

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 195 OF 2024

STATE

v

ILAITIA RADRAVU

Counsel: Mrs. U. Ratukalou for the State
Ms. O. Grace for the Accused

Date of Trial: 27 - 30 January 2026

Date of NCTA Ruling: 29 January 2026

Date of Judgment: 13 February 2026

JUDGMENT

Caveat – The alleged victim shall herein be referred as ‘MIL’ pursuant to the name suppression order.

1. **Ilaitia Radravu**, the Accused, is indicted with three counts of *Rape* contrary to sections 207(1) & (2)(a) of the Crimes Act 2009, laid out as follows in the Information by the Acting Director of Public Prosecutions dated 14 August 2024 and filed on 15 August 2024.

COUNT 1

Statement of Offence

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

Particulars of Offence

ILAITIA RADRAVU on an unknown date between 1st March 2024 and 31st March 2024 at Nakasi in the Central Division, penetrated the vagina of **MIL** with his penis, without her consent.

COUNT 2

Statement of Offence

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

Particulars of Offence

ILAITIA RADRAVU on an unknown date between 1st April 2024 and 31st April 2024 at Nakasi in the Central Division, penetrated the vagina of **MIL** with his penis, without her consent.

COUNT 3

Statement of Offence

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

Particulars of Offence

ILAITIA RADRAVU on an occasion other than that mentioned in Count 2 at Nakasi in the Central Division, penetrated the vagina of **MIL** with his penis, without her consent.

2. The prosecution commenced its case and closed it on 27 January 2026, having called one witness i.e. PW1: MIL [name suppressed] and tendered as prosecution exhibit 1 [**PE1**] the birth certificate of PW1, to prove its case against Ilaitia Radravu *beyond reasonable doubt*.
3. The defence opted for a *submission of no case to answer* which was heard on 28 January 2026, and on 29 January 2026 the Court ruled a *no case to answer* for **Count 3: Rape** and acquitted the accused accordingly [Criminal Procedure Act 2009, s.231(1)], but a *case to answer* for **Counts 1 & 2: Rape**.
4. As for **Counts 1 & 2: Rape**, the defence opted that the accused Ilaitia Radravu and a Samisoni Lutuisera provide sworn testimony. However, defence counsel decided not to call Samisoni Lutuisera, and only Ilaitia Radravu (DW1) gave sworn testimony, and PW1's statement to the Nakasi police dated 9 July 2024 tendered as defence exhibit 1 [**DE1**] mainly on the basis of prior inconsistency.
5. Both counsels made closing submission on 30 January 2026, and this is the Court's judgment on **Counts 1 & 2: Rape** in the indictment.

Burden & Standard of proof

6. Pursuant to sections 57 and 58 of the Crimes Act 2009 including Woolmington v DPP [1935] AC 462 at 481 (HL), the prosecution bears the burden to prove *beyond reasonable doubt* all elements of the offence of *Rape* in **Counts 1 & 2** of the Information.

Physical and fault elements for Rape – Counts 1 & 2

7. **Rape** in Counts 1 & 2 is contrary to section 207(1) & (2)(a) 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; ...*

206.-(4) *If “carnal knowledge” is used in defining an offence, the offence, so far as regards 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.*

8. The physical and fault elements for **Rape** in Counts 1 & 2 are:

[1] A person i.e. the accused Ilaitia Radravu;

[2] Penetrated the complainant MIL's

- vagina with his penis [Count 1];

- vagina with his penis [Count 2];

[3] Without the complainant's consent [See ss. 206(1) - (2)]; and

[4] Did so intentionally.

Lesser or alternative offence to Rape – Defilement of young person between 13 & 16 years

9. Section 162(1)(f) & (2) of the Criminal Procedure Act 2009 state:

162.-(1) Where a person is charged with an offence but the court is satisfied that the evidence adduced in the trial supports a conviction only for a lesser or alternative offence, the court may record a conviction made after due process for – ...

(f) any sexual offence where the charge has been for rape; ...

(2) The court may record convictions for certain offences in accordance with sub-section (1) notwithstanding that no charge has been laid for the lesser or alternative offence in accordance with the provisions of this [Act].

10. Read in conjunction with sections 162(1)(f) & (2) of the Criminal Procedure Act 2009, the relevant offence of **Defilement of young person between 13 & 16 years** is contrary to section 215(1), (2) & (3) of the Crimes Act 2009 which state:

215.-(1) A person commits a summary offence if he or she unlawfully and carnally knows or attempts to have unlawful carnal knowledge of any person being of or above the age of 13 years and under the age of 16 years. ...

(2) It shall be sufficient defence to any charge under sub-section (1) if it shall be made to appear to the court that the person charged had reasonable cause to believe, and did in fact believe, that the person was of or above the age of 16 years.

(3) *It is no defence to any charge under sub-section (1)(a) to prove that the person consented to the act.*

11. The physical and fault elements of ***Defilement of young person between 13 & 16 years***, in this instant, are:

[1] A person i.e. the accused Ilaitia Radravu;

[2] Carnally knew the complainant MIL by penetrating the complainant's vagina with his penis;

and

[3] Did so intentionally.

Agreed Facts

12. The ***Agreed Facts*** between the prosecution and defence dated 18 December 2024 are as follows:

- 1) The complainant's name is MIL [name suppressed].
- 2) The accused's name is Ilaitia Radravu.
- 3) The complainant and Ilaitia are known to each other as Ilaitia is the complainant's grandfather.
- 4) During the school holidays in 2022 from December, the complainant resided with her grandmother and grandfather at Drala Place, Painapiu St, Vishnu Deo Road in Nakasi.
- 5) The complainant addresses Ilaitia as '*Tua*' meaning grandfather.
- 6) The complainant addresses her grandmother as '*Pu*'.
- 7) On 9 July 2024, the complainant lodged a report with the Nakasi Police Station.

Prosecution case via PW1

PW1 – MIL [name suppressed]

13. In **examination-in-chief** PW1 testified that her date of birth is 14 July 2008, and she is 17 years old and will turn 18 in July, and reside at Nasilai Feeder Road, Nausori. Her father's name is Colati Kau and mother's name is Liliviwa Matasega. By leave of the Court, PW1 was shown a document, which she identified as her birth certificate, and the prosecution then tendered it as prosecution exhibit 1 [**PE1**]. In March and April 2024, PW1 resided at Painapiu Place, Nakasi, and had moved to live there in December 2022 with her grandfather Ilaitia Radravu and grandmother Akosita Vakatoto, whom she respectively refer to as '*Tua*' [grandfather] and '*Pu*' [grandmother].

PW1 recalled March 2024, but could not recall the day when her *Tua* had shown her a \$20 note and asked her for them to be together or '*tikovata*' in I-Taukei meaning to have sex, which PW1 agreed to. They had sex inside her room, and her *Tua* used his penis and put it into her female private part meaning vagina. PW1 could not recall the time of the day they had sex, but recalled that it was still day time, and her *Pu* or grandmother had gone to work as a housemaid for another woman. Apart from living with her *Tua* and *Pu*, PW1 also lived with her mother Liliviwa Matasega, *momo* or uncle Semiti Savu and *Ta* or uncle Samisoni Lutu. On that particular day PW1's mother had also gone to work as housemaid for an Indian woman, while her uncle Semiti Savu was at his friend, and PW1 did not know the whereabouts of her uncle Samisoni Lutu.

In 2024, PW1 was in Year 10 at Nakasi High School, and her school stationery was usually bought by her grandfather from money earned from mowing grass. PW1's grandfather also gave money to PW1's grandmother, and received social welfare benefit. They did not celebrate PW1's birthday in 2023, and remained home at Painapiu Place, despite PW1's grandmother knowing about PW1's birthday, but not her grandfather.

In April 2024, on an evening after 8.00 o'clock, they had no electricity at home, and PW1 and her grandfather were at home, while her mother and grandmother had gone to Naulu. PW1 was alone in her room while her grandfather was in the living room, then her grandfather came through the passage to PW1's room, showed her a \$10 note and asked PW1 to sleep with him, which PW1 agreed, then her grandfather entered the room, closed the room door, and had sex with PW1, and after that he gave her the \$10 note. When they had sex, PW1's grandfather put his penis into PW1's vagina. PW1's grandfather first took off his trousers and underwear, and PW1 also took off her trousers and underwear, and then he put his '*yaya vakaturaga*' in I-Taukei meaning male private part or penis into PW1's vagina. At that moment, PW1's uncle Savu was roaming around elsewhere, and PW1 did not know the whereabouts of her uncle Sami. After this particular sexual encounter in April 2024, nothing else happened that month. The matter was reported to the police in July 2024 by PW1 and her aunt Vilise Tikowale.

14. In **cross-examination** by defence counsel, PW1 stated that there are three bedrooms and seven occupants at their flat situated at Painapiu Place. PW1 always slept in her room, and beside the flat was her *Tua*'s plantation. PW1's *Tua*, uncle Sami and uncle Savu would go around the neighbourhood cutting grass, and on most days would leave home after breakfast and return home slightly after midday to have lunch, and head out again to continue cutting grass, and return home again after 6.00 or 7.00 in the evening followed by PW1's mother and grandmother knocking off from work. On days when they do not go out to cut grass, they would instead work at the plantation. Most of the time PW1 and her *Tua* would be at home. PW1 knows a Susana who is a relative and younger than her, and Susana stayed with PW1 and family on the weekend and then returned to her home. In March 2024 Susana lived with PW1 and family at Painapiu Place, but not in April 2024. When Susana was at Painapiu Place in March 2024, she and PW1 dated two boys at PW1's *Tua*'s plantation, and when they returned home, PW1's *Tua* told them that he had caught them dating two boys in the plantation, and this was on a Sunday evening. PW1 stated that the story of her having sex with her *Tua* was not known until the following Tuesday. PW1 admitted that she had made up this complaint against her *Tua*, after her *Tua* had caught her and Susana dating the two boys in the plantation. PW1 also admitted that all she had told the police were all made up by her. PW1

stated that there was no sexual intercourse between her and her *Tua*, and that she had made up these allegations, but also stated that in March and April she had sex with her grandfather. PW1 recalled giving a statement to the police, and by leave of the Court, identified her statement to the police, which statement dated 9 July 2024 was subsequently tendered by defence counsel as defence exhibit 1 – [**DE1**] on the basis of prior inconsistency. PW1 could verify her statement because it has the names of her grandfather and aunt including her signature at the bottom of the second page. PW1 admitted that she had agreed to have sex with her grandfather, but in her statement to the police, PW1 noted that she was forced to have sex with her *Tua*, and that there are two different versions before the Court today. PW1 admitted that she made up the story to the police and lied to the police. PW1 then stated that she had sex with her grandfather who did not force her, in response to defence counsel's suggestion that because PW1 lied to the police, she therefore also lied about her *Tua* having sex with her.

15. In **re-examination** by the prosecutor, PW1 stated that she had made up the story that she told the police rather than the one she just told the Court. PW1 stated that the part of the story she made up to the police was that her *Tua* had forced her.

Defence case via DW1

DW1 – Ilaitia Radravu

16. In **examination-in-chief** DW1 testified that he is married with four children. Before being remanded in custody, he resided at Painapiu road, Nakasi, with Samisoni and Semiti Savu including his wife and a lady Vula who would go to work on some days. In March 2024, DW1 resided with Semiti Savu, Samisoni Tikoisuva, Vula and a few others who would come and live with him. In March 2024, DW1 worked as a grass cutter starting work at around 7.30 am from Monday to Friday and returned home around 5.00 pm to 6.30 pm, being assisted by two other boys. After returning home from work, DW1 would clean his grasscutter, then take a bath, have a cup of tea, and later drink kava or grog with the two boys. In March 2024, DW1 neither gave \$20 to PW1 nor penetrated her vagina with his penis, without PW1's

consent. In April 2024, DW1 was at home, and he did not penetrate PW1's vagina with his penis, without PW1's consent. DW1 did not have sexual intercourse with PW1, and he did not do what PW1 had alleged against him. DW1 did not know PW1's age in 2024, but recalled seeing PW1 in school uniform and attending Nakasi High as a Form 4 student.

17. In **cross-examination** by the prosecutor, DW1 stated that PW1 came to live with him and his wife in December 2022, she was 13 years old then, and to start secondary school in 2023 at Nakasi High School. In 2023 PW1 was in Form 3 or Year 9 and 14 years old, and in 2024 she was in Form 4 or Year 10 at Nakasi High School and 15 years old. DW1's wife worked as a house girl in March and April 2024. DW1 earned money by cutting grass, and received social welfare benefit monthly, and some of the money he earned went towards PW1's schooling. PW1 attended school in March and April 2024, and DW1 saw PW1 leave home and return home from school in her uniform. While at home PW1 would sometimes be outside or in the living room, and sometimes she was not home. The house that he rented in Nakasi has three bedrooms, and him and his wife occupied a room, the second room was occupied by his son Semiti Savu, and PW1 and her mother Liliwa who is DW1's stepdaughter, slept in the third room. DW1 agreed that PW1 is his step-granddaughter, and though not related by blood, PW1 considered DW1 as her real grandfather calling him '*Tua*' or grandfather. PW1 would ask DW1 if she needed anything while schooling in March and April 2024 since PW1's parents live in the village, relying mostly on DW1 for financial assistance. Sometimes PW1 would ask DW1 for money to buy her spray and gel. In March 2024, DW1 had shown PW1 a \$20 note as she had asked him for some money to buy her spray and gel, witnessed by DW1's nephew Samisoni Kotoisuva, and nothing else happened that day. DW1 stated 'no' to the prosecutor's proposition that he had gone to PW1's bedroom and showed PW1 a \$20 note for them to have sex. DW1 stated that they did not have sex in the room because there were other people in the house including his son Semiti Savu who wasn't working during that time. DW1 stated that there were other people at home on that day, and he was not home alone with PW1. DW1 stated that nothing happened in March 2004. DW1 stated that in April 2024, he neither approached PW1 nor showed her a \$10 note, nor ask her to have sex with him. DW1 stated that he did not have sex with PW1 in April 2024. DW1 did not penetrate PW1's vagina with his penis in March and April 2024.

18. DW1 was not re-examined by his counsel.

Analysis of the entire prosecution vis-à-vis defence case

19. The physical and fault elements for **Counts 1 & 2: Rape** are:

[1] A person i.e. the accused Ilaitia Radravu;

[2] Penetrated the complainant MIL's

- vagina with his penis [Count 1];

- vagina with his penis [Count 2];

[3] Without the complainant's consent [See ss. 206(1) - (2)]; and

[4] Did so intentionally.

20. The physical and fault elements for the lesser or alternative offence of ***Defilement of young person between 13 & 16 years***, in this instant, are:

[1] A person i.e. the accused Ilaitia Radravu;

[2] Carnally knew the complainant MIL by penetrating the complainant's vagina with his penis;

and

[3] Did so intentionally.

21. Having carefully scrutinized the entire evidence, I find as follows:

(1) **Accused identity**

The *Agreed Facts*, PW1's and DW1's testimonies clearly establish that the accused Ilaitia Radravu and PW1: MIL knew each other since the accused is PW1's *Tua* or grandfather / step-grandfather. The evidence also establish that during the school holiday in December 2022, PW1 stayed at the three-bedroom flat rented by the accused, situated at Drala Place, Painapiu Street, Vishnu Deo Road, Nakasi, with her grandfather Ilaitia Radravu and his

wife, her mother, uncle Semiti Savu and uncle Samisoni Lutu. Thus, the identity of the accused Ilaitia Radravu is well established and substantiated by the evidence.

(2) **Evidence of Rape – Counts 1 & 2**

(a) **PW1 (Complainant) testimony in chief**

PW1's testimony in examination-in-chief pertaining to Counts 1 & 2: Rape, are basically encapsulated as follows:

Count 1: Rape

During daytime on a day in March 2024, PW1's *Tua* or grandfather Ilaitia Radravu showed her a \$20 note and asked her for them to have sex, which PW1 agreed, and then they had sexual intercourse inside her room at the flat, and her grandfather used his penis and put it into her vagina. When they had sex, PW1's grandmother and mother had gone to work, while her uncle Semiti Savu was at his friend, and PW1 did not know the whereabouts of her uncle Samisoni Lutu.

Count 2: Rape

On an evening after 8.00 pm in April 2024, PW1's grandfather Ilaitia Radravu went to PW1's room and showed PW1 a \$10 note and asked her for them to have sex, which PW1 agreed, then the grandfather entered the room, closed the room door, had sexual intercourse with PW1 by putting his penis into PW1's vagina, and thereafter gave PW1 the \$10 note. When they had sex, PW1's grandmother and mother had gone to Naulu, while her uncle Semiti Savu roamed around elsewhere, and she did not know the whereabouts of her uncle Sami. After this sexual encounter in April 2024, nothing else happened on that month, and the matter was reported to the police in July 2024 by PW1 and her aunt Vilise Tikowale.

(b) **PW1 (Complainant) testimony in cross-examination**

In cross-examination, PW1 admitted that she had made up the complaint of being raped by her grandfather in March 2024, after her grandfather caught her and Susana dating two boys at the plantation, and she made up all that she informed the police in July 2024. PW1 stated that there was no sexual intercourse between her and the grandfather, and had made up these allegations, but despite that, PW1 also said that she had sex with her grandfather in March and April 2024. PW1 recalled giving a statement to the police, and by leave of the Court, identified her statement to the police, which statement dated 9 July 2024 was subsequently tendered by defence counsel as defence exhibit 1 – [**DE1**] on the basis of prior inconsistency. PW1 admitted that she had agreed to have sex with her grandfather, but in her statement to the police, PW1 noted that she was forced to have sex with her grandfather, and that there are two different versions given in Court today. PW1 admitted that she made up the story to the police and lied to the police. PW1 then stated that she had sex with her grandfather who did not force her, in response to defence counsel’s suggestion that because PW1 lied to the police, she therefore also lied about her grandfather having sex with her.

(c) **PW1 (Complainant) testimony in re-examination**

In re-examination, PW1 stated that she had made up the story that she told the police rather than the one she just told the Court. PW1 stated that the part of the story she made up to the police was that her *Tua* or grandfather had forced her.

(d) **DW1’s testimony**

DW1 Ilaitia Radravu denied both allegations of *Rape* in Counts 1 & 2.

- (3) PW1 MIL, the complainant, is an unreliable and incredible witness primarily because she was heavily discredited during cross-examination for: (i) admitting that there was no sexual intercourse between her and the grandfather in March and April 2024; (ii) making up the allegations of rape against DW1, after DW1 caught her and Susana dating two boys

at the plantation; (iii) lying to the police about the allegations of rape in her prior inconsistent statement dated 9 July 2024 tendered as **DE1**; and (iv) contradicting herself by stating at re-examination that she had sex with her grandfather without being forced by her grandfather. Therefore, I attach no weight to PW1's testimony and reject it entirely, but accept DW1's testimony, to the effect that the prosecution has failed to prove *beyond reasonable doubt* **Counts 1 & 2: Rape** in the Information including the lesser or alternative offence of *Defilement of young person between 13 & 16 years* contrary to section 215(1) of the Crimes Act 2009.

CONCLUSION

22. Based on all the reasons articulated above, I therefore find the accused Ilaitia Radravu *not guilty* of **Count 1: Rape** and **Count 2: Rape** in the Information including the lesser or alternative offence of *Defilement of young person between 13 & 16 years*, and *acquit* him accordingly of the said offences.
23. Thirty (30) days to appeal to the Fiji Court of Appeal.



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

At Suva

13 February 2026

Solicitors

Legal Aid Commission for the Applicant

Office of the Director of Public Prosecutions for the Respondent