

IN THE HIGH COURT OF FIJI AT SUVA

CRIMINAL JURISDICTION

Criminal Case No. HAC 280 of 2022

The State vs Kolinio Seru

For the State: Ms. Ratukalou. U

For the Accused: Ms. Grace. O

Date of Trial: 29th August 2025

Date of Judgment: 18th November 2025

JUDGMENT

1. The complainant has been granted name suppression and shall be identified in this judgment and any public record of this case by the initials PB.
2. The Accused faces the following offences contained in the Information filed in Court on the 13th of September 2022:

**INFORMATION BY THE
DIRECTOR OF PUBLIC PROSECUTIONS**

KOLINIO SERU is charged with the following offences:

COUNT 1

Statement of Offence

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

Particulars of Offence

KOLINIO SERU between the 1st day of October 2019 and the 31st day of October 2019 at Nasinu in the Central Division, had carnal knowledge of **PB** without her consent.

COUNT 2

Statement of Offence

DEFILEMENT OF YOUNG PERSON BETWEEN 13 AND 16 YEARS OF AGE:

Contrary to Section 215 (1) of the Crimes Act 2009

Particulars of Offence

KOLINIO SERU between the 1st day of November 2019 and 30th day of November 2019 at Nasinu in the Central Division, had unlawful carnal knowledge of **PB** a young person

3. The Accused was first produced in Nasinu Magistrate's Court on the 15th of August 2022, and the matter was sent to the High Court as count 1 is an indictable offence.
4. The Accused was arraigned in the High Court on the 26th of August 2022, and directions were made for the filing of Information and Disclosures.
5. On the 26th day of September 2022, the Accused entered a Not Guilty plea to both charges on the Information. The Court then gave directions for pretrial conference and Admitted facts to be filed.
6. The State and the Accused then filed Admitted facts pursuant to section 135 of the Criminal Procedure Act 2009 as follows: -
 - i. The complainant is PB, 16 years of age.
 - ii. The person charged is one Kolinio Seru, 33 years old, male of Delaitokatoka, Valelevu, Nasinu.
7. There were no admissions as the accused denied the allegations therefore there was no voir dire and the matter was fixed for Trial from 1st September to 5th September 2025.

The Trial

8. At the Trial, the State called two witnesses, PW1 – the complainant PB, and PW2 Lusiana Dikoroi.

9. After a finding that he had a case to answer, the Accused elected to exercise his right to remain silent, and he also did not call any other witnesses or offer any other evidence.

The evidence for the State

10. In her evidence, the complainant stated that she resides in Delaivalelevu, Nasinu but she currently works at Shop N Save, Lautoka. She is currently 21 years of age.
11. In October 2019 she was no longer attending school. She previously attended Ratu Sir Lala Sukuna Memorial School and left school after Term 2.
12. She testified that on the night in question, in the month of August, after dinner she had gone with two of her friends to the Chinese shop. On the way to the shop they met some boys from their neighbourhood and she sat down and talked with her two friends while the boys went to the shop.
13. Her two friends were Cema and Rosi sat and talked for about 15 minutes and as they were about to leave she saw Kolinio the Accused coming down the road. Her two friends then left and at that point Kolinio came straight for her.
14. He approached her and pulled her and started kissing her and even though she tried to resist him, he was too strong, and he pulled her under a nearby house. There he asked her to have sex and she refused. He told her to take off her pants, and she refused and he took it off himself. He then came on top of her, and she screamed and he covered her mouth. He then penetrated her vagina with his penis, and he had sex with her until he ejaculated. She was very scared, and it was painful as she had only had sex prior to this with her baby's father.
15. When he finished, he left her there and after he left, she looked for her pants and underwear. She went straight home and had her shower. In the shower, she discovered that her panties had blood in it. She did not tell her parents what happened to her as she was afraid of what her parents would do to her to punish her. She knew Kolinio Seru from before as they live in the same area and she has seen him from time to time.

16. The second occasion she met Kolinio was at her aunt Maria's house. they had been drinking alcohol there since the morning she was drinking with her aunt and some boys from the neighbourhood. Kolinio Seru joined the party, and he apologised to her for what he did to her. She accepted his apology and later when he asked to have sex with her, she agreed and they had sex. When this happened, she was 17 years of age.
17. Under cross examination it was put to her that on the first occasion, Kolinio Seru only talked to her and left, and he did not do anything to her. She maintained that he had forcefully had sexual intercourse with her that night.
18. It was put to her that at that time she was young and Kolinio would chase her away when she joined drinking parties because she was too young and this happened on the second occasion. She maintained that Kolinio had approached her and sought forgiveness and later they had consensual sex.
19. She admitted that she was nearly 17 when the first incident happened and on the second occasion, she was already 17.
20. The second witness Lusiana Dikoro is the mother of the complainant. In her evidence, she testified that in the year 2020 she found out that her daughter was 3 months pregnant.
21. When they asked her who the father of the baby was, the complainant stated that it was the Accused.
22. She further testified that her husband and her were not happy when they found out that the complainant was pregnant because the complainant also lived in the community. When the child was born, the Accused came to visit the complainant and the baby.
23. Under cross examination, the Accused admitted that the complainant had lied when she named the Accused as the father of her baby.
24. At the close of the State's case, the Accused was informed that he has a case to answer.
25. After conferring with his counsel, he advised that he exercised his right to remain silent and he would not call any witnesses.

26. The parties then filed written submissions, and the matter is adjourned for the judgment.
27. In their submissions, the State submits that the evidence adduced by the complainant has established that for the first count, the Accused had sexual intercourse with her without her consent under a house in Delaivalelevu in the month of October 2019.
28. It is conceded that the second count is not sufficiently proved as she has testified that at the time of the second count, she was 17 years of age.
29. The Accused submits that the complainant is not a credible witness. She has admitted that she lied in naming the Accused as the father of her baby. In her evidence she was evasive and seemed to be concocting her evidence on the witness stand.
30. The State has conceded that the 2nd count cannot be established as she was 17 when the incident occurred.
31. In conclusion the Accused submits that the evidence in totality casts a reasonable doubt on the credibility of the complainant and the reliability of the prosecution case.
32. The Accused should therefore be acquitted for the offence that he is alleged to have committed.

Analysis

33. The Accused, Kolinio Seru is charged on the first count with the offence of Rape contrary to section 207 of the Crimes Act 2009, which provides: -

“The offence of rape

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

Penalty– Imprisonment for life.

(2) A person rapes another person if-

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

2. (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
3. (c) the person penetrates the mouth of the other person to any extent with the person's penis without the other person's consent.

(3) For this section, a child under the age of 13 years is incapable of giving consent.”

34. The parties have filed Admitted Facts and, pursuant to section 135 of the Criminal Procedure Act – the identity of the Accused Kolinio Seru is established.
35. The burden is on the State to prove beyond a reasonable doubt that the act of sexual intercourse was without the consent of the complainant. The Accused elected to remain silent and that is his right. It is for the State to establish all of the elements of the two offences beyond a reasonable doubt.
36. Consent is defined in law at section 206 (1), (2) of the Crimes Act 2009 as follows: -
 - “(1) The term “consent” means consent freely and voluntarily given by a person with the necessary mental capacity to give the consent, and the submission without physical resistance by a person to an act of another person shall not alone constitute consent.
 - (2) Without limiting sub-section (1), a person's consent to an act is not freely and voluntarily given if it is obtained–
 - (a) by force; or
 - (b) by threat or intimidation; or
 - (c) by fear of bodily harm; or
 - (d) by exercise of authority; or
 - (e) by false and fraudulent representations about the nature or purpose of the act; or
 - (f) by a mistaken belief induced by the accused person that the accused person was the person's sexual partner.”

37. For the second count, the Accused is charged with Defilement of a Young Person between 13 and 16 years of age contrary to section 215 (1) of the Crimes Act 2009.
38. For this count the State had to establish the following elements of the second count: -
- a) Between 1st November 2019 and 30th November 2019
 - b) Kolinio Seru had unlawful carnal knowledge of PB
 - c) A young person between 13 and 16 years of age
39. After the Trial, the State has conceded that they have been unable to establish the offence beyond a reasonable doubt as the complainant has testified that she was 17 years of age when the second offence was allegedly committed.
40. This leaves the first count of Rape.
41. From the evidence led at the Trial – it is established that on the night in question, the complainant and the Accused were at the same place in Delaivalelevu Settlement, Nasinu.
42. From there the two versions diverge – according to the complainant, the Accused, who was drunk, approached her and grabbed and kissed her. He then dragged her under a nearby house where he had sexual intercourse with her, without her consent.
43. According to the accused, he was returning from work and he met the complainant on his way home and he left the scene. He denies approaching her, pulling and kissing her and forcefully having sexual intercourse with the complainant under a nearby house without her consent.
44. The Defence submits that the complainant is not a credible witness and this issue was discussed by the Court of Appeal in Sivoinatoto vs State [2018] FJCA 68; AAU 49 of 2014 (1 June 2018) 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.”

45. The complainant's account of what happened to her that evening in Delaivalelevu is very clear and she maintained this evidence under cross examination. She is very clear that the Accused approached her, forced her under the nearby house and had sexual intercourse with her without her consent.
46. Under cross examination other aspects of her evidence have been contradicted with respect to the second count and the paternity of her baby and have been conceded by her. She also testified that she has consensual sexual intercourse with the Accused when she was 17.

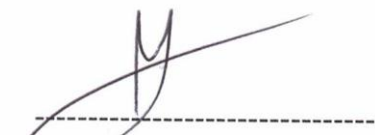
47. I found the evidence of the complainant with respect to the 1st count compelling and she appeared to be a witness of truth especially as she conceded that she had lied to her parents about the paternity due to her fear of retribution from them. She was also candid about her correct age thus ensuring that the Accused was cleared of the second count.
48. The Accused's case was put to the complainant however she has established that he did commit the first account on her that evening. His later actions of visiting the complainant and the baby when the question of paternity was still a live issue bolsters the complainant's case that he had sexual intercourse with her and was a possible father of her child.

This is the verdict of the Court

1. **Kolinio Seru for the first count of Rape you are convicted as charged.**
2. **Kolinio Seru for the second count of Defilement of a Young Person between 13 and 16 Years of age – you are acquitted.**
3. **The Court will hear from you in mitigation for the first count.**

30 days to appeal





Mr. Justice U. Ratuville
Puisne Judge

cc: **Office of the Director of Public Prosecutions**
Legal Aid Commission