sexual intercourse whereby the man penetrates his penis into the vagina of the woman. In terms of Section 206 (5) the term carnal knowledge is said to include sodomy or anal sexual intercourse as well. Anal sexual intercourse can be with a man or with a woman.

[13] Therefore, in order to prove the first count of Rape against the accused, the prosecution must establish beyond reasonable doubt that;

(i) The accused;

- (ii) During the specified period (in this instance between 1 January 2021 and the 31 December 2021);
- (iii) At Lautoka, in the Western Division;
- (iv) Penetrated the mouth of the complainant URT, with his penis; and
- (v) At the time the complainant URT was a child under the age of 13 years.

[14] Similarly, in order to prove the third count of Rape against the accused, the prosecution must establish beyond reasonable doubt that;

- (i) The accused;
- (ii) During the specified period (in this instance between 1 May 2023 and the 31 May 2023);
- (iii) At Lautoka, in the Western Division;
- (iv) Penetrated the anus of the complainant URT, with his penis;
- (v) At the time the complainant URT was a child under the age of 13 years.

[15] To further elaborate upon these elements in respect of the above two counts of Rape. The first element is concerned with the identity of the person who committed the offences. The prosecution should prove beyond reasonable doubt that the accused and no one else committed the said offences.

[16] The second element relates to the specific time period during which the offences were committed. The third element relates to the place at which the offences were committed. The prosecution should prove these elements beyond reasonable doubt.

[17] In respect of Count 1, the fourth element involves the penetration of the complainant's mouth, with the accused's penis. In respect of Count 3, the fourth element involves the penetration of the complainant's anus, with the accused's penis. It must be noted that, in law, the slightest penetration is sufficient to satisfy this element of penetration. This element is complete on penetration to any extent. Therefore, to establish this element, the prosecution should prove beyond reasonable doubt that the accused penetrated the mouth of the complainant or the anus of the complainant with his penis respectively, to any extent.

[18] The final element is that at the time of the incident the complainant was a child under 13 years of age. The issue of consent will not arise in this case. Only a child of over the

age of 13 years is considered by law as a person with necessary mental capacity to give consent. As would be seen later in this judgment, the complainant in this case was 10 years at the time of the alleged incident of Rape detailed in Count 1 and 12 years at the time of the alleged incident of Rape detailed in Count 3. Therefore, he had no mental capacity to give consent [His date of birth being 21 July 2010].

[19] The second count against the accused is a charge of Indecent Assault, contrary to Section 212 (1) of the Crimes Act and the fourth count against the accused is a charge of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act.

[20] Section 212 (1) of the Crimes Act states that a person commits a summary offence of Indecent Assault, if he unlawfully and indecently assaults any other person.

[21] The offence of Sexual Assault is defined in Section 210 (1) of the Crimes Act as follows:

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

(a) unlawfully and indecently assaults another person; or

(b)

[22] Therefore, in order to prove the second count of Indecent Assault, the prosecution must establish beyond reasonable doubt that;

- (i) The accused;
- (ii) During the specified time period (in this instance between 1 May 2023 and the 31 May 2023);
- (iii) At Lautoka, in the Western Division;
- (iv) Unlawfully and indecently assaulted URT, the complainant, by massaging his buttocks.

[23] Similarly, in order to prove the fourth count of Sexual Assault, the prosecution must establish beyond reasonable doubt that;

- (i) The accused;
- (ii) During the specified time period (in this instance between 1 January 2023 and the 31 December 2023);
- (iii) At Lautoka, in the Western Division;

- (iv) Unlawfully and indecently assaulted URT, the complainant, by pulling down his pants and masturbating his penis.

[24] To further elaborate upon these elements in relation to the two counts. The first element is concerned with the identity of the person who committed the offences. The prosecution should prove beyond reasonable doubt that the accused and no one else committed the offences.

[25] The second element relates to the specific dates on which the offences were committed. The third element relates to the place at which the offences were committed. The prosecution should prove these elements beyond reasonable doubt.

[26] The accused would be guilty of Indecent Assault, if he unlawfully and indecently assaulted the complainant. The word “unlawfully” simply means without lawful excuse. An act is an indecent act if right-minded persons would consider the act indecent. As such, it is for Court to consider and decide whether the massaging the complainant’s buttocks, is an indecent act and thereby amounts to Indecent Assault.

[27] The accused would be guilty of Sexual Assault, if he unlawfully and indecently assaulted the complainant. The word “unlawfully” simply means without lawful excuse. An act is an indecent act if right-minded persons would consider the act indecent. As such, it is for Court to consider and decide whether the pulling down of the complainant’s pants and masturbating his penis, is an indecent act and thereby amounts to Indecent Assault.

[28] It must also be noted that in terms of Section 129 of the Criminal Procedure Act, it is stated that no corroboration of the complainant’s evidence is necessary to prove an offence of a sexual nature; Rape. Indecent Assault and Sexual Assault are obviously considered as offences of a sexual nature. Corroborative evidence is independent evidence that supplements and strengthens evidence already presented as proof of a factual matter or matters.

The Admitted Facts

[29] Section 135 of the Criminal Procedure Act No 43 of 2009 (Criminal Procedure Act) deals with “Admission of facts”. The Section is reproduced below:

135. — (1) *An accused person, or his or her lawyer, may in any criminal proceedings admit any fact or any element of an offence, and such an admission will constitute sufficient proof of that fact or element.*

(2) *Every admission made under this section must be in writing and signed by the person making the admission, or by his or her lawyer, and—*

(a) *by the prosecutor; and*

(b) *by the judge or magistrate.*

(3) *Nothing in sub-section (2) prevents a court from relying upon any admission made by any party during the course of a proceeding or trial.*

[30] Accordingly, the prosecution and the defence have consented to treat the following facts as “*Agreed Facts*”:

1. The accused is Isei Namacamaca hereafter referred to as “The accused”.
2. The complainant is URT, hereafter referred to as “The complainant”.
3. The complainant’s date of birth is 21 July 2010.
4. The accused is the complainant’s grandfather’s brother-in-law.
5. Both the accused and the complainant were staying together at the complainant’s grandfather’s house at the material time.
6. It is agreed that the following document will be tendered by consent:
 - (i) Birth Certificate of URT.

[31] Since the prosecution and the defence have consented to treat the above facts as “*Agreed Facts*” without placing necessary evidence to prove them, the above facts are proved beyond reasonable doubt.

Case for the Prosecution

[32] The prosecution, in support of their case, called the complainant (URT), his adoptive mother, Koini Tinai Rayawa, who was the recent complaint witness, Acting Sergeant 4202 Timoci Tavurunaqiwa and Doctor Salome Daunivalu.

[33] The prosecution also tendered to Court a copy of the Birth Certificate of the complainant as Prosecution Exhibit PE1, the original caution interview statement of the accused as Prosecution Exhibit PE2, the English translation of the caution interview statement of the accused as Prosecution Exhibit PE3 and the Medical Examination Report of the complainant as Prosecution Exhibit PE4.

[34] **Evidence of the complainant URT**

- (i) *The complainant's evidence was recorded over a period of one day. His evidence was recorded in a 'closed court'.*
- (ii) *The complainant testified that he is currently 14 years old. His date of birth is 21 July 2010. This is an agreed fact as well. A copy of his birth certificate was tendered to Court as Prosecution Exhibit PE 1. He is a student at Ba Provincial Secondary School.*
- (iii) *He is currently residing at Waiyavi, Stage 5, in Lautoka, with his (adoptive) mother, Koini Tinairaiova and Lepani Vunisa, Mesake Dravunica and Timoci Isilaba. Koini is not his biological mother. His biological mother is Salaseini Naicikoleba.*
- (iv) *When asked to explain his exact relationship to Koini Tinai, the witness said that she is his grandmother from his mother's side. However, he does not know the exact relationship. Koini Tinai has 7 children on her own. Lepani and Mesake are her own children. Timoci is his biological brother.*
- (v) *The witness testified that in the year 2021, he was residing at Naikabula at his maternal grandfather's house, together with his mother, Isei Namacamaca, the accused and Isei's wife. His maternal grandfather's name is Timoci Isilaba.*
- (vi) *The said house had only one bedroom. There was also a sitting room and a kitchen. Besides the kitchen there was a room separated by a curtain – to make room for Isei and his wife to stay.*
- (vii) *The usual sleeping arrangements in the house was as follows: the complainant and the mother normally slept in the sitting room. His grandfather normally slept beside the TV which is at the porch – it is an open porch but there is a door for the porch. Isei and his wife slept beside the kitchen on the left side. The bedroom (with the beddings) were used by his uncle and aunty when they visit from Suva. His younger brother Timoci was staying in Waiyavi, at the time.*
- (viii) *The complainant testified to the events which took place during the period 1 January 2021 to 31 December 2021. He said on the first occasion, he was inside the house. The accused Isei had called the complainant to the room besides the kitchen. He had entered the room. Isei was without his pant and underwear. He forcibly made the complainant to kneel down. After he knelt down, the accused had put his private part in his mouth.*

- (ix) *When asked to explain what was meant by private part, the witness said it was his penis (polo). When asked what is that part of the body usually used for, he said it was to urinate.*
- (x) *This incident had happened close to lunch hour. At the time his grandfather and his mother were also in the house. His mother had been lying down in the sitting room, while his grandfather was lying on his bed playing with his mobile phone. Isei's wife had gone to work.*
- (xi) *When asked for how long Isei had put his penis in his mouth for, the witness said that he pushed it in and out 4 times. The incident had lasted for about 5 minutes (roughly).*
- (xii) *The witness said that he had known Isei for a long time. He identified the accused in the dock as Isei Namacamaca.*
- (xiii) *The complainant said that after the incident, he had gone outside, spat and drank water. He said he had not told his mother or his grandfather about what the accused had done to him. When asked to explain why he did not do so, he said he forgot to tell them. However, later, the complainant said that he did mention about the incident to his grandfather. His grandfather had told him if the accused does it again to come and tell him.*
- (xiv) *The complainant testified that in the year 2021 he was not schooling that year. He said his grandfather lied to him by saying that the teacher called and informed him not to come to school.*
- (xv) *The complainant next testified to the events which took place in the month of May 2023. Even at the time he was living at Naikabula at his maternal grandfather's house.*
- (xvi) *The witness said that he was in the bathroom washing the plates and pots. He was bending while washing the said dishes and pots. The accused had come opened the bathroom and come into the bathroom. The accused was in his wrap-around sulu. The complainant was wearing pants at the time. Thereafter, the accused had taken his private part and was slapping it on the complainant's back. He had been slapping it on the area of the complainant's buttocks. [This Court is conscious of the fact that this may be an uncharged act].*
- (xvii) *When asked to explain what was meant by private part, the witness said it was his penis. When asked what is that part of the body usually used for, he said it was to urinate.*
- (xviii) *This incident had lasted for about 2 minutes (roughly). Until the time the complainant had completed washing the dishes and pots.*
- (xix) *This incident had happened in the morning. At the time his grandfather and his mother were also in the house. His mother had been in the sitting room, talking with her friends, while his grandfather was lying on his bed. At the time his grandfather couldn't move around or walk. Isei's wife had gone to work at the time.*
- (xx) *The complainant explained that the bathroom is located outside the house. That bathroom is not only used by people in their house but it also the*

bathroom for the neighbouring house. The witness said that you cannot see the bathroom from the sitting room.

- (xxi) The complainant said that on the next day he had informed his grandfather about what had happened but his grandfather had done nothing about it.*
- (xxii) The complainant then testified to an incident which took place the day after. The accused had been cooking dhal in the kitchen. The complainant had been with his grandfather. Then his grandfather told him to go and help the accused in the kitchen. The complainant had complied. When he went to the kitchen, he saw the accused putting the fire together. The complainant had laid down on the rug in the kitchen facing upwards. The accused had then forcibly removed the complainant's pants. He had then spat on this hand and then started playing with the complainant's penis. This incident had happened after lunch and had lasted roughly 5 minutes.*
- (xxiii) At the time only his grandfather was in the house. His mother had gone to visit another house, while Isei's wife had gone to work at the time.*
- (xxiv) When asked to explain whether apart from these two incidents which happened in May 2023, anything else happened to him in the year 2023, the complainant said yes. The witness testified to an incident which had happened inside the room used by Isei and his wife (the room partitioned by a curtain). Isei had called him from that room. The complainant had gone to the room. Isei had been without his pants but was still wearing his underwear.*
- (xxv) The complainant said: "He made me lie on top of the bed. I tried to turn but I couldn't. He placed his knee on my leg. Then he put his private part on my butt.... He was trying to insert it inside. When it was paining, he covered my mouth with a pillow."*
- (xxvi) When asked whether the accused had inserted his private part into his buttocks or anus, the complainant said no. However, he said his butt was paining. When asked to explain what the accused was doing that caused his butt to hurt, the witness said: "When Isei used his private part to insert it into my butt, it was paining. Then he used a pillow to cover my mouth."*
- (xxvii) The witness was asked to explain what part of his butt was paining, the complainant said that it was inside. The witness used the Fijian term for anus to refer to this part.*
- (xxviii) The complainant said that this incident happened around afternoon. The accused was doing this act for about 5 minutes. When the accused had put his private part out, he had ejaculated. The complainant was asked how he knew that the accused had ejaculated. He said when he turned, he saw the accused wiping it.*
- (xxix) When asked to explain what was meant by private part, the witness said it was his penis. When asked what is that part of the body usually used for, he said it was to urinate.*

- (xxx) *The complainant said that at the time this incident happened, his grandfather and mother were at home. His grandfather was sitting on the chair besides the TV pressing his phone. He is not aware as to where his mother was at the time.*
- (xxxii) *The complainant identified Isei, who was the accused in the dock, who had done all these acts on him.*
- (xxxiii) *When asked whether he had told anybody about these incidents, the witness said he had told his grandfather. Apart from that, he had told his (adoptive) mother Koini Tinai in Waiyavi. He had told Koini Tinai everything that the accused had done to him.*
- (xxxiv) *The complainant was cross examined by the defence.*
- (xxxv) *It was suggested to the complainant that he had told Koini Tinai that the accused only started touching him in the first term school holidays of 2023. The witness said yes. However, when it was put to him again that isn't it correct that what the accused did to him only started in 2023, the witness said no.*
- (xxxvi) *The witness confirmed that the complaint about this incident was only made to the Police in 2023. The witness was referred to the statement made by him to the Police on 22 August 2023.*
- (xxxvii) *He confirmed that thereafter he was taken to the doctor for medical examination. It was suggested to him that even to the doctor he had mentioned that the incidents only started in 2023. The witness denied this suggestion.*
- (xxxviii) *It was suggested to the complainant that in the year 2021, the accused did not put his private part (penis) in his mouth. The witness denied the suggestion and said: "No. He put it".*
- (xxxix) *It was further suggested to the complainant that he is lying about this incident (which took place in 2021). The witness said: "No My Lord, he really did it."*
- (xl) *It was further suggested to the witness that he did not tell his grandfather of the 2021 incident. The witness said that he told his grandfather the next day.*
- (xli) *The complainant was cross-examined in detail about the incidents which allegedly took place in the year 2023.*
- (xlii) *It was suggested to the complainant that the accused's private part (penis) did not enter his anus. The witness said that he inserted it and it was painful. It was further suggested to the complainant that the accused did not insert his private part into his anus, rather his private part went in between his buttocks in an upward motion. The witness said: "No My Lord. He inserted it".*
- (xliii) *It was again suggested to the complainant that at no point did the accused's private part enter into his anus but it was only placed on his buttocks. The witness answered by saying, he was trying it and inserted it.*
- (xliv) *It was again suggested to the complainant that if the accused had inserted his penis into his anus that he would have received injuries, but in this case he did*

not receive any injuries. The witness answered: "He was trying to insert it, but he couldn't. But when I was in pain then he blocked my mouth with a pillow".

(xlv) It was put to the witness:

Q: So you said he was trying to insert it but he couldn't, so it did not go into the anus isn't it?

A: Yes My Lord.

(xlv) In re-examination the State Counsel attempted to clarify the above testimony given by the witness in cross-examination.

[35] Evidence of Koini Tinai Rayawa

- (i) The witness testified that she is 58 years of age and residing at Waiyavi, Stage 5, in Lautoka. She has been residing there for the past 23 years. Her husband has passed away. She has 5 children of her own (her biological children). The complainant and his younger brother Timoci have been adopted by her. She said she adopted the complainant when he was 4 months old.*
- (ii) The witness said that currently she is residing at Waiyavi with two of her biological children and the complainant and his brother Timoci.*
- (iii) The witness testified that in the year 2021, the complainant was residing at Naikabula in his grandfather Timoci Isilaba's house. The complainant had been residing in Naikabula in the years 2021 and 2022. He had moved back to Waiyavi in 2023. This was during the last school term of 2023. Later the witness said that the complainant had moved back to Waiyavi in July 2023.*
- (iv) During the first and second school terms of 2023, the complainant had been at Naikabula. In between Term 2 – towards the school break of Term 2 – the witness said the complainant had not been going to school. When she had inquired from the complainant's grandfather as to the reason why he was not going to school, he had told her that the teacher had told the complainant not to come to school and to look after his skin problem. The witness said that in spite of applying so many creams from the Pharmacy, the skin problem had continued.*
- (v) The witness testified further that the complainant had run away from Naikabula and come to stay with her at Waiyavi. When asked as to why he had run away from Naikabula, the witness said that when the complainant came back, he had told her what the accused had done to him at Naikabula.*
- (vi) When asked to explain what exactly the complainant had told her, the witness said that on one occasion the accused (Tutua Isei – grandfather Isei) was cooking dhal when he came and pulled down the complainant's pants and put his private part on his buttocks. On another occasion they were at home, when the accused had put him on his bed, removed his pant and put his private part on his back and covered his mouth with a pillow when the child try to shout. Also*

in 2021, the accused did the same thing. He had told the complainant to suck his private part. Another time the complainant was in the bathroom washing the pots. The accused came, took his private part and was slapping it on the complainant's buttocks.

- (vii) The witness said that she has known the accused for a long time. She said he is like her son. He is related to her deceased husband. The accused calls her husband uncle. The complainant's maternal grandfather's sister is the accused's wife (so the accused is the complainant's grandfather's brother-in-law).*
- (viii) The witness identified Isei Namacamaca as the accused in the dock.*
- (ix) The witness testified further that one week after the complainant ran away from Naikabula and came to Waiyavi, he complained of pain whenever he was passing stool – every time he visits the toilet he was having pain. Therefore, they had come to the Police Station to report the matter.*
- (x) The witness said that the complainant had told her (told her the story) about what the accused had done to him immediately as he came from Naikabula. When asked why she didn't report the matter immediately upon hearing of it, the witness said that she felt scared. This was the first time she was hearing about such an incident. Prior to going to the Police to report the matter, the witness had called the complainant's grandfather and informed him about what the complainant had told her. She had also told the grandfather that she will be taking the complainant to the Police to report the matter.*
- (xi) In cross examination the witness confirmed that her statement was recorded by the Police on 31 August 2023. She agreed that the complainant had returned to Waiyavi in July 2023. She also agreed that the complainant's statement had been recorded by the Police on 22 August 2023, which would have been about a month after the complainant had informed her about the matter.*
- (xii) The witness agreed that she had gone to report the matter to the Police only after the complainant complaint of the pain in his buttocks – the complainant had been telling her that he was having pain when passing stool.*
- (xiii) It was suggested to the witness that the complainant had never made any complaint to her in 2021. She said, the complainant had informed his grandfather about the incident in 2021. She had been informed about the 2021 incident only when the complainant told her the story in 2023.*
- (xiv) The Defence highlighted the following omissions in the evidence given by the complainant vis a vis her statement made to the Police.*
 - i. In her testimony in Court she stated that the complainant had told her about what the accused did to him in 2021. However, in her statement made to the Police there is no mention of 2021 incident.*
 - ii. In her testimony in Court she stated that the complainant had told her that in the year 2021, the accused had told the complainant to suck his private part. However, in her statement made to the Police there is no mention of this fact.*

[36] Evidence of Acting Sergeant 4202 Timoci Tavurunaqiwa

- (i) The witness testified that he is 48 years of age and currently serving at the Lautoka Police Station.*
- (ii) He has been Police Officer for the past 24 years. He started his service at the Nadi Police Station, where he was serving for 10 years. Thereafter, he served at the Nausori Police Station for 6 years. The rest of his career he has been serving at the Lautoka Police Station. He has been serving at the Lautoka Police Station since 2017.*
- (iii) The witness said that he had received specialized training on investigation of cases.*
- (iv) In the year 2023, the witness was serving at the Lautoka Police Station. He was a Corporal at the time. On 28 September 2023, he had received instructions to caution interview Isei Namacamaca, the accused in this case.*
- (v) Accordingly, on the said day he had conducted the caution interview of the accused. Corporal 3780 Trevor was the Witnessing Officer. The caution interview was conducted at the Lautoka Police Station and was recorded by the use of a computer. The caution interview was conducted in question and answer format in the iTaukei language. The caution interview statement was signed by the witness, the Witnessing Officer and the accused.*
- (vi) The original caution interview statement of the accused recorded in the iTaukei language was tendered to Court as Prosecution Exhibit PE2. The English translation of the caution interview statement of the accused was tendered to Court as Prosecution Exhibit PE3. The witness testified that the translation from iTaukei to English had been done by him.*
- (vii) The witness testified that the caution interview statement was recorded fairly and that the accused provided his answers to the questions put to him voluntarily.*
- (viii) In cross-examination it was put to the witness that throughout the interview the accused maintained that he never penetrated the mouth or the anus of the complainant with his penis. The witness answered by saying that the accused said that he did penetrate but not inside the anus. He only rubbed (his penis) between the buttocks.*
- (ix) The witness was asked to read out the answer given by the accused to Question 46 of the caution interview statement.*
- (x) It was also put to the witness that the accused denied penetrating the complainant's mouth throughout the caution interview statement. The witness answered in the affirmative.*

[37] Evidence of Dr. Salome Daunivalu

- (i) The Doctor testified that she is currently based at the Medical Services Pacific (MSP) Lautoka. She is 40 years of age. She is a General Practitioner (GP).*

- (ii) *She had graduated with an MBBS Degree from the Fiji School of Medicine in 2010. Thus, she has been practicing as a Medical Officer for the past 15 years. She did her internship at CWM Hospital and was posted to the Maternity Unit Sub-divisional Hospital in Nausori in 2012. She served at Nausori Hospital until 2016.*
- (iii) *Thereafter, she served at the Vunidawa Sub-divisional Hospital in Naitasiri from 2016 to 2019. From 2019 to 2021 she served as Principal Medical Officer at the Valelevu Hospital.*
- (iv) *She has been serving at MSP Lautoka since March 2021.*
- (v) *The witness testified that in the year 2023, she had been serving at the MSP Lautoka. She confirmed that she had conducted the medical examination on the complainant, at the MSP Lautoka, on 22 August 2023, commencing at 12.10 p.m. At the time of the examination, the complainant's guardian was present.*
- (vi) *Doctor Daunivalu had prepared a Medical Examination Report based on her examination of the complainant. The said Medical Examination Report was tendered to Court by the witness as Prosecution Exhibit PE4.*
- (vii) *She testified that the complainant's date of birth was 21 July 2010, so at the time of examination he was 13 years of age.*
- (viii) *The Doctor read out the history as related by the complainant which has been noted in column D10 of the Medical Examination Report.*
- (ix) *She said that the patient was calm during the examination and was able to elicit the history confidently.*
- (x) *The Doctor testified as to the specific medical findings as noted in column D12 of the Medical Examination Report. The vitals (blood pressure, pulse, temperature) was stable. Under head, eye, ear, nose, throat (HEENT) nothing has been recorded. Under extremities – the arms and legs – she has noted eczema on both arms and forearms, both flanks, both knees and thighs. Flanks are the areas on the sides and back of your abdomen, between your lower ribs and your hips.*
- (xi) *The Doctor explained that eczema is a skin condition that would be observed on the skin following signs of inflammation. It is an observation on the skin that would indicate some sort of inflammation happening on the skin. It's a body reaction. So the body reaction could result in redness, rashes, the appearance of the skin appearing abnormal from normal skin. There could be dry skin from smooth skin. There could be change in colour of the skin from redness to discoloration black, blue, whatever the colour may be. The condition could even result in patches/scaling patches and dry skin. The Doctor observed that in this case the eczema was chronic (continuous).*
- (xii) *The Doctor confirmed that on the complainant the eczema was noted on both arms, the forearms, the flanks, the knees and the thighs. So it was almost over the whole extremities.*
- (xiii) *The witness further testified to the specific medical findings as noted in column D12 of the Medical Examination Report. On the anus the Doctor has noted a*

- degree of anal dilatation. She explained that there was a degree of widening of the anus. This is not a normal condition for a person who was 13 years of age. Anal dilatation could be caused by constipation, history of trauma or infection.*
- (xiv) The Doctor has noted that the rectal mucosa (anal canal) appear red and tender at 4.00 – 6.00 o'clock and 12.00 o'clock position. The Doctor said that some of the causes for such redness and tenderness could be due to trauma following sexual abuse or due to constipation.*
 - (xv) At Appendix 1 in the Medical Examination Report, the Doctor has drawn a sketch to depict the above findings.*
 - (xvi) The Doctor was asked whether it was possible for such symptoms to be present from trauma which may have occurred 3 months prior to the examination. She explained that it would be possible only if it was caused by a deep penetrating injury. It would also depend on the type of object used and the sharpness and size of the object.*
 - (xvii) The Doctor was specifically asked whether such symptoms could be present by a male penis penetrating the anus 3 months prior to the examination. She explained that ideally 3 months is too long. This is more so considering the fact that injuries in children heal faster than adults. However, she said it all depends on the degree of force used, age of the victim, type of object (penis) and the sharpness and size of the object (penis) used and if there was any self-defence/resistance from the victim.*
 - (xviii) The Doctor has noted that the penis and scrotum of the complainant was normal.*
 - (xix) Under other observations at column D13 of the Medical Examination Report the Doctor has noted chronic dermatitis eczema.*
 - (xx) As to her Professional Opinion as depicted in column D14, the doctor testified that there was evidence of sexual penetration (anal penetration).*
 - (xxi) Under Summary and Conclusions at column D16 of the Medical Examination Report the Doctor has recorded 12 year old child with history of anal penetration. Examination indicates signs of anal penetration and healing of injury.*
 - (xxii) In cross-examination it was put to the Doctor that in the history as related by the complainant which has been noted in column D10 of the Medical Examination Report, the complainant has stated that all the incidents he is complaining of had started during Term 1 of the school year 2023. The Doctor agreed.*

[38] At the end of the prosecution case this Court decided that there was no relevant or admissible evidence to establish that the accused had committed the offence of Indecent Assault of which he is charged with in Count 2. Accordingly, the accused was found not guilty and acquitted of the said charge. The reasons for this decision will be further elaborated upon later in this judgment.

[39] However, this Court decided to call for the defence in respect of the remaining three counts-Counts 1, 3 and 4. The accused was then explained his legal rights. I explained to him that he could address Court by himself or his Counsel. He could also give sworn evidence from the witness box and/or call witnesses on his behalf. He could even remain silent. He was given these options as those were his legal rights. I explained to the accused that he need not prove anything. The burden of proving his guilt rests entirely on the prosecution at all times.

[40] The accused decided to give evidence in his defence. He did not call any other witnesses.

[41] **Evidence of Isei Namacamaca**

- (i) *The witness testified that he is 43 years of age and currently residing at Naikabula, Lautoka. He is currently working as a labourer at Tengey Cement Production.*
- (ii) *He has been residing at Naikabula for 12 years now. Since last year he has been living in his own house in Naikabula – he and his wife. They have no children. The witness said that his wife have children from an earlier marriage. They don't live with them.*
- (iii) *Prior to that (prior to last year) the witness said he and his wife were staying at his brother-in-law Timoci Isilaba's house. Timoci Isilaba is his wife's brother. His wife's father and Timoci's father are cousins. Salaseini is Timoci Isibala's daughter. The complainant is Salaseini's son. Therefore, Timoci Isilaba is the complainant's grandfather. The complainant is the witness's grand-nephew through marriage.*
- (iv) *The witness said that he has known the complainant for a long time.*
- (v) *The witness said that in the year 2021 he and his wife were residing at Timoci Isibala's house. The complainant and the complainant's mother Salaseini were also residing there.*
- (vi) *The witness said that Timoci Isilaba's house was a long house. There is a sitting room and one other room. On the side of the house there is a covered porch. Straight from the porch you will go to the kitchen. Outside there is a bathroom and toilet. At the edge of the house besides the kitchen and the porch there is a portion covered by a curtain. The witness and the wife used to sleep there. The only room was reserved for Timoci Isilaba's son Apolosi and his wife. However, they were staying in Suva.*
- (vii) *The witness was asked about the allegations made by the complainant during his testimony.*
- (viii) *He was first questioned about the incident in 2021 where the complainant alleged that the witness had called him into his room and forcibly made him*

kneel down and had put his erected penis in his mouth four times. The witness completely denied this allegation.

- (ix) The witness said that nothing of that sort happened. He said 2021 was the COVID period and during that time the house was full with family members of Timoci Isilaba who had come there from the village.*
- (x) The witness testified that he continued staying at Timoci Isilaba's house from 2021 to 2023. In 2023, he had been residing there from January to September, the time he was arrested. In 2023, it was Timoci Isilaba, the witness and his wife and the complainant and his mother Salaseini who were residing there.*
- (xi) The witness was asked whether in May 2023 he had called the complainant into his room, made him lie down on the bed facing downwards, and then removed the complainant's pants and underwear, removed his own underwear (his pants was said to have been already removed at the time) and tried to insert his penis into the complainant's anus. The witness answered by stating: "I just rub it (his penis) in between his buttocks".*
- (xii) The witness testified that at no time did his penis enter into the complainant's anus.*
- (xiii) When asked as to what his intention was in rubbing his penis between the complainant's buttocks, the witness said so that he can ejaculate.*
- (xiv) The witness said that even during his caution interview this is the same position he has taken regarding the two incidents.*
- (xv) The witness was asked about the incident which had taken place between January and September 2023. The complainant had testified that during this period when he was cooking dhal in the kitchen, the complainant had come to the kitchen to help him cook the dhal. At that time the complainant laid down on the rug while the witness continued cooking. At that time, whilst the complainant was lying down on the rug, the complainant testified that the witness removed the complainant's pants and underwear and started playing with his penis. The witness admitted to this act.*
- (xvi) The witness explained that he had massaged the complainant's penis to make it big because it was small. He had used his hands to massage the complainant's penis.*
- (xvii) The witness was asked as to the reasons he did these acts to the complainant. The witness answered: "All I know that was a doing of the evil spirit because I was about to be baptized."*
- (xviii) The witness testified further that after this incident the complainant had run away from Naikabula to Waiyavi. He had run away to Waiyavi after he mentioned the incident to his grandfather. The witness said that Koini, who is Timoci Isilaba's niece, resides in Waiyavi. The complainant had gone to Koini's house in Waiyavi.*
- (xix) The witness said that he and his wife had gone to Koini's place in Waiyavi after they heard the story about what he had done to the complainant. He and his wife had gone there to sit down and discuss about the issue. The witness said*

he had apologized to the whole family and sought forgiveness for what he had done. The complainant had also been present at the time. The witness said he had spoken to the complainant and apologized to him as well.

- (xx) *The witness testified that thereafter, he had been arrested by the Police and taken to the Police Station. He had been at Naikabula when the Police came. This was about one week after he apologized to the family.*
- (xxi) *The witness was cross-examined at length by the Learned State Counsel and the prosecution case theory put to the witness.*

Analysis

- [42] As stated before, the prosecution, in support of their case, called the complainant (URT), his adoptive mother, Koini Tinai Rayawa, who was the recent complaint witness, Acting Sergeant 4202 Timoci Tavurunaqiwa and Doctor Salome Daunivalu. The accused testified in his defence.
- [43] The burden of proving each ingredient of the charges rests entirely and exclusively on the prosecution and the burden of proof is beyond a reasonable doubt. Therefore, it is incumbent on the prosecution to prove all the elements of the charges beyond reasonable doubt. I have made reference to the elements that the prosecution has to prove in respect of the first and third counts of Rape at paragraphs 13 and 14, of this judgment, respectively. Similarly, I have made reference to the elements that the prosecution has to prove in respect of the second count of Indecent Assault at paragraph 22 of this judgment and the fourth count of Sexual Assault at paragraph 23 of this judgment.
- [44] As I have stated before, in this case it has been agreed by the prosecution and the defence to treat certain facts as agreed facts without placing necessary evidence to prove them. Therefore, those facts are considered as proved beyond reasonable doubt.
- [45] Based on the said admitted facts it is admitted that the accused is the complainant's grandfather's brother-in-law. It is also admitted that both the accused and the complainant were staying together at the complainant's grandfather's house at the material times of these incidents. Therefore, the identity of the accused is not in dispute.

[46] It is further admitted that the complainant's date of birth is 21 July 2010. Accordingly, the complainant in this case was 10 years at the time of the alleged incident of Rape detailed in Count 1 and 12 years at the time of the alleged incident of Rape detailed in Count 3. Therefore, it is established beyond reasonable doubt that the complainant was a child under the age of 13 years for the purpose of Counts 1 and 3.

[47] I have summarized the evidence of all witnesses led during the trial.

[48] During his testimony the complainant did not come out with any evidence in relation to Count 2, the charge of Indecent Assault. The complainant testified to an incident which took place in the bathroom while he was washing the plates and pots. He was bending over while washing the said dishes and pots. The accused had come opened the bathroom and come into the bathroom. The accused was in his wrap-around sulu. The complainant was wearing pants at the time. Thereafter, the accused had taken his private part and was slapping it on the complainant's back. He had been slapping it on the area of the complainant's buttocks. However, this Court finds that this is an uncharged act. No evidence has been elicited in Court that the accused unlawfully and indecently assaulted the complainant by massaging his buttocks, which is what the prosecution has to establish as per Count 2 of the Information.

[49] In the circumstances, at the end of the prosecution case, this Court decided that there was no relevant or admissible evidence to establish that the accused had committed the offence he is charged with in Count 2. This is in spite of the fact that the accused had pleaded guilty in respect of this count. Accordingly, the accused was found not guilty and acquitted of the said charge. However, this Court decided to call for the defence in respect of Counts 1, 3 and 4.

[50] The complainant clearly testified to the manner in which the accused had perpetrated the alleged acts on him in respect of Counts 1, 3 and 4.

[51] The accused admits that he committed the offence of Sexual Assault as set out in Count 4. However he totally denies the two charges of Rape (Counts 1 and 3).

[52] The Defence attempted to impeach the credibility of the complainant during his cross examination by stating that the complainant did not report the matter to anyone immediately as it happened. I agree that the matter was formally reported to the Police only on 22 August 2023.

- [53] However, this Court is conscious of the fact that children do not always react the same way to sexual acts as adults would. It would be a mistake to think that children behave in the same way as adults, because their reaction to events is conditioned by their personal experience and immaturity and not by any moral or behavioural standard taught or learned.
- [54] The complainant has clearly testified as to the reasons for the delay in reporting the matter to the Police. The complainant testified that he had even informed his grandfather the very same day about what the accused had done to him in the year 2021 and even about the incidents of 2023.
- [55] The adoptive mother of the complainant, Koini Tinai Rayawa, was called by the prosecution as the recent complaint witness. She testified as to how the complainant had informed her about what the accused did to him while he was residing at Naikabula. This was immediately upon the complainant returning to her house at Waiyavi around July 2023.
- [56] The complainant had told her that on one occasion the accused (Tutua Isei – grandfather Isei) was cooking dhal in the kitchen when he came and pulled down the complainant’s pants and put his private part on his buttocks. On another occasion they were at home, when the accused had put him on his bed, removed his pants and put his private part on his back and covered his mouth with a pillow when the child try to shout. Also in 2021, the accused did the same thing. He had told the complainant to suck his private part. Another time the complainant was in the bathroom washing the pots. The accused came, took his private part and was slapping it on the complainant’s buttocks.
- [57] I concede that there is a discrepancy in what the complainant testified in Court with regard to the Count 4, where he said that the accused had taken out his pants and played with his penis or masturbated his penis, with what witness Koini Tinai said about this incident. This is the incident which allegedly happened in the kitchen, while the accused was cooking dhal in the kitchen. Koini Tinai’s testimony was that the complainant had told her that the accused came and pulled down the complainant’s pants and put his private part on his buttocks. In any event, the accused has pleaded guilty to Count 4.

- [58] Therefore, in spite of this discrepancy the above clearly qualifies as a recent complaint. It is trite law with regard to recent complaint evidence that the complainant need not specifically disclose all of the ingredients of the offences and describe every detail of the incidents, but the complaint should contain sufficient information with regard to the alleged conduct of the accused. I am satisfied that the complainant made a proper complaint in this case. Accordingly, I consider that his credibility is strengthened in view of that recent complaint.
- [59] I must emphasize that I have borne in mind that the recent complaint is not evidence of facts complained of, nor is it corroboration. It goes to the consistency of the conduct of the complainant with his evidence given at the trial. It goes to support and enhance the credibility of the complainant.
- [60] The defence attempted to impeach the credibility of prosecution witness Koini Tinai Rayawa by highlighting 2 omissions in her statement made to the police, in comparison to the testimony given by her in Court. I have identified and made reference to the said omissions when summarizing her evidence.
- [61] In *Sivoinatoto v. State* [2018] FJCA 68; AAU0049.2014 (1 June 2018); the Fiji Court of Appeal discussed as to how a Court should deal with issues arising out of contradictions and omissions. His Lordship Justice Gamalath held as follows:

*[9] When a court is dealing with the issues arising out of “contradictions”, “omissions”, it is necessary for the Court to carefully examine the impact that such discrepancy could have on the total credibility of evidence of a witness. As decided in the case of **Appabhai v. State of Gujarat**, AIR 1988, S.C. 694, (1988 Cri.L.J.848) (a decision of the Indian Supreme Court).*

“The Court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The court by calling into aid its vast experience of men and matters, in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses nowadays go on adding embellishment to their version perhaps for the fear of their testimony being rejected by the Court. The Courts, however, should not

disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy.”

*In the case of **Arjun and Others v. State of Rajasthan**, (1994) AIR - SC-2507, it was held that; (A decision of the Indian Supreme Court).*

“A little bit of discrepancies or improvement do not necessarily demolish the testimony. Trivial discrepancies, as is well known, should be ignored. Under circumstantial variety, the usual character of human testimony is substantially true. Similarly, innocuous omissions are inconsequential.”

[10] More often contradictions and omissions become the main tool used in courts to evaluate the testimonial trustworthiness of a witness's evidence. As defined in the Oxford Dictionary “contradictions” means ‘to offer the contrary’. On the other hand, if a witness has testified in the examination-in-chief on a certain thing which he has omitted to state in his statement to the police, it is called “omission”. If the said omission is on minor points, it is not contradiction and court will not take cognizance of those omissions. Court will take cognizance of those omissions which are on material points and they are called “contradictions by way of omissions”. In order to prove the omissions, it is necessary to find out as to what the witness has deposed before the court in the examination-in-chief.

[11] Any statement of a witness made to an investigating police officer does not form part of the evidence in trial. Court would not be looking into police statements of witnesses to find out the truth involved in a case. However, if any party to a law suit is depending on ‘contradictions’ or ‘omissions’ to assail the trustworthiness of the evidence of any witness, it is necessary not only to highlight the ‘contradictions’ or ‘omissions’, but also to prove them at trial, so that the court could consider the effect of them according to the criterion laid down in the decided decisions referred above.

[12] Whenever it appears in the proceedings of a trial that the witness's evidence is tainted with certain contradictions and/or omissions, opportunity should be given to such witness to explain the basis for such infirmities. If the explanation is plausible that would have a direct impact on the credibility issue.

*[13] In the case of **Sri Cruz Pedro Pacheco v. State of Maharashtra**, 1998 (5) Bom. L.R. 521-1998 Crim.L.J.4628, it was decided that; (an Indian Decision)*

“Credibility of the witness can be impeached only after obtaining his explanation for the contradictory statement and by pointing out that the explanation given by him is not true or unsatisfactory. Then only the Court will be in a position to consider whether or how far the credibility of that witness is affected in that court. It is absolutely necessary to give the witness an opportunity of explaining the alleged contradiction. It must be borne in mind that the trial has to be fair not only to the accused but also to the witness who may be the aggrieved party himself.”

[62] I have duly considered the explanation offered by the witness Koini Tinai Rayawa in respect of the said omissions in her evidence as highlighted by the defence. It is my opinion that the said explanation is reasonable and acceptable. In any event, I am of the opinion that these are only minor discrepancies which do not shake the basic version of the prosecution case. As such, I am of the opinion that the reliability and credibility of her evidence is unaffected.

[63] The State is relying on the medical evidence of Doctor Salome Daunivalu. The Doctor testified to the specific medical findings as noted in column D12 of the Medical Examination Report of the complainant. On the anus the Doctor has noted a degree of anal dilatation- this is a degree of widening of the anus. The Doctor has also noted that the rectal mucosa (anal canal) appear red and tender at 4.00 – 6.00 o'clock and 12.00 o'clock position. The Doctor explained some of the causes for such symptoms to be present.

[64] However, the complainant had been examined by the Doctor only on 22 August 2023. This is nearly 2-3 months after the alleged incident of anal penetration that the complainant testified to. The Doctor was asked whether it was possible for such symptoms to be present from trauma which may have occurred 3 months prior to the examination. However, the Doctor did not provide a definitive answer.

[65] For the aforesaid reasons, this Court will not place any reliance on the medical evidence tendered by the prosecution in coming to its finding.

[66] The State is relying on the caution interview statement made by the accused on 28 September 2023. The Defence did not challenge the admissibility of the said caution interview statement. The Defence position is that the contents of the caution interview statement is consistent with the accused's defence. The original caution interview statement recorded in iTaukei has been tendered to Court as Prosecution Exhibit PE2, while the English translation of the said caution interview statement has been tendered to Court as Prosecution Exhibit PE3.

[67] I wish to refer to the following portion of the caution interview statement made by the accused [From Question No. 43 – 55]:

Q43. What can you say about this allegation?

A. It is true but I do not agree that I forced him and injured his anus.

Q44. What happened?

A. I undressed him but did not penetrate inside his anus my erected penis.

Q45. How many times you sexually assaulted URT?

A. 3 times.

Q46. How you sexually assaulted him?

A. The same thing I have been doing that I put my erected penis between his buttocks but did not injure his anus. I did not aim his anus but just rubbing his buttock with my erected penis.

Q47. Why you sexually assaulted him?

A. He always naughty on me as we are cousin.

Q48. Who told you to sexually assault him?

A. Nobody only me.

Q49. You stated that you sexually assaulted URT 3 times. Can you explain how you sexually assaulted him?

A. Took out his clothes, make him lie face down, then I get undressed, make my penis to erect and lie on top of his back.

Q50. What happened when you have made your penis to erect and lie on his back?

A. I put my penis between his buttocks and rub my penis between his buttocks outside his anus but did not penetrate inside his anus.

Q51. It has been alleged that you in 2021, at Naikabula, Lautoka, called URT inside your room and forced him to suck your penis. What can you say about this matter?

A. No this is not true.

Q52. It has been alleged that you in the month of May 2023, at Naikabula, Lautoka, you called URT inside your room, took out his clothes while you took out your clothes and lie on his back and penetrated your erected penis on his anus for

5 minutes and ejaculated over his buttocks. What can you say about this allegation?

A. Yes it is true but I did not penetrate his anus.

Q53. It has been alleged that you in the month of May 2023, at Naikabula, Lautoka, you entered the kitchen where URT was, took out his trousers, spit on your hand and masturbate his penis. What can you say about this?

A. Yes, that is true but I did not go to him in the kitchen but we were together?

Q54. Why you masturbate his penis?

A. He wanted his penis to get big.

Q55. What else you did to URT?

A. Nothing else only those things you have mentioned.

[68] I hold that the above caution interview statement was made voluntarily by the accused. However, I am of the opinion that the caution interview statement is self-serving and has been made by the accused in such a manner as to formulate his defence for this case. He admits to Count 4, the Sexual Assault charge, which he has pleaded guilty to. However, he totally denies Counts 1 and 3, the two Rape charges.

[69] I am of the opinion that the accused's denial to the Rape charges cannot be accepted as truthful and reliable. Therefore, considering the totality of the evidence in this case, it is my opinion, that the defence version cannot be accepted as truthful and reliable and I reject the defence version.

[70] Having analysed all the evidence in its totality, it is my considered opinion that the evidence of the complainant and the recent complaint witness Koini Tinai Rayawa, can be accepted as truthful, credible and reliable. The complainant withstood the rigorous cross examination by the Defence and remained consistent throughout his evidence, in relation to the material particulars of this case.

[71] It must also be mentioned once again that in terms of the provisions of Section 129 of the Criminal Procedure Act, where any person is tried for an offence of a sexual nature,


no corroboration of the complainant's evidence shall be necessary for that person to be convicted.

[72] Considering the nature of all the evidence before this Court in its totality, it is my considered opinion that the prosecution has proved its case beyond reasonable doubt by adducing truthful and reliable evidence satisfying all elements of the charges of Rape (Counts 1 and 3) and the charge of Sexual Assault (Count 4) with which the accused has been charged. In any event, the accused had pleaded guilty to Count 4.

[73] In the circumstances, I find the accused guilty of the first and third counts of Rape with which he is charged; and I find the accused guilty of the fourth count of Sexual Assault with which he is charged.

[74] Accordingly, I convict the accused of the first and third counts of Rape and the fourth count of Sexual Assault with which he is charged.




Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

AT LAUTOKA

Dated this 25th Day of June 2025

Solicitors for the State: Office of the Director of Public Prosecutions, Lautoka.

Solicitors for the Accused: Office of the Legal Aid Commission, Lautoka.