

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CRIMINAL JURISDICTION**

**Crim. Case No: HAC 134 of 2023**

**STATE**

**vs**

**EPELI OLE RAVUCI**

<b>Counsel:</b>	Mr. J. V. Singh for the State Mr. S. Raikanikoda for Accused
<b>Dates of Hearing:</b>	02 <sup>nd</sup> and 03 <sup>rd</sup> September 2024
<b>Date of Closing Submission:</b>	18 <sup>th</sup> September 2024
<b>Date of Judgment:</b>	27 <sup>th</sup> September 2024

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**JUDGMENT**

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1. The name of the Complainant is suppressed and, from now on, referred to as **AB**.
2. The Acting Director of Public Prosecution, on the 1st of June 2023, filed this Information, charging the Accused Mr. Epeli Ole Ravuci, with one count of Indecent Assault, contrary to Section 212 (1) of the Crimes Act 2009, three counts of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes Act and one count of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act. The particulars of the offences are:

**COUNT 1**

*Statement of Offence*

**INDECENT ASSAULT**: Contrary to Section 212 (1) of the Crimes Act 2009.

*Particulars of Offence*

**EPELI OLE RAVUCI** on the unknown date between the 08<sup>th</sup> day of May 2017 to 11<sup>th</sup> day of August 2017 at Davuilevu in the Central Division unlawfully and indecently assaulted **AB** by touching her thighs.

**COUNT 2**

*Statement of Offence*

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

*Particulars of Offence*

**EPELI OLE RAVUCI** on the unknown date between the 08<sup>th</sup> day of May 2017 to 11<sup>th</sup> day of August 2017 at Davuilevu in the Central Division penetrated the vagina of **AB** with his fingers, without her consent.

**COUNT 3**

**(Representative Count)**

*Statement of Offence*

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

*Particulars of Offence*

**EPELI OLE RAVUCI** on the unknown date between the 08<sup>th</sup> day of May 2017 to 11<sup>th</sup> day of August 2017 at Davuilevu in the Central Division penetrated the vagina of **AB** with his tongue, without her consent.

**COUNT 4**

**(Representative Count)**

*Statement of Offence*

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

*Particulars of Offence*

**EPELI OLE RAVUCI** on the unknown date between the 28<sup>th</sup> day of August 2017 to 24<sup>th</sup> day of November 2017 at Davuilevu in the Central Division unlawfully and indecently assaulted **AB** by touching her vagina.

**COUNT 5**

*Statement of Offence*

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

*Particulars of Offence*

**EPELI OLE RAVUCI** on the unknown date between the 15<sup>th</sup> day of January 2018 to 20<sup>th</sup> day of April 2018 at Davuilevu in the Central Division penetrated the vagina of **AB** with his tongue, without her consent.

3. The Accused pleaded not guilty to these five counts. Consequently, the matter proceeded to the hearing, which commenced on the 2nd of September 2024 and concluded on the 3rd of September 2024. The Prosecution presented the evidence of three witnesses, including the Complainant. The Accused gave evidence for the Defence. Subsequently, the Court heard the closing submissions of the parties. Moreover, the learned Counsel for the Prosecution and the Defence filed their respective written submissions. Having perused the evidence adduced and the respective oral and written submissions of the parties, I now pronounce the judgment on this matter.

**Burden and Standard of Proof**

4. The Accused is presumed to be innocent until he is 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 he is 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**

5. The main elements of the offence of Indecent Assault are:

- i) The Accused,
- ii) Unlawfully and Indecently,
- iii) Assaulted the Complainant by touching her thighs.

6. The main elements of the offence of Rape as charged under Count two are:

- 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.

7. The main elements of the offence of Rape as charged under Count three and five are:

- i) The Accused,
- ii) Penetrated the vagina of the Complainant with his tongue,
- iii) The Complainant did not consent to the Accused penetrating her vagina with his tongue,
- iv) The Accused knew or believed or reckless that the Complainant was not consenting for him to insert his tongue in that manner.

8. The main elements of the offence of Sexual Assault are:

- i) The Accused,
- ii) Indecently and Unlawfully,
- iii) Assaulted the Complainant by touching her vagina.

9. The first element is the Accused's identity. The Prosecution must prove beyond a reasonable doubt that the Accused committed these offences against the Complainant. There is no dispute about the identification. The Accused and the Complainant are known to each other.
10. Evidence of the slightest penetration of the vagina of the Complainant with the fingers and tongue of the Accused is sufficient to prove the element of penetration in respect of counts two, three, and five, respectively.
11. 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 consent expressed freely and voluntarily. A submission without physical resistance by the Complainant to an act of another person shall not alone constitute consent.
12. The Complainant must have the freedom to make a choice. It means she must not be pressured or forced to make that choice. Moreover, the Complainant must have the mental and physical capacity to make that choice freely. The consent can be withdrawn at any time. The consent is an ongoing state of mind and is not irrevocable once given. It should not be an optional choice. The consent of a person should not be assumed.
13. If the Court is satisfied that the Accused had penetrated the vagina of the Complainant with his fingers/tongue 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 differs from the hope or expectation that the Complainant was consenting.

### Admitted Facts

14. The Accused tendered the following admitted facts pursuant to Section 135 of the Criminal Procedure Act.

1. *The complainant's name is AB (hereinafter referred to as "AB").*
2. *The Accused's name is Epeli Ole Ravuci (hereinafter referred to as "Epeli").*
3. *AB and Epeli share a domestic relationship as he is her step-father.*
4. *AB was a school student during the school terms in 2017 and 2018.*
5. *The second school term in 2017 was from 8<sup>th</sup> May 2017 – 11<sup>th</sup> August 2017 (hereinafter referred to as "Second School term").*
6. *The third school term in 2017 was from 28<sup>th</sup> August 2017 – 24<sup>th</sup> November 2017 (hereinafter referred to as "Third School Term").*
7. *The first school term in 2018 was from 15<sup>th</sup> January 2018 – 20<sup>th</sup> April 2018 (hereinafter referred to as "First School Term").*
8. *During the school terms in the year 2017 and 2018, Epeli was residing in Davulevu Housing.*
9. *During the school terms in 2017 and 2018, AB was residing with Epeli at his house in Davulevu Housing.*
10. *In relation to count 1, Epeli agrees that he touches AB's thighs.*
11. *In relation to count 3, Epeli agrees that he penetrated AB's vagina with his tongue on more than one occasion.*
12. *In relation to count 4, Epeli agrees that he touched AB's vagina on more than one occasion.*
13. *On 11<sup>th</sup> April 2023, Epeli was arrested for allegedly raping and sexually assaulting AB.*

14. *It is hereby agreed that the admissibility of the following document is not in dispute and the same will be tendered by consent.*

(a) *Birth Certificate of AB and*

(b) *Photographic booklet dated 2<sup>nd</sup> February 2021.*

### **Evidence of the Prosecution**

15. The Accused is the stepfather of the Complainant. The Complainant's mother separated from her previous marriage in the early 2010s and married the Accused in 2017. She has five children from her previous marriage, where two elder sons are staying with her former husband while the Complainant and her two younger siblings are staying with their mother. Once their mother married the Accused in 2017, the Complainant and her younger sister and brother moved to the house owned by the Accused with their mother. The Complainant was 13 years old in 2017.

16. During the second school term of 2017, the Complainant went to the bedroom of the Accused to ask for his mobile phone so she could make a call to her friend. The two siblings were in the living room, and her mother was not home as she had gone to USP. The Accused was on his bed when she went to the room. The Accused gave her the phone and then touched her thigh. The Complainant was confused, not knowing whether it was an accident or intentional. She wanted to convince herself that it was an accident. However, she immediately gave the phone back and left the room. She did not inform anyone of this incident. The Accused admitted under Section 135 of the Criminal Procedure Act that he touched the thigh of the Complainant.

17. One night during the same school term in 2017, the Accused went to pick up the Complainant's mother from the USP with the three kids in his car. While they were waiting at the car park for the mother to come, the Accused penetrated the vagina of the Complainant with his fingers without her consent. The Complainant was in the front passenger seat while the two young siblings were sleeping in the back passenger seat. The

Accused leaned towards her and put his hands through her shorts, and penetrated her vagina with his fingers. The Complainant was shocked and didn't know what to do as she always looked at the Accused as her father.

18. The third count of Rape is a representative count, where the Complainant alleged that the Accused penetrated her vagina with his tongue without her consent on several occasions during the period between the 8th of May, 2017 and the 11th of August, 2017. The Complainant explained in her testimony that one day, while watching TV in the living room with her siblings, the Accused called her to his room, asking her to look for his spectacles. Her mother had gone to USP to attend her classes. When she went to his room and started to look for his spectacles, the Accused pushed her to the bed and removed her shorts and undergarments. He held her hands and then began to penetrate her vagina with his tongue. The Complainant told the Accused what he was doing was wrong; he replied that this was for her educational purposes.
19. Furthermore, the Accused told her that if she told someone, he would do something to her. The Complainant then put on her clothes and left the room. She did not inform anyone about this incident.
20. One night between the 28th of August 2017 and the 24th of November 2017, the Accused called the Complainant to his room while having tea with her two siblings in the living room. The Accused asked her about the school and her studies. He made her sit next to him on the bed. While he was asking those things from her, he started to touch her vagina with his fingers putting his hand through her shorts. The Complainant felt helpless and also useless of herself. Yet, she did not inform anyone about these continuous sexual abuses by her stepfather as she was not sure of who should be trusted.
21. Once again, in 2018, during the first school term, she had to go to the School to attend cheerleading training on one Saturday. All her family members had gone somewhere, leaving her with the Accused at home. The Accused gave her \$10 for her spending money and then came up with the proposition that she should give him something in return for the



money he gave her. He pushed her to the couch in the living room and removed her pants with her undergarment. The Accused then penetrated her vagina with his tongue without her consent.

22. Meanwhile, her younger sister was curious about what was happening between the Complainant and the Accused. She inquired from the Complainant, but the Complainant did not reveal anything about this initially. Eventually, she decided to confide in her younger sister, but she merely told her that the Accused was touching her inappropriately. She requested her younger sister not to inform their mother about this. However, one morning, the younger sister observed the fear in her elder sister's behaviour when she was leaving home to go to school with her mother and brother, leaving the Complainant alone with the Accused. On their way to school in the car, the younger sister told her mother that the Accused had been inappropriately touching the Complainant. The mother immediately turned the car and returned home to find out the truth of this allegation.
23. The Accused partly admitted that he touched the Complainant's body as he wanted to see her but sought forgiveness, saying that he didn't know what happened to him at that moment. The Complainant's mother explained during her evidence that the Accused and she are church leaders; hence, they always practice forgiveness. On that basis, the mother decided to forgive the Accused and pray hard to forgive and forget this episode of their lives. The Complainant and the mother testified at that stage that the mother only knew that the Accused made inappropriate touching and nothing more. Despite this uneasy reconciliation, the mother made arrangements to keep the Complainant away from the Accused. The Accused had to accompany the mother and assist her in her school teaching, as the mother wanted him to be around her.
24. This arrangement worked for a while until the Accused attempted to touch her private parts while the Accused was driving back his car from dropping one of their friends at Nadi with the Complainant. That was the time the Complainant realized that she was not still safe from the Accused's unwanted sexual advances. The Accused went to New Zealand and got stranded there due to the Covid 19 outbreak.

25. During the time that the Accused was away in New Zealand, the Complainant and her family lived at his place as usual. The Complainant said that she felt happy and safe then. Then, she heard the Accused was returning after the travel ban was lifted. The Complainant informed her mother that she does not want to live with them if he is returning. Upon further inquiring about the issue, the mother heard the details of the incident faced by the Complainant at the hand of the Accused. She then went to the Police with the Complainant and reported the matter.

### Evidence of the Defence

26. The Accused admitted in his evidence that he once penetrated the vagina of the Complainant with his tongue so as to educate her on how to avoid getting pregnant while still allowing her boyfriend to sexually engage with her. Besides that, he vehemently denied other allegations against him, suggesting that the Complainant's mother fabricated them.

### Evaluation of the Evidence

27. Appraising the evidence presented by the Prosecution and Defence, I shall now proceed to evaluate the evidence with the applicable law. In doing that, the Court must first look into the credibility or the veracity of the evidence given by the witnesses 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).*)
28. I first draw my attention to the evidence of the Defence. The Accused is not required to give evidence. He does not have to prove his innocence, as it is presumed by law. However,

in this case, the Accused gave evidence. Therefore, such evidence presented by the Defence needs to be considered when determining the facts of this case.

29. Lord Reading CJ in Abramovitch (1914) 84 L.J.K.B 397 held that:

*"If an explanation has been given by the accused, then it is for the jury to say whether on the whole of the evidence they are satisfied that the accused is guilty. If the jury think that the explanation given may reasonably be true, although they are not convinced that it is true, the prisoner is entitled to be acquitted, inasmuch as the crown would then have failed to discharge the burden imposed upon it by our law of satisfying the jury beyond reasonable doubt of the guilt of the accused. The onus of proof is never shifted in these cases; it always remains on the prosecution."*

30. Accordingly, if the Court believes the evidence given by the Accused is true or may be true, then the Court must find the Accused not guilty of the offences. Even if the Court rejects the Accused's version, that does not automatically imply that the Prosecution has established that the Accused is guilty of the crime. The Prosecution must satisfy that it has established, on the evidence accepted by the Court, beyond a reasonable doubt, that the Accused committed these offences as charged in the Information. (*vide*; Naidu v State [2022] FJCA 166; AAU0158,2016 (24 November 2022), Liberato and Others v The Queen ((1985) 159 CLR 507 at 515), Abramovitch (1914) 84 L.J.K.B 397)

31. Comprehending the preceding legal principles and the precedence on the onus of the Prosecution in proving the case beyond a reasonable doubt, I now evaluate the evidence presented by the parties to determine the testimonial trustworthiness of the evidence. As I mentioned before, the Court needs to consider two aspects in deciding the testimonial trustworthiness of the evidence, i.e. the credibility of the witness evidence and the reliability of the evidence.

32. In respect of the first, third and fourth counts, the Accused admitted under Section 135 of the Criminal Procedure Act the alleged physical component of those offences. According to the Admitted Facts, tendered by the Accused, he admitted that he touched the Complainant's thighs and then penetrated her vagina with his tongue on more than one occasion in respect of the third count of Rape. Over and above that, he conceded that he touched the vagina of the Complainant on more than one occasion in respect of the fourth count of Sexual Assault.

33. Section 135 of the Criminal Procedure Act states:

- i. *An accused person, or his or her lawyer, may in any criminal proceedings admit any fact or any element of an offence, and such an admission will constitute sufficient proof of that fact or element.*
- ii. *Every admission made under this section must be in writing and signed by the person making the admission, or by his or her lawyer, and—*
  - a) *by the prosecutor; and*
  - b) *by the Judge or Magistrate.*
- iii. *Nothing in subsection (2) prevents a court from relying upon any admission made by any party during the course of a proceeding or trial.*

34. As per Section 135 of the Criminal Procedure Act, the Accused tendered the foregoing admitted facts stated in paragraph 14; thus, the Court is allowed to consider these admitted facts as sufficiently proven facts. Deviating from his above admission, the Accused changed his position significantly in his oral testimony given in the Court, stating that he only penetrated the vagina of the Complainant with his tongue once so as to educate her about how to avoid getting pregnant. He asserted that he had never touched her vagina with his finger or inserted his fingers into her vagina, or touched her indecently, as alleged under counts one, two and four. Additionally, he denied that he penetrated the vagina of the

Complainant with his tongue in 2018, as claimed under count five. Hence, it is apparent that the evidence given by the Accused strikingly contradicted his own position adopted under Section 135 of the Criminal Procedure Act.

35. During the cross-examination by the learned Counsel for the Prosecution, the Accused explained that he, being a former civil servant, put his signature on the draft admitted facts, trusting the contents were true; hence, he did not bother to read it before putting his signature. It is difficult to reconcile with the explanation given by the Accused for these materially significant contradictions, thus diminishing the evidential trustworthiness of his evidence.
36. The Accused explained that he penetrated the vagina of the Complainant with his tongue as part of educating her on how to avoid getting pregnant. The Accused had been a qualified primary school teacher in Fiji for over 30 years before he moved to New Zealand. He was surprised to find the recent curriculum development in the Primary Schools in Fiji with respect to education of sex. The Accused said that what he did to educate the Complainant about getting pregnant is precisely what happened in the Primary School. It is absurdly ridiculous to suggest that teachers must be engaged in such sexual activities with young students so as to educate them about preventive measures for avoiding unwanted pregnancy. Therefore, the explanation given by the Accused of penetrating the vagina of the Complainant with his tongue is untenable.
37. Drawing on the reasons discussed above, the evidence given by the Accused is not true or may not be true. I accordingly refuse his evidence. Furthermore, it failed to create any reasonable doubt in the Prosecution case.

### **Delay**

38. The central plank of the Defence's submission challenging the credibility and reliability of the Prosecution's case is founded on the allegation of delay in reporting this matter,

suggesting the considerable delay affects the credibility and reliability of the Complainant's evidence.

39. I shall now proceed to determine whether the delay in reporting this matter affected the credibility and reliability of the Complainant's evidence. 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's case doubtful. Whether the case becomes doubtful depends on the facts and circumstances of the particular case.
40. 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; **Masei v State [2022] FJCA 10; AAU131.2017 (3 March 2022)**)
41. The Complainant testified, stating that she was 13 years old when the Accused started to assault her sexually. She was confused as to how to react to this unexpected sexual assault by her stepfather. Her mother was happy and in love with the Accused after her failed first marriage. She did not know whether her mother would believe her or take the Accused's side. According to the evidence from the three Prosecution witnesses, the Accused had been a good person to them, though he covertly abused the Complainant. The Complainant initially revealed inasmuch as that the Accused inappropriately touched her. The Complainant's sister and mother affirmed it in their evidence. Based on that allegation, the mother forgave the Accused through their prayers but made arrangements to protect the Complainant. Regardless of the reconciliation, the Accused's motive for molesting the Complainant resurfaced when he found an opportunity.

42. The Accused then left for New Zealand and away from the Complainant's life for a few years. The Complainant reacted when she heard the Accused was returning to live with them. She then told her mother the full details of these alleged sexual assaults. The explanations given by the Complainant and the mother for the delay in reporting this matter are probable and possible. Therefore, I am content to accept that the delay has not affected the credibility and reliability of the Complainant's evidence.

### **Recent Complaint**

43. The Prosecution presented the evidence of the Complainant's younger sister and her mother as witnesses of the recent complaint. The Complainant initially told her younger sister that the Accused inappropriately touched her, and later, she revealed the full details of the incident to her mother.
44. *Gates CJ* in **Raj v State [2014] FJSC 12; CAV0003.2014 (the 20th of August 2014)** has defined the evidence of a recent complaint outlining its scope and application. Accordingly, the evidence of the recent complaint is not evidence of facts complained of but evidence that connects to the issue of consistency or inconsistency of the evidence given by the Complainant. Hence, the evidence of the recent complaint could enhance the credibility and reliability of the evidence presented by the Complainant. The evidence of the recent complaint does not establish the facts of which the Complainant testified or disprove those facts, It only establishes the consistency of the Complainant, establishing that she has stated a similar version of events she alleges in her evidence to the recent complaint witness. The Complainant is not required to disclose the details of the offence, covering all the ingredients. It is sufficient to explain the material and relevant alleged sexual conduct allegedly committed by the perpetrator.
45. In her evidence, the younger sister specifically stated that the Complainant only revealed that the Accused touched her inappropriately, which is consistent with the Complainant's evidence. In corroborating the Complainant's evidence, the mother testified, explaining that the Complainant confided in her full scale of these allegations only after she found the

Accused was returning from New Zealand to stay with them. Considering the consistent nature of the evidence of the Complainant, her younger sister, and the mother, I find the evidence that the two recent complaint witnesses asserted the credibility and reliability of the Complainant's evidence.

46. There are no discernible contradictions *inter se* and *per se* in the evidence given by the Prosecution witnesses. The Complainant was consistent, coherent, and affirmative in her evidence.

### Conclusion

47. Considering the above reasons, I am inclined to find the Complainant's evidence credible and reliable; thus, it is the truth. This conclusion leads me to conclude that the Prosecution has proven the charges against the Accused beyond reasonable doubt.
48. In conclusion, I find the Accused guilty of one count of Indecent Assault, contrary to Section 212 (1) of the Crimes Act, and three counts of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes Act, and one count of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act as charged in the Information and convict of the same accordingly.



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

### At Suva

27<sup>th</sup> September 2024

### Solicitors

Office of the Director of Public Prosecutions for the State.

Raikaniakoda & Associates for the Accused.