

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 151 of 2024

STATE

v

SAUKARASA RAVINASAGA

Counsel : Ms M. Lomaloma for State
Ms V. Rao with L. Taukei for Defence

Dates of Hearing: 14-15 October 2025

Date of Judgment: 07 November 2025

(The name of the Complainant is suppressed. She is referred to as SS)

JUDGMENT

(Child Rape-visual identification- recognition- late alibi-credibility and reliability)

1. The Accused is charged with multiple counts of sexual offences on the following information filed by the Director of Public Prosecutions:

SAUKARASA RAVINASAGA is charged with the following offences:

COUNT 1

Statement of Offence

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

Particulars of Offence

SAUKARASA RAVINASAGA on one occasion between the 1st of August, 2022 and the 31st of August, 2022 at Lautoka in the Western Division, unlawfully and indecently assaulted SS by fondling with her breasts.

COUNT 2

Statement of Offence

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

Particulars of Offence

SAUKARASA RAVINASAGA sometime between the 1st of August, 2022 and the 31st of August, 2022 on the same occasion as in Count 1, at Lautoka in the Western Division, unlawfully and indecently assaulted SS by touching her vulva above her clothing.

COUNT 3

Statement of Offence

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

Particulars of Offence

SAUKARASA RAVINASAGA sometime between the 1st of August, 2022 and the 31st of August, 2022 on the same occasion as in Count 1, at Lautoka in the Western Division, penetrated the vulva of SS with his tongue, being a child under the age of 13 years.

2. The Accused pleaded not guilty to the charges. At the ensuing trial, the Prosecution presented the evidence of the Complainant, her cousin and her former teacher and closed its case. There was *prima facie* evidence to maintain the Counts. The Accused was put to his defence on all counts. Upon being explained the rights in his defence, the Accused elected to give evidence under oath and called a witness to support his defence of alibi.
3. On Counts one and two the Accused is charged with Indecent Assault. To prove these charges, the Prosecution must establish that the Accused unlawfully and indecently assaulted the complainant.
4. On Count 3, the Accused is charged with Rape contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Act. The Prosecution alleges that the Accused penetrated the vulva of the Complainant with his tongue. Section 207(2)(b) of the Crimes Act states that a person rapes another person if 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 penis without the other person's consent.

5. SS was 10 years old at the time of the alleged offences. The Defence does not dispute the age of SS. The law says that a child under the age of 13 years has no mental capacity to give consent to any form of sexual activity. Accordingly, SS is incapable of giving consent to any form of sexual activity. Therefore, the Prosecution has no burden to prove that the alleged sexual conduct occurred without the consent of SS. All that the Prosecution must prove is that the Accused was engaged in the sexual conduct with SS as alleged in the information.
6. The Prosecution bears the burden to prove all the elements of each offence and that burden must be discharged beyond reasonable doubt. The burden never shifts to the Accused at any stage of the trial. The presumption of innocence in favour of the Accused prevails until the charges are proved beyond reasonable doubt. Since the Defence has raised an alibi, the Prosecution must disprove the alibi and prove beyond reasonable doubt that it was the Accused who committed the offences.
7. The salient parts of evidence led in this trial can be summarized as follows.

Evidence for Prosecution

PW1 - SS (The Complainant)

8. SS currently is a Year 7 student at Ratu Naivalu Memorial School in Yasawa. She lived in Natawa village with her mother, stepfather, grandmother and brother. Before she moved to Natawa, she was schooling at Jasper Williams Primary School.
9. In 2022, SS was attending Amichandra Memorial School from her (cousin) sister Sereana's house in Lovu Seaside. Sereana, her husband Saukarasa (Sau), their daughter (3) and her cousin sister lived in that house.
10. SS described the alleged incident. She said she came to Court because she was raped by her uncle, Saukarasa Ravinasaga in 2022 when she was at Class 4. The incident happened at Saukarasa Ravinasaga's house in All Make, Opposite Lovu Hart. They had come there for a weekend during the second two-week school vacation. It was a two bedroomed house. On that night, Sereana, Sereana's husband (Sau) and their daughter were sleeping

in one of the rooms. She was sleeping on the sofa in the sitting room. She woke up when she felt someone touching her. It was her uncle Saukarasa Ravinasaga whom she used to call 'Momo'. Momo was sitting down beside the settee. The light in the sitting room was off. Only the light in the veranda was on. She clearly saw Momo's face from the light coming from the veranda.

11. She was wearing tights and a T-shirt. Momo used his hands to touch her breast, underneath her T-shirt. He then pulled her tights and completely took off her pantie when she was still lying on the settee. Momo then touched her vagina, where she usually pee. Momo then licked her vagina. She could feel his tongue in her vagina for a short time. She didn't like it. She did not do anything because she was scared of Momo. Momo was drunk. She could smell beer on him. She was awake at that time but closing her eyes because she was scared. She opened her eyes only when Momo bent down. When this incident happened, Sereana, her husband (Sau) and their daughter were sleeping in their room.
12. Momo stopped when a sound came as Sau came out to go to the washroom. Momo quickly put on her tights and panty. She did not call out to Sau because she was scared. When Sau went to the washroom, Momo told her to go to his room. She didn't want to go to Momo's room. When Sau returned to his room, she went to the washroom because she was afraid to stay in the sitting room. Momo followed her to the washroom. She locked it from inside and peeped through the gap. She saw Momo standing outside for about three minutes. When Momo left, she came out from the washroom and went back to sleep in the sitting room.
13. That was the first time she visited this house for the school vacation and the first time she saw uncle Momo. She had been to this house previously during school breaks and had seen Momo in this house. That's Momo's house. This incident happened on a Saturday, and then on Sunday, they went back to her auntie's place.
14. She did not tell her sister about what Momo did to her because she was scared that her sister might smack her. She did not tell anyone in her family. The matter came to light when she told her teacher Lele in 2023 when she was in Year Five at Amichandra Memorial School.

15. She described what prompted her to tell her teacher about the incident. In 2023, the police officers came to the school. Upon seeing the police, she felt scared. She started crying. She thought the police had come to get her and question her about the incident that happened. Ms Lele asked her what happened. She then told Ms Lele, that her uncle harassed her, that he was touching her. Ms Lele then went and called the police officers.
16. Under cross-examination, SS said that the other children who used to stay in Momo's house had left for Natabua during school holidays. She is aware that Momo sometimes used to go to work. But he was home that night. She told one of the police officers that Momo licked the inside of her vagina. She could not recall which month or date in 2022 the incident happened. She didn't tell the police the exact dates. That night, Lilibeth and Jason had gone to Natabua. She did not tell the police that they had gone to Yasawa. SS identified the Accused in Court as Momo who did all those things.

PW2 - Salaseini Lele (Lele)

17. Lele has been a primary school teacher for 32 years. In 2023, she was teaching for Year 5 students at Amichandra Memorial School. SS was in her Year 5 class. While they were in a reading lesson, a police vehicle came into the school premises. When SS saw the police vehicle, she stood up and then started crying. She called SS over and said, what's wrong? SS told her in Fijian dialect "*Noqu Momo e rape taki au*". (Uncle Momo raped me). SS said that she felt something wet on her and when she woke up, she saw Momo doing something on her.
18. SS said it had happened a year before but was frightened to tell her when it happened in 2022. When she heard this, she was shocked. She didn't know whether to believe SS or not. SS was still crying. SS said that when she saw the police vehicle, she thought that they had come to see her in school. SS wanted her to tell the story to the police. She informed the head of school and then told the police officers what she heard. The police officers spoke to SS and then took her.
19. Under cross-examination, Lele said that the teachers, when they do substance abuse, talk about rapes from Years 4 to 8.

PW3 - Sereana Katonitabua (Sereana)

20. In 2022, she resided in Lovu Seaside with her family, her husband's two younger siblings, Jason and Lilibeth. She could not recall what happened in 2022, when they were residing at Lovu Seaside. In 2023, a police officer called her and informed about the matter that happened to her sister SS. During COVID, the mother got married again and took SS to Suva. SS was not attending school. She brought SS and took care of her. SS came to her house in 2021.
21. Saukarasa Ravinasaga [her husband's namesake] is her father-in-law's elder brother (Gwadi Sau). In 2022, they came to live with Gwadi Sau in his two bedroomed house in Lovu Seaside. Gwadi Sau would sleep in the first bedroom. She and her husband used to sleep in the second bedroom with their daughter. SS Jason and Lilibeth (her husband's two younger siblings) slept in the living room.
22. Gwadi Sau used to do night shifts as a security officer at the cement industry in Naikabula, about two kilometers away (about ten minutes' walk) from home. Gwadi Sau used to go to work every day. However, in the middle of the night, he would sometimes come home during his shift. One morning, when her husband asked why he was back, Gwadi Sau said that he just went to turn on the lights. Around 5 am, Gwadi Sau goes to turn the lights off and come back. On one night when she went to use the washroom, she saw Gwadi Sau moving around the kitchen and another night she saw him drinking alcohol. She asked her husband if they could find another place to rent.
23. Under cross-examination, Sereana said that Jason and Lilibeth were schooling from that house. When the incident happened, they had gone to the village to their parents for two weeks' holiday in Wayasewa in the Yasawas. She is not sure when the school vacation started and ended in 2022. SS stated that it happened during the two weeks holiday of term two in 2022. She used to switch off the light in the sitting room. Only the light in the porch will be on. She agreed that Gwadi Sau was renting that house at Lovu from August 2022 to end of 2023 and that they came to live with him sometime after August 2022.

Evidence for Defence

DW1 Saukarasa Ravinasaga (Saukarasa)

24. In August 2022, Saukarasa was living at Lovu seaside for work. He worked for a gravel crusher company in Naikabula as a security officer until 2023. It took around 30- 40 minutes for him to walk to his workplace from home. His shift was from 6 pm to 6 am, every night. He was supposed to supervise every gravel truck that came at night. The surveillance cameras would monitor them at work. There is another security (Jolame Tabacece) for day shifts. They would sign in and sign out when they change their shifts. He recognised the attendance sheet (DE1) for the month of August 2022 where he had signed in and out. In the month of August 2022, no one else was living with him in his house at Lovu. In the month of October 2022, his namesake and his family came and lived with him. He denied all the allegations levelled against him.
25. Under cross-examination, Saukarasa admitted that when his namesake and his family came to live with him, his niece SS also came with them. Jason, Maria, Lilibeth, and Salote were schooling from that house. During the school holidays, they would go back to their homes. He admitted that it would take 20 plus minutes to the workplace if he took the short-cut. He admitted that according to the attendance sheet, he had not signed in for the night shift on 15 August 2022. He denied that he would sometimes go back home around midnight after signing in to work. He denied that he was fired from the company in 2023.
26. When he was served with the charge, he informed his counsel that he was doing nightshifts right throughout the month of August 2022. He informed his counsel that he had an alibi witness. His alibi witness Seremaia Sauqaqa is distantly related to him.

DW2 Seremaia Sauqaqa (Sauqaqa)

27. Sauqaqa worked as the Manager at Petra Industries in Naikabula. In 2022, there were two security officers, Jolame and Saukarasa. Saukarasa did night shifts from 6pm to 6am from mid-March 2022 till September/October 2023. He is unable to say where Saukarasa had been between 6 p.m. to 6 a.m. in August 2022. He usually knocks off at 5 pm and

would just refer to the time sheet and the surveillance cameras to verify the attendance. He tendered the time sheet for August 2022 (DE1). He did not verify the accuracy of the August 2022 timesheet with the surveillance cameras. He does nighttime random visits to the workplace once a week around 10-11 pm. He could not recall if he did such checks in August 2022.

28. Under cross-examination, Sauqaqa stated that Saukarasa resided at Lovu Seaside, within walking distance of about 15 minutes. He agreed that Saukarasa's signature on the time sheet is different as of 12 August 2022 and that on 15 August 2022, Saukarasa had not come to work. In 2023, his company decided to hire a security company because the security officers were not doing their duties well. When they checked the surveillance cameras, he found that the securities were not working on night.

Evaluation/ Analysis

29. The main issue in this trial is whether the Prosecution proved beyond reasonable doubt that the alleged perpetrator was none other than the Accused.

Is the Complainant's visual identification evidence credible and reliable?

30. Let me first deal with the credibility issues raised at the trial. The Complainant had not shouted or raised alarm at the time of the alleged sexual assaults. Her explanation was that she was scared of the Accused who was drunk and smelling beer. Because of fear she pretended to be sleeping.
31. The Complainant's explanation for her conduct is reasonable and acceptable. She was a child aged 10 years at that time whereas the Accused was in his sixties. She was from a broken family and extremely vulnerable. She was under the care of her cousin Sereana (PW3) who had taken custody of the Complainant from her mother who had married another man. The Complainant had come to the Accused's house because she had no other option but to be with her cousin and her family who had moved to the Accused's house. Although the Complainant said they came to the Accused's house for a weekend, Sereana explained why they were there. The Accused confirmed that it was his house and that he allowed Sereana's family to be there.

32. Immediately after the alleged incident, the Complainant had not complained to Sereana. Her explanation was that she was scared that her sister might smack her. She did not tell anyone in her family. The matter eventually came to light when the Complainant told her teacher Lele in 2023. Lele gave evidence and confirmed that she received the complaint from the Complainant in 2023 when she was in year 5 classroom.
33. The circumstances under which the complaint was made explain how the Complainant had been suppressing the traumatic experience for approximately six months. The Complainant had told Lele that she was frightened to relay the incident in 2022, immediately after the incident. That is an acceptable explanation for the delay.
34. Lele explained how she noticed the sudden change in the Complainant's behaviour as she saw the police presence at the school. The Complainant thought the police had come to question her about the incident. She appeared as if she were guilty for what she was subjected to. She was crying as she revealed her ordeal. She wanted Lele to tell the police what the Accused had done to her.
35. The Complainant could not recall what exactly she told Lele as she was crying. Lele's evidence is consistent with that of the Complainant regarding the complaint of sexual nature. The Complainant had told Lele that uncle Momo raped her; that she felt something wet on her and when she woke up, she saw Momo doing something on her. Lele confirmed that the students are taught about rapes from Year 4. Therefore, it was not surprising that the Complainant used the word rape in her complaint to her teacher to describe what was done to her.
36. Despite the delay, I accept the complaint as a recent complaint to test the consistency of the Complainant in view of the reasonable explanation available for the delay.
37. The Defence challenged the credibility of the Complainant on the basis that she was not consistent in her evidence as to the whereabouts on that particular day of the other children (Jason and Lilibeth) who used to stay in the Accused's house. In her statement, she had stated that they had gone to Yasawa. In her evidence she said they had left for Natabua during school holidays. I perused the Complainant's witness statement to check on the alleged inconsistency. This inconsistency in my view is not material because the

Complainant had been consistent in her evidence that she was alone at the sitting room when other children had left the Accused's house during school vacation. It doesn't matter if they had gone to Yasawa or Natabua.

38. The Complainant is straightforward in her evidence. Her demenour is consistent with that of a genuine child witness. She is honest and credible. She had no ulterior motive or reason to fabricate a story in such a coherent manner. I accept the Complainant told the truth in Court.
39. There are instances where even honest witnesses make mistakes when it comes to visual identification. Given that, the next question is whether the Complainant was mistaken in her visual identification in a context of child witness where the reliability of her memory and perception is being assessed. I applied the Turnbull guidelines to test the accuracy of the Complainant's visual identification. It was indeed a recognition rather than an identification. The Accused is her uncle whom she had known before. Although she had seen the Accused for the first time in that visit, she had seen and known him in her previous visits to the Accused's house during school breaks. The Accused admitted that the Complainant is his niece. He admitted that she came with Sereana and her family to stay in his house.
40. It was not a fleeting glance observation. The Complainant had observed her perpetrator in proximity for a considerable time. There had been no obstruction impeding her observation. Although the Complainant pretended to be sleeping, she had opened her eyes when the perpetrator bent down. There is no challenge to the lighting condition in the sitting room. Although the light in the sitting room was off, there was sufficient light coming from the veranda. This was confirmed by PW3. The fact that Sau had gone to the washroom during this time suggests that there was enough light in the sitting room. After the attack, the Complainant had gone to the washroom and peeped through the gap and observed her perpetrator for three minutes. I am sure the Complainant was not mistaken in her identification. There was a proper foundation for a dock identification which the Defence raised no objection to¹.

¹ Asesela Naureure and Another v The State [Criminal Petition No. CAV0004 of 2024 (30 October 2025)]

41. At the trial, the Accused advanced an alibi and maintained that he was doing night shifts right throughout the month of August 2022 and denied his presence at the crime scene at the material time. He raised his alibi only when the trial started raising serious doubt about its credibility. The notice of alibi was extremely late although it was allowed in the interests of justice.
42. Way back in May 2025, the Accused had been served with the information which particularized the period within which the alleged offences took place. He had ample time to raise his alibi well in advance if it were true. The Accused said he advised his Counsel in advance about the alibi and the availability of an alibi witness. If his claim were true, his counsel had been extremely negligent. I am not convinced he gave that advice to his counsel as he claimed in view of the admission he had recorded. The Accused had signed the agreed facts on 25 July 2025 admitting that he and the Complainant lived together during the time of the alleged incident at Lovu, Lautoka². If he gave that advice to his Counsel, he would not have signed this agreed fact contrasting his claim. The defence of alibi in my view is an unconvincing afterthought.
43. The Accused tendered the attendance sheet (DE1) to substantiate his alibi. DE1 should be regarded as an accurate and credible document because it provides the basis for Accused's remuneration as DW2 said. Although the Accused said that he reported for nightshifts every day in August 2022, the attendance sheet indicates that he had not reported to work on 15 August 2022. It is doubtful if he had reported to work also on 12 August 2022 because the purported signature is markedly different from his usual signature. His alibi witness (DW2) confirmed that as per DE1 the Accused had not reported to work on 12 August 2022. Therefore, the Accused's claim that he had been at his workplace every night in August 2022 cannot be true.
44. Furthermore, there is credible evidence to question the reliability of the attendance sheet (DE1) with regard to the Accused's alibi. According to Sereana, the Accused had been in the habit of coming home during night shifts. Admitting that the Accused used to go to work every night, Sereana denied the Accused was confined to his workplace during his entire nightshift. She had seen the Accused home in the middle of the night at least

² Admitted fact No 3

on two occasions when he was supposed to be at his workplace doing his night shifts. On one night, she had seen the Accused moving around the kitchen and another night drinking alcohol. She said that the Accused used to go to the workplace to turn on the lights and again around 5 am to turn the lights off. I do not have any valid reason to reject Sereana's evidence. The Complainant also said that the Accused sometimes used to go to work. She was sure the Accused was home the night she was assaulted.

45. The alibi witness called by the Defence (DW2) also supports the version of Sereana (PW3). According to DW2, in 2023, his company had decided to hire a security company because the security officers were found not to have been at the site when they checked the surveillance cameras. Although the Accused said he resigned from work in 2023, he has apparently lost his job when his employer decided to recruit a security company when they found the security guards were not doing their shifts properly.
46. DE1 and DW2's evidence do not confirm that the Accused had been doing his night shifts at the workplace right throughout the month of August 2022. According to PW3 and DW2, the Accused's workplace was close to his house, and the Accused himself admitted that it was within walking distance. It was possible that he was home when the offence took place. I accept that the Accused was not at his workplace when the alleged incident occurred.
47. The information states that alleged offence was committed sometimes between the 1 August and the 31 August 2022. The Complainant was not sure about the month or the date of the alleged offence but the year. In her statement to police she had told the police: *'It was sometimes during the second term holiday'* She had made that statement on 25.04.2023, approximately 8 months after the alleged incident.
48. The Defence argued from the Bar table that in the year 2022, there had never been a two weeks school vacation in the month of August. The Court is unable to speculate on it. There was no evidence to substantiate the Defence's claim. It was never put to the Complainant for her to comment on the Defence's stance. The Complainant consistently maintained in her statement and evidence that she was not sure of the date or the month of the alleged incident. Under cross-examination, she said she could not recall which

month or date in 2022 the incident happened. She didn't tell the police the exact dates or the months.

49. The Courts are bound to give effect to the rights of a child and all decisions must be taken in the best interests of the child. It is against the spirit of the Constitution if the courts deny access to justice to a child victim if he/she is unable to recollect the exact date of the alleged offence. The date of the offence is not an element of the offence. The argument of the Defence has no merits.
50. For the reasons given, I would reject the evidence of the Defence and its alibi. No reasonable doubt is created in my mind as to the version of events of the Prosecution's case.
51. The Count Two alleged that the Accused touched the Complainant's vulva above her clothing. The Complainant's evidence was that by the time the Accused touched her vagina, the Accused had pulled her tights and completely taken off her pantie. On the basis of this evidence the Accused should be guilty of Sexual Assault. However, it is not just for the Court to convict the Accused for an uncharged serious offence. The evidence of the Complainant satisfies all the elements of each offence in the information.
52. I find the Accused guilty on all three counts as charged. The Accused is accordingly convicted on each count.



Aruna Aluthge
Judge

7 November 2025

At Lautoka

Solicitors:

Office of Director of Public Prosecutions for State
Legal Aid Commission for Defence