

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

**Crim. Case No: HAC 085 of 2021**

**STATE**

vs.

**MACTU KOROIDUA**

**Counsel:** Ms. U. Tamanikaiyaroi with Ms. P. Kumar for the State  
Ms. N. Raikaci for Accused

**Date of Hearing:** 12<sup>th</sup> and 13<sup>th</sup> October 2022

**Date of Closing Submission:** 24<sup>th</sup> October 2022

**Date of Judgment:** 17<sup>th</sup> November 2022

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**JUDGMENT**

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1. The Accused is charged with one count of Rape, contrary to Section 207 (1) (2) (a) of the Crimes Act, one count of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes Act, and three counts of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act. The particulars of the offences are:

**Count 1**

*Statement of Offence*

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

*Particulars of Offence*

**MACIU KOROIDUA** between the 1<sup>st</sup> day of October 2019 and the 31<sup>st</sup> day of October 2019 at Tumavia, Nakelo, Tailevu in the Eastern Division, had carnal knowledge of **MEREIA UA**, without her consent.

**Count 2**

*Statement of Offence*

**SEXUAL ASSAULT:** Contrary to Section 210 (1) (a) of the Crimes Act 2009.

*Particulars of Offence*

**MACIU KOROIDUA**, between the 1<sup>st</sup> day of April 2020 and 30<sup>th</sup> day of April 2020 at Tumavia, Nakelo, Tailevu in the Eastern Division, unlawfully and indecently assaulted **LUSIANA SIKITI BAINIVALU**, by fondling her breasts.

**Count 3**

*Statement of Offence*

**RAPE:** Contrary to Section 207 (1) and (2) (b) of the Crimes Act 2009.

*Particulars of Offence*

**MACIU KOROIDUA** between the 1<sup>st</sup> day of September 2020 and 30<sup>th</sup> day of September 2020 at Tumavia, Nakelo, Tailevu in the Eastern Division, penetrated the vagina of **JULIE RAVUNA**, with his finger, without her consent.

**Count 4**

*Statement of Offence*

**SEXUAL ASSAULT:** Contrary to Section 210 (1) (a) of the Crimes Act 2009.

*Particulars of Offence*

**MACIU KOROIDUA**, between the 1<sup>st</sup> day of September 2020 and 30<sup>th</sup> day of September 2020 at Tumavia, Nakelo, Tailevu in the Eastern Division, unlawfully and indecently assaulted **JULIE RAVUNA**, by fondling her breasts.

**Count 5**

*Statement of Offence*

**SEXUAL ASSAULT:** Contrary to Section 210 (1) (a) of the Crimes Act 2009.

*Particulars of Offence*

**MACIU KOROIDUA**, between the 1<sup>st</sup> day of September 2020 and 30<sup>th</sup> day of September 2020 on an occasion other than in Count 4 at Tumavia, Nakelo, Tailevu in the Eastern Division, unlawfully and indecently assaulted **JULIE RAVUNA**, by fondling her breasts.

2. The Accused pleaded not guilty to these five counts; hence, the matter proceeded to the hearing. The hearing commenced on 12th October 2022 and concluded on 13<sup>th</sup> October 2022. The Prosecution presented the evidence of three Complainants. The Accused exercised his right to remain silent but called one witness for the Defence. Subsequently, the Court heard the closing submissions of both counsel. Besides their oral submissions, the learned counsel filed their respective written submissions. Having carefully perused the evidence adduced during the hearing and the parties' oral and written submissions, I now pronounce my judgment as follows.

**Burden and Standard of Proof**

3. The Accused is presumed to be innocent until proven guilty. The burden of proof of the charge against the Accused is on the Prosecution. It is because the Accused is presumed to be innocent until proven guilty. The standard of proof in a criminal trial is "proof beyond

reasonable doubt". The Court must be satisfied that the Accused is guilty of the offence without any reasonable doubt.

### **Elements of the Offences**

4. The main elements of the offence of Rape as charged under first count are that:
  - i) The Accused,
  - ii) Penetrated the vagina of the first Complainant with his penis,
  - iii) The first Complainant did not consent to the Accused to penetrate her vagina with his penis,
  - iv) The Accused knew or believed or reckless that the first Complainant was not consenting for him to insert his fingers in that manner.
  
5. The main elements of the Rape as charged under count three are that:
  - i) The Accused,
  - ii) Penetrated the vagina of the Complainant with his fingers,
  - iii) The Complainant did not consent to the Accused to penetrate her vagina with his fingers,
  - iv) The Accused knew or believed or reckless that the Complainant was not consenting for him to insert his fingers in that manner.
  
6. The first element is the identity of the Accused. It is the onus of the Prosecution to prove beyond a reasonable doubt that it was the Accused who committed these offences against the Complainant. There is no dispute about the correctness of the identification. The Accused and the Complainant are known to each other. The Accused never raised the issue that the Complainant was mistaken in identifying the alleged perpetrator.
  
7. Evidence of the slightest penetration of the vagina of the Complainant with the penis/ fingers of the Accused is sufficient to prove the element of penetration.

8. Consent is a state of mind that can take many forms, from willing enthusiasm to reluctant agreement. In respect of the offence of Rape, the Complainant consents if she had the freedom and capacity to make a choice and express that choice freely and voluntarily. Consent obtained through fear, threat, the exercise of authority, use of force, or intimidation could not be considered as consent expressed freely and voluntarily. A submission without physical resistance by the Complainant to an act of another person shall not alone constitute consent.
9. If the Court is satisfied that the Accused had penetrated the vagina of the Complainant with his penis/ fingers and she had not given her consent, the Court is then required to consider the last element of the offence. That is whether the Accused honestly believed, knew, or was reckless that the Complainant was freely consenting to this alleged sexual act. The belief in consent is not the same as the hope or expectation that the Complainant was consenting.
10. The main elements of the Sexual Assault are that:
  - i) The Accused,
  - ii) Unlawfully and indecently,
  - iii) Assaulted the Complainant.

### **Admitted Facts**

11. The Prosecution and the Defence tendered the following Admitted Facts pursuant to Section 135 of the Criminal Procedure Act; they are that:
  - a) *The name of the person charged is Maciu Koroidua ["Maciu"].*
  - b) *Maciu was born on 31 May 1974 and was 45 years old in October 2019.*
  - c) *Maciu is legally married to Marama Keresi and they have four children together.*
  - d) *In October 2019, Maciu was residing in Tumavia settlement, Nakelo, Tailevu*

### Count 1

- e) *Mereia Ua ["Mereia"] was born on 09 July 2001 and was 18 years old in October 2019.*
- f) *Maciu and Mereia are known to each other namely Mereia is Maciu's niece.*
- g) *Whilst attending Shiridhar College, Mereia resided with Maciu at his residence located at Tumavia settlement, Nakelo, Tailevu.*
- h) *Mereseini Bou ["Mereseini"] who is Maciu and Marama's daughter also resided at Tumavia settlement, Nakelo, Tailevu.*
- i) *Mereia's sister is Lusiana Sikitai Bainivalu ["Lusiana"] and her brother's name is Meli Robroy ["Meli"]. Mereia, Lusiana and Meli's father's name is Alipate Soko ["Alipate"] and their step-mother's name is Jomila.*

### Count 2

- j) *Lusiana was born on 12 June 2006 and was about 13 years and 10 months old in April 2020.*
- k) *Maciu and Lusiana are known to each other namely Lusiana is Maciu's niece.*
- l) *In April 2020, Lusiana resided with Maciu at his home in Tumavia settlement, Nakelo, Tailevu.*

### Counts 3, 4 and 5

- m) *Julie Ravuna ["Julie"] was born on 20 March 2003 and was about 17 years and six months old in September 2020.*
- n) *Maciu and Julie are known to each other namely that Julie is the de-factor partner of Maciu's nephew namely Meli. Julie is also Maciu's niece.*
- o) *Sometime in September 2020, Julie and Meli resided with Maciu at his home in Tumavia settlement, Nakelo, Tailevu.*

### Prosecution's Case

12. The first Complainant explained in her evidence how the Accused penetrated her vagina with his penis without her consent on a week day between the 1st day of October 2019 and the 31st day of October 2019. The Accused is related to the first and second Complainants as a fraternal uncle. The third Complainant's partner is the brother of the first and second Complainants. The first Complainant came to the Accused's place in 2019 as it was convenient for her to attend school from her uncle's place. The second Complainant had joined her sister at the Accused's residence in 2020. Subsequently, the third Complainant came to stay with the Accused as she eloped with her partner, leaving her father in the village.
13. According to the first Complainant, she was sleeping in the room on that day as she did not attend school due to some sickness. While asleep, she felt someone on top of her. She opened her eyes and found that the Accused was on top of her. No one was home as they all had gone to work or school. The Accused then pushed her shorts and undergarment aside and put his penis into her vagina. She felt that it went into her vagina. The Accused continued that for about two minutes until he ejaculated. He then stood up and went to his room.
14. The Complainant explained that she was scared and could not do anything as he was big. The Accused did not say anything while penetrating her vagina with his penis. The Complainant testified that she was scared of the Accused and did not say anything while he did that. The Complainant specifically stated in her evidence that she did not consent to the Accused to penetrate her vagina in that manner. The first Complainant had not informed anyone, including her family members, the wife of the Accused, or anyone at her school. The Complainant had thought that the Accused's wife might not believe her and would look at her differently if she told her about this incident. She had not told any of the Accused's children because he is their father. She was scared and also felt ashamed of telling anyone about this. The Accused had done so much for her and her education; he was also a church elder.



15. According to the 1<sup>st</sup> Complainant, she subsequently had consensual sexual intercourse with the Accused twice. During the second sexual encounter, the daughter of the Accused found it and informed the Accused's wife.
16. In respect of the second count, the Court heard the evidence of the second Complainant, where she explained how the Accused committed the offence of Sexual Assault against her. The second Complainant moved to the Accused's house in 2020 and attended school from there. One night between the 1st of April 2020 and the 30th of April 2020, she felt someone touching her breasts while she was sleeping in the bed in the kitchen. There was another bed on which Epeli, one of the sons of the Accused, was sleeping at that time while her sister, the first Complainant, was sleeping on the kitchen floor. She then woke up, tapped the hand touching her breasts, and found that the Accused was touching her breasts. He was lying on the floor beside the bed and stretched his hand to touch her breasts. According to the second Complainant, the Accused was not sleeping on the floor when she went to sleep. The Court heard the second Complainant's explanation about the set-up of the kitchen.
17. The second Complainant explained that she was shocked to find that the Accused did such an act. She was scared and ran to the sitting room and stayed with the Accused's wife and children, who were sleeping in the living room till the next morning. On the following morning, she informed her sister, the first Complainant. Her sister told her they should confront the Accused to clarify what he had done last night. They have, accordingly, confronted the Accused regarding this incident, where the Accused apologized and said that he did not intend it and requested them not to tell anyone about this. The second Complainant wanted to finish school and return to her village immediately. In 2021, she had gone to her village to attend a church gathering, and by that time, there was some rumours around the village about what had happened to them. Her father had inquired about these rumours, and she then told her father about this incident. Before that, the second Complainant had informed her teacher at school, but no action was taken.
18. The third Complainant testified regarding the third, fourth and fifth counts. The third Complainant was seventeen years old in 2020. On one of the Saturdays between the 1st of



September 2020 and the 31st of September 2020, the three Complainants with the children of the Accused were doing house chores in the kitchen while her partner was sleeping in the bed in the kitchen. The Accused was in one of the two bedrooms of the house. While they were doing the house chores in the kitchen, the Accused called her to the room and told her to lie beside him in the bed. The Accused was lying on the bed on his right side arm. It was not unusual for them to lie beside the Accused, as he had been doing that with them many times. The Accused used such moments to talk to them regarding life, their education and their future. Hence, the third Complainant lay beside the Accused in the bed as he requested. The Accused then started to talk about her education and future and then moved to her relationship with her partner. He explained that she should not let her relationship be an obstacle to her further success. Having discussed those issues, the Accused told the Complainant that he would show her how to engage in intimacy with her partner without getting pregnant.

19. The third Complainant was confused and shocked when the Accused started to talk about her personal life with her partner. She was not sure whether the intention of the Accused was genuine as an elder or not. The Accused then touched her breasts with his hands and put his hands under her undergarment. He put his fingers in her vagina. The Court heard the evidence of the third Complainant, stating that she was scared and confused and did not know how to react. She couldn't even talk or think of it. She stayed the same way, wishing someone from the kitchen would walk into the room and then this ordeal would end. The third Complainant specifically stated that she did not consent to the Accused penetrating her vagina with his fingers and touching her breast with his hands. After that, the Accused asked her to spill oil on her hand and rubbed his penis. She then got up and walked out of the room. She went outside and the first and the second Complainants followed her. According to the third Complainant, the two other Complainants knew what happened to her in the room. They came and asked what had happened to her. She then explained to them what the Accused did. She was uncomfortable telling her aunty or their children about this incident.
20. A few days after the first incident, the Accused again touched her breast while sleeping in the sitting room. That night she was sleeping on the floor of the sitting room with the second

Complainant while the Accused's wife and their children were on the other side. The second Complainant was sleeping 2 to 3 meters away from her. While sleeping, she felt someone lying beside her and started to touch her breasts. She woke up and suddenly got up, seeing the Accused lying beside her and started to touch her breasts. The Accused too, got up with her and ran to his room. Her partner was not at home that night. When the Accused left, the second Complainant woke up. The third Complainant did not tell anyone as she thought they might not believe it if she told them about these incidents. Since the Accused supported her in her education, she wanted to finish school, leave his house, and return to the village.

21. During the cross-examination, the third Complainant said that her father sexually harassed her when she was in the village. She then eloped with her partner. She later told her partner about these incidents but not immediately after they occurred. She feared that her partner would react angrily and create some issues.

#### **Defence's Case**

22. The Accused exercised his right to remain silent. The fact the Accused decided not to give evidence must not be held against him, and it proves nothing. However, the Accused called one witness for the Defence. The Defence's witness testified regarding the messages exchanged between the witness and the first Complainant regarding the Accused on the day he was produced in Court.

#### **Evaluation of Evidence**

23. Having briefly discussed the evidence adduced during the hearing, I shall now proceed to evaluate the evidence. In doing that, I must first draw my attention to determining the evidential trustworthiness of the prosecution witnesses. Kulatunga J in **State v Solomone Quran (HC Criminal - HAC 14 of 2022)** has explained the test of determining the testimonial trustworthiness of the witness on the basis of credibility and reliability of the evidence, where His Lordship held that:

*"In considering the testimonial trustworthiness of a witness there are two aspects that a court is required to consider. One is the credibility or veracity and the other is the accuracy and reliability. The former relate to the witness's sincerity, that is, his or her willingness to speak the truth as the witness believes it to be. The latter concerns and relate to the actual accuracy of the witness's testimony. The accuracy of a witness's testimony involves considerations of the witness's ability to accurately observe, recall and recount the events in issue. When one is concerned with a witness's veracity, one speaks of the witness's credibility. When one is concerned with the accuracy of a witness's testimony, one speaks of the reliability of that testimony. Obviously a witness whose evidence on a point is not credible cannot give reliable evidence on that point. The evidence of a credible, that is, an honest witness, may, however, still be unreliable. [vide; R. v. Morrissey (1995), 22 O.R. (3d) 514 (C.A.), Doherty J.A. (at p. 526); 2014 MBCA 74 (CanLII) and R. v. H.C., 2009 ONCA 56, 244 O.A.C. 288 R. v. H.C., 2009 ONCA 56, 244 O.A.C. 288]"*

24. Consequently, the Court should first look into the credibility or the veracity of the evidence given by the witness and then proceed to consider the reliability or accuracy of the evidence. In doing that, the Court should consider the promptness/spontaneity, probability/improbability, consistency/inconsistency, contradictions/omissions, interestedness/disinterestedness/bias, the demeanour and deportment in Court and the evidence of corroboration where it is relevant. (vide *Matusavui v State* [2016] FJCA 118; AAU0036.2013 (30 September 2016, *State v Solomone Qurai* (HC Criminal - HAC 14 of 2022)).
25. The learned Counsel for the Defence extensively cross-examined the three Complainants, suggesting their allegations were false. The Court heard the evidence of the first Complainant, where she explained that the incident pertaining to her occurred while other occupants of the house were away. She had not attended school that day due to some sickness. She was lying in bed and found the Accused was on top of her, pushing her shorts

and undergarment and penetrating her vagina with his penis. Neither the Accused nor the Complainant said anything during this incident. The first Complainant admitted that she did not shout asking for help as no one was at home then. Moreover, she was scared and shocked and never thought the Accused would do something like this.

26. There is no stereotype of behaviours for rapists and victims of Rape; they behave in various ways. Some of them shout, asking for help and resist the perpetrator, but another may silently submit due to fear and shock. According to three Complainants, the Accused was an influential father figure. He had provided them with everything, especially for their education and well-being. The first Complainant consistently stated that without the Accused's and his wife's help, she would not be able to complete her school exams. Furthermore, the Accused was a church elder. Under such circumstances, the Accused was not just an uncle but an influential and dominating figure. Hence, it is probable that the first Complainant submitted without any resistance to the Accused's unexpected and shocking sexual assault while no one was at home.
27. The learned Counsel for the Defence contended that the delay in reporting the matter might affect the credibility of the evidence given by the first Complainant. Gamlath JA in **State v Serelevu [2018] FJCA 163; AAU141.2014** (4 October 2018) has extensively discussed the issue of delay in reporting, where His Lordship found "the totality of the circumstance test" is the correct approach in evaluating the delay in reporting to determine the credibility of the evidence. An unexplained delay does not necessarily or automatically render the Prosecution case doubtful. Whether the case becomes doubtful depends on the facts and circumstances of the particular case.
28. The first Complainant had not related this incident to anyone until her father confronted her about the rumours. The first Complainant explained that she was scared and felt ashamed of herself after this incident, hence, decided not to tell anyone. She did not inform the Accused's wife or his children as she thought they would not believe her if she told them. It is essential to understand the circumstance under which this alleged incident occurred and the nature of her relationship with the Accused and his family. As I explained before, the Accused is a

phenomenal fatherly figure in their lives. He had provided her with everything, including her education. In addition, the Accused treated them as his children. The evidence of the second and third Complainants explained the close nature of their relationship with the Accused. According to the third Complainant, lying beside him and listening to his advice and talks were not unusual for them. During the cross-examination, the second Complainant admitted that sometimes she watched television while lying next to or over his arm. They all lived in a small house headed by the Accused. This evidence confirms that the Accused had a very close relationship with the three Complainants. Under such circumstances, the three Complainants thought that no one of the Accused's family, including his wife, would believe them if they told them about these sexual assaults of the Accused against them.

29. The first Complainant confronted the Accused regarding the alleged sexual assault against her younger sister. The learned Counsel for the Defence cross-examined the first Complainant, suggesting that if she was scared of the Accused, what made her feel confident to confront the Accused in that manner. The incident relating to the second Complainant occurred in April 2020, nearly six months after the incident involved the first Complainant. The first Complainant's said conduct should be considered under the circumstances that prevailed in April 2020.
30. The learned Counsel for the Defence suggested to the first Complainant that she subsequently engaged in consensual sexual intercourse with the Accused, which she admitted. The fact that she was subsequently involved in consensual sexual intercourse with the Accused does not automatically prove that she consented to the Accused to penetrate her vagina with his penis in October 2019. That relationship with the Accused would have given the first Complainant confidence to confront him regarding the incident involving the second Complainant in 2020. Besides the fear, the first Complainant said she was ashamed of this incident. Taking into consideration these reasons discussed above, I find the reasons for not reporting this incident promptly and spontaneously have not affected the credibility of the evidence of the first Complainant.



31. The Defence witness said that the first Complainant exchanged certain messages with her regarding the Accused. The Defence witness apparently initiated the conversation about the Accused in a tone reminding the first Complainant of what he had done to her. The Defence witness tried to emotionally disturb the first Complainant during this conversation which she later forwarded to the Accused's wife and used in evidence. Moreover, the first Complainant had not stated that she made false allegations against the Accused. Considering the nature of the relationship and influence the Accused had on the first Complainant, the exchange of those messages would not adversely affect the credibility of the evidence given by the Complainant.
32. The learned Counsel for the Defence extensively cross-examined the second Complainant on the issue of not informing the Accused's wife or any other family members, including the first Complainant, immediately after this alleged sexual assault of the Accused. When the Accused touched her breasts, Epele slept in the nearby bed while the first Complainant was on the floor. The second Complainant testified that she saw the Accused's hand when she woke up after feeling someone touching her breasts. She then tapped on the hand, pushing it away, and saw the Accused take his hand away while lying on the floor just beside the bed. She did not tell anyone and went to the sitting room and waited till morning to inform the first Complainant.
33. Considering the nature of the relationship the Accused and the three Complainants had, the continued presence of the Accused beside her bed after the incident, and her young age, I find the explanation given by the second Complainant regarding not informing any of the family members promptly is acceptable. Eventually, she confided with her elder sister about this incident at the first opportunity she had.
34. I now turn on to discuss the 3rd and 4th Counts. The learned Counsel for the Defence extensively cross-examined the third Complainant, suggesting whether she felt unusual when the Accused asked her to lie beside him in the bed. The learned Defence Counsel further questioned her, asking if the Accused could do such an act while all his children,


including the first and second Complainants and the third Complainant's partner, were in the kitchen.

35. The third Complainant explained that it was not unusual for them to lie beside the Accused and listen to his advice; hence, it was not a surprise when the Accused asked her to lie beside him. The third Complainant testified how she felt when the Accused started discussing matters relating to her relationship with her partner. She was not sure whether the Accused genuinely intended to give her valuable advice or not. The third Complainant said she was shocked and confused when he touched her breasts. She did not know how to react or what to say. Hence, she just stayed lying in bed, expecting someone from the kitchen would come and rescue her. The third Complainant managed to leave the room at the first available opportunity. She immediately went out of the house, and the first and second Complainants followed her, asking what had happened to her. The third Complainant promptly told the other two Complainants about the incident.
36. A few days after the first incident, the Accused allegedly sexually assaulted the third Complainant while sleeping in the sitting room with the second Complainant. That night, the third Complainant was sleeping on the floor of the sitting room, closer to the door, while the second Complainant was sleeping a few meters away from her. The Accused's wife and his children were sleeping on another side of the living room. The third Complainant felt that someone touched her breast and then saw that the Accused had touched her breasts. She promptly got up, and the Accused stood up and went to his bedroom. He did not say anything. The second Complainant was awake and asked her about it.
37. The third Complainant determined to finish her school year and leave the Accused's house. She explained the reasons for not reporting this matter to anyone, including the Accused's wife. As I discussed before, I accept the reasons given by the third Complainant for not reporting this matter promptly. Hence, a lack of promptness and spontaneity has not affected the credibility of the evidence given by the third Complainant.



38. Furthermore, I observed the three Complainants' narration of the events in their respective evidence was descriptive and coherent. They were not evasive but showed distress while elaborating on the events they had encountered.
39. Given the reasons discussed above, the three Complainants' evidence are credible and reliable, and I accept it as the truth. Accordingly, the Prosecution has proven beyond reasonable doubt that the Accused had committed these five offences as charged in the Information.
40. In conclusion, I hold the Accused guilty of one Count of Rape, contrary to Section 207 (1) (2) (a) of the Crimes Act, one count of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes Act, and three counts of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act and convict to the same accordingly.



  
.....  
Hon. Mr. Justice R.D.R.T. Rajasinghe

**At Suva**

17<sup>th</sup> November 2022

**Solicitors**

Office of the Director of Public Prosecutions for the State.

Ravono & Raikaci Law for the Accused.