

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 11 of 2025

THE STATE

-v-

AM (Juvenile)

Counsel: Mr T Tuenuku for the State
Mr I Rusaqoli for the Accused

Date of Trial: 25 - 26 August 2025

Date of Judgment: 9 January 2026

JUDGMENT

1. An Amended Information dated 8 February 2025 charged AM (name suppressed) with a single count of rape, contrary to section 207(1) and (2) (b) of the Crimes Act 2009, the particulars of his alleged offending being that, on 22 February 2024, he penetrated the complainant's vulva with the handle of a cane knife.
2. AM pleaded not guilty and the matter proceeded to trial.

The evidence

3. This was a short trial. The evidence was largely uncontentious and may be summarised shortly.
4. In 2024, the complainant, who I shall refer to as CC in this Judgment, and AM were in the same form at college. They were both 16 years old at the time of the alleged offending, and 17 years old when they gave evidence at trial. On 22 February

2024, their last lesson of the day was an agricultural practical which, as one might expect, involved the students using various garden tools. At around 3.30pm, the lesson ended and the students, including the CC and AM, were tasked with returning these tools to the tool room. As the tool room was elevated, CC had to step up to enter the room. As she did so, she felt something poke her vagina from behind, which caused her a good deal of pain. So much so that she started to cry.

5. AM was standing behind CC holding a cane knife. He gave evidence at trial, consistent with what he said when interviewed by the police, that he was swinging the cane knife, and the handle accidentally struck CC between her legs as she stepped up to the tool room.
6. The incident was witnessed by the CC's friend (PW2), who was stood behind AM and had a clear view. She demonstrated how AM had swung the cane knife and how the handle had struck CC between her legs as she stepped up to the tool room, resulting in CC crying in pain. AM poked CC on top of her long dress. When Mr Rusaqli suggested to PW2 that AM had accidentally poked CC, she replied that he had meant to do it.
7. It was common ground at trial that AM had apologised to CC, which apology was gracefully accepted.
8. Nevertheless, the incident came to the attention of a teacher who, quite properly, reported the matter up the chain of command in accordance with the established protocol governing allegations of sexual assault. A report was made to the police and CC was escorted for a medical examination.
9. Dr Alosio Yacalagilagi examined CC on 22 February 2024. He completed the standard Police Medical Examination Form, which was tendered at trial. He found a small area of redness on the left side of her labia majora. In Dr Yacalagilagi's opinion, this was not a penetrative injury. In medicine, penetration involves entry into a cavity.
10. As mentioned, AM was interviewed under caution and gave the account set out above.

The key issues

11. The key issues I must determine are: (i) whether I am sure that AM deliberately struck CC with the handle of a cane knife; (ii) whether the evidence makes me sure that the handle of the cane knife penetrated CC's vulva; and (iii), if satisfied of (i) and (ii), whether I am sure that AM intentionally penetrated CC's vulva with the cane knife.
12. As discussed below, these key issues are not as straightforward as they may appear in all the circumstances of this case.

Closing submissions

13. Mr Tuenuku and Mr Rusaqoli made helpful written and oral submissions for which the Court is grateful.
14. The main thrust of the defence case is that the poking of CC's private parts with the handle of a cane knife was an accident. In other words, AM did not intend to poke her. Mr Rusaqoli also argues forcefully that the prosecution has failed to prove that there was any penetration of CC's vulva. He points out that CC was wearing a long dress, tights and underwear. Mr Tuenuku accepts that there was no penetrative injury to the complainant's vulva, but relies on CC's evidence that her vagina was penetrated by the handle of the cane knife.
15. Mr Tuenuku argues that the evidence supports that AM deliberately poked CC's private parts, intending to penetrate her vulva. His fallback position is that AM was reckless as to penetration. Mr Rusaqoli strongly refutes the suggestion that a reckless penetration is sufficient to found a rape conviction.

Legal directions/warnings

16. The prosecution must prove that AM is guilty. AM does not have to prove anything to me. The defence does not have to prove that AM is innocent. The prosecution will only succeed in proving that AM is guilty if I have been made sure of his guilt. If, after considering all of the evidence, I am not sure that AM is guilty, my verdict must be not guilty.

17. Section 207(1) of the Crimes Act 2009 (“the Act”) provides that any person who rapes another person commits an indictable offence. Relevantly for present purposes, Section 207(2) states that:

“(2) A person rapes another person if-

- (b) The person penetrates the vulva, vagina or anus of the other person to any extent with a thing or part of the person’s body that is not a penis without the other person’s consent;”*

18. Section 14 of the Act provides:

“214. In order for a person to be found guilty of committing an offence the following must be proved-

(a) The existence of such physical elements as are, under the law creating the offence, relevant to establishing guilt;

(b) In respect of each such physical element for which a fault element is required, one of the fault elements for the physical element.”

19. Since section 207 of the Act does not specify the fault elements of rape, section 23 of the Act comes in to play:

“23. –(1) If the law creating the offence does not specify a fault element for a physical element that consists only of conduct, intention is the fault element for that physical element.

(2) If the law creating the offence does not specify the fault element for a physical element that consists of a circumstance or a result, recklessness is the fault element for that physical element.”

20. In my view, there are two physical elements of the offence of rape as defined in section 207 of the Act. Firstly, there must be a penetration of a person’s vagina/anus/mouth with a penis/thing/body part and, secondly, that penetration must be without the other person’s consent. Since the first physical element

consists only of conduct, intention is the fault element for that conduct. In other words, the prosecution must prove in this case that AM intended to penetrate CC's vulva with the handle of a cane knife. The second physical element – that the penetration is non-consensual – is a circumstance for which the fault element is recklessness.

21. I have found *Greg William Anderson v The Queen* [2010] VSCA of assistance on the fault element of penetration. At paragraph 86, the Court stated that:

“86. In many instances, where penetration is established, there will be no issue as to whether the act was deliberate, and intentional. If the evidence is that the penetration took place over an extended period of time, there will ordinarily be no doubt whatsoever as to the mental state having been proved. Where, however, as in the present case, the complainant's account of what occurred is uncertain, and left as vague as it was, the possibility that any slight act of penetration was accidental, cannot easily be excluded. It must be remembered that the requisite intention for the offence of sexual penetration is an intent to penetrate. An intent to commit an indecent assault will not suffice.”

22. Essentially, what it boils down to is whether I am sure that CC and PW2 are truthful and reliable witnesses whose evidence makes me sure that AM intentionally penetrated CC's vulva with the handle of a cane knife. Also, I must be sure that AM's denials are untrue.
23. Since AM 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.

Analysis

24. CC gave a clear description of being poked in her private parts over her clothes, causing her to cry in pain. There is no dispute that she was poked by the handle

of the cane knife carried by AM, and that she suffered a blunt force trauma to the left side of her labia majora.

25. I am sure that AM deliberately poked CC between her legs with the handle of his cane knife. PW2 was clear in her impression that AM intended to poke CC. This strikes me as the sort of thing that an immature young man would do. It is simply implausible that he accidentally poked CC between her legs in the manner he described. I have no hesitation in rejecting AM's evidence that he accidentally poked CC.
26. I am not, however, sure that AM penetrated CC's vulva. The medical evidence supports that she suffered a blunt force trauma to the left side of her labia majora rather than *between* her labia majora. Whilst the absence of evidence of a penetrative injury is not, of course, determinative of the issue of penetration, in all the circumstances of this case I am left with a reasonable doubt as to whether CC's vulva was, in fact, penetrated, even slightly.
27. Even if CC's evidence as to the fact of penetration were to be accepted, there would still be a question as to whether one could safely conclude, on the facts of this case, that AM had intended to penetrate her vulva with the handle of a cane knife. I am doubtful about that given that CC was poked over her clothes. The possibility of inadvertent penetration could not be excluded. I could not be sure that, by poking her over her clothes, AM *intended* to penetrate her vulva.
28. During closing speeches, I discussed with counsel the availability of an alternative verdict. Mr Tuenuku submitted that, in the event that the Court was not sure that CC's vulva was penetrated, the evidence supports an alternative verdict of sexual/indecent assault. Mr Rusaqoli maintained that, since the poking was accidental, the only proper disposal is an acquittal.
29. Having found that the prosecution has failed to prove that the accused penetrated CC's vulva, I must find him not guilty of rape. That, however, is not the end of the matter.
30. Pursuant to section 162(1)(f) Criminal Procedure Act 2009, where a person is charged with rape, but the court is satisfied that the evidence adduced at trial

supports a conviction for a lesser sexual offence, the court may record a conviction for that lesser sexual offence.

Disposal

31. As will be apparent from my reasoning above, I am satisfied so that I am sure that AM intentionally poked CC's private parts with a cane knife above her clothing.
32. In my judgement, this act clearly has some element of indecency in that any right-minded person would consider such conduct indecent in nature.
33. It follows that I satisfied that the evidence adduced at trial supports a finding of guilt for Indecent Assault, contrary to section 212(1) Crimes Act 2009.
34. Accordingly, the Court finds AM not guilty of rape and finds him guilty of Indecent Assault, contrary to section 212(1) Crimes Act 2009.
35. 30 days to appeal to the Court of Appeal.



Hon. Mr Justice Burney

At Labasa

9 January 2026

Solicitors

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