

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

**Criminal Case No. HAC 34 of 2023**

**STATE**

**-v-**

**TU LUKE RASALATO**

**Counsel: Ms E Thaggard for the State**  
**Ms M Besetimoala for the Accused**

**Date of Trial: 17 and 19 November 2025**

**Date of Judgment: 8 January 2026**

**JUDGMENT**

*(In order to protect her identity, I shall refer to the complainant as "C" in this Judgment.)*

1. An Information dated 5 June 2023 charged Mr Tu Luke Rasalato ("the accused") with a count of rape, contrary to section 207(1) and (2) (a) of the Crimes Act 2009, the particulars being that, between 1 January 2023 and 31 January 2023, at Raikivi Settlement, Dogotuki, he penetrated C's vagina with his penis without her consent.
2. The accused pleaded not guilty and the matter proceeded to trial.

**The prosecution case**

3. In outline, the prosecution case is that C, aged 14 years at the time of the alleged offending, was asleep at home in the small settlement of Raikivi on a Friday

evening in January 2023 when she was awoken by the accused who proceeded to undress her and penetrate her vagina with his penis without her consent. C's younger brother and an elderly relative were asleep in the same room as C when she was raped by the accused. Sometime later, C told her school friends about the incident and they, in turn, informed the school master, and the matter was reported to the police.

4. In a little more detail, C, who was aged 16 years at trial, testified that she returned home from boarding school on a Friday in January 2023. Straight after dinner, her mum told her to go to sleep. Her mum and stepfather went to bath in the nearby river. She slept on a mattress in the sitting room with her 12-year-old brother. Karua Matai slept on a bed in the sitting room. As she slept, C felt someone close her mouth. She opened her eyes and saw the accused by the light of the solar light in the kitchen. He took off her pants and panty. She felt pain inside her vagina when the accused put his penis into her vagina. The accused was there for about 3 hours and he left when she heard her parents return from bathing. She told the girls in her dormitory about what happened and they told Master Joe. When he asked her about the matter, she told Master Joe everything. C knows the accused well. He is her cousin and resides in the same settlement.
5. In cross-examination, C said that, on the night in question, she was sleeping in the sitting room together with her younger brother and Karua Matai. Her stepfather's mother was sleeping in the kitchen. She did not scream or shout for help because she was scared. When it was suggested to C that the accused was not staying in Raikivi in January 2023, C said that he was in Raikivi. She did not tell her mother about what the accused did to her because she was scared that her mother would tell her off. C agreed that, before she told anyone that the accused had raped her, she had told her friends that Pa Jack had done that to her on a different night in Qaranivai. She had also told them that Tomasi did that to her. C agreed that she only told her friends about these things and did not tell any adults. She denied that these stories were untrue.
6. C's mother (CM) testified that she was staying at Raikivi in January 2023. There were only three houses in the settlement. Her family lived in one of the houses

and the accused's family lived in a house about 200 metres away from their house. Karua Matai occupied the third house. She would meet the accused every day as he would come to charge his phone. She and the accused's mother are cousins. When the Court sought to clarify the date that C had returned to boarding school after the Christmas holidays, CM said that she could not recall the date. She also said that she would only bath in the river before it went dark.

7. In cross-examination, CM confirmed that she only came to learn of the allegations against the accused when she was informed by the police. CM said that she never left C home alone at night. She slept between C and her son.
8. Mr Jonetani Mataruga testified that he is a school teacher at Duavata District School. In March 2023, C informed him that she was sexually harassed by a number of different boys, including the accused. The matter was reported to the police.
9. In cross-examination, Mr Mataruga said that, before she mentioned the accused, C had mentioned Pa Jack. The matter first came to his attention when C's dorm mates had informed him that Pa Jack had sexually abused her. When he first asked C about the matter, she mentioned Pa Jack's name. On a later occasion, C mentioned that the accused had sexually harassed her. When asked about when the school term started after the Christmas holiday, it emerged that school resumed in early February 2023.
10. At the close the prosecution case, I acceded to an application to amend the Information by substituting 2 February 2023 to 28 February 2023 as the period of the alleged offending. Ms Besetimoala quite properly did not seek to persuade the Court that the prosecution evidence was not sufficient to put her client to his defence.

### **The defence case**

11. The accused elected to give evidence and to call his sister as an alibi witness.
12. He testified that he was living with his sister, Luisa, and her family in Raranibulubulu in February 2023. His parents lived in Raikivi, but he did not visit them during

February 2023. He only learned of the allegations against him when he was informed by his parents in April 2023. As soon as he came to learn of the matter, he took a bus to Namara Police Station, where he was questioned. He denied raping C and testified that she had falsely accused Pa Jack and Tomasi, and now him.

13. In cross-examination, the accused maintained that he was staying with his sister in Raranibulubulu in February 2023. When it was suggested that he was lying to save himself, the accused said that he really did not do it.
14. Ms Luisa Levulevu testified that she lives in Raranibulubulu together with her husband, their three children and her brother, the accused. The accused was staying with her in February 2023. During the cane cutting season, he worked with her husband, and also assisted her husband farming cassava. At no time during February 2023 did the accused visit Raikivi. The only time he visited Raikivi was during the school holidays.
15. In cross-examination, Ms Levulevu said that the accused had a yaqona farm in Vunisikau, which is around a two and a half hour walk from Raikivi. She also has a farm there, and they would visit there during the school holidays. They had planted yaqona in the December 2022 school holidays, and returned to the farms in the April 2023 school holidays. The accused had stayed with her during his schooling, and had returned to stay with her in 2022. He stayed with her because he is close to her and was not that close to his father, who was a very short-tempered man. She agreed that she would do anything for the accused, but said that she would not lie for him in court. She first learned about these serious allegations against the accused when they were at the farm in April 2023. The accused took the bus to Namara Police Station.

### **Closing submissions**

16. In her helpful written and oral submissions, Ms Besetimoala dealt with the correct approach to an alibi defence, pointing out, quite rightly, that the prosecution bears the burden of disproving an alibi to the criminal standard. Ms Besetimoala invited the Court to accept Ms Levulevu as a truthful and reliable witness.

17. Ms Besetimoala also highlighted CM's evidence that she never bathed in the river after dark, and never left her children alone at night. This evidence undermines C's evidence about being left at home when her mum went to bath in the river after dinner. Also, C's evidence about the accused being with her for 3 hours is inherently implausible.
18. Finally, Ms Besetimoala argued that the evidence supports that C is a fantasist with a propensity for making false allegations of sexual offending against other men. In short, C is not a credible and reliable witness.
19. Ms Thaggard highlighted that the Alibi Notice was filed significantly late and submitted that the accused and his sister had the opportunity to concoct his alibi. Ms Thaggard further submitted that C may have been confused when she testified that the accused was with her for 3 hours. Likewise, C may have been mistaken about her parents having gone to bath in the river in light of CM's evidence that she never went to bath after dark. Given the lapse of over two years, CM may have been mistaken about never leaving C alone at night. Notwithstanding her submissions regarding the possibility of C and CM having been confused or mistaken, Ms Thaggard invited the Court to accept them both as credible and reliable witnesses.

### **Analysis and disposal**

20. The prosecution must prove that the accused is guilty. The prosecution bears the burden of disproving the alibi defence to the criminal standard. 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, I am not sure that the accused is guilty, my verdict must be not guilty.
21. Since the accused elected to give evidence in his own defence, I remind myself that even if I reject his evidence the prosecution must still prove its case to the criminal standard.
22. I must start by rejecting as misconceived the defence submission that C has made false rape allegations against other men. There is simply no evidence upon which

I may form a concluded view on the truthfulness or otherwise of what C said about other men having sexually abused her. I am unaware whether these allegations were ever investigated by the police.

23. I am required to reach a verdict in this case by applying the burden and standard of proof to the totality of the relevant evidence adduced at trial.
24. It is convenient to deal firstly with the alibi since I must find the accused not guilty if the alibi may be true. Plainly, Ms Levulevu has a very close relationship with her younger brother. It would be wrong of me, however, to jump to the conclusion that she has provided him with a false alibi out of a misguided sense of loyalty. I found her to be an impressive witness. Her account of the accused living with her family, and them only visiting their farms together during the school holidays has the ring of truth about it. Her evidence about coming to learn of the serious allegations against her brother when she was at the farm with her family and the accused during the April 2023 school holidays was not challenged. The accused and Ms Levulevu gave consistent evidence about the accused having taken the bus to the police station on the Monday following the weekend they were informed about the allegations. This evidence finds support in the undisputed fact that the accused was interviewed under caution on Monday, 17 April 2023. Despite what Ms Thaggard said about the late Alibi Notice being suggestive of a false alibi, I note from the court file that the alibi defence was discussed in court on 3 December 2024 and Ms Thaggard acknowledged that the accused had raised his alibi in his record of interview. Clearly, the alibi was not a late invention.
25. CM was called by the prosecution principally to rebut the accused's alibi. She testified that the accused was in Raikivi in January 2023. I did not find her to be an impressive witness. CM's recollection of often seeing the accused in the settlement when he came to charge his phone was generalised. Her memory of dates was sketchy. For example, she could not recall when C had returned to school after the Christmas holidays. I note also that the prosecution has suggested that CM may be unreliable in her recollection that she never bathed in the river after dark and never left C alone at night.

26. Of course, the key witness in rebutting the alibi is C herself. Should I accept her as a credible and reliable witness, whose evidence makes me sure that the accused raped her in February 2023, that would be sufficient to rebut the accused's alibi and found his conviction.
27. My sense is that C found the experience of giving evidence to be challenging despite the special measures taken. I make full allowance for this and for her relative youth. C was open and frank in accepting that she had made allegations against two other men before naming the accused. As touched upon above, I am not in a position to assess the truthfulness of those allegations. It seems to me to be highly unlikely that C is a fantasist who has imagined being repeatedly sexually abused by different men. She struck me as being far too naïve and straightforward to have come up with untrue stories of that nature. Nevertheless, in light of CM's evidence, I cannot be sure that C's account of having been raped in her own home at night over a period of 3 hours whilst her mother was bathing in the river is true.
28. For the reasons discussed above, the prosecution has failed to rebut the accused's alibi. I must therefore find him not guilty and acquit him accordingly.
29. 30 days to appeal to the Court of Appeal.



A handwritten signature in black ink, consisting of a stylized "W" and "D" followed by a long horizontal line.

Hon. Mr Justice Burney

**At Labasa**

8 January 2026

**Solicitors**

**Office of the Director of Public Prosecutions for the State  
Office of the Legal Aid Commission for the Accused**