

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO. HAC 060 OF 2025**

**BETWEEN : STATE**

**AND : SAIRUSI UASIRO**

**Counsel : Ms S Bibi for the State  
Ms B Kinivuai for the Accused**

**Date of Hearing : 16 March 2026**

**Date of Judgment : 19 March 2026**

**JUDGMENT**

**Introduction**

[1] The accused, Sairusi Uasiro, is charged with two counts of rape contrary to section 207(1) and (2)(b) of the Crimes Act 2009.

[2] The accused pleaded not guilty to both counts. The State called three witnesses: the complainant's younger brother Sailasa, the complainant's aunt Salote Vueti, and the complainant. The accused exercised his right to remain silent and called no evidence.

**Admitted Facts**

[3] The parties filed a set of admitted facts pursuant to section 135 of the Criminal Procedure Act 2009. These include:

- The accused's name is Sairusi Uasiro, born on 29 June 1987, aged 39 at the material time.
- The complainant's name is TU, born on 22 April 2011. She was 13 years old on 7 February 2025.
- The accused is the biological father of the complainant.
- The accused formerly lived with the complainant's mother, Ana Rasiga, but they separated about eight years ago. He later married Liku of Taiperia and they have two children who are the complainant's half-siblings.
- In February 2025, the accused, the complainant, the complainant's brother Sailasa, Liku and the two half-siblings were residing together in a modest corrugated-iron house at Naitata, Navua. The sleeping area was separated from the living space with curtains and a partial iron partition.
- On the morning of 7 February 2025, only the accused, the complainant and her brother were at home. Liku and the two half-siblings were away from the house.
- The photographic booklet of the house at Naitata and the complainant's birth certificate were tendered by consent.

[4] Identification of the accused as the alleged perpetrator and the complainant as the alleged victim is not in issue.

### **The Charges and Elements**

[5] The Information charges the accused as follows:

- **Count 1 – Rape:** that on 7 February 2025 at Naitata, Navua, the accused penetrated the vagina of the complainant with his finger without her consent, contrary to section 207(1) and (2)(b) of the Crimes Act 2009.

- **Count 2 – Rape:** that on the same occasion, at the same place, the accused penetrated the vagina of the complainant with his tongue without her consent, contrary to section 207(1) and (2)(b). of the Crimes Act 2009.

[6] Section 207(2)(b) of the Crimes Act 2009 provides that a person rapes another person if: the person penetrates the vulva, vagina or anus of the other person to any extent with a thing or a part of the person’s body that is not a penis, without the other person’s consent.

[7] For each count, the State must prove beyond reasonable doubt that:

- The accused penetrated the complainant’s vagina with his finger (Count 1) or tongue (Count 2).
- The penetration occurred without the complainant’s consent.
- The accused either knew or was at least reckless as to the absence of consent, within the meaning of sections 14, 21 and 23 of the Crimes Act 2009, as explained in *Tukainiu v State* [2017] FJCA 118.

[8] The legal burden rests on the prosecution throughout to prove every element of the offences beyond reasonable doubt. Sections 57 and 58 of the Crimes Act 2009 codify this principle. There is no legal or evidential burden on the defence to prove anything and any reasonable doubt arising from the evidence led by the prosecution must result in acquittal.

### **The Evidence at Trial**

#### **Evidence of PW1 – Sailasa**

[9] The complainant’s younger brother, Sailasa, was 11–12 years old when he gave evidence. He confirmed that in February 2025 he lived at Naitata, Navua, with his sister the complainant, his father (the accused), Liku and their two younger

siblings. On the morning of 7 February 2025, he, the complainant and the accused were at home. They had returned from an uncle's house and were preparing lunch when he saw their father approaching the house. The accused gave them \$15 and told them not to go to school that day.

[10] The accused then went into the bedroom and lay down. He called "us" into the room, meaning both children. After some movement between the room and kitchen, the accused gave his phone to Sailasa and told him to lie down in the kitchen and watch videos, leaving the accused alone with the complainant in the room.

[11] While lying on a mat in the kitchen, a short distance from the bedroom, Sailasa heard his father speaking softly. He heard words to the effect of telling someone to "open the legs," though he could not recall the exact words. He demonstrated in court the action of parting the legs.

[12] He said that the complainant came out of the room three times and each time she was crying. The first two times, she went to the sink and washed her face. When he asked her on the third occasion why she was crying, she replied "nothing." She then left the house.

[13] When he saw that the kitchen door was open and the complainant had gone, he ran to his uncle's house. There he saw the complainant sitting and crying and speaking with their grandmother.

[14] In cross-examination, he agreed that he estimated the complainant to be in the room with the accused for about 52 seconds on one of the occasions. He maintained that she came out of the room three times crying and that he heard his father saying something about opening the legs.

### **Evidence of PW2 – Salote Vueti**

- [15] The complainant's aunt, Salote Vueti, gave evidence as the second State witness. Her role, as explained by the prosecutor at the outset, was to give recent complaint evidence.
- [16] The prosecutor informed the court that the complaint was first made to the grandmother, with the aunt present, and that the aunt overheard the grandmother and then heard the complainant disclose the incident in the presence of the grandmother and aunt.
- [17] In her evidence, Salote recounted what the complainant said about the incident, including that the complainant had been told to bathe and was wearing a wrap-around sulu at the time of the assault.
- [18] Defence counsel submitted in closing that this evidence was inadmissible hearsay because the person to whom the complainant first complained – the grandmother – was not called, contrary to the principle that both the complainant and the person complained to must testify for recent complaint to be admissible. Counsel relied on *State v Prashottam* [2025] FJHC 746, where it was held that recent complaint evidence is admissible only to show consistency of conduct and to negative consent, not as proof of the facts complained of, and that both the complainant and the recipient of the complaint must give evidence.

### **Evidence of PW3 – the Complainant**

- [19] The complainant was 13 at the time of the alleged offending and 15 at trial. She gave evidence in closed court with special measures (screen, Itaukei interpreter) previously granted.

- [20] She confirmed the agreed facts: that the accused is her biological father, that they lived together at Naitata, and that on the morning of 7 February 2025 only she, her brother and her father were at home.
- [21] She said that on that morning, after they returned from their uncle's house, the accused gave them \$15 and told them not to go to school. The accused then lay down in the room and first asked her brother to massage his stomach, then sent him away to the kitchen to check the rice and called her into the room to massage his stomach.
- [22] While she was massaging his stomach, the accused told her to move down and squeeze his "male private part." She did not want to and continued massaging his stomach. When her grandmother called from outside the house, the accused told her to remain in the room.
- [23] She described going in and out of the room two or three times while crying. Each time, the accused called her back and eventually made her lie on the bed. The accused grabbed her neck and massaged her private part – which she identified as the place she urinates from, i.e. the vagina – by rubbing his middle finger there. She said she felt his middle finger inside her private part.
- [24] She further said that the accused told her to part her legs and then put his tongue on the same place, and she felt his tongue inside her private part.
- [25] She testified that she had been wearing shorts and a t-shirt, which the accused removed before the assaults, and that when she left the room the third time, she had put her clothes back on.

- [26] She did not tell her brother immediately because she was scared and crying. She was afraid the accused would do something to her or her brother and said the accused had told her not to tell anyone, promising that he had registered land for them worth \$4,000. She did not heed this threat and went to her paternal grandmother, Kalara Danford, and disclosed the incident.
- [27] She identified the place of the incident in the photographic booklet tendered as an admitted fact.
- [28] She expressly denied giving consent for the accused to put his finger or tongue into her vagina. She said she was scared, tried to kick him, and resisted while he forced himself on her.
- [29] In cross-examination, several propositions were put to her: that she had stolen money from the accused's wallet and was in trouble with him; that she had fabricated the allegations for that reason; that she would have called out to her brother for help if any sexual assault was occurring; and that her account of events was improbable given the short time she spent in the room and her movements in and out of the room. She denied stealing money, denied fabricating the allegation, and maintained that the accused had sexually assaulted her as described.
- [30] Defence also put to her that, according to PW2, she had said she was wearing a wrap-around sulu after being told to bathe, whereas in her evidence she said she was wearing shorts and a t-shirt. She did not accept the sulu version and kept to her account that she had worn shorts and t-shirt which the accused removed.

### **Admissibility of Recent Complaint**

- [31] Before turning to the elements of the offences, it is necessary to deal with the status of PW2's evidence. The prosecution opened her as a recent complaint witness, but the grandmother – the person said to have first heard the complaint was not called.
- [32] In *State v Prashottam* [2025] FJHC 746, the High Court held that recent complaint evidence is an exception to the hearsay rule, admissible to show the consistency of the complainant's conduct and to negative consent, but not as evidence of the facts complained of or as corroboration. For such evidence to be admissible, both the complainant and the witness who complained to must testify.
- [33] On the facts of this case, the evidence establishes that the initial disclosure was made by the complainant to her grandmother, in the presence or hearing of the aunt. The grandmother did not give evidence. PW2's account of what the complainant said is therefore at one remove and amounts to hearsay of what was said to another.
- [34] In my view, and having regard to *Prashottam*, I treat PW2's account of the content of the complaint as having no probative value on the truth of the allegations. Her evidence is not capable of functioning as recent complaint in a strict sense because the primary recipient of the complaint was not called.
- [35] I therefore disregard PW2's evidence insofar as it purports to recount what the complainant said about the details of the alleged assault (including the "bath" and "sulu" aspects). I do not treat it as corroboration of the complainant's account, nor as evidence of the facts complained of.

[36] The case must accordingly be decided primarily on the evidence of the complainant, supported by the circumstantial evidence of PW1, evaluated against the admitted facts.

### **Issues for Determination**

- [37] Given the admitted facts and undisputed identity, the real issues are:
- Whether the accused penetrated the complainant's vagina with his finger, as alleged in Count 1.
  - Whether the accused penetrated the complainant's vagina with his tongue, as alleged in Count 2.
  - Whether such penetration, if proved, occurred without the complainant's consent, and whether the accused was at least reckless as to the absence of consent.
- [38] There is no suggestion of any lawful justification or statutory defence that could shift any evidential burden to the accused. The burden remains on the State throughout.

### **Legal Principles: Credibility, Reliability and Inconsistencies**

- [39] In assessing the evidence, I am guided by the approach articulated in a number of authorities referred to by both counsel.
- [40] In *State v Navetau* [2023] FJHC 686 and *State v Solomone Qurai* HAC14 of 2022, the High Court emphasized that the court must determine the testimonial trustworthiness of witnesses by considering both credibility (veracity) and reliability (accuracy), taking into account factors such as promptness, probability or improbability, consistency and inconsistencies, contradictions, omissions, interest or bias, demeanor, and any corroboration where relevant.

- [41] Justice Kulatunga in *Qurai* explained that credibility concerns the witness's sincerity and willingness to tell the truth, whereas reliability concerns the ability of the witness to accurately observe, recall and recount events. A witness may be honest but mistaken; equally, an untruthful witness cannot be reliable.
- [42] In *Nadim v State* [2015] FJCA 130, the Court of Appeal noted that minor inconsistencies and omissions are to be expected in honest testimony and should not lead the court to reject the evidence entirely, provided they do not go to the heart of the matter or shake the basic version of the prosecution's case. The Supreme Court in *Bharwada Bhoginbhai Hirjibhai v State of Gujarat* [1983] AIR 753, cited with approval in Fiji cases, similarly cautioned against over-scrutinizing trivial discrepancies, especially in sexual offence cases.
- [43] In *Lulu v State* [2017] FJSC 19 and *State v Natuitagalua* [2016] FJHC 937, the courts emphasized that victims of sexual offences, particularly children, do not react in a stereotypical way and that their demeanor in court may not neatly correspond to expectations.
- [44] In *State v Sasiceni Raqio* HAC265 of 2020, it was observed that victims of sexual offences may not scream, struggle, run away or report immediately, and that such behaviour, or the absence of it, is not determinative of whether an assault occurred.
- [45] Finally, the Court of Appeal in *Chand v State* [2018] FJCA 145 stressed that a trial court must consider the totality of the evidence and account for all relevant evidence in reaching a conclusion, without selectively ignoring unfavorable portions.

[46] Applying these principles, I consider both the internal consistency of each witness's evidence and its consistency with other evidence and the admitted facts.

**Analysis: Penetration**

**Count 1 – Digital Penetration**

[47] The complainant's evidence is that after the accused had maneuvered her into the bedroom, sent her brother to the kitchen with his phone, and ensured they were alone, he lay her on the bed, grabbed her neck and massaged her vagina, inserting his middle finger into her private part.

[48] This account is consistent with the admitted fact that only the accused, the complainant and her brother, were in the small house that morning, and with the layout of the house as shown in the photographic booklet.

[49] PW1's evidence provides important circumstantial support. He confirmed that the accused called both children into the room initially but then sent him away to the kitchen, gave him a phone and left the accused alone with the complainant in the room. PW1 heard the accused speaking softly and saying words about opening or parting the legs, and saw the complainant come out of the room three times crying.

[50] The complainant's description of the acts – rubbing her vagina with the middle finger and feeling the finger inside – is clear and specific. She used age-appropriate language (referring to the place she urinates from) but conveyed an act of penetration to some extent, which is sufficient under section 207(2)(b).

[51] Defence submitted that it was inherently improbable that the accused could have undressed the complainant, digitally and orally penetrate her, and redressed her within the short periods suggested by PW1 (an estimated 52 seconds between

some of the movements in and out of the room). However, PW1 is a child, and his estimate of time is plainly imprecise. The case of Bharwada recognises that ordinary witnesses, especially children, cannot be expected to give precise time estimates; minor discrepancies about timing do not go to the root of the matter.

[52] Having observed the complainant's manner of giving evidence and considering the inherent probabilities, I find her evidence on digital penetration to be credible and reliable. It is supported by PW1's account of the accused's deliberate separation of the children, the soft instructions about parting the legs, and the complainant's distressed state immediately after.

[53] I am satisfied beyond reasonable doubt that the accused penetrated the complainant's vagina with his finger on the morning of 7 February 2025 as alleged in Count 1.

#### **Count 2 – Oral Penetration**

[54] The complainant further testified that after inserting his finger, the accused told her to part her legs and then placed his tongue on and into her vagina. She said she felt his tongue inside her private part.

[55] From PW1's position in the kitchen, separated by a curtain and partial iron partition, it is unsurprising that he did not witness the act itself. He could only hear the accused's voice and observe the complainant's later behaviour. The absence of a direct eyewitness does not create a reasonable doubt where the complainant's evidence is otherwise credible and consistent.

[56] The complainant's account of oral penetration follows immediately from and is closely linked to the digital penetration she described. It forms part of a single

sexual episode in which the accused had isolated her from her brother, used the pretext of stomach massage, and dictated her movements.

[57] Defence relied on inconsistencies between the complainant's evidence and PW2's version (that she had been told to bathe and was wearing a sulu). For reasons already given, I place no weight on PW2's contested account of what the complainant allegedly told her and her grandmother. The discrepancy about clothing arises from a hearsay account which I have disregarded.

[58] On the core question of whether the accused used his tongue to penetrate the complainant's vagina, the complainant's evidence was firm and unshaken in cross-examination. She consistently described the same sequence of events.

[59] I accept her evidence on this point. The State has proved beyond reasonable doubt that the accused penetrated the complainant's vagina with his tongue as alleged in Count 2.

#### **Analysis: Consent and Fault Element**

[60] Section 206 of the Crimes Act defines consent as consent freely and voluntarily given by a person with the necessary mental capacity and provides that consent is not freely and voluntarily given if obtained by force or by the exercise of authority, among other means.

[61] The complainant was 13 years old at the time. She was living in the same house with the accused, who is her biological father and an adult in a position of authority over her. These features are highly significant in assessing whether any apparent compliance could amount to free and voluntary consent.

- [62] The complainant said she was scared, tried to kick the accused and did not want to do what he was asking. She expressly denied giving him consent to penetrate her with his finger or tongue. Her fear that he would “do something” to her or her brother, coupled with his instruction not to tell anyone and his reference to land registration, shows coercive use of authority and psychological pressure.
- [63] PW1’s evidence that she emerged from the room three times crying supports the inference that she was distressed and not a willing participant. Her failure to call out to him in the house does not, in light of the authorities, negate her lack of consent. Victims of sexual offences, particularly children assaulted by a parent, may remain silent due to fear, shock, confusion or internalized obedience to authority.
- [64] I am satisfied beyond reasonable doubt that the complainant did not consent to either the digital or oral penetration.
- [65] As to the fault element, *Tukainiu v State* confirms that where the statute does not specify a mental element for the circumstance of absence of consent in rape, knowledge or recklessness under section 21 is the applicable fault element. The prosecution must establish penetration, lack of consent, and recklessness as to consent.
- [66] On the facts, the accused’s conduct, instructing his daughter to massage his stomach, sending the brother away, isolating her, directing her to handle his genitals, and penetrating her vagina demonstrates that he was at least aware of a substantial risk that she was not consenting and unjustifiably took that risk. There is no basis on which he could genuinely have believed a 13-year-old daughter consented to these acts by her father.

[67] I therefore find that the State has proved the requisite fault element of recklessness beyond reasonable doubt for both counts.

**Verdict**

[68] On Count 1 (rape by digital penetration), I find that the prosecution has proved beyond reasonable doubt that on 7 February 2025 at Naitata, Navua, the accused penetrated the complainant's vagina with his finger without her consent, being at least reckless as to her lack of consent.

[69] On Count 2 (rape by oral penetration), I find that the prosecution has proved beyond reasonable doubt that on the same occasion, the accused penetrated the complainant's vagina with his tongue without her consent, being at least reckless as to her lack of consent.

[70] Accordingly, I find the accused guilty and convict him on both counts of rape as charged.



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**Hon. Mr Justice Daniel Goundar**

**Solicitors:**

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

**Legal Aid Commission for the Accused**