

**IN THE HIGH COURT OF FIJI**

**AT LABASA**

**CRIMINAL JURISDICTION**

**Criminal Case No. HAC 13 of 2025**

**THE STATE**

**-v-**

**MALELI NAWAI**

**Counsel: Ms E Thaggard for the State  
Mr I Rusaqoli for the Accused**

**Date of Trial: 14 – 15, 30 January 2026 and 6 February 2026**

**Date of Judgment: 6 March 2026**

**JUDGMENT**

1. Mr Maleli Nawai (“the accused”) pleaded not guilty to three counts of sexual offending against his 13-year-old niece. To protect her identity, I shall refer to the complainant as CC in this Judgment.
2. By an Information dated 20 February 2025, the accused is charged with the following three counts:
  - (i) Indecent Assault, contrary to section 212 (1) of the Crimes Act 2009, the particulars being that, between 16 December 2022 to 6 February 2023, at Yadua Island, Bua, he unlawfully and indecently assaulted CC by kissing her on her lips (count 1).
  - (ii) Indecent Assault, contrary to section 212 (1) of the Crimes Act 2009, the particulars being that, between 16 December 2022 to

6 February 2023, at Yadua Island, Bua, on an occasion other than count 1, he unlawfully and indecently assaulted CC by rubbing her breasts and crotch area over her clothes (count 2).

(iii) Rape, contrary to section 207(1), (2) (a) of the Crimes Act 2009, the particulars being that, between 16 December 2022 to 6 February 2023, at Yadua Island, Bua, on an occasion other than count 1 and count 2, he inserted his penis into CC's vagina without her consent (count 3).

### **The prosecution case**

3. CC gave sworn evidence seated at the bar table, and a screen was in place, in order to facilitate her best evidence. Her date of birth is 17 March 2009, making her 16 years of age at trial and a few months short of her 14<sup>th</sup> birthday at the time of the alleged offending.
4. In 2022, CC was living with her parents on the island of Yadua.
5. One day during the eight-week school holiday, at around 10am, CC was washing clothes in the bathroom when the accused came in, twisted her head, and kissed her on her lips. She slapped a bar of soap on his face. The accused is her uncle, and she has known him since she was a small child.
6. CC said that she did not tell anyone about this incident because she was scared. Her father is a very short-tempered man, and she was afraid that he might hit her.
7. She was home alone one night, reading a book, when the accused came and asked for the wood that is used to beat pandanus leaves. Her parents were out catching crabs. She went to the kitchen to look for the wood. The accused followed her and touched her breasts over her clothes from behind. She turned around and shone the Sun King light on him. He used his hand to rub her pubic area over her clothes. As soon as he touched her, she pushed his hand away. She gave him the wood and, as he left, he told her not to tell

anyone. She did not tell anyone about what the accused did because she was scared.

8. On another day, she returned from bathing wrapped in a towel. As she was about to enter her room, she saw the accused staring at her from the front door. She was home alone as her parents had gone out to sea. She told him to go, but he followed her into her room and pushed her on the bed. He took off his pants and, as she tried to stand, he lay on top of her. He inserted his penis into her vagina for one or two minutes. He then got dressed and left. She did not say anything to him because she was scared. She did not tell anyone about this incident because the accused had told her not to tell anyone, and she was scared of her father.
9. These three incidents happened during the eight-week holiday. She remembers this because she left the village to attend boarding school at Labasa College after these incidents. She had attended primary school on Yadua, but there was no high school on the island. The first time that she returned to the village was in August 2024. She did not return to the village earlier during school holidays because she was afraid that the accused might do something else to her. Her parents had asked her to return, but she did not want to. She did not tell her parents why she did not wish to return home. She spent school holidays at her cousin brother's house in Nacula. She did not tell him about the abuse because she was scared to tell anyone.
10. The incidents came to light when the police came to the island to conduct an investigation in January 2025.
11. When Mr Rusaqoli suggested to CC that the reason she did not tell anyone about the accused kissing her was because it never happened, she replied that he had kissed her, but she was just scared to tell her parents.
12. After the second incident, she was still awake when her parents returned from catching crabs. She accepted that she had the opportunity to tell her parents,

but had not done so. When Mr Rusaqoli suggested that she had not told them because it never happened, CC replied that the accused had touched her. When it was suggested that the accused had never come to her house to borrow the wood, CC said that he came.

13. CC accepted that she had the opportunity to tell her parents about the rape when they returned from the sea. When it was suggested that the accused had not put his penis in her vagina, CC replied that he put it. CC confirmed that she had not told anyone about what the accused did to her until the police came to the village in 2025.
14. When it was suggested to CC that the accused was not in the village between 16 December 2022 to 6 February 2023, she replied that he was in the village.
15. CC agreed that, when the police came to the village in January 2025, there were rumours in the village about what the accused was doing to some girls, and that is when her name was mentioned to the police.
16. In answer to my questions, CC said that nobody knew about what the accused had done to her before the police spoke to her in January 2025. She was scared and upset when the police questioned her. She was scared that her father would smack her if he came to find out what the accused had done to her.
17. CC's stepmother ("CM") testified that she has raised CC from the age of 2 years. She considers her to be her daughter.
18. CM and her husband brought CC to Labasa one week before the start of term in February 2023. CC had not returned home to the village until August 2024, when her father went to bring her home. CM had gone to visit her in Labasa and CC had told her that she did not wish to return to the village. She had requested CC to return home to assist her after her surgery in November 2023, but CC had said that she did not wish to return to Yadua. She and her husband

stayed with CC during the eight-week holiday in December 2023 to February 2024.

19. When her father brought CC back to the village in August 2024, CM noticed that CC did not talk much. When she asked her what was wrong with her, CC did not respond.
20. The accused is CM's first cousin. When asked about his whereabouts during the eight-week holiday starting in December 2022, CM recalled that, when they were getting ready to bring CC to school in Labasa, the accused was in the village and took them out to sea to gather seafood for her to sell in Labasa.
21. When I asked CM about the character of CC's father, CM explained that he was a quiet man, but he shows a different side when he hears bad news. He would get angry and smack CM or CC.
22. When Mr Rusaqoli suggested that the accused did not spend Christmas 2022 in the village, CM said that they celebrated Christmas together in the village. The accused was in Yadua at Christmas and New Year. When it was suggested that the accused never took her out to sea in December 2022, CM replied that he had taken her in December 2022, but she was not sure about the date.
23. CM confirmed that CC had never told her about the accused abusing her. She also said that her husband was a loving and caring husband and father.
24. The final witness for the prosecution was the Investigating Officer, DC 5995 Maria Kuruyabaki. On 8 January 2025, she was on Yadua Island to investigate an indecent assault complaint. The village headman gave her a number of names. At around 9.30am, she went to CC's home. She explained to her parents the purpose of her visit. CC seemed afraid to speak in the presence of her parents, so DC Kuruyabaki asked permission to speak with her privately. She asked CC whether anything had happened to her as her name had come up during her investigations. CC started to shed tears. DC Kuruyabaki said that they were genuine tears, and she knew that something

must have happened to CC. She was shivering and looked really frightened as she told what had happened to her.

25. In cross-examination, DC Kuruyabaki said that the village headman had given her two names.
26. At the close of the prosecution case, the accused was explained his options. He elected to give evidence in his own defence and indicated that he would call alibi witnesses.

### **Defence Case**

27. The accused testified that he is a 42-year-old married father of two. His eldest child was aged 6 years in 2022. He was born and raised in Yadua.
28. The accused said that he spent Christmas 2022 in Vio. At the end of the school term, he and his family crossed from Yadua to Viti Levu on 16 December 2022. The purpose of the trip to Vio was to attend his wife's elder brother's wedding. He spent New Year 2023 with his brother-in-law in Vio. He returned to Yadua in the second week of February 2023. He did not take CM out on his boat in December 2022.
29. The accused denied offending against CC.
30. In cross-examination, the accused said that was his first visit to Vio. He remembers clearly that he spent Christmas 2022 and New Year 2023 there.
31. The accused owns a boat and goes to catch crabs on the other side of the island that can only be reached by boat. He takes other villagers on his boat to catch crabs for sale. He said that he did not take CM on his boat between 16 December 2022 to 6 February 2023. He was not on Yadua during that period.
32. When Ms Thaggard put the prosecution case to the accused, he denied any offending against CC. He denied lying to protect himself.

33. In answer to questions from the Court, the accused said that the wedding was on 17 January 2023. It was a church wedding. He crossed over to Viti Levu on 16 December 2022 because the sea was calm that day. He crossed in his own fiberglass boat. He moored at Malake and someone brought his boat back to Yadua. He and his family took the bus to Lautoka. The crossing from Yadua to Malake takes around one and a half hours if the sea is calm. The bus to Lautoka takes around two hours. The adult fare is \$12. He was sent a wedding invitation. The accused confirmed that his brother-in-law would come to Court to give evidence, but he was not sure whether he would bring his marriage certificate and wedding photographs with him.
34. In answer to Ms Thaggard, the accused said that he did not have any photographs of the wedding. His wife could be asked whether she had any wedding photographs. He stayed on Vio for such a long time because he was diving to earn their fare home.
35. In re-examination, the accused said that they travelled back on the Goundar ferry from Vio to Nabouwalu. The adult fare was \$65.
36. Mrs Lavenia Marama testified that she is married to the accused and they have two sons, aged 11 and 3 years. Her family spent Christmas 2022 in Vio. They crossed from Yadua on 16 December 2022. They went to Vio to attend her elder brother's wedding on 17 January 2023. When asked whether the wedding was conducted in a church or in a hall, or in an office, Mrs Marama replied, "*One shed*". They returned to Yadua in the second week of February 2023. The school term had already started when they got back to Yadua.
37. In cross-examination, Mrs Marama said that the fiberglass boat they crossed in was Pita's boat. They went one month before the wedding because they wanted the children to spend the holiday there. Her youngest son was a baby at that time. They travelled from Malake to Lautoka by car, and from Lautoka to Vio by boat. When asked whether she had taken photographs at the wedding, Mrs Marama said that she did, but her old phone went missing. She

said that she could show the photographs posted on Facebook. She then said that she has a new Facebook account that does not have those photographs. When Ms Thaggard suggested that she had not attended a wedding, Mrs Marama said that they went to the wedding.

38. When I asked her whether it had occurred to her that it would be a good idea to bring along some evidence of the wedding, Mrs Marama replied that she did not bring the photographs.
39. Mr Isireli Saukitoga testified that he married Ms Sulueti Tavutu on 17 January 2023. The ceremony took place on Vio, a small island close to Lautoka, in a big tent in the village of Viwa. His sister and the accused attended the wedding. He saw them at the wedding.
40. In cross-examination, Mr Saukitoga said that he travelled from Yasawa to Vio two days before his wedding. The accused and his sister were already in Vio. He agreed that there were a lot of photographs taken at the wedding. They were stored on his old phone.
41. Mr Saukitoga said that he had been in a domestic relationship with his wife for seven years prior to their marriage. They decided to get married in 2022. There were no invitations sent out. When I sought to clarify whether it was a legal marriage he entered into on 17 January 2023, he confirmed that it was. The marriage certificate was signed on that day. It is kept in Yasawa.
42. When Ms Thaggard suggested to Mr Saukitoga that he was lying or mistaken about getting married in 2023, he replied, "*Probably, I've forgotten about the year*". He said that his wife would know clearly. He then clarified that he was sure that he was married on 17 January 2023.
43. Mrs Sulueti Vaturuturu testified that she married Mr Isirelli Saukitoga on 17 January 2023. The ceremony was held at Vio. She and Isireli travelled from Yasawa to Vio the day before the wedding. They returned to Yasawa after the wedding. The accused and Lavenia attended the wedding. She saw them

there. She did not take any photographs of the wedding and no photographs were uploaded to Facebook. Pastor Semi presided over the ceremony. She said that the date 17 January 2023 would be reflected on her marriage certificate.

44. In cross-examination, Mrs Vaturutura said that she did not know when the accused had arrived in Vio or when he left. People did send wedding photographs to her Facebook account. When asked whether she was able to produce those photographs, she said that phone was lost.
45. At the conclusion of the defence case, I expressed my concerns that the alibi had not been properly advanced at trial. Clearly, the existence of a marriage certificate and wedding photographs, if available, would lend support to the evidence given by the alibi witnesses. I, therefore, adjourned the trial part-heard to enable defence counsel to make the necessary inquiries.
46. When the trial resumed on 30 January 2026, Mr Rusaqoli informed the Court that the marriage certificate evidences that the legal marriage took place on 28 May 2013. The marriage was blessed by the pastor on 17 January 2023 at Vio. Mr Rusaqoli was intending to re-call Isireli to explain the position, but he was unable to make the crossing from Yasawa owing to bad weather. In the interests of justice, I acceded to Mr Rusaqoli's request for an adjournment.
47. On 6 February 2026, Sulueti was re-called. She confirmed that she was legally married to Isireli on 28 May 2013. The marriage was blessed in Vio on 17 January 2023. She could not show any photographs because her phone had been lost.

### **Closing submissions**

48. I heard closing speeches on 6 February 2026, and I have also considered the helpful written submissions filed by both parties for which the Court is grateful.
49. In his closing speech, Mr Rusaqoli emphasised the long delay in the reporting of the accused's alleged offending. CC had many opportunities to report the

incidents to her parents, family members and teachers. It was only after the police approached her out of the blue in January 2025 that she complained about the accused. In other words, CC did not complain at the first reasonable opportunity. She has not provided a reasonable explanation for her delayed complaint. Mr Rusaqoli argued that the delayed reporting suggests that the allegations have been fabricated. Had the abuse really happened as alleged, CC would have reported it to her parents.

50. Mr Rusaqoli submitted that the accused's alibi is strong. It is supported by his wife and the couple whose wedding they attended in Vio on 17 January 2023. There is nothing untoward or suspicious about the legal marriage entered into on 28 May 2013 being blessed on 17 January 2023.
51. Ms Thaggard met the defence case on delayed reporting head-on. She argued that there is a reasonable explanation why CC did not tell anyone about what the accused did to her until she was approached by the police. CC explained that she was afraid to tell her parents for fear of her father's reaction. She was only young when offended against by her uncle. It is pertinent that she was isolated in a small island community. Her reluctance to report her uncle's offending is consistent with her behavioural response in refusing to return home until her father took her home in August 2024. Ms Thaggard submitted that CC's delay in reporting the matter supports, rather than undermines, her credibility.
52. As for the alibi, Ms Thaggard submitted that the prosecution has disproved the alibi to the criminal standard. There is credible evidence from CC and CM that the accused was on Yadua Island at the material times. Also, there are serious weaknesses and inconsistencies in the defence evidence. Defence witnesses gave inconsistent accounts regarding travel arrangements, duration of stay, boat ownership and details of the wedding. The marriage certificate evidences that the alibi witnesses were legally married on 28 May 2013. Also, there was none of the supporting evidence that one might expect the defence to have produced – no photographs, no wedding invitations, and no independent

wedding guests. Ms Thaggard argued forcefully that, in the modern context of widespread use of social media, the absence of social media postings significantly undermines the alibi witnesses.

53. In conclusion, Ms Thaggard submits that CC is a credible and reliable witness, the delay in reporting is fully explained, the alibi defence is false, and all elements of the three offences have been proved beyond reasonable doubt.

**Legal Directions/warnings**

54. The prosecution must prove that the accused is guilty. The accused does not have to prove anything to me. The defence does not have to prove that the accused is innocent. The prosecution will only succeed in proving that the accused is guilty if I have been made sure of his guilt. If, after considering all of the evidence in relation to each count separately, I am not sure that the accused is guilty, my verdict must be not guilty.
55. Also, I must be sure that the accused's denials are untrue. Since the accused gave evidence in his own defence, I remind myself that if his denials are, or may be, true, I must find him not guilty. Even if I reject his evidence, I must not find him guilty unless the prosecution has made me sure of his guilt.
56. CC is a child. She was just shy of 14 years old at the time of the alleged offending and 16 years old at trial. It is for me to decide whether she is reliable and has told the truth. The fact that she is young does not mean that her evidence is any more or less reliable than that of an adult. I must assess her evidence in the same fair way as I assess the other evidence in the case.
57. Because CC is a child, I bear in mind a number of things. A child does not have the same degree of maturity, logic, perception or understanding as an adult. A child may find questions difficult to understand – they may not fully understand what they are being asked to describe. It may be that they do not have the words to accurately or precisely to describe things in the same way that an adult might.

58. A child may be tempted to agree with questions asked by an adult because the child sees an adult as being in a position of authority. Also, if a child feels that what they are asked to describe is bad or naughty, this may lead to them being embarrassed and reluctant to say anything about it, or to be afraid that they get into trouble.
59. A child's perception of the passage of time is likely to be very different to that of an adult. A child's memory can fade, even in a short time.
60. These things are relevant to a child's level of understanding rather than to their credibility.
61. None of these things mean that CC is or is not reliable: that is a matter for my judgement.
62. Since the accused relies on alibi, I remind myself that the defence bears no burden of proving an alibi. It is for the prosecution to make me sure that the accused does not have an alibi for the times of the alleged offending. Also, the fact that I am sure that the alibi raised is false does not of itself prove guilt. A false alibi may sometimes be raised by an accused person who thinks that it is easier or better for them to invent an alibi than to tell the truth. Sometimes an innocent person who fears the truth may not be believed may instead invent an alibi.
63. Given that the accused has not advanced any reason why CC would fabricate false allegations against him, I warn myself that the accused bears no onus to prove a motive to lie. A motive to lie or be untruthful may substantially affect the assessment of the credibility of a witness, but it would be wrong to conclude that the complainant told the truth because there is no apparent reason for her to lie. There might be a reason for her to be untruthful that nobody knows about.

64. Since the defence has argued that CC's significantly delayed reporting of the alleged offending substantially undermines her credibility, I remind myself that there may be many reasons why a complainant of a sexual offence might not immediately make a complaint, whether to family, friends or others. There can also be understandable reasons why someone does not involve the Police straight away, including a fear of the process that may follow and the impact it may have on their relationships, including with the accused. The defence argue that CC has no reasonable explanation for not having complained earlier, whereas the prosecution advanced a number of factors to explain the delayed reporting.
65. Research shows that complainants of sexual offences react in different ways. Some complain close in time to the alleged offending. Others do not. This can be because of shame, shock, confusion or fear of getting into trouble, not being believed, causing problems for other people, or because of a fear about the process that may follow. Importantly, there is no such thing as a "typical" response. Different people react to situations in different ways. A complaint made some time after the alleged offending does not of itself mean the complaint was untrue, just as an early complaint does not of itself mean it was true.
66. In considering DC Kuruyabaki's evidence that CC was crying and distressed when she first spoke privately with her, I need to bear in mind three things. First, there is no "normal" reaction to a rape. Some people will show emotion or distress and may cry. But other people will seem very calm or unemotional. Second, it is possible for someone to put on an act if they choose to. Third, even if a complainant's distress is not feigned, it is not necessarily indicative of the accused's guilt.

### **Analysis and decision**

67. It is not disputed that CC and the accused are well known to each other. Identity is not in issue.

68. The defence says that the allegations against the accused have been concocted, and are false. They have not advanced any motives for these allegations to have been fabricated.
69. Since I must acquit the accused on the charges relating to alleged offending between 16 December 2022 to 6 February 2023 unless I reject his alibi evidence, it is convenient to deal with this aspect of the case first.
70. I have no hesitation in rejecting the defence case that he could not have committed the alleged offending because he was not on Yadua Island during the whole period of the alleged offending.
71. The alibi advanced by the accused strikes me as elaborately contrived. It is too convenient that the accused and his family departed Yadua on 16 December 2022, to attend a wedding on 17 January 2023, and did not return home until after the start of the school term in February 2023. The accused testified that he spent Christmas and New Year with his in-laws on Vio, but his in-laws said that they only arrived on Vio a few days before the wedding ceremony. CM's clear recollection is that the accused was on Yadua during the Christmas and New Year period. Her evidence about the accused taking her out to sea to catch seafood to be sold when she escorted CC to Labasa has the ring of truth about it.
72. I am sure that the accused, his wife, Isireli and Sulueti have colluded to concoct an elaborate story about a wedding ceremony on Vio on 17 January 2023. When first giving evidence, Isireli and Sulueti both said that it was a legal marriage ceremony. It was only after the inconvenient truth emerged that they were legally married on 28 May 2013 that the wedding ceremony transformed into a blessing ceremony.
73. Ultimately, what makes me sure that the alibi is false is CC's credible and reliable evidence about what the accused did to her on three separate

occasions during that eight-week holiday before she left for boarding school. I have no doubt that CC told the truth about those incidents.

74. I am untroubled by the fact that she did not tell her parents about what the accused had done to her. As confirmed by CM, CC's concerns about how her father might react to learning of her sexual abuse were well-founded. Even after she escaped the isolation of Yadua, I can well understand why she would keep to herself that she had suffered sexual abuse at the hands of a close relative. To my mind, CC's reluctance to return to Yadua is consistent with her being fearful of further abuse by the accused. I also find CC's genuine distress when first asked about the abuse to be consistent with her having been the victim of sexual abuse by her uncle.
75. The accused was unwavering in his denials of any sexual offending against CC. Nevertheless, I did not find him to be an impressive witness. He plainly lied about his whereabouts during the eight-week holiday. I am sure that the only reasonable explanation for those lies is his wish to avoid the consequences of having sexually abused and raped CC. It is clear that, as a near neighbour and close relative, the accused had the opportunity to prey on CC when he knew that she was home alone. I am sure that he took advantage of those opportunities to indecently assault and rape her. It would have been obvious to him from her reactions that his attentions were not welcomed by CC. He forced himself on her when he penetrated her vagina with his penis without her consent.
76. It is not without significance that the accused's pattern of offending escalated when CC did not report his earlier abuse.
77. I am sure that CC gave truthful and reliable evidence about the things the accused did to her. Kissing CC on her lips and rubbing her breasts and crotch area over her clothes were unquestionably unlawful and contrary to the ordinary standards of respectable people in this community. I have no doubt that the accused penetrated CC's vagina with his penis without her consent.

78. For the reasons given, the Court finds the accused guilty as charged and convicts him accordingly.
79. 30 days to appeal to the Court of Appeal.



.....  
Hon. Mr Justice Burney

**At Labasa**

6 March 2026

**Solicitors**

**Office of the Director of Public Prosecutions for the State**

**Office of the Legal Aid Commission for the Accused**