

IN THE HIGH COURT OF FIJI AT SUVA

CRIMINAL JURISDICTION

Criminal Case No: HAC 59 of 2023

STATE

-v-

JEOSEVA BUADROMO

Counsel: Ms. P. Ram for the State
Mr. S Ravu for the Accused

Date of Trial: 19 March 2024 to 22 March 2024

Date of Closing Submissions: 22 March 2024 and 25 March 2024

Date of Judgment: 25 September 2024

JUDGMENT

[1]. The Accused is charged with three counts of Rape contrary to section 207 (1) and 2(b) of the Crimes Act, 2009 and one count Sexual Assault contrary to section 210 (1)(a) of the same Act as above. The charges are as follows;

COUNT 1

Statement of Offence

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

Particulars of Offence

JEOSEVA BUADROMO on the 18th day of November, 2022, at Nausori, in the Eastern Division, penetrated the vagina of **ARITAMA MARAMA**, with his fingers, without her consent.

COUNT 2

Statement of Offence

SEXUAL ASSUALT: Contrary to section 210 (1)(a) of the Crimes Act 2009

Particulars of Offence

JEOSEVA BUADROMO on the 01st day of December, 2022 at Nausori, in the Eastern Division, unlawfully and indecently assaulted **ARITAMA MARAMA**, by biting the buttocks of **ARITAMA MARAMA**.

COUNT 3

Statement of Offence

RAPE: Contrary to section 207 (1) and (2)(b) of the Crime Act 2009.

Particulars of Offence

JEOSEVA BUADROMO on the same occasion as count 2, at Nausori, in the Eastern Division, penetrated the vagina of **ARITAMA MARAMA**, with his fingers, without her consent.

COUNT 4

Statement of Offence

RAPE: Contrary to section 207 (1) and (2)(b) of the Crime Act 2009.

Particulars of Offence

JEOSEVA BUADROMO on the 6th day of December, 2022 at Nausori, in the Eastern Division, penetrated the vagina of **ARITAMA MARAMA**, with his fingers, without her consent.

- [2]. The Accused pleaded not guilty to the above charge and the hearing commenced on 19th March, 2024 and completed on 22nd March, 2024.
- [3]. During the hearing, the Prosecution adduced the evidence of two witnesses which includes the complainant. At the close of the Prosecution case, the Court ruled that there is a case to answer. The Accused opted to exercise his right to remain silent and did not present evidence for the Defence.
- [4]. [In addition to the evidence presented in court, the Learned Counsel for the Prosecution and Defence filed their written closing submissions. After having carefully considered the evidence in court and read the written submissions filed by the parties, I now proceed to pronounce my judgment on this case.

Legal Burden of Proof and Standard of Proof

- [5]. **Section 57.** - (1), (2) and (3) of the **Crimes Act, 2009** reads;

- “57. (1) The Prosecution bears a legal burden of proving every element of offence relevant to the guilt of the person charged.
- (2) The Prosecution also bears a legal burden of disproving any matter in relation to which the defendant has discharged an evidential burden of proof imposed on the defendant.
- (3) In this [Act] –
“legal burden” in relation to a matter, means the burden of proving the existence of a matter.”

- [6]. **Section 58** – (1) and (2) of the **Crimes Act, 2009** states;

- “58. (1) A legal burden of proof on the Prosecution must be discharged beyond reasonable doubt.
- (2) Sub-section (1) does not apply if the law creating the offence specifies a different standard of proof.”

[7]. The Accused person is presumed to be innocent until the Prosecution proves beyond reasonable doubt that he is guilty.

Elements of the Offences

[8]. The elements for the Counts 1, 3 and 4 of Rape are as follows;

- i. The Accused,
- ii. Penetrated the vagina of the Complainant with his fingers,
- iii. Without her consent

[9]. The main elements of the offence of Sexual Assault are that:

- i. The Accused,
- ii. Unlawfully and indecently,
- iii. Assaulted the Complainant.

Admitted Facts

[10]. The Prosecution and the Defence tendered the following Admitted Facts under Section 135 of the Criminal Procedure Act.

- i. The accused in this matter is Jeosefa Buadromo [**herein referred to as "Mr Buadromo"**], 72 years old (D.O.B 15/03/1952), Farmer from Naivucini Village in Naitasiri.
- ii. Mr Buadromo is married to Ms Losana Lokeni [Herein referred to as "Ms Losana"]. He resided with his wife, two grandchildren, his son, Mr Luke Rasaqa [herein referred to as "Mr Rasaqa"] at their family home in Naivucini Village in Naitasiri.
- iii. The complainant in this matter is Aritama Marama [herein referred to as "complainant", 23 years old, Housewife from Naivucini Village in Naitasiri.
- iv. The complainant is in a defecto relationship with Mr Luke Rasaqa and for the past 3 years, she has been residing with Mr Rasaqa- and his family at Naivucini Village in Naitasiri.
- v. The complainant in the month of October 2022 had become really sickly and has medical issues that affects her mobility. She had swollen hands, legs and knees which confined her to a bed.
- vi. That Ratu Meki Covecena [herein referred to as "Mr Covecena"], 39 years old, farmer of Naivucini Village in Naitasiri is the Turaga-ni- koro for Naivucini Village.

The Prosecution's Case

[11]. Prior to the Prosecution calling their first witness, they tendered the Sketch Plan of the House (as per Agreed Facts) as Prosecution Exhibit No. 1.

[12]. Prosecution then called PW1 - **Aritama Marama**, who testified that she is 23 years old. She resides at Naivucini village, Naitasiri. She lives with her husband Luke and her mother in law. She has lived at Naitasiri for 3 years. No children.

- [13]. She further states that Jeoseva Buadromo is her father in law – Luke’s father.
- [14]. In the last 3 years he had lived with Jeoseva Buadromo.
- [15]. In November, 2022 she was sick as her hands and knees were swollen (‘vuvuce’). It was caused by the herbal medicine she took. Herbal medicine was to clean her internal injuries. She took the herbal medicine to enable her to have children. As the result of the herbal medicine she had joints (elbows and knees) swollen for two months. She was unable to walk.
- [16]. She did not seek medical treatment since the nearest Health Center was about 30 minutes away. She also could not walk. During those two months she would crawl to the entrance to the bathroom, held on to the wall and enter. No one helped her.
- [17]. She recalled the first incident happened on 18/11/2022 as there was a funeral in the village. She was lying inside her room whilst her other family members went to the funeral. She did not attend funeral due to her swollen knees. Only her mother in law and her husband Luke attended the funeral. Her father in-law namely Jeoseva Buadromo was sitting in the lounge. She was lying in her room on the mattress which was placed on the floor.
- [18]. ***[Prosecution ask to show Prosecution Witness 1 to show copy of Sketch Plan – Prosecution Exhibit No. 1].*** Prosecution Witness No. 1 states Sketch Plan is that of their house. She points to ‘Bedroom 1’ and mattress where she was lying. Then to lounge where Jeoseva was sitting.
- [19]. She further states that she was lying with her face up. She was lying there when father in law (Jeoseva) entered and massaged her. She did not ask her father in law to come over and massage her. He massaged her from her thighs upwards. At that time she was wearing her panty and wrap around cloth and a t-shirt at the top. When her father in law entered her room and was massaging her, she was scared. She did not say anything to Jeoseva because she was not aware as to why he did that.
- [20]. When Jeoseva was sitting and massaging her, their distance were 2 cm apart. She could see his face clearly. She further states that Jeoseva was sitting towards her legs. He only used his hands to massage her.
- [21]. Jeoseva massaged towards her female private part and used his hand to touch her “pussy” or in English she said “Vagina”. She states that Jeoseva used his hand or fingers and inserted two of his fingers to penetrate her vagina. Prior to doing it, he pulled away her ‘sulu’ or wrap around sarong, took off her panty (underwear) by pushing it to one side. She did not do anything because she could not move. She told him not to do it or not to touch her vagina.
- [22]. However, Jeoseva told her for them to be together. She disagreed with his suggestion. Thereafter he left the room. Her father in law’s conduct hurt her feelings.
- [23]. At that time all other family members were away. The incident happened at about 10am and all the windows were opened. She could see the person who entered the room well. It was a sunny day.

- [24]. He husband and mother in law returned home at about 1pm. From 10am to 1pm she was in the room. When they returned, she told her husband as to what his father had done to her. Her husband did not do anything. She reported it to her husband because she was hurt emotionally. She did not tell anyone else as it could adversely affect her relationship with her husband.
- [25]. The second incident, she again recalled that on 01/12/2022 her mother in law went to Waituri to visit her sister. Her husband had gone to the farm. That morning she was folding clothes in the bedroom. Jeoseva was at the farm too. After she folded the clothes she fell off to sleep. As she was sleeping she could tell that someone had entered the bedroom. She felt that someone was massaging her legs. She was lying on her stomach and could not move due to her swollen legs.
- [26]. PW1 states that she could see the person when he entered the room. It was her father in law. He massaged her legs but she did not ask him to do so. She did not say anything to him as she was still angry with him for the previous incident. At that time, she was wearing a wrap-around sarong, panty and a t-shirt. Her father in law was about 1cm away from legs. He was squatting and massaging her. Squatting at the lower part of her body.
- [27]. As he massaged her upwards, he bit her buttocks. She saw him bit her buttocks. She tried to push him away but she could not do so because her legs were swollen. She told Jeoseva not to do so. He asked her for them to be together meaning for them to have sex. She told him to stop and she would report what happened to her husband when he returns. Jeoseva walked outside.
- [28]. On that date, Jeoseva also touched her vagina. He did so after pulling down her panty. Jeosefa used his hand or two of his fingers to penetrate her vagina. He pushed his fingers up when she was lying and facing down.
- [29]. She was angry with Jeoseva. His behaviour hurt her feelings. She did not say anything to Jeoseva. Prior to that, he lifted her leg to one side and took off her panty or undergarment. Jeoseva bit her buttocks when she was still wearing her sarong. After biting her buttocks then he took off her sarong and undergarments to penetrate her vagina. Jeoseva told her that he wanted to have sex with her after his fingers penetrated her vagina.
- [30]. On that date only her husband returned at 1pm. Her mother in law was still at Waituri. She was sitting in the sitting room when her husband returned. She reported to him what her father in law had done by touching her. When her husband did not do anything she was angry and emotional.
- [31]. She recalled 06/12/2022 as she was in the kitchen. Her mother in law was still in Waituri and her husband had gone to play rugby at the school. It was 3pm and she was in the kitchen to bake for their dinner. She had crawled to the kitchen. She was sitting beside the cupboard when her father in law entered.
- [32]. ***[Prosecution requested for Prosecution Witness No. 1 to indicate from Prosecution Exhibit 1 as to where she was sitting in the kitchen]***. She pointed to where she sitting next to cupboard. She was on the mat on the floor. She had stretched out her legs and

was preparing her baking stuffs. She placed her ingredients for baking in a basin. She baked buns – placed buns in the oven.

- [33]. After she baked, then she saw her father in law entered the kitchen. He came from the sitting room to the kitchen. He did not say a word. At that time, she was observing the buns in the stove.
- [34]. Her father in law came and started massaging her legs. He was squatting whilst massaging her knees [right knee]. Whilst massaging her knees, his hands were moving upwards. He pushed her panty to the side and she tried to push him away but she could not so as they were far apart. She told her father in law that when her husband return, she would report to him. He used his hand or two of his fingers and inserted it into her vagina for 20 minutes.
- [35]. Her husband returned and she told him of what her father in law did to her in the kitchen. Her father in law massaged her legs and touched her private parts. She was wearing t-shirt, wrap around sarong and a panty. She was sitting on the floor. Her back to the cupboard and her legs stretched out.
- [36]. She did not do anything when her father in law penetrated her vagina. Only told him she would report to her husband. Jeoseva left the kitchen and went to the sitting room than to his bedroom. She states in I-Taukei the words '*Rarawa na yaloqu*' meaning that she had mixed emotional feelings and she was angry at her father in law.
- [37]. PW1 further states that Jeoseva had squatted about 4cm from her whilst he was massaging her. She could not push him away because of her swollen legs. Could not use her hands because it was recovering and she could still feel pain on her elbows.
- [38]. She was still waiting in the kitchen when her husband returned from playing. It was about 7pm. She reported the incident to him. Informed him that her father in law touched her. Her husband then went to report to the Turaga Ni Koro [Village Headman]. At that time Jeosefa was inside the house.
- [39]. The Turaga Ni Koro's house is about 30 minutes walk from their home. She was in the bedroom when her husband and Turaga Ni Koro came to present a 'bulubulu' for what her father in law had done. She told Turaga Ni Koro of how her father in law used to touch her.
- [40]. Bulubulu done to her and husband Luke. Jeoseva then sought forgiveness from her. She accepted his apology.
- [41]. After that they [PW 1 and her husband Luke] left for Waituri to Luke's aunty's house. Luke's mother's youngest sister told them to report to the Police.
- [42]. She reported the matter to the Police because Jeoseva had done that to her three times. He had touched her on three occasions.
- [43]. She identified Jeoseva in Court by pointing to accused in the dock.

- [44]. In cross examination she states that she lived at Navucini Village in 2022. Lived with her father in law Jeoseva, her husband and mother in law. She also agreed that two of Jeoseva's grandchildren lived with them.
- [45]. She also agreed that in 2022 Jeoseva used a walking stick to help him move around. He is still in the same condition as in 2022.
- [46]. PW1 also agreed to the suggestion that in 2022 she had a swollen knee and arm. However, she was able to speak and communicate with people.
- [47]. Furthermore, she agrees that there are two bedrooms. They (her and husband) occupy bedroom No. 1. There is a window on the school side. Window has no louvers but corrugated iron attached to the window. She also agrees to the suggestion that when it's hot the corrugated iron would be removed. The first incident happened in the early morning at 10am. The distance from their house to Navucini Primary School would be 10 metres. At 10am the congregated iron would have been removed. Once the iron is detached anyone can see whatever is happening in the room.
- [48]. She also agreed that incident of 18/11/2022 happened in the bedroom when she was lying down facing upward. Also said that Accused came into the room and started massaging her. She cannot recall giving a statement on 10/12/2022 but recalled being interviewed by a Police Officer. However, she could recall if her statement is shown to her. She recalled signing her statement and can recognise her signature. She agreed that by signing that statement that information in statement is the truth.
- [49]. PW1 confirmed that when the Accused entered the room she was lying facing upwards.
- [50]. ***[Defence refer Prosecution Witness's statement dated 10/12/2022 to her]***. Prosecution witness 1 confirmed it's her statement.
- [51]. ***[Defence refer Prosecution Witness 1 to line 18- 19 of her statement]***. Defence reads 18 -19 since Prosecution witness 1 could not read English.
"I was lying down on bed facing down..."
- [52]. Prosecution witness 1 agreed with her statement as per line 18.
- [53]. ***[Defence suggests that Prosecution witness 1 in examination in chief said she was lying facing up but in her statement she said lying facing down (2 different version)]***. PW1 agreed to the above (2 different versions) facing upwards and facing downwards. However, she said the correct one is in the statement (facing downwards).
- [54]. Later, she said that she was facing upward when the Accused entered the room. She also agreed that her father in law massaged her from her thighs upwards. She was lying facing upwards. During the time Accused was doing that to her, she did not do anything. She said Accused just entered her room.

- [55]. ***[Defence refer Prosecution witness 1 to line 21 and 22 of the statement]***. Defence read 21 'I could feel someone forced his hand and started to touch my thigh, right up to my panty'.
- [56]. ***[Defence – do you agree that to massage and to force are two different things]***. She agreed that that the two – (massage and to force) are two different things. Later she said she could not understand the above. However, she said that she gave her statement to the Police Officer in English.
- [57]. ***[Defence asked Prosecution witness 1 to read line 20 to 23 of her statement]*** PW1 read line 20 to 23 “All of a sudden I could feel someone force his hand and started to touch my things then up to my panty”.
- [58]. ***[Defence suggest to Prosecution witness 1 that her statement is different to what she said in Court about Accused manner of massaging her]***. Prosecution witness 1 said word is massage. Again confirmed that Accused current condition is the same as in 2022.
- [59]. ***[Defence to Prosecution witness 1 ‘that Accused had difficulty in trying to sit down and stand up – he would ask for assistance’]***. She agreed with the above version. She agreed that Accused pushed her panty aside and inserted two of his fingers to her vagina.
- [60]. ***[Defence – this is not possible as Accused will need someone to assist him to sit down]*** She agreed to the above version but said Accused entered room, held onto window and squatted.
- [61]. ***[Defence – whilst Accused was allegedly doing all these acts to you, you did not shout or raise the alarm]***. PW1 agreed that she did not shout or raise the alarm.
- [62]. ***[Defence suggest to Prosecution witness 1 that the reasons she did not shout or raise alarm because she said happened did not happened?]*** She states that the reason she did not shout or raise the alarm was due to what happened to her was painful.
- [63]. ***[Defence the condition he now is the same in 2022 Accused would struggle to pull your panty?]***. She states that the Accused did pull her panty. He really did so. She states that when Accused pushed aside her panty, he was squatting down.
- [64]. ***[Defence – Accused squatting down will need assistance with him pushing aside panty and inserting his fingers into vagina]***. PW1 said Accused came slowly squatted down, pushed her panty aside and inserted his fingers into her vagina.
- [65]. She agreed that she reported incident to husband who returned from the funeral but he did not do anything.

- [66]. *[Defence suggested to Prosecution witness 1 that her husband did not take action because he could not believe that with Accused condition he could do such actions?]* She said that was exactly what the Accused did to her.
- [67]. *[Defence suggest that in Examination in Chief, Prosecution Witness said that he could see father in law entered the room but on statement she said when she was lying down felt someone bit her buttocks she turned saw father in law].* She agreed to having given two different statements. She then confirms saying when she turned she saw her father in law enter the bedroom. However, she told Police that when person took off tights and panty then bit her buttock then she knew it was her father in law Jeosefa.
- [68]. *[Defence suggests that it is not possible for her father in law to squat down and pull her panty].* She does not agree with the above statement. She insists that he did pull her panty.
- [69]. *[Defence suggest that it was not possible for her father in law to push her panty since she was lying facing down].* She again insists that her father in law came into the room pushed leg to one side and pulled panty.
- [70]. *[Defence refer Prosecution witness to line 45 to 50 "... felt someone pulled my tights and panty and bit my buttocks and I turned around and saw it was my father in law Jeosefa". Defence - nowhere in the statement did you mentioned the lifting of your leg?]* She agreed saying that her father in law did not lift her leg. However, she later said he lifted her legs and bit her buttocks.
- [71]. On 06/12/2022 she agreed to baking at home *[Defence – In Examination in Chief you stated that Accused penetrated your vagina for about 20 minutes].* She affirmed same and agreed that he penetrated her vagina for 20 minutes.
- [72]. *[Defence – 20 minutes is a long period of time?]* She agreed with the suggestion.
- [73]. *[Defence – reason that you did not scream or ask for help because that incident did not happen].* She states that it did happen.
- [74]. *[Defence- when Turaga Ni Koro came for the bulubulu – Prosecution Witness 1, her husband and Accused were present in the house].* She agreed to the statement.
- [75]. *[Defence – your husband Luke went to see the Turaga Ni Koro due to the incident].* Yes.
- [76]. *[Defence – the Turaga Ni Koro was the one who presented the bulubulu not your father in law].* She agreed.

- [77]. [*Defence – your father in law was embarrassed due to the allegation*]. Yes
- [78]. In re-examination she states that the window in her room was opened. Her mattress was on the floor. If a person was standing outside he or she can see into her bedroom.
- [79]. For count one on 18/11/2022, the correct version was that she was lying and facing downwards. As for count 2 on 01/12/2022, the correct version was the one in her statement “*Accused pulled her tights and panty bit her buttocks. She turned and saw Accused.*”
- [80]. PW2 – Ratu Meli Covecega states that he is the Turaga ni Koro (Village Headman) of Naivucini village, Naitasiri. He further states that on 06/12/2022 at about 6pm, Luke came to his home to relate to him what has happened at his home. He accompanied Luke to his home. At Luke’s home he asked as to what has happened. Luke told him as to what has happened. He asked Jeosefa and Aritama as to what had happened. Aritama told him that the old man [Jeosefa Buadromo] massaged her and touched her private part.
- [81]. PW2 then told Luke that if his wife is sick he should stay at home. He also told (old man) that what he did is wrong. The old man asked for forgiveness from him. Jeoseva admitted to him that he massaged Aritama until he touched her inside of her clothes.
- [82]. After he spoke to them than presented the bulubulu. He again spoke to Luke and his wife. He told Luke that when his wife is sick, he should be at home. PW2 also told Aritama that when she is sick, she should not call anyone else but to wait for her husband because Luke is her husband.
- [83]. He further states that “*Bulubulu*” is an I-Taukei traditional or custom. It is a way of seeking for forgiveness. The old man Jeoseva should perform bulubulu because he is at fault. He also states that Jeoseva performed bulubulu here because he is at fault. Jeoseva presented bulubulu to Luke because he was at fault. The Yaqona was presented by Jeosefa to Luke. Jeosefa sought forgiveness from Luke. Luke accepted it. Jeosefa sought forgiveness from Aritama and she accepted the apology.
- [84]. In cross examination he agreed that on 06/12/2022 Luke approached him. He accompanied Luke to Jeoseva’s house
- [85]. He agreed to the version that the Accused did not request him to present the ‘*bulubulu*’ on his behalf. Further states that Jeoseva did not present the ‘*bulubulu*’ and said that in that custom, the wrongdoer is the one who presents the ‘*bulubulu*’.
- [86]. Later he states that the Accused asked him to present the ‘*bulubulu*’
- [87]. PW2 does not recall providing a statement to the Police but said he was interviewed by a police officer. Confirmed signing the statement.

- [88]. *[Defence refer Prosecution witness 2 to line 10 & 11 of his statement “Then I went and talk to Jeoseva and he admitted doing it. Then Jeosefa presented grog ‘bulubulu ...’.* He said Jeoseva did not present the ‘bulubulu’. He did present the ‘bulubulu’.
- [89]. *[Defence – there is nothing in your statement to say that Jeosefa had asked you to present bulubulu on his behalf].* He agreed to the statement.
- [90]. *[Defence – not in statement because Jeosefa did not admit to the allegations against him].* He still said that Jeoseva admitted that to him.
- [91]. In re-examination he states that he did not inform the Police about the Accused requesting him to present the ‘bulubulu’.

Analysis

- [92]. There is no dispute as to the identity of the Accused. It is agreed that the Accused and the Complainant live in the same house at Naivucini village, Naitasiri. The complainant is in a defacto relationship with the Accused son Luke.
- [93]. It is also not in dispute that on 18/11/2022, the complainant was at her residence. She was on bed rest since her legs were swollen. Mr. Buadromo was the only other person in the house since the other family members had gone to a funeral.
- [94]. It is also not disputed that on 01/12/2022, after breakfast Mr. Buadromo and his son Luke Rasaqa went to the farm. The complainant was at home alone.
- [95]. It is also not disputed that on 06/12/2022, the complainant, Mr. Rasaqa had gone to see Mr. Covecena about Mr. Buadromo touching the complainant’s vagina on three separate occasions whilst in their family home.
- [96]. The complainant’s version to the Court was that on three separate occasions, 18/11/2022, 01/12/2022 and 06/12/2022, the Accused penetrated her vagina with his fingers. These three separate incidents happened during daylight hours. Two of the incidents happened in her bedroom and one in the kitchen.
- [97]. During those three separate incidents, she did not push the Accused away nor said anything to him. Her explanation was that she could not push Accused away because her hands were swollen. She did not provide any reasons for not shouting or calling for help despite the closeness of their house from the school which is said to be 10 metres away.
- [98]. She further states that she did not request the Accused to massage her or penetrate his fingers into her vagina.

[99]. The complainant's version of the Accused sexually assaulted her when she was lying in her room facing downwards. She said that the Accused came into the room and bit her buttocks.

[100]. The outcome of this case mostly depends on the complainant's evidence in Court. However, the Prosecution bears the overall legal burden to prove each charge beyond a reasonable doubt. That burden never shifts to the Defence.

[101]. As the **rape and sexual assault** allegations arise out of incidents that happen in utter secrecy, in the absence of eye witnesses, the court is presented with a difficult task in getting to the truth by analysing the evidence of the complainant only in this case. This task becomes extremely difficult.

[102]. In this alleged **rape and sexual assault**, the victim is none other than the daughter in law of the Accused. Whether the Complainant is telling the truth in Court has to be decided mostly on the basis of how she had conducted herself before and after the alleged incident.

[103]. I start off with the tests generally used by the courts to test the credibility of a witness.

[104]. The main contention of the Defence is that the three separate incidents did not happen. During those separate incidents she did not call out for help and neither did she push him away. Furthermore it was not possible for the Accused to squat down and touch her since he will need assistance to do so.

[105]. In considering that contention in mind, I shall proceed to analyse her evidence to test her honesty and credibility.

Counts 1, 3 and 4 - Rape

[106]. The issues here is whether the incident did happen. I find the evidence of the complainant to be unreliable. She kept on changing her version during the trial. In addition to that she kept on saying in court that she did not speak to the Accused or pushed him away because her hands were swollen. Neither did she raised the alarm so that those in the school next door could hear her.

[107]. If her hands were indeed swollen than how was it that she was able to crawl outside to the kitchen and used her hands to prepare the buns.

[108]. She informed her husband of what happened in the first instance. The Prosecution did not call Luke to court to corroborate her evidence.

Count 2 – Sexual Assault

[109]. The complainant again did not do anything to prevent the Accused when he allegedly bit her buttocks.

[110]. Her version of what happens is not believable at all.

[111]. The evidence of PW2 is also unreliable. His version of events keep on changing. He states in Court that he told the complainant/victim “*when she is sick, she should not call anyone else but to wait for her husband because Luke is her husband.*”

[112]. The above statement of PW2 was not clarified by the Prosecution.


Conclusion

[113]. Based on the foregoing reasons, I conclude that the Prosecution has not proved their case beyond reasonable doubt.

[114]. The charges of Rape (Counts 1, 3 and 4) and Sexual Assault (Count 2) against the Accused are dismissed.

[115]. The Accused is acquitted forthwith.

[116]. 30 days to appeal to Fiji Court of Appeal.


Waleen George
Acting Puisne Judge



Dated at Suva this 25th September 2024

**Solicitors: Office of the Director of Public Prosecution for State.
Legal Aid Commission for Accused.**