

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**Crim. Case No: HAC 84 of 2022**

**STATE**

**v**

**UGESH CHANDRA PRASAD**

**Counsel:** Ms. K. Semisi for the State  
Mr. A. Sen for the Accused

**Date of Judgment:** 30 December 2025

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**JUDGMENT**

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1. **Ugesh Chandra Prasad**, the accused, was indicted and tried for the 4 counts of *Rape* and 1 count of *Sexual assault*, laid out as follows in the *Amended Information* by the Acting Director of Public Prosecutions dated 29 August 2023:

**COUNT 1**

**[ REPRESENTATIVE COUNT ]**

*Statement of Offence*

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

*Particulars of Offence*

**UGESH CHANDRA PRASAD** between the 18<sup>th</sup> day of January 2021 and the 12<sup>th</sup> day of February 2021 at Navua in the Central Division penetrated the vagina of **NILESHNI DEVI** with his penis, without her consent.

**COUNT 2**

**[ REPRESENTATIVE COUNT ]**

*Statement of Offence*

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

*Particulars of Offence*

**UGESH CHANDRA PRASAD** between the 18<sup>th</sup> day of January 2021 and the 12<sup>th</sup> day of February 2021 at Navua in the Central Division penetrated the anus of **NILESHNI DEVI** with his penis, without her consent.

**COUNT 3**

**[ REPRESENTATIVE COUNT ]**

*Statement of Offence*

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

*Particulars of Offence*

**UGESH CHANDRA PRASAD** between the 18<sup>th</sup> day of January 2021 and the 12<sup>th</sup> day of February 2021 at Navua in the Central Division penetrated the vagina of **NILESHNI DEVI** with his fingers, without her consent.

**COUNT 4**  
**[ REPRESENTATIVE COUNT ]**

*Statement of Offence*

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

*Particulars of Offence*

**UGESH CHANDRA PRASAD** between the 18<sup>th</sup> day of January 2021 and the 12<sup>th</sup> day of February 2021 at Navua in the Central Division penetrated the mouth of **NILESHNI DEVI** with his penis, without her consent.

**COUNT 5**

*Statement of Offence*

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

*Particulars of Offence*

**UGESH CHANDRA PRASAD** between the 18<sup>th</sup> day of January 2021 and the 12<sup>th</sup> day of February 2021 at Navua in the Central Division unlawfully and indecently assaulted **NILESHNI DEVI** by touching her buttocks and fondling her breasts.

2. Ugesh Chandra Prasad pleaded *not guilty* and tried for the aforesaid offences, and this is the Court's judgment.
3. Pursuant to sections 57 and 58 of the Crimes Act 2009 including Woolmington v DPP [1935] AC 462 at 481 (HL), the prosecution bear the burden to prove *beyond reasonable doubt* all elements of the offences of *Rape* in Counts 1 – 4 and *Sexual Assault* in Count 5 in the indictment.

**Physical and fault elements of Rape**

4. In this instant, as per the 4 counts in the indictment, **Rape** is contrary to section 207(1) and (2)(a), (b) & (c) of the Crimes Act 2009 which state:

**Rape**

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

(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.

206.- In this Part –

(3) The term “penetrate” does not include penetrate for a medical, hygienic or law enforcement purpose only.

(4) If “carnal knowledge” is used in defining an offence, the offence, so far as regard that element of it, is complete on penetration to any extent.

**Consent** is defined under section 206(1) - (2) of the Crimes Act 2009 as:

206. In this Part –

(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.

5. The physical and fault elements for the offence of **Rape** in Counts 1, 2, 3 and 4 are:

- i) A person i.e. the accused
- ii) Penetrated the complainant's:
  - vagina with his penis [ Count 1 ]
  - anus with his penis [ Count 2 ]
  - vagina with his fingers [ Count 3 ]
  - mouth with his penis [ Count 4 ]
- iii) Without the complainant's consent [ See ss. 206(1) - (2) ]
- iv) Intentionally and / or recklessly [ i.e. fault element or *mens rea* – see Crimes Act 2009, s.23(1) - (2); For *reckless* refer to Tukainiu v State [2017] FJCA 118; AAU0086.2013 (14 September 2017) at paragraphs 31 - 34 per Prematilaka, JA. ]

**Physical and fault elements of Sexual Assault**

6. **Sexual Assault** is contrary to section 210(1)(a) of the Crimes Act 2009 which state:

*210.-(1) A person commits an indictable offence (which is triable summarily) if he or she - (a) unlawfully and indecently assaults another person.*

7. The physical and fault elements for the offence of **Sexual Assault** in Count 5 are:

- i) A person i.e. the accused
- ii) Unlawfully and indecently assaults another person
- iii) Intentionally [ i.e. fault element or *mens rea* ]

8. All elements of the offences of *Rape* in Counts 1, 2, 3 and 4, and *Sexual Assault* in Count 5, are disputed by the litigants.

9. At trial, prosecution called 2 witnesses namely, PW1: Nileshni Devi (Complainant); and PW2: Rajeshwar Kumar.

10. Defence, on the other hand, called 4 witnesses namely, DW1: WDC 3042 Vika Nakete; DW2:

Rohit Utendra Prasad; DW3: Ajay Kumar; and DW4: Dr. Rajeshwar Maharaj, who all gave sworn testimony. The Defence also tendered the following exhibits:

DE1A, 1B, 1C, 1D & 1E – BSP deposit slip butt receipts from 11 November 2020 to 13 January 2021;

DE2 – Vodafone call record from 1 January 2021 to 28 February 2021; and

DE3 – Medical report of Dr. Rajeshwar Maharaj (DW4) dated 21/09/2023.

### **Prosecution case via PW1 and PW2**

#### **PW1 – Nileshni Devi (Complainant)**

11. **PW1 Nileshni Devi, the complainant, in examination-in-chief** testified that she is aged 46 years and currently live in Navatu Street, Ba, with her brother Kamal Prakash and his wife Mele Dalituicama and their son Melvin who is in Form 4. PW1 stated that she has lived with the said individuals for 7 years and have known them for 8 years, and use to work preparing settings in their shop called N. Ratnam upholstery. PW1 considers them as family because when she was unemployed they would help her out financially. PW1 is currently employed at the Greater Good Foundation Animal Sanctuary located in Tavarau, Ba, since 5 December 2022, as an animal caregiver. PW1 is currently not married, but was earlier married to a Ugesh Chandra Prasad, and before that was first married to a Shree for about 20 years ago, and Shree abandoned and left her and their new born daughter at her aunt's home. Her initial marriage to Shree was an arranged marriage which was good for the first 2 years and he worked for TNT, and after the birth of their daughter, Shree did not want to any responsibility and also left his job as he had stolen money, and left them at her aunt's home at Korociriciri, Nausori, and she later filed for maintenance. Her marriage to Shree ended in 2000. She has a daughter aged 23 years.

Her second husband's name is Ugesh Chandra Prasad. PW1 use to work at Shop and Gain supermarket in Tailevu, and a Fijian man who frequented the shop told her that there is a suitable man for her to marry and he is a good man from a good household. PW1 told that Fijian man that she is willing to marry that man as this would be good for her daughter's future, and she then gave

the Fijian man her phone number. Ugesh then started calling PW1 and she told her mother of Ugesh calling, which he did mostly when he was drunk as he would tell her that he was drinking during the phone calls. Ugesh would call PW1 after 8.30 in the evening after closing his store situated at his house. During the phone call, Ugesh would tell PW1 to go to him at his home, and she would respond that she cannot do that since they are not married, and he would scream at her over the phone saying that he would instead marry another woman that he had seen at the market, and did not speak to PW1 for about 2 weeks. After 2 weeks Ugesh then called PW1 again and spoke to her nicely and asked her to marry him. Ugesh would then send PW1 phone recharge, and since she had a driver's licence told her that he would like to buy a car for her and for her to go and look for cars in Ba. Later Ugesh asked PW1 if she had a television at her home, and then sent a TV to her home address. At some stage, PW1 was unemployed and returned to Ba from Tailevu, and Ugesh would occasionally send her money for her food expenses. Ugesh would send her about \$200 or more for about 2 to 3 times only. Then PW1 informed her family especially her mother and grandmother whom she was living with that she wanted to marry Ugesh because Ugesh had told her that he will support her and the daughter, and she also thought of her daughter's future. Her family told her that if Ugesh is a good man and she wishes to marry him than it is the right thing to do. PW1 then told her mother that she wants to go and see Ugesh and his house, but before she could do that, Ugesh had gone to her mother's place at Howell Road, Suva, and later PW1 and her entire family including then went to see Ugesh's house. PW1 was accompanied by her daughter, mother, sister, brother-in-law, sister's two children, aunt from Korociriciri, Nausori, aunt's two daughters and her son-in-law, who all wanted to see if Ugesh's house situated in Navua was good given that PW1 was going to live there once married to Ugesh.

At Ugesh's house his family had prepared food and later Ugesh took PW1 upstairs and told the boy to go downstairs, then he held PW1's hand, kissed her forehead, and forcefully told her not to go back to her home but to send her family away, and he will buy her clothes, and thereafter have a legal marriage, to which PW1 said that she cannot do that without being legally married to him, and insisted that they return downstairs as her mother and everyone were waiting for them to have food. Ugesh then held PW1's hand and stopped her, and told her not to return to her home, to which PW1 replied that she will only come back to stay with him provided they are legally married. They then proceeded downstairs and then Ugesh's sister and her family asked PW1 if

her and Ugesh agreed to stay together, to which they answered in the affirmative. Ugesh's sister then told PW1 not to go back to her home, but PW1 replied that she would return to stay after being legally married to Ugesh. They all then had food and PW1 and family returned to their home. PW1's family had agreed to the marriage proposal and subsequently made arrangements with Ugesh's family for their marriage. That particular night Ugesh whilst drunk and crying called PW1 and asked her to return to Navua, to which PW1 replied that she was returning to Ba the next morning, and then Ugesh told her to arrange the marriage registration in Ba. PW1 then went to Ba and found out from the marriage registry at Koronubu House that it would take 21 days for the legal marriage papers. PW1 then informed Ugesh of this, and Ugesh then told her to go to the Nausori registry instead with her birth certificate, which she did, and they were then informed to return to the Nausori registry after 21 days on 28 January with 2 witnesses each for purposes of getting married.

PW1 recalled **18 January 2021** being the day they got married at the marriage office in Nausori beside the bridge, and then Ugesh took her and showed her cars, and told her that he would buy her a car, but he bought a car and arranged for its purchase himself. They then went to have lunch at PW1's home at Howell Road, Rewa Street, Suva, and then to Ugesh's home in Navua driven by Ugesh's brother's son. Ugesh's entire family waited for them and then PW1 made food for the family of about 25 people who ate and left at around 12 o'clock, and then Ugesh told PW1 for them to go and sleep, but only after PW1 had washed the dishes. Whilst in the bedroom, PW1 told Ugesh that she could not sleep with him as she was having her menses [ or menstruation ], but Ugesh got angry and insisted that she sleep with him and nothing would happen. Then Ugesh forced and told her that she must sleep with him as he had married her, and PW1 did not feel good as she had not agreed to have sex as she was having her menses. Ugesh had forced PW1 by strongly grabbing hold of her hand and got her on the bed, and said that since he is the husband, PW1 must therefore sleep or have sex with him. PW1 then told Ugesh that they can sleep together once she is alright, to which Ugesh got angry, and then forcefully slept with her that night, and she had told him that she does not agree sleeping with him and also cried.

Note: At this particular juncture the prosecutor applied to have PW1's name suppressed and for a closed court, which application was vehemently objected to by defence counsel, and this Court

then ruled dismissing the prosecution's application, and subsequent continuation of PW1's examination-in-chief by the prosecutor.

PW1 had told Ugesh that she was having her menses and the side of her stomach was hurting, thus she cannot sleep with him, to which Ugesh responded saying that nothing would happen and that he had brought her to sleep with him. PW1 then told Ugesh that she cannot sleep with him despite being married and him bringing her to the bedroom. PW1 stated that Ugesh had grabbed her hand with his hand and then forcefully told her to hold his thing in terms of grabbing him in the front and squeeze, his front meaning his penis and to touch his balls, which PW1 did not touch. Then Ugesh told her to take off her clothes, and PW1 replied that she could only sleep with him after she had recovered, but Ugesh then started pulling her brown skirt downwards while she was seated on the bed and wearing a top. PW1 was stopping Ugesh from pulling her skirt by pushing him away with her hand. Ugesh insisted that nothing would happen and she should sleep with him, but PW1 pushed him away, got up and started leaving, then Ugesh came from behind and tightly grabbed her hand and pulled her to his side, and told her to sleep on the bed. PW1 then told Ugesh that she will not sleep with him, but he then grabbed her and made her sleep on the bed, took off his pants and got on top of her, and she was pushing him away with both hands and at the same time not feeling good as she did not agree with what he was doing to her. While pushing Ugesh away, he was on top of her and put a pillow on her stomach to prevent her from moving up, and then forcefully put his penis into her vagina and blood spilled out. PW1 stated that she did not like what Ugesh had done to her, and she was trying to get up but could not do so because of the pillow placed on her by Ugesh. Furthermore, Ugesh covered her mouth with his hand to prevent her from screaming and the neighbours hearing, and she was angry and yelled at him because she did not agree to the sex. Ugesh put his penis into PW1's vagina, and told her that it would end quickly, and PW1 pushed him away, threw the pillow away and stood up and walked away while he stood there and laughed out loudly, and told her that he will do her again, which made PW1 feel angry. After the sex, PW1 went and sat in the sitting room and then returned to bed and slept while Ugesh drank alcohol. PW1 had called Ugesh's sister and the latter told her not to worry as they will talk about it in the morning. PW1 did not leave the house because it was about 2.00 to 3.00 am in the morning and she did not know anyone in Navua.

On the next day i.e. **19 January 2021** while Ugesh was in the shop, PW1 was in the bathroom naked when Ugesh loudly came and opened the door, then PW1 went to the back of the bathroom and saw all the glass being shattered which made her shocked and scared. Ugesh then told PW1 to shower and walk around in front of him naked. PW1 then closed the bathroom door, wore her clothes and went inside the room and closed the door. Ugesh then started knocking on the door telling her to open the door and to go and make food. PW1 then went to make roti, and while doing so, Ugesh came from behind and squeezed her breast which hurt very badly and also tightly squeezed her, and told her to go and sleep inside the room. PW1 stated that Ugesh had suddenly come from the back and tightly grabbed her breast and twisted it which hurt very badly, and she did not agree to this particular action of his. PW1 then quickly went and sat on the settee, and he then told her to go to the room and sleep. Ugesh then went and opened the shop, and came back and kept glancing at PW1 who sitting quietly in the sitting room. Ugesh closed the store at 5.00 in the afternoon and started drinking alcohol, while she made curry as she had already made the roti. At that moment Ugesh had taken off his clothes and wore only his underwear in the house. After making the curry, PW1 went to watch television in the sitting room, while Ugesh drank alcohol and stood in front of her. Then Ugesh took out his penis and held PW1's head and told her to drink it, to which PW1 told Ugesh not to do such thing as people may see it from outside through the windows. Ugesh then fought and yelled at PW1 who then went inside the room, while Ugesh remained drinking alcohol and yelling saying, "*[d]o you want me or do you want your daughter.*" PW1 then told Ugesh that she wanted both him and her daughter as she has no one there in Navua since getting married to him. Ugesh reacted by running around the house, drunk, yelling and crying. PW1 had begged Ugesh not to fight and yell in the house as a boy and a lady had heard his voice and came to her to ask what had happened, and were then sent away.

PW1 then went to sleep, and Ugesh came from behind, tightly grabbed her and squeezed her thighs and pinched them with his hand, and then put his fingers inside her vagina, and asked her if she would sleep with him or not. Ugesh was very drunk at that moment, and PW1 was scared because he prevented her from getting off the bed. Ugesh then pulled PW1 to his side and put a pillow on her again and pulled her clothes, to which PW1 told Ugesh not to do it as he was drunk and that he was having her menses and that it would hurt her more. Ugesh hassled her for about half an hour, pinched her, put a pillow on her, and then inserted his finger into PW1's vagina, and

she felt a burning sensation inside her vagina and it hurt as well causing her to push his shoulder. PW1 stated that she did not agree to him putting his finger into her vagina at that time, and told him so, to which Ugesh got angry and then left the room. PW1 then quickly got up and locked the room door. Ugesh went and slept in the sitting room while she slept in the room, and he did not speak to her for 2 days. PW1 then rang her mother and told her of what Ugesh was doing to her, to which her mother told her that since she is married, she should do her duty and stay with him. After speaking to her mother, PW1 also called Ugesh's sister.

On the afternoon of the third day, Ugesh started drinking Gin and then came back into the room while she was asleep on the bed. Ugesh then started touching PW1's breast and stomach, and PW1 told him that she does not want to sleep with him. Ugesh reacted by yelling and fighting with PW1. PW1 was angry and did not like it nor consented to Ugesh touching her breast because that was not love, and he also told her that he will hit her and break her face on the wall, which made PW1 feel very afraid of him, and she immediately went and locked herself in the room. Ugesh then came and began pounding loudly on the door, and PW1 then called the Navua Police Station a number of times via her small Samsung Galaxy A1 mobile phone, but no police had responded and come. PW1's neighbour Rajesh had stood near the window and asked her what had happened, and Rajesh told her to come to his house through the back door, to which PW1 replied that all the back doors are locked with a lock and no one can go outside. PW1 stated that she was locked inside the room for 2 days, and the police then came on the 3<sup>rd</sup> day and waited down at the shop on the driveway.

PW1 then opened the room door and came outside, and then went down to the police and told them that Ugesh was sleeping, and they then left. PW1 then brushed her teeth and started cooking the food. Ugesh then woke up, brushed his teeth, ate the food, and then opened the shop. After opening the shop, Ugesh then spoke nicely to PW1 and asked her if she wanted to go to Suva to meet his Accountant for purposes of putting the shop in her name, to which PW1 replied that she does not want the shop or any property as she had no happiness within her, and that they should run the shop together. Ugesh got angry and showed attitude to her. On another day they then went to Suva so see his Accountant so that the shop would be put in her name, which did not happen due to the paperwork not done in full, but he told her that he would buy her jewelry in Suva. They

had gone to a jewelry shop and saw a bracelet worth \$2000, but he did not have much money and told her that he would sell a property and then buy the bracelet for her. Ugesh bought fish and chips for lunch which they had in the car. PW1 then told Ugesh that they should go and visit her mother's house at Howell Road, Suva, but Ugesh was reluctant saying that he had work and needed to return to Navua.

Upon returning to Navua, they went inside the house, and while PW1 was changing her clothes in the room, Ugesh came from behind and told her that he will buy her everything and she should sleep with him, to which she replied that she was tired. Ugesh started getting angry and went out of the room and opened the shop. PW1 then started making the food while Ugesh was in the shop and closed it at 8.30 and came inside the house and started to drink alcohol. PW1 then told him to stop drinking alcohol because when he is drunk he started to do things in a different style, and out of fear PW1 went into the room thinking that would hassle her again when consuming alcohol. PW1 turned the light off and went to sleep, and at about 1 o'clock in the night, Ugesh opened the door, turned on the light and pulled PW1 quickly to his side. Then he put a pillow on PW1 while being very drunk, came on top of her and forcefully had sex with her. Ugesh told her that since he is her husband, it is her job to sleep with him, but PW1 told him to his face that judging by the things he is doing, he does not love her, to which Ugesh replied that he will impregnate her. PW1 then started crying, got up and left quickly. PW1 stated that Ugesh tightly squeezed both her breasts and bit on the breast hard, to which she told him to get off her as she does not like the way he is behaving like that of a hooligan. Ugesh then pushed her and laughed, and she told him that he does not care or feel bad for her as she is another girl who has come to his house. Then Ugesh forcefully slept with her again, and said that he wanted to do it from the back or anus. PW1 then pushed him, quickly got up and went into the prayer room, while he slept in the room until the next morning.

That morning Ugesh's brother's son namely Rohit came, and Ugesh told Rohit about everything that he had done to PW1. Then Rohit's wife asked PW1 if Ugesh had slept with her forcefully while she was menstruating, to which PW1 said 'yes'. PW1 asked Rohit's wife as to how she knew about this, to which Rohit's wife told PW1 that Ugesh had told her this when they were all sitting together and drinking alcohol.

PW1 did not leave Ugesh's house when the police had earlier come because she did not have any money nor know where and how to go. When their neighbour Rajesh had come home and enquired about the noise, PW1 told him that Ugesh was drinking alcohol and hassling her, and also trying to sleep with her. PW1 stated that she could not leave at that point in time because all the doors were locked all the time in that house, and all keys were with Ugesh, which keys she did not have nor know which particular key to use. PW1 stated that she had called the police many times, they would answer but not come, and when the police visited her, only 2 men came and she had told them what Ugesh had to her in the night. PW1 also stated that there was no female officer whom she could have told what had happened to her. The police left and said that they would come back, but they did not return.

PW1 stated that when she was turning on the television, Ugesh came from behind and pushed her to the front and her head hit the vase, and he told her that he wanted to do her from the back, to which she told him not to do that as she does not want that. Ugesh then started pulling her to his side, her head got locked inside the settee when he pushed her from the back, he then inserted his penis from the back i.e. 'the area where she passes out toilet or does her toilet from', which she did not consent nor liked. PW1 had tried to get Ugesh to let go as he had pressed on her shoulder, and eventually pushed him away and then left and went into the washroom.

PW1 stated that Ugesh had sex with her twice at different nights through her vagina. PW1 also stated that the two times Ugesh had sex with her through her vagina was during the day time after he had closed the shop.

PW1 stated that Ugesh had sex with her 3 times through her anus i.e. the place where she passes stool. She was sleeping on the bed, then Ugesh came to the bed to sleep, and while on the bed he lifted his leg and put it on top of her leg, lifted her dress, and had sex with her from the back by putting his penis inside where she passes toilet from, without her consent.

When Ugesh had gone to Suva on 12 February 2021, PW1 recharged her phone and called her aunt in Nausori requesting her to tell her son-in-law to pick her up from Navua, and she managed

to speak to her aunt's son-in-law and made the pickup arrangement. PW1 then packed all her clothes into a suitcase, got into the waiting car and went straight to the Navua Police Station and told them that she no longer lives there and only taking her clothes. PW1 then proceeded to her aunt's place and told her aunt of what had happened to her in Navua. Later PW1 went to the Nausori Police Station and reported the complaints against her husband Ugesh Chandra Prasad, and was also medical examined by a lady doctor.

PW1 stated that between 18 January 2021 and 12 February 2021, Ugesh penetrated her vagina with his:

- a) penis, without her consent, 13 times, but cannot recall the exact dates these occurred; and
- b) fingers, without her consent, 3 times.

PW1 identified Ugesh Chandra Prasad in Court via Dock ID.

12. In **cross-examination**, PW1 stated that she is aged 46 and married Ugesh Chandra when she was 44 years. PW1 has a cyst in her womb and the relevant medical documents are in Ba. She was medically examined at the Nausori hospital on 16 February 2021. She reached Form 4 in 1987, and then stayed home for 22 years with her grandparents in Ba. Then her parents found a boy in Suva and fixed an arranged marriage to that boy. She lived with her husband for 2 years and they have a daughter, and her husband later left her and their daughter while residing with her aunt at Korociriciri, Nausori. Her first employment was at Classic Apparel Garment factory for 7 months, then Datec Fiji Limited for nearly one year, and third employment in Tavarau, Ba, working at Greater Good Foundation. When she met her husband Ugesh, she was a cashier at a place in Tailevu for 3 months. Her daughter would visit her but stayed with her grandparents and schooling in Ba. PW1 did not work when she relocated to Navua. PW1 has 4 sisters and a brother.

In cross-examination the following propositions by the defence were directly put to PW1, to which PW1 replied, as follows:

- (1) Ugesh Chandra Prasad has zero or no strength in his right hand being the dominant hand, and lacks function ability on the right hand. PW1 stated that Ugesh's right hand is functioning,

and he drives, carries items using both hands, and usually eats with his right hand.

- (2) Prior to marrying Ugesh Chandra Prasad, he usually send money to PW1's BSP account no. 10912743 and PW1's daughter's account no. 82662050. PW1 admitted that Ugesh Prasad sent her money via her account, but was not aware of him sending money to her daughter's account which account number she gave to Ugesh. **DE1A, 1B, 1C, 1D & 1E**, for instant, provides proof of some money sent by Ugesh Prasad to PW1 before they got married. Furthermore, PW1 admits that Ugesh Prasad also sent her a flat screen smart TV.
- (3) PW1 stated that she got legally married to Ugesh Chandra Prasad on 18 January 2021.
- (4) The new vehicle i.e. Toyota Motor Wish 2008 was delivered to Ugesh's house on 19 January 2021, and it is registered under his name. Ugesh went to receive the new vehicle and signed off on the delivery note being the registered owner of the vehicle. PW1 stated that she also drove the said vehicle, for instance, she drove the vehicle to Suva when they went to see the accountant on 20 January 2021.
- (5) **DE2** shows that PW1 called the Women's Crisis Center, a Mele Dalituicama, etc.
- (6) PW1 and Ugesh Prasad went on a two days trip around Viti Levu on 23 to 24 January 2024. They also stopped and spent time in Ba with PW1's relatives during that particular trip, and continued to live together as married couple upon returning to their residence in Navua.
- (7) PW1 never lodged the complaints of *Rape* and *Sexual assault* against Ugesh Chandra Prasad to the Navua Police Station in the period 18 January 2021 to 12 February 2021, to which PW1 admitted, however, the said complaints were actually lodged later by PW1 at the Nausori Police Station when she had moved from Ugesh's house in Navua to her aunt's place in Korociriciri, Nausori.
- (8) PW1 stated that it is true that she got married to Ugesh Chandra Prasad because she wanted a better future for her daughter, and also she wanted a good life since they did not have a proper

house.

(9) PW1 lied about being raped and sexually assaulted by Ugesh Chandra Prasad between 18 January 2021 and 12 February 2021, to which PW1 replied that she did not lie nor make up her testimony.

13. In **re-examination**, PW1 stated that she obtained the number to the police from Google website, and during the night of these problems she had asked her daughter to give her the police number. She did not use her phone to call the police, and her cousin's husband came to pick her. PW1 could not recall the time when the problem happened during the night, this is when she was locked in the room. PW1 had called the police when she was locked in the room at night, Ugesh was pointing a knife at her asking her to come out of the room or not, and so that is why she had called the police to help her. When the police arrived initially, she told them that Ugesh was sleeping and for them to come back later, and they did tell her that they will return. PW1 did not tell the police then anything because they were males, and she wanted to tell someone face to face and wishes for a lady police officer to be present there at the time because she was shy to talk to the male police officers. PW1 did not leave because she was scared since she was not aware of where to go and what she is suppose to do. PW1 took the trip to Ba as she wanted to see her daughter and she would have travelled by bus alone. They had gone to Meli's house because they had invited them for dinner. PW1 returned to Navua with Ugesh Prasad because he wanted to go with her so she left with him. The only reason why PW1 went to the accountant was because Ugesh took her there to get the business transferred under her name since he told her that by doing so there would be less tax deducted from the business in comparison with the business being under his name where the tax deduction is high. PW1 could not confirm whether the business was transferred, but she can confirm that she signed some papers. PW1 did not leave Ugesh Prasad at that time because he was with her all throughout, and she did not have any money with her. PW1 stated that she has never seen Rohit do any work at home, and between 18 January 2021 and 12 February 2021, Rohit only came to the house 2 to 4 times to have lunch. PW1 stated that she did inform the doctor that Ugesh was doing all those sorts of things to her and he wanted to sleep with her, but she did tell the doctor directly of the sexual assault. PW1 did not leave after being medically examined by the doctor because Ugesh was standing outside and waiting for her, PW1

stated that she could not move around the house freely as Ugesh would follow her and walk behind her, and would not let her go to the neighbour's home to talk to them.

### **PW2 – Rajeshwar Kumar**

14. **PW2 Rajeshwar Kumar** in **examination-in-chief** testified that he is 61 years of age, married, resides at Nakaulevu, and does private job as a painter. Between 18 January 2021 and February 2021 he resided at Nakaulevu situated a bit in front of Rampur College in Navua. During the said period, he could recall that Ugesh and Nilesjni Devi had fights, which he saw and returned back to his house without saying anything. PW2's house is situated about 5 to 7 minutes walk from Ugesh's house. In terms of the fight, PW2 stated that they yelled at each other and he assumed that they were drunk, and he could hear this while seated in his sitting room watching TV. Upon hearing the fight from his house, PW2 would then go to Ugesh's shop to see what had happened and then return to his house. PW2 stated that he saw them fighting and making a lot of noise and nothing else. PW2 stated that at that moment, Ms. Devi was in the house in her room, but he did not see her in her room. When PW2 returned to his house, Nilesjni Devi would then call him via phone and told him that Ugesh is drunk and wanted to hit her. PW2 stated that he did not do anything but returned to his house and stayed there.

15. In **cross-examination**, PW2 stated that sometime in January 2021, Nilesjni came to Ugesh's house as a married wife, but PW2 himself was not aware that they were married. PW2's house is behind Ugesh's house and about 5 to 7 minutes walk away. PW2 does not know whether Nilesjni was managing the shop, but can confirm that she lived there. When returning home from work, PW2 would go to Ugesh's shop to buy things and that is when he would see Nilesjni, and at times Nilesjni would serve him at the shop and so as Ugesh. While serving PW2 at the shop, there was nothing unusual and Nilesjni did not smile and he would just take his things like cigarettes and leave the shop. PW2 stated that he does not have any disability, and when Ugesh and Nilesjni fought he assumed that they were drunk, but he did not pay much heed to it, and he would just go over to Ugesh's house and returned to his house. PW2 did not have any face to face conversation with Nilesjni, and whatever Nilesjni told him over the mobile phone, that is all he knows and he does not know the veracity of which.

16. PW2 was not **re-examined** by the prosecutor.

17. Having called PW1 and PW2, the prosecutor then closed the State's case, and defence given the options of the accused: (i) remaining silent; or (ii) giving sworn testimony; and (iii) calling other independent witness, of which the defence opted that the accused remain silent, but call 4 other witnesses namely, DW1: WDC 3042 Vika Nakete; DW2: Rohit Utendra Prasad; DW3: Ajay Kumar; and DW4: Dr. Rajeshwar Maharaj.

#### **Defence case via DW1, DW2, DW3 and DW4**

##### **DW 1 – WDC 3042 Vika Nakete**

18. **DW1 WDC 3042 Vika Nakete in examination-in-chief** testified that she was based at the Navua Police Station in January and February 2021, which station has almost 90 officers and 22 of whom are female police officers. DW1 stated that sometimes a female officer is present at the station. Upon receiving a complaint via telephone, they would register the complaint and attend to the report. A female reporting a sexual assault or unlawful confinement report is taken seriously, and a person's repeated phone call is not neglected. Either male or female police officer can attend to a report of sexual assault made by a lady. A sexual assault report is usually registered and then investigated upon, but not simply forgotten. If a woman lodges a report then a female officer would attend to the report, and in the absence of a female officer, the officer dealing with sexual offences would attend to that report. There would be women police constables on standby. DW1 was not aware of any repeated calls to the Navua Police Station between 18 January and successive 15 days, nor any sexual offence report that were never attended to by the station. DW1 stated that there has not been any complaint made against the Navua Police Station for mishandling a sexual offence report. If the complainant insists on speaking to a female officer, the department will facilitate accordingly.

19. DW1 was not cross-examined by the prosecutor.

## **DW2 – Rohit Utendra Prasad**

20. **DW2 Rohit Utendra Prasad in examination-in-chief** testified that he is 51 years and reside at Tokotoko, Navua. He has known Ugesh, the accused, for a long time, and he was the one who accompanied them to get Nileshni home. Once Nileshni was home, there was a family gathering. At that time, he was working for Ugesh doing maintenance work, which work was carried out from Ugesh's house to the main road. He was at work during the week that Nileshni was brought to Ugesh's home. His work routine is that at 8.00 am he would arrive at the job site at Ugesh's residence, change his clothes, pick up the tools, ask Ugesh what needs to be done for that day, and then leave to carry out that work. The day after they had brought Nileshni to Ugesh's house, DW2 resumed working and he saw Nileshni that morning and she prepared breakfast. On the morning of 19 January 2021, DW2 saw Nileshni looking happy and she spoke to DW2 in a very nice manner. While at work Ugesh would come to him after an hour, and they would have lunch together. DW2 worked at Ugesh's place the whole of that week commencing on 19 January 2021 including the two successive weeks, and his routine was always the same. Nileshni prepared and served him lunch during those working period. When knocking off work, he would return to Ugesh's house to change clothe and then return to his house. During those 3 weeks of work, he saw Nileshni sometimes sitting on the porch and roam around the compound. Nileshni managed the shop from the time she was brought to Ugesh's house, and she owned the said shop, and he knew this because he has documentary proof as he was the one who accompanied Ugesh and Nileshni to get everything done. Nileshni use to oversee the controlling of the finance, income and sale of goods from the shop. Nileshni had access to a mobile phone. Nileshni never met DW2's wife, nor did he take his wife to meet Nileshni during the 3 weeks period. DW2 has stayed at Ugesh's house and stated that the front gate is always open, however the main gate has a padlock with its key hanging on the wall so that one can open the lock and enter. The shop customers go from outside where they are served. During that time, he saw Nileshni roaming freely around the compound and also saw her at times sitting on the porch, and from that porch she could go to the main road which is about 1 kilometer away. DW2 stated that on the day Ugesh and Nileshni got married, they brought Nileshni home and took her to the place where they bought the car, which car was then delivered and Nileshni was told that the vehicle was not under her name, and she then asked them to transfer the vehicle under her name, but the salesgirl informed her that the vehicle will be under the name of the person who pays for the vehicle. Nileshni's

movement was never restricted when Ugesh was in the shop and visiting the job site. DW2 stated that he was no restricted in terms of getting inside Ugesh's house to change and getting out again. Inside the Ugesh's shop are goods to sell, and pasted on the wall are the numbers to the police and fire authority, which numbers were there when Nileshni was there. DW2 stated that he did not notice anything unusual about Nileshni when she was living with Ugesh Chandra, and everyday Nileshni would speak to him nicely. DW2 was aware that Nileshni and Ugesh had gone for a trip around Viti Levu, and they were the ones who informed him of that trip. Upon returning from the said trip, Nileshni told DW2 that the trip was good and they had met all of their family members.

21. In **cross-examination** by the prosecutor DW2 stated that he is the son of Ugesh's cousin brother, and he is therefore closely related to Ugesh Prasad. DW2 agreed that he was asked by Ugesh Prasad to come and give evidence on his behalf today, but he did not discuss his evidence with Ugesh as he already knew everything. DW2 stated that he did not discuss his evidence with Ugesh, but told Ugesh that he will come to court to testify, and he already knew what all had happened. DW2 then stated that he discussed his evidence with Ugesh today, and he already knew that he had to come to court to testify. DW2 worked everyday i.e. 5 days for Ugesh except for Saturday and Sunday. His work was mainly detailed for outside of Ugesh's residence. DW2 did not work inside Ugesh's house, but he only changed his clothing inside that house and had lunch. DW2 was never at Ugesh's residence at night. Ugesh would inform DW2 a day prior if he had to go somewhere so that DW2 does not report to work on that particular day. The car is not with Nileshni because the car is under Ugesh Chandra Prasad's name. DW2 stated that until now he knows that the ship is under Nileshni's name, and the shop belongs to Ugesh Prasad.

22. In **re-examination** DW2 stated that knew beforehand about his testimony as he already knew what had happened and so he did not find the need to discuss his evidence with anyone. DW2 confirmed that Ugesh is his father's cousin brother.

### **DW3 – Ajay Kumar**

23. **DW3 Ajay Kumar** in **examination-in-chief** testified that he knows Ugesh Chandra Prasad and have known him since 2009 when he bought a piece of land there, and use to go to Ugesh's house

every time to shop and have grog. He recalls Nileshni coming to live with Ugesh after getting married, and usually call Ugesh uncle, and Nileshni use to call him son and their relationship was good. DW3 was called to Ugesh's home a day before they left, and Nileshni requested him to load coconuts, cassava, dalo and groceries in the carton, and 2 gallons of soya bean oil from the shop. Ugesh's hand is no good and unable to do heavy lifting or work with his hand. Nileshni told him that she will be taking all the loaded items to her family in Ba, of which DW3 replied that his family also live in Raviravi, Ba, and for Nileshni to visit them. Nileshni was good to him and offered him coke, she dressed beautifully, and everything was well and did not look distressed but happy.

24. In **cross-examination** by the prosecutor DW3 stated that he knows Ugesh Prasad well and that he had told him to come and give evidence in Court, but they did not discuss anything. He works at the abattoir slaughter house, and goes to Mr. Prasad's home at night. Mr. Ugesh Prasad is able to drive, but hardly drives. The loading of the items was done on the Friday.

25. DW3 was not **re-examined** by the defence counsel.

#### **DW4 – Dr Rajeshwar Maharaj**

26. **DW4 Dr Rajeshwar Maharaj** in **examination-in-chief** testified that he graduated from the Fiji School of Medicine in 1992 with MBBS and then joined the CWM Hospital Paediatric Department until 1999, and attained his Postgraduate qualification in Paediatrics in 1997, and since 2000 have been practicing as a general practitioner, Family doctor and private practitioner. DW4 recalled seeing and examining Ugesh Chandra Prasad on 20 September 2023 for purposes of rendering an opinion on Ugesh's condition. Ugesh gave DW4 the history of weakness in his right hand and inability to perform task with his right hand, and being unable to hold or grasp objects in his right hand including difficulty in doing and attending to his personal needs such as being unable to button his shirt, eat with his right hand, and using his left hand instead and became accustomed to using his left hand. Furthermore, Ugesh also briefed DW4 of being admitted at the CWM hospital with febrile illness and being in a coma for 3 weeks. DW4 opined that the degree of neurological injury or damage leading to coma can cause a person to end up with residual deficits and reduced functions in his body and limb, and the relevant medical term is *limb*

*spasticity*, and if it is one limb then it is called *monoplegia*, and if it is two limbs or one side of body this is referred to as *hemiplegia*. *Hemiplegia* means weakness of one side of the body, and *monoplegia* means weakness of one limb. To determine the patient's condition, they perform a neurological examination involving inspection of a particular limb and the body, and after inspection that ask the patient to move his hands to check for power, so for a particular hand, he would ask the patient to grasp objects or to make a fist, and in Ugesh was unable to do that with his right hand. Furthermore, they would then check each particular joint such as the wrist joint for flexion and extension, and for Ugesh he was unable to grip DW4's hand and fingers, and Ugesh's fingers were spastic and there wasn't free movement of his fingers on the right hand. Through elbow flexion and extension, DW4 found that Ugesh's elbow and muscle joints were weak, and there was muscle wasting especially in his hands due to lack of movement of the hands and joints. Furthermore, Ugesh's shoulder rotation and adduction i.e. bringing the shoulder closer to the body vis-à-vis abduction i.e. taking the shoulder away from the body, there was limited movement of his right limb from the wrist, elbows and up to the shoulder, which condition is consistent with the neurological condition suffered when Ugesh was 18 years of age, and now he is aged 66 years, and it is very likely that he had the same condition in 2021. DW4 opined that based on his medical report, Ugesh could not grasp and hold anybody, and the percentage of loss of function on his right hand would be around 85% to 90%. Ugesh informed DW4 that his right hand is the dominant hand. DW4 opined that if a person loss function of the right hand and relied on the left hand will depend on the degree of training and attitude of the individual, and how much that person is psychologically prepared and groomed to acquire the same degree of function on his left hand. DW4 opined that Ugesh was not able to get 100% strength on his left hand, but the left hand is normal and he got accustomed to using his left hand in doing normal activities; however, in terms of getting the full strength that he had on his dominant right hand, there wasn't evidence to suggest that. DW4 opined that a person with the degree of weakness on the right hand and arm described earlier would not be able to grab another person by the right arm and put that person to the ground. DW4 opined that the condition can improve with time if there is a regular rehabilitation, physiotherapy and ongoing program, but despite that how much it is going to improve will depend on the degree of damage done during the initial injury, and it is very hard to predict how much one would improve from neurological damage, which is usually slow but never 100%. There is very limited and inadequate intense physiotherapy services in Fiji apart from the Rehabilitation

Center at PJ Twomey hospital in Tamavua. DW4 identified and confirmed his signature on the medical report dated 21 September 2023 of Ugesh Chandra Prasad, and tendered the same which was then labelled Defence Exhibit 3 [ **DE3** ].

27. In **cross-examination** by the prosecutor, DW4 in response to the question of how was he able to render estimates of 85% to 90% loss of function on the right hand stated that the grading of power is based on standard neurological examination, and the scale being zero for no movement and 100% for full movement, and so a flick movement is around 15% to 20%, that is, the degree of strength in his right hand especially the flicking of his fingers, wrist, right to the elbow and extending to the shoulder, which is the degree of impairment affecting his whole right limb. Ugesh had very limited movement on his right fingers and could not make fist, and his fingers were spastic. The movement of Ugesh's fingers, wrist and shoulders was to test strength and loss of function on his right hand, and he was also tested for power, sensation and coordination, and there was no need for scans.

28. In **re-examination** DW4 stated that his finding is consistent with the history narrated to him by Ugesh.

29. Upon the defence closing its case, both counsels then made closing submissions, and this is the Courts judgment on the allegations of *Rape* in Counts 1, 2, 3 and 4, and *Sexual Assault* in Count 5, in the indictment.

### **ANALYSIS of the entire prosecution and defence evidence**

30. The physical and fault elements for the offence of ***Rape*** in Counts 1 – 4 of the indictment are:

- i) A person i.e. the accused
- ii) Penetrated the complainant's:
  - vagina with his penis [ Count 1 ]
  - anus with his penis [ Count 2 ]

- vagina with his fingers [ Count 3 ]
- mouth with his penis [ Count 4 ]
- iii) Without the complainant's consent [ See ss. 206(1) - (2) ]
- iv) Intentionally and / or recklessly [ i.e. fault element or *mens rea* – see Crimes Act 2009, s.23(1) - (2); For *reckless* refer to Tukainiu v State [2017] FJCA 118; AAU0086.2013 (14 September 2017) at paragraphs 31 - 34 per Prematilaka, JA. ]

31. The physical and fault elements for the offence of ***Sexual Assault*** in Count 5 are:

- i) A person i.e. the accused
- ii) Unlawfully and indecently assaults another person
- iii) Intentionally [ i.e. fault element or *mens rea* ]

32. Given the physical and fault elements of the offences of *Rape* in Counts 1, 2, 3 & 4, and *Sexual assault* in Count 5, I now turn to carefully consider and weigh the entire evidence adduced at trial by both the prosecution and defence.

33. Having carefully considered the entire evidence, I find as follows:

**Count 1 – Rape**

- a) PW1 Nileshni Devi's (complainant) testimony is inconsistent and contradictory when testifying during examination-in-chief that between 18 January 2021 and 12 February 2021, her husband Ugesh Chandra Prasad had inserted his penis into her vagina twice on different nights, without her consent, and later stated that the vaginal rape happened 13 times, and she could not recall the exact dates these incidents happened.
- b) On that basis, PW1's testimony in relation to the **Rape** in Count 1 of the indictment is rendered unreliable and incredible, and the accused Ugesh Chandra Prasad is hereby **acquitted** accordingly of the said charge.

#### **Count 4 – Rape**

- c) In examination-in-chief, PW1 Nileshni Devi (complainant) testified that on 19 January 2021 after making the curry, she went to watch television in the sitting room, while Ugesh drank alcohol and stood in front of her. **Then Ugesh took out his penis and held PW1’s head and told her to drink it, to which PW1 told Ugesh not to do such thing as people may see it from outside through the windows.** Ugesh then fought and yelled at PW1 who then went inside the room, while Ugesh remained drinking alcohol and yelling saying, “[d]o you want me or do you want your daughter.” PW1 then told Ugesh that she wanted both him and her daughter as she has no one there in Navua since getting married to him. Ugesh reacted by running around the house, drunk, yelling and crying. PW1 had begged Ugesh not to fight and yell in the house as a boy and a lady had heard his voice and came to her to ask what had happened, and were then sent away.
- d) The evidence only show that on 19 January 2021 Ugesh Chandra Prasad took out his penis and held PW1’s head and told her to drink it, however, there is no credible evidence adduced by the prosecution to prove *beyond reasonable doubt* that the accused actually penetrated PW1’s mouth with his penis, without her consent, thus Ugesh Chandra Prasad is hereby **acquitted** of *Rape* in **Count 4** of the indictment.

#### **Counts 2, 3 and 5 – Anal rape, Digital rape and Sexual assault**

- e) Despite the presence of evidence adduced by the prosecution that the accused Ugesh Chandra Prasad *anally raped* [ Count 2 ], *digitally raped* [ Count 3 ] and *sexually assaulted* [ Count 5 ] PW1 Nileshni Devi (complainant), however, having considered the entire prosecution *vis-à-vis* defence evidence, I find that the prosecution evidence is unreliable and incredible, thus of no weight, primarily because:

- (1) Of PW1’s demeanour when testifying during the course of the trial, in particular, her clear reluctance to answer questions posed by both counsels, and

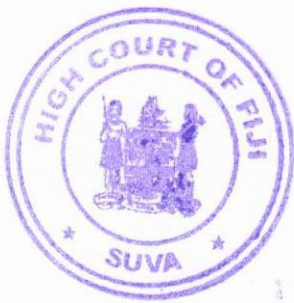
indicating at a certain point during cross-examination of wanting to have the charges against her husband withdrawn, notwithstanding her later changing her stance to continue prosecuting the matter.

(2) The inconsistencies in PW1's testimony like those highlighted above for the **Rape** in **Counts 1 and 4** in the indictment, are in my view, goes to the root of the trial, thus rendering the prosecution's evidence and entire case unreliable and incredible with no weight.

34. Relying on the aforesaid reasons, I therefore find that PW1 Nileshni Devi (complainant) is an unreliable, incredible, and untruthful witness, and entirely reject her testimony.

35. Based on the entire rationale stated above, I therefore find that the prosecution has not proved *beyond reasonable doubt* the **Rape** in **Counts 1, 2, 3 and 4**, and **Sexual assault** in **Count 5**, and hereby **acquitt** Ugesh Chandra Prasad of the said indictments in the *Amended Information* by the Acting Director of Public Prosecutions dated 29 August 2023.

36. Thirty (30) days to appeal to the Fiji Court of Appeal.



.....  
**Hon. Mr. Justice Pita Bulamainivalu**  
**PUISNE JUDGE**

**At Suva**

30 December 2025

**Solicitors**

Office of the Director of Public Prosecutions for the State.

Sen Lawyers for the Accused