

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

**Crim. Case No: HAC 110 of 2022**

**STATE**

vs.

**AMINIO ROKOTUIVUNA**

**Counsel:** Ms. J. Fatiaki with Ms. W. Elo for the State  
Mr. E. Veibataki for Accused

**Date of Hearing:** 03<sup>rd</sup> and 4<sup>th</sup> July 2023

**Date of Closing Submission:** 12<sup>th</sup> July 2023

**Date of Judgment:** 04<sup>th</sup> August 2023

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**JUDGMENT**

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1. The name of the Complainant is suppressed and hereinafter referred to as AB.
2. The Director of Public Prosecution, by the amended Information filed on the 27th of June 2023, charged the Accused Mr. Aminio Rokotuivuna with one count of Rape, contrary to Section 207 (1) (2) (a) and (3) of the Crimes Act. The particulars of the offence are that:

***COUNT 1***

*Statement of Offence*

***RAPE:*** *Contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Act 2009.*

### *Particulars of Offence*

*AMINIO ROKOTUIVUNA on an unknown date between the 1<sup>st</sup> day of December 2016 and the 11<sup>th</sup> day of December 2016 at Suva, in the Central Division, penetrated the vagina of AB, a child under the age of 13 years with his penis.*

3. The Accused pleaded not guilty to this offence. Hence, the matter proceeded to the hearing. The hearing commenced on the 3rd of July, 2023, and concluded on the 4th of July, 2023. The Prosecution presented the evidence of two witnesses, including the Complainant, whereas the Accused gave evidence for the Defence. Subsequently, the Court heard the closing submissions of the learned Counsel for the Prosecution and the Defence. Further to their respective oral submissions, both the learned Counsel filed written submissions. Having considered the evidence adduced in the hearing and the respective oral and written submissions filed by the parties, I now pronounce the Judgment as follows.

### **Burden and Standard of Proof**

4. 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 Offence**

5. The main elements of Rape are that:
  - i) The Accused,
  - ii) Penetrated the vagina of the Complainant with his penis,
  - iii) The Complainant was a child under the age of 13 years.

6. The first element is the identity of the Accused. The identity of the Accused is not disputed by the parties.
7. Evidence of the slightest penetration of the vagina of the Complainant with the penis of the Accused is sufficient to prove the element of penetration.

#### **Admitted Facts**

8. The Prosecution and the Defence admitted the following facts under Section 135 of the Criminal Procedure Act.
  - a) *The name of the person charged is Aminio Rokotuivana [‘Aminio’].*
  - b) *Aminio was born on 15 January 1983 and was 33 years old by December 2016.*
  - c) *AB’s step-father’s name is Robert Smilly Mafutuma [‘Robert’].*
  - d) *Aminio and AB are known to each other namely they reside in the same neighbourhood namely Mafutuma, Vilamaria settlement, Mead Road, Nabua.*
  - e) *Aminio and Robert are related namely they are cousins.*
  - f) *There is a community hall near Aminio and AB’s residence which contains a public toilet for both male and female.*
  - g) *It is agreed that the admissibility of the following document is not in dispute and the same is tendered by consent and annexed as follows:-*
    - (i) *Photographic booklet dated 27/07/2021.*

9. The Complainant and the Accused are related as he is the cousin of her stepfather. The Complainant was twelve years old in December 2016. In the year 2016, she was staying with her mother's elder sister at Sote. The Complainant came to her family, living at Vilamaria settlement, to spend the school holidays in December 2016. One of the days between the 1st of December 2016 and the 11th of December 2016, the elderly family members had a function at her home. They all were drinking grog at home. The Complainant was flying kites with her cousins outside.
10. The Accused came and helped the kids to fly kites and then asked the Complainant to accompany him to go and feed the pigs at the nearby pigsty. She then helped him to carry the buckets to the pigsty. Once they finished feeding the pigs, they walked back, passing the toilets of the community hall, which is away from her home. No one from her home could see the toilets of the community hall. The Accused told her he wanted to visit the toilet and went to the female one as the male toilet was locked. The Complainant waited for him, standing beside the toilet. Suddenly, the Accused opened the toilet door and pulled her inside. She noticed that the pants of the Accused were already down, and his penis was erected. He then pinned her down on the floor. Her head was leaning against the toilet wall while her upper body was lying on the floor. The Accused pulled her legs up towards her face and removed her shorts. He then penetrated her vagina with his penis. The Complainant explained that it was painful and she was scared. Once he ejaculated outside, the Accused left the toilet, leaving the Complainant alone. He threatened her not to tell anyone saying that if she did, he would do something. The Complainant then slowly walked back to her home.
11. According to the Complainant, her family, including her stepfather and mother, were at home. She sat beside her stepfather and spent the whole night like that. The Complainant explained in her evidence why she did not tell anyone about this incident until she told her mother in July 2021. The Complainant, being a young child, had thought that if an adult said something, he would surely do it; hence, she thought that if she told anyone about this incident, the Accused might do something to her. She became a withdrawn child, even after returning to her Aunt's place after the school break. She spent most of her time alone inside her room, thinking if she stayed like this, she would be able to forget this incident.

12. The Complainant's mother also said that she noticed the change of behaviours of the Complainant and her reaction towards the Accused. However, she never thought her behaviours were due to this kind of incident.
13. In the year 2020, the Complainant came back to live with her mother and moved to a place at Nayau Street after leaving Vilamaria. The Complainant finally opened up and told her mother about this incident in July 2021 when she had a conversation with her mother. Her mother was talking to her about the responsibilities of a teenage girl and how she should behave. The Complainant then explained to her mother what had happened to her in 2016 at the Community Hall toilet. The matter was reported to the Police after that.
14. The Accused denied this allegation, stating that he had never engaged in such sexual intercourse with the Complainant as she alleged. He admitted that he lived in Vilamaria in 2016 but categorically denied that he committed this crime.
15. Having briefly summarized the evidence adduced during the hearing, I shall now evaluate the evidence. In evaluating the evidence, the Court must first look into the credibility or the veracity of the evidence given by the witness and then proceed to consider the reliability or accuracy. 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; Matasavui v State [2016] FJCA 118; AAU0036.2013 (the 30th of September 2016, State v Solomone Qurai (HC Criminal - HAC 14 of 2022).*)
16. I shall first draw my attention to the probability/improbability of the events explained by the Complainant in her evidence. This alleged incident occurred in the female toilet of the Community Hall, which is nearly 50 meters from her home. Her family members were having a grog session when the Accused allegedly committed this crime. The Complainant precisely explained how the Accused pinned her down inside the toilet. Her upper body was lying on the floor while her head was against the wall. He lifted her legs towards her face.

She explained it as someone lifted a baby's legs to change the diaper. He then kneeled and removed her clothes. The Accused had already lowered his pants, and his penis was erected when he pulled her inside the toilet. He then penetrated her vagina with his penis.

17. During the cross-examination, the Defence neither challenged nor suggested to the Complainant that this incident never occurred. During the cross-examination of the Complainant, the learned Counsel for the Defence pointed out a contradiction between her evidence given in Court and the statement she gave to the Police regarding the colour of the clothes the Accused was wearing at the time of this incident. This incident happened in 2016, and the Complainant was 12 years old. The colour of the clothes is not materially linked to the root of the dispute in this matter; hence, I do not find this inconstancy has adversely affected the credibility or reliability of the Complainant's evidence.
18. Considering the reasons discussed above, the occurrence of the incident explained by the Complainant is probable.
19. The Complainant had not promptly informed anyone about this incident. She eventually related this incident to her mother in July 2021, nearly five years after the incident. I shall now proceed to determine whether the delay in reporting this incident affected the credibility of the evidence given by the Complainant.
20. Gamlath JA in State v Serelevu [2018] FJCA 163; AAU141.2014 (the 4th of 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.
21. The delay in reporting the matter cannot be used as a stringent rule to discredit the authenticity of the Prosecution case. It only cautions the Court to seek and consider a satisfactory explanation for such a delay and then determine whether there was a possibility of embellishments or exaggeration in the facts explained in the evidence if there is an

unsatisfactory explanation for the delay or unexplained delay. (*vide; Musei v State [2022] FJCA 10; AAU131.2017 (3 March 2022)*)

22. The Complainant explained that the Accused threatened her, telling her not to tell anyone about that incident. As a child, she believed that the Accused could do something as he threatened her. Hence, she did not tell anyone, even after returning to her Aunty. Instead, she withdrew from the others, confining herself from social engagement, thinking she could forget this incident and move on with her life. She felt insecure whenever the Accused was present in her vicinity. Her mother, in her evidence, explained that she observed such withdrawn behaviours of the Complainant.
23. According to the Complainant, she moved back with her mother in 2020 and rented a place in Nayau, Samabula. In July 2021, during the Covid time, she related this incident to her mother. Accordingly, the reason for such a delay is that the Complainant feared the Accused. She related this incident to her mother once she moved to a new place and felt comfortable. I find this explanation satisfactory. Hence, the delay in reporting has not affected the credibility and reliability of the Complainant's evidence.
24. In her evidence, the Complainant's mother explained that the Complainant told her the Accused had sexually abused her. The Complainant said to her that the Accused pulled her to the toilet of the Community Hall and then penetrated her vagina with his penis. The Complainant had explained to her mother the incident that occurred that day. She had further told the mother why she did not relate this matter until July 2021.
25. The evidence of the recent complaint is not evidence of the fact that could corroborate the Complainant's evidence, but they are relevant to the issue of consistencies in the conduct of the Complainant; hence, they link to the issues of credibility and reliability of the Complainant's evidence. (*vide Gates CJ in Raj v State [2014] FJSC 12; CAV0003.2014 (the 20th of August 2014)*). It is sufficient to disclose some material about the unlawful sexual abuse and not required to explain all the ingredients of the alleged sexual conduct. (*vide; Raj v State (supra)*).



26. The mother's evidence contains two main components. The first component is the evidence of recent complaint. The second component is evidence of facts regarding the conduct and the behaviour of the Complainant after this incident. The first component enhances the credibility and reliability of the Complainant's evidence regarding this incident, and the second component corroborates the Complainant's evidence regarding her withdrawn behaviour and conduct after the incident.
27. Considering the above-discussed reasons, I accept the evidence given by the Complainant is true, credible and reliable.
28. The Accused merely denies this allegation, stating that he never engaged in such sexual intercourse with the Complainant. On account of accepting the Complainant's evidence as true, credible and reliable, I find the evidence of the Accused is not true. Therefore, the Defence failed to create reasonable doubt in the Prosecution case.
29. In conclusion, I find the Prosecution successfully proved beyond a reasonable doubt that the Accused penetrated the vagina of the Complainant on an unknown date between the 1st day of December 2016 and the 11th day of December 2016. Wherefore, I hold the Accused guilty of the Rape contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Act and convict of the same accordingly.



A handwritten signature in black ink, consisting of a large, stylized 'R' and 'T' followed by a horizontal line.

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

**At Suva**

04<sup>th</sup> August 2023

**Solicitors**

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.