

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

**Crim. Case No: HAC 121 of 2022**

**STATE**

**v**

**MOHAMMED SHAFIQ**

**Counsel:** Mr. J. Singh for the State  
Mr. S. Gosaiy & Mr. S. Prasad for the Accused

**Date of Judgment:** 13 August 2024

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**JUDGMENT**

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1. Mohammed Shafiq, the accused, is indicted with the following charges in the Information by the Director of Public Prosecutions dated 10 May 2022:

**COUNT ONE**

*Statement of Offence*

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

*Particulars of Offence*

**MOHAMMED SHAFIQ** on 1<sup>st</sup> September 2021 at Davuilevu Housing in the Central Division, unlawfully and indecently assaulted **FARNEEZ FARZANA BIBI**, by rubbing his beard on her neck while she was sleeping.

## COUNT TWO

### *Statement of Offence*

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

### *Particulars of Offence*

**MOHAMMED SHAFIQ** on an unknown date between 1<sup>st</sup> September 2021 and 30<sup>th</sup> September 2021, at Davuilevu Housing in the Central Division, penetrated the vagina of **FARNEEZ FARZANA BIBI** with his finger, without her consent.

## COUNT THREE

### *Statement of Offence*

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

### *Particulars of Offence*

**MOHAMMED SHAFIQ** on an occasion other than referred to in Count 2, between 1<sup>st</sup> September 2021 and 30<sup>th</sup> September 2021 at Davuilevu Housing in the Central Division, unlawfully and indecently assaulted **FARNEEZ FARZANA BIBI**, by touching her vagina on top of her clothes.

2. Mohammed Shafiq pleaded *not guilty* and tried for the aforesaid offences, and this is the Court's judgment.
3. Pursuant to sections 57 and 58 of the Crimes Act 2009 and Woolmington v DPP [1935] AC 462 at 481 (HL), the prosecution bears the burden to prove all elements of the offences of Count 1: Indecent Assault, Count 2: Rape, and Count 3: Sexual Assault, beyond reasonable doubt.

### **Physical and fault elements of *Indecent assault***

4. *Indecent assault* is contrary to section 212(1) of the Crimes Act 2009 which state:

#### *Indecent assault*

212.-(1) *A person commits a summary offence if he or she unlawfully and indecently assaults any other person.*

5. The physical and fault elements for the offence of *Indecent assault* are:

- i) A person i.e. the accused
- ii) Unlawfully and indecently assaults another person i.e. the complainant
- iii) Intentionally [ i.e. *mens rea* – see Crimes Act 2009, s.23(1) – *If the law creating the offence does not specify a fault element for a physical element that consists only of conduct, intention is the fault element for the physical element.* ]

### **Physical and fault elements of *Rape***

6. *Rape* is contrary to section 207(1) & (2)(b) of the Crimes Act 2009 which state:

#### *Rape*

207.-(1) *Any person who rapes another person commits an indictable offence.*

(2) *A person rapes another person if –*

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

Consent is defined under section 206(1)-(2) of the Crimes Act 2009 as:

206. *In this Part –*

*(1) The term “consent” means consent freely and voluntarily given by a person with the necessary mental capacity to give the consent, and the submission without physical resistance by a person to an act of another person shall not alone constitute consent.*

*(2) Without limiting sub-section (1), a person's consent to an act is not freely and voluntarily given if it is obtained –*

*(a) by force; or*

*(b) by threat or intimidation; or*

*(c) by fear of bodily harm; or*

*(d) by exercise of authority; or*

*(e) by false and fraudulent representations about the nature or purpose of the act; or*

*(f) by a mistaken belief induced by the accused person that the accused person was the person's sexual partner.*

7. The physical and fault elements for the offence of *Rape* are:

- i) A person i.e. the accused
- ii) Penetrated the vagina of the complainant with his finger
- iii) Without the complainant's consent [ See ss.206(1)-(2) ]
- iv) Intentionally and / or recklessly [ i.e. *mens rea* – see Crimes Act 2009, s.23(1)-(2); For *reckless* refer to Tukainiu v State [2017] FJCA 118; AAU0086.2013 (14 September 2017) at paragraphs 31-34 per Prematilaka, JA. ]

### **Physical and fault elements of Sexual assault**

8. *Sexual assault* is contrary to section 210(1)(a) of the Crimes Act 2009 which state:

*Sexual assault*

*210.-(1) A person commits an indictable offence (which is triable summarily) if he or she -*

*(a) unlawfully and indecently assaults another person.*

9. The physical and fault elements for the offence of *Sexual Assault* are:

- i) A person i.e. the accused
- ii) Unlawfully and indecently assaults another person i.e. the complainant
- iii) Intentionally [ i.e. *mens rea* - see Crimes Act 2009, s.23(1) - *If the law creating the offence does not specify a fault element for a physical element that consists only of conduct, intention is the fault element for the physical element. ]*

### **Admitted facts between prosecution and defence**

10. The *Admitted facts* between the prosecution and defence filed on 30 September 2022 are:

- 1) The complainant's name is Farneez Farzana Bibi (hereinafter referred to as "Farneez").

- 2) The accused's name is Mohammed Shafiq (hereinafter referred to as "Mohammed Shafiq").
- 3) Mohammed Shafiq is Farneez's father in law, thus they share a domestic relationship.
- 4) Farneez is married to Mohammed Shafiq's son, Mohammed Zakriya and has one son.
- 5) In 2021, Farneez was residing with her in-laws at Davuilevu Housing in a 2 bedroom house.
- 6) On 1<sup>st</sup> September 2021, Farneez was at home with her son, mother-in-law and Mohammed Shafiq.
- 7) Sometimes in September 2021, Farneez recorded a video of Mohammed Shafiq being inside her bedroom.
- 8) In the same video, Mohammed Shafiq was touching Farneez.
- 9) On 4<sup>th</sup> March 2022, Farneez lodged a complaint against Mohammed Shafiq of indecent assault and rape.
- 10) On 10<sup>th</sup> May 2022, WDC 3742 Adi Keva took photographs of the scene where the alleged offences took place.
- 11) It is agreed that the admissibility of the following is not in dispute and the same will be tendered by consent:
  - Video Recording of Mohammed Shafiq recorded on Farneez's mobile phone (*Disclosed in tab no. 12 of the Disclosures*);
  - Photographic booklet dated 10<sup>th</sup> May, 2022.

11. At trial, prosecution called nine (9) witnesses: PW1: Farneez Farzana Bibi (Complainant); PW2: Poonam Amrita Kumar; PW3: Sergeant Annual Prakash; PW4: WDC.3884 Shivani Raj; PW5: IP.2660 Apisai Dredreyaca; PW6: WPC.6247 Titilia Tabaka; PW7: WPC.5980 Lusiana Sinuleleiwasa; PW8: PC.6918 Josefa Kama; and PW9: WPC.6279 Unaisi Naitabua Saqanivalu.

12. The following exhibits were tendered by the prosecution at trial bearing in mind *Admitted fact 11* noted in paragraph 10 herein:

- PE1 – Photographic booklet dated 10/05/22 Rape vide Nakasi CR 54/03/22 tendered via PW1

- PE2 – Original video recording of Farzana Bibi evidence vide Nakasi report no. 24/3/22 tendered via PW1
- PE3 – Copy of original video recording of Farzana Bibi EI CR 54/3/22 tendered via PW7

13. Defence opted for the accused Mohammed Shafiq to remain silent, and not call other independent witness.

### **Prosecution case via PW1, PW2, PW3, PW4, PW5, PW6, PW7, PW8 and PW9**

#### **PW1 - Farneez Farzana Bibi (Complainant)**

14. **PW1 Farneez Farzana Bibi** in examination-in-chief testified that she is 24 years old, divorced and resides in Tavua with her father Saiyad Shaheed Ali, mother Rukyath Bibi, 4 year old son Mohammed Zareef, elder brother Zohab Shaheed, younger brother Zahid Shaheed Ali, and sister-in-law. PW1 was married to a Mohammed Zakariyya whose father Mohammed Shafiq is well known to PW1 being her father-in-law. PW1 married Mohammed Zakariyya in 2018 and lived with him and their son including her father-in-law Mohammed Shafiq and mother-in-law Saiful Nisha at Mateka Road, Davuilevu Housing. On 1 September 2021 PW1's husband left for work at 8am while she stayed home with her son, father-in-law and mother-in-law, doing house chore and preparing lunch for her in-laws. After lunch PW1 put her son to sleep and slept next to him. While sleeping PW1 felt someone rub his beard against her neck causing her to wake up and saw her father-in-law Mohammed Shafiq standing close by who then immediately went out of her bedroom, and PW1 felt scared. PW1 then told her husband when he returned home from work that his father Mohammed Shafiq had rubbed his beard on her neck while she was asleep, but her husband did not believe her.

On another day, PW1 was massaging her father-in-law Mohammed Shafiq's head in the sitting room when he began moving his hand up PW1's knee, to which PW1 reacted by pushing his hand away, but he kept on doing that and eventually inserted his right finger into her vagina, which PW1 did not like. At that particular moment Mohammed Shafiq had repeatedly inserted his finger into PW1's vagina a few times, and would quickly pull his finger out if he noticed

someone approaching. PW1 reacted by pushing Mohammed Shafiq and walking away. PW1 stated that the place where she had massaged her father-in-law's head and him inserting his finger into her vagina is not in any of the photograph (PE1) shown to her by the prosecutor. PW1 told her husband when he returned from work that afternoon that his father Mohammed Shafiq had inserted his finger into her vagina when she was massaging his head, but her husband did not believe her again.

PW1 recalled that on 18 September 2021 she had made a video recording via her mobile phone of her being sexually molested by her father-in-law Mohammed Shafiq in her bedroom. PW1 said that she had made the video recording because her husband did not believe her when she told him that his father had sexually molested her on prior occasion. PW1 said that in that particular video her father-in-law Mohammed Shafiq is featured touching her ankle and vagina while she was clothed. PW1 then showed the same video to her husband when he returned home from work that afternoon, who then showed it to his mother Saiful Nisha. On 8 December 2021 PW1, her husband and son were in Tavua to celebrate PW1's mother's birthday when PW1 showed the same video to her mother who then told PW1's father. PW1's father then asked PW1's husband if the video is true, to which PW1's husband admitted as true. On 4 March 2022 PW1 told the Women's Crisis Centre of her problems and showed them the video in her mobile phone, and was then taken to the Tavua police station by a Poonam from the Women's Crisis Centre, accompanied by her mother and little son. At the Tavua police station PW1 told the Indo-Fijian police officer taking down her statement about the video in her Samsung touch screen mobile phone, which video was then viewed by the police officer. PW1 had authorised Poonam to take her mobile phone to an internet shop for purposes of downloading the video and transferring it to a compact disc for storage. Poonam then returned to the Tavua police station and handed over the mobile phone and compact disc to the police, and the mobile phone was returned to PW1. Upon receiving back her Samsung touch screen mobile phone, the police then told PW1 that they had transferred the video from her phone to a compact disc, however PW1 did not watch the video in the compact disc until she did so in Court. Leave was granted by the Court for PW1 to then watch the said video in a compact disc, primarily on the basis that the video recording was agreed upon by the prosecution and defence in the *Admitted facts 11* filed on 30 September 2022. Having watched the said video in Court,

PW1 then confirmed that it is the same video that she had initially taken via her Samsung touch screen mobile phone. According to PW1 that video shows her lying in the bedroom and her father-in-law Mohammed Shafiq inappropriately touching her leg and vagina, and she reacted by telling him to stop as her head is hurting and thereafter her father-in-law left her bedroom. PW1 stated that her father-in-law Mohammed Shafiq had inappropriately touched her many times, but this was the first time she had used her mobile phone to record such inappropriate behaviour. PW1 stated that she showed the same video to her husband who then showed it to his mother who then confronted her husband Mohammed Shafiq and he admitted the content of the video. PW1's husband, mother-in-law and father-in-law then told PW1 to delete the video and not to show it to anyone. PW1 was also told by her in-laws for her and her husband to go and live with PW1's parents in Tavua, and refrain from reporting the aforesaid sexual abuse incidents to anyone including the police. PW1 identified her former father-in-law and accused Mohammed Shafiq in Court via dock ID as the man who had rubbed his beard on her neck, inserted his finger into her vagina, and touched her vagina on top of her clothes as shown in the video recording taken via her Samsung touch screen mobile phone.

15. In cross-examination PW1 maintained that on 1 September 2021 her father-in-law Mohammed Shafiq rubbed his beard on her neck while she was asleep in her bedroom, and PW1 did not immediately tell her mother-in-law Saiful Nisha about it because PW1 thought that her mother-in-law would not believe her based on prior experience. PW1 stated that when she told her husband about this particular incident, he got scared and wondered as to why his father had done it, but did not raise it further with his father or mother. PW1 said that she did not have an ulterior motive when lodging the police complaint against her father-in-law Mohammed Shafiq on 4 March 2022, but had done so because he had done bad things to her, and her husband Mohammed Zakariyya had told her that when he leaves her which he did on 3 March 2022, she is then free to do whatever she wishes to do. PW1 also maintained that her father-in-law raped her by inserting his finger into her vagina while she was massaging his head, and she did not immediately tell her mother-in-law of that particular rape. PW1 was wearing a long plazo pants which was torn when Mohammed Shafiq turned his hand to the back and inserted his finger into PW1's vagina. PW1 said that she told her husband about that rape when he returned home from work that day, but her husband did not believe her, and he did not confront his father nor tell his



mother about that rape. PW1 stated that she was the one who had taken the video without Mohammed Shafiq being aware, and confirmed that she and the accused Mohammed Shafiq are featured in that video, which video PW1 showed her husband at night and then viewed by her mother-in-law and father-in-law the next morning. PW1 later showed the same video to her father and mother. PW1 stated that her husband had told her father not to show the video to any other person, but they could do so after he had left. PW1 said that she had given the video to the Women's Crisis Centre lady who then gave the video to the police. The video was in PW1's phone.

16. In re-examination PW1 stated that on 1 September 2021 when she stood up from her bed, her father-in-law Mohammed Shafiq had left the room, and then she got her phone and began viewing Facebook on her phone. PW1 said that when she told her husband about his father's inappropriate touching on 1 September 2021, PW's husband got scared because he had never imagined that his father could do such thing to PW1. PW1 said that she showed her husband the video in her phone on the night of the same day she had made the video.

### **PW2 - Poonam Amrita Kumar**

17. **PW2 Poonam Amrita Kumar** in examination-in-chief testified that she is 40 years old, has a Diploma in Leadership, Human Rights and Governance, and currently unemployed but previously worked for the Ba Women's Crisis Centre as a Project Officer and Counsellor for 13 years resigning in November 2022. According to PW2 counsellors at the Ba Women's Crisis Centre main responsibility is to listen to so called female victims or survivors of domestic violence and abuse and counsel them accordingly. The said counsellors receive in-house training on skills and legal literacy. PW2 recalled that PW1 told her that she had been raped and indecently touched many times by her father-in-law, and she had recorded a video via her mobile phone of her father-in-law inappropriately touching her while she was asleep on her bed, which video was also watched by PW2. PW2 stated that in that particular video she saw PW1 sleeping on her bed and the accused approached and touched PW1 inappropriately and lifted her dress. Based on these information, PW2 then on 4 March 2022 took PW1 to the Tavua police station to lodge a complaint against PW1's father-in-law for allegedly raping and indecently

touching PW1. PW1 told PW2 that she had been touched inappropriately many times by her father-in-law, and the short video is the only video she recorded via her mobile phone of her father-in-law touching her inappropriately. The video, i.e. MFI2 & MFI2 later exhibited respectively as PE2 & PE3, was played in Court and PW2 confirmed that it was the same video that PW1 had shown her earlier via PW1's phone. At the Tavua police station, PW2 said that PW1 was taken by a police officer to give her statement, and police officer Annual told PW2 that the video in PW1's phone needs to be downloaded to a compact disc. PW2 then took PW1's phone to an internet shop in Tavua town where the video in PW1's phone was downloaded into a compact disc, which compact disc was then handed over to police officer Annual.

18. In cross-examination PW2 stated that counsellors at the Women's Crisis Centre keep counselling notes containing information disclosed by the victim or survivor during the counselling session. PW2 said that having resided in Tavua for 40 years and worked for 13 years at the Ba Women's Crisis Centre, she is well known in that area as a counsellor for victims or survivors of domestic violence and abuse. PW2 confirmed that she counselled PW1 at the Ba Women's Crisis Centre, and the pertinent counselling notes are confidential. During the counselling session PW1 showed PW2 a video from her phone. PW2 then took PW1 to the Tavua police station, but was not present when PW1's statement was taken down by a police officer. PW2 said that she was authorised by PW1 to take PW1's phone to the internet shop for purposes of downloading and transferring the said video to a compact disc. PW2 said that the transfer of the video from PW1's phone to the compact disc was done by an individual in the internet shop in her presence, and she paid cash for that service. PW2 then took PW1's phone and the compact disc back to the Tavua police station and handed over the compact disc to police officer Annual while the phone was given back to PW1.

19. In re-examination PW2 stated that at the Tavua police station she was seated outside when PW1's statement was taken by a police officer in a special room at the sexual offence department, and the video in PW1's phone was also shown to the police officer. PW2 said that at the internet shop the video in PW1's phone was downloaded and transferred to a compact disc by a male personnel in front of her gaze.

### **PW3 – Sergeant 2408 Annual Prakash**

20. **PW3 Sergeant 2408 Annual Prakash** in examination-in-chief testified that he is currently based at the Ba Police Station, and has been a police officer for 30 years. PW3 recalled that on 4 March 2022 he was then a Detective Corporal based at the CID branch of the Tavua police station, and reported to work at 7.30am. On that day an alleged rape victim namely Farneez came to the CID office at Tavua police station with one Poonam from the Women’s Crisis Centre. The victim Farneez’s statement was recorded by WPC Shivani, and Poonam from the Women’s Crisis Centre assisted Farneez by taking her mobile phone to an internet shop in Tavua town to convert some footage from that mobile phone to a compact disc. After converting the relevant footage from Farneez’s mobile phone to a compact disc, Poonam then returned to the Tavua police station and handed over the compact disc to PW3 in the presence of Farneez. PW3 did not watch the content of the compact disc, but prepared a search-list *a.k.a* receipt to confirm that he had received the compact disc and then handed over the same compact disc to WPC Shivani who later sent that compact disc together with Farneez’s statement and medical report to the Nakasi police station because the precinct or territory where the alleged rape occurred is within the jurisdiction of the Nakasi police station. PW3 was shown the compact disc in Court and confirmed that it was the same compact disc that was given to him initially by Poonam from the Women’s Crisis Centre and later handed over to WPC Shivani.

21. In cross-examination PW3 basically confirmed what he had testified in examination-in-chief. Furthermore, PW3 stated that evidence received by police like the compact disc in this instant is either kept as an exhibit by the Exhibit Writer, or immediately sent to the appropriate station such as in this instant the Nakasi police station. PW3 identified in Court the relevant search-list he had prepared regarding the compact disc.

22. In re-examination PW3 maintained what he had said earlier, and identified the search-list in Court being the same search-list he had prepared to confirm receiving the compact disc from Poonam of the Women’s Crisis Centre.

### **PW4 – WDC 3884 Shivani Raj**

23. **PW4 WDC 3884 Shivani Raj** in examination-in-chief testified that she is currently the Exhibit Writer at the Criminal Investigation Department, Ba police station, and has been a police officer for 18 years. On 4 March 2022 PW4 was based at the CID, Tavua police station, and recalled receiving a sexual assault victim by the name of Farneez who had come to the police station to report that she was sexually abused by her father-in-law. PW4 recorded Farneez's statement, and then Farneez showed a video contained in her touch screen mobile phone to PW4, which PW4 then requested Farneez to burn i.e. download and transfer the video into a compact disc, and the compact disc to be given to the police as evidence. PW4 said that in that video she saw Farneez lying on the bed and playing with her mobile phone, and according to Farneez her father-in-law then came and started touching her. PW4 said that she informed Farneez to seek Poonam's assistance to have the video in her mobile phone burned into a compact disc, and the compact disc given back to the police to be retained as evidence. PW4 said that Poonam went to burn the video into a compact disc at an IT shop in Tavua town, and Poonam returned to the station and handed over the compact disc to Sergeant Annual. PW4 was recording Farneez's statement when Poonam returned and gave the compact disc to Sergeant Annual who was sitting beside PW4 in the same room at that moment. Sergeant Annual then handed over the compact disc to PW4 who then sent it to Nakasi police station on 5 March 2022. PW4 identified the compact disc in Court, and confirmed having written on the compact disc at the top '*Evidence by Nakasi report number 24/3/22*', and at the bottom '*AI-Farneez Bibi*'. PW4 did not view the content of the compact disc because there wasn't any facility at Tavua police station to view the compact disc.

24. In cross-examination PW4 stated that on 4 March 2022 she took the statement of a victim of sexual abuse who was brought in by a Poonam whom PW4 knew personally as working at the Ba Women's Crisis Centre while PW4 was based at Ba police station for the past 12 years prior to being transferred to Tavua police station. PW4 confirmed seeing a video from a phone. PW4 said that no police officer had accompanied Poonam to go and have the video in the phone transferred to a compact disc. PW4 said that the phone in which the video was contained was not taken into custody by police to be kept as evidence because the victim had requested to keep the home as it is the only phone in her house and there was no other means of communication to her husband. PW4 said they did not take any photograph of the phone. PW4 said that he did not

view the content of the compact disc because there was no facility in the station to view the compact disc. PW4 said that she made a diary entry of the compact disc being sent to Nakasi police station via mail.

25. In re-examination PW4 stated that she personally knew Poonam since being based at Ba police station for 12 years prior to being transferred to Tavua police station. On 4 March 2022 the victim Farneez was examined by a doctor at the Tavua hospital. PW4 said that there wasn't any other police officer available to accompany Poonam to the internet shop to have the video in the mobile phone transferred into a compact disc. PW4 said that the usual procedure is for them to call the police IT officers from Suva to transfer the video from the mobile phone into the compact disc, but since it would take long to wait for the IT officers from Suva to do the video transfer and this being a sexual offence case, she then gave priority by compiling the relevant documents and sending the compact disc to Nakasi police station through normal mail rather than waiting for a police vehicle to dispatch.

#### **PW5 – IP 2660 Apisai Dredreyaca**

26. **PW5 IP 2660 Apisai Dredreyaca** in examination-in-chief testified that he has been a police officer for 28 years and currently based at Nakasi police station as Crime Officer. PW5 recalled receiving an envelope in early March 2022 which contained the statement of the victim and a white silver compact disc. Upon receiving the victim's statement and compact disc, PW5 then directed the Crime Writer WPC Titilia to register the case and hand it over to Investigating Officer WPC Lusiana. The white silver compact disc was shown to PW5 in court and he confirmed that it is the same compact disc that was in an envelope that he received from the Nakasi Post Office.

27. In cross-examination PW5 stated that he received the envelope containing the compact disc and victim's statement on 5 March 2022, but could not confirm as to any entry done of the receipt of the contents of the envelope at Nakasi police station. PW5 confirmed that he handed over the same envelope to WPC Titilia, but did not go through the contents of the compact disc. PW5 said that WPC Lusiana was appointed to be the investigating officer for this particular matter. PW5 said that he gave written instructions to the Crime Writer WPC Titilia in an instruction

sheet to register the contents of the envelope before handing it over to the investigating officer WPC Lusiana. PW5 said that he also supervised the investigation.

28. In re-examination PW5 stated that he did not and could not view the content of the compact disc because there wasn't any machine at Nakasi police station to enable him to do so.

### **PW6 – WPC 6247 Titilia Tabaka**

29. **PW6 WPC 6247 Titilia Tabaka** in examination-in-chief testified that she has been a police officer for 4 years and currently based at the Traffic Department, Nakasi police station. PW6 said that on 10 March 2022 she was the Crime Writer at Nakasi police station. PW6 recalled that sometime in March 2022 Inspector Apisai Dredreyaca gave her a brown envelope containing a statement and a compact disc, and instructed her to register the case as a *PEP* and to handover the said statement and compact disc to the investigating officer WPC 5980 Lusiana. PW6 explained that the case was registered as *PEP* which stands for *Police Enquiry Pending* whereby the police still have to gather some other relevant documents and once all the evidence are gathered or the suspect is ready to be brought in then the case is subsequently registered as *CR* or *Crime Register*. PW6 said that she placed the statement and the compact disc in a docket, and registered the relevant details into the register and then handed over the docket or file to WPC 5980 Lusiana. PW6 described the compact disc as whitish silver in colour and had black writing on the top. PW6 was shown the compact disc (MFI2) in Court and she confirmed that it is the same compact disc that was initially in the brown envelope, and read the inscription on the top of the compact disc as '*Evidence vide Nakasi Report number 24/3/22*', and at the bottom '*Al-Farneeze Bibi*'. PW6 did not view the content of the compact disc, and she dispatched the relevant docket to WPC 5980 Lusiana on the same morning she received the compact disc.

30. In cross-examination PW6 stated that she is familiar with the procedure and role of a Crime Writer and also received the relevant training. PW6 confirmed receiving a brown envelope on 10 March 2022 at about 8.00am from Inspector Apisai but the receipt of the envelope was not recorded. PW6 said that she was instructed by Inspector Apisai to prepare a docket and the witness's name was Farneeze. The compact disc MFI2 was shown again to PW6 describing the compact disc as silver in colour. PW6 said that she prepared the relevant docket and labelled it

as *PEP* and dispatched it to WPC 5980 Lusiana.

31. In re-examination PW6 stated that in a docket there is an instruction sheet whereby the Crime Officer or Station Officer usually write their instruction to the Investigating Officer. However, for Crime Writers like her, the Crime Officer usually provide them verbal instruction on what to do with regard to documents and statements.

**PW7 – WPC 5980 Lusiana Sinuleleiwasa**

32. **PW7 WPC 5980 Lusiana Sinuleleiwasa** in examination-in-chief testified that she has been a police officer for 5 years, and currently based at the Administration Department, Nakasi police station. PW7 said that on 10 March 2022 PW7 she was based at the Sexual Offence Unit, Nakasi police station, when she received a docket from Crime Writer WPC Titilia regarding a complaint of rape from Tavua police station, which rape allegedly happened at Mataika Road, Davuilevu Housing, whereby the complainant is a Farzeen Farzana Bibi and the alleged perpetrator or suspect is the complainant's father-in-law. The said docket contained the instruction sheet from the Crime Officer, the complainant Farneez Farzana Bibi's statement, and a silver grey compact disc with black writings on it. PW7 was appointed investigating officer, and during the investigation PW7 collected the complainant Farneez Farzan Bibi's medical report from Tavua, and arrested the suspect from Mataika Road, Davuilevu Housing. PW7 also watched the content of the silver grey compact disc, which compact disc (MFI2) she identified and confirmed in Court to be the same compact disc that was in the docket given to her by Crime Writer WPC Titilia with the Nakasi report number and victim's name Farneez Bibi written on it. PW7 used the computer in the Crime Office to watch the short video in the said compact disc, featuring an Indo-Fijian man approaching the person holding the camera and touching her vagina from on top of her clothes. After watching the said short video, PW7 removed the compact disc from the computer and left it in the docket. The short video in compact disc MFI2 was played in Court, and PW7 confirmed that it is the same video contained in the same compact disc that she watched via the computer in the Crime Office. PW7 said that as investigating officer she also made a copy of the original compact disc (MFI2), which copy was attached in the docket while the original compact disc was exhibited in the station by PC

6918 Josefa Kama. The original compact disc (MFI2) was then tendered by the prosecution via PW7 as PE2. The duplicate copy (MFI1) of the original compact disc was shown to PW7 in Court and she identified it as a white CD with her writing in blue ink on the CD noting '*Video Recording of Farzana Bibi. EI CR 54/3/22, IO: WPC 5980 Lusiana*'. The content of the duplicate copy (MFI1) was also shown to PW7 in Court and she confirmed that it is the same video that she watched in the original compact disc (PE2). The duplicate copy of the compact disc (MFI1) was then tendered by the prosecution via PW7 as PE3. The original compact disc and relevant documents were kept in the Exhibit room at Nakasi police station, and PW7 got hold of the said CD and documents again on 28 August 2023. PW7 explained that it is the investigating officer who makes a request to the Exhibit Writer for the release of the original exhibit(s) from the Exhibit room at the police station, and the RCE number of the required exhibit is usually sent with such request.

33. In cross-examination PW7 stated that during her 1 month attachment at the Sexual Offence Unit, she was assisting the Sexual Offence Officer, and was supervised when handling the 2 cases including this case. PW7 said that she updated her investigation diary when conducting her investigation. PW7 confirmed making a copy of the original CD that was in the docket given to her as investigating officer.

34. In re-examination PW7 said that during her stint at the Sexual Offence Unit she was assisting the Sexual Offence Officer who was busy with other cases, and the Crime Officer appointed her as investigating officer for this case since the Fiji Women's Crisis Centre kept on calling the Crime Officer about the case.

#### **PW8 – PC 6918 Josefa Kama**

35. **PW8 PC 6918 Josefa Kama** in examination-in-chief testified that he has been a police officer for 15 years, and currently attached with the Eastern Division Task Force Unit. Prior to this, PW8 was the Exhibit Writer at Nakasi police station for 2 years mainly responsible for keeping safe all original documents and materials that will be later tendered in court. PW8 said that in March 2022 WPC 5980 Lusiana gave him a sealed envelope containing some documents and a compact disc, he then assigned the *RCE* or *Registered Court Exhibit number 2588/22* and the



Station Orderly made relevant entries in the Exhibit register, and the sealed envelope then placed in the Exhibit room for safe keeping. PW8 said that it is prohibited for him to open the sealed envelope or exhibit.

36. In cross-examination PW8 stated that he did not check the content of the brown envelope handed to him by WPC Lusiana because it was sealed, but could tell the content of the envelope by what was written on the envelope.

37. PW8 was not re-examined by the prosecutor.

### **PW9 – WPC 6279 Unaisi Naitabua Saqanivalu**

38. **PW9 WPC 6279 Unaisi Naitabua Saqanivalu** in examination-in-chief testified that she has been a police officer for 4 years, and currently based at the Exhibit department, Nakasi police station. PW9 receives exhibits from investigating officers, register those exhibits in the Exhibit register, and have the exhibits safely kept in the Exhibit room in assigned cabinets according to the exhibit number. PW9 recalled that on 28 August 2023 she received a request from WPC 5980 Lusiana for the release of certain exhibits i.e. statements, medical report, and a compact disc to her. PW9 said that she did not open the envelope containing the said exhibits, but handed it over to WPC Lusiana.

39. In cross-examination PW9 stated that she has been an Exhibit Writer at Nakasi police station for 2 months.

40. PW9 was not re-examined by the prosecutor.

### **Analysis of the entire evidence**

41. In analyzing the entire evidence, I have found that:

- (a) The identification of the accused Mohammed Shafiq is well substantiated and thus a non-contentious issue in this case.

- (b) PW1 Farneez Farzana Bibi being the complainant of Count 1 – Indecent assault; Count 2 – Rape; and Count 3 – Sexual assault, is a credible and reliable witness.
- (c) The testimonies of all prosecution witnesses i.e. PW1, PW2, PW3, PW4, PW5, PW6, PW7, PW8 and PW9 are consistent, and any discrepancy does not render the prosecution evidence incredible and unreliable. In Nadim v State [2015] FJCA 130; AAU0080.2011 (2 October 2015) at paragraph 15, Prematilaka, J. stated:

*[15] It is well settled that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be discredited or disregarded. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witnesses. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of incidents, minor discrepancies are bound to occur in the statements of witnesses.*

- (d) Regarding Count 1 – Indecent assault, the prosecution has proved beyond reasonable doubt that on 1 September 2021 the accused Mohammed Shafiq unlawfully and indecently assaulted his daughter-in-law PW1 Farneez Farzana Bibi by rubbing his beard on PW1's neck while she was asleep in her bedroom at their home situated at Davuilevu Housing.
- (e) Regarding Count 2 – Rape, the prosecution has proved beyond reasonable doubt that between 1 and 30 September 2021 the accused Mohammed Shafiq raped his daughter-in-law PW1 Farneez Farzana Bibi by penetrating PW1's vagina with his finger without her consent, when she was massaging him at their home situated at Davuilevu Housing.
- (f) Regarding Count 3 – Sexual assault, the prosecution has proved beyond reasonable doubt that on 18 September 2021 the accused Mohammed Shafiq unlawfully and indecently assaulted his daughter-in-law PW1 Farneez Farzana Bibi by touching PW1's vagina on top of her clothes while she was in her bedroom, which sexual assault was filmed by PW1 via her Samsung touch screen mobile phone, and the said film or video was later downloaded and transferred into a compact disc (PE2) and a duplicate copy of that CD was also tendered in Court as PE3.

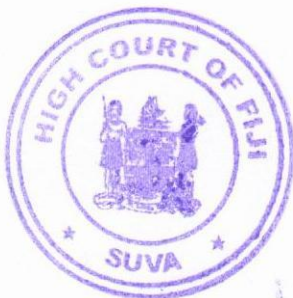
(g) Pursuant to *Admitted fact 11*), the video recording taken by PW1 Farzeen Farzana Bibi via her mobile phone showing the accused Mohammed Shafiq sexually assaulting her as per Count 3, is admissible and not in dispute and tendered by the prosecution as PE2, and the duplicate copy as PE3.

(h) Notwithstanding *Admitted fact 11*), the chain of custody of the original compact disc (PE2) containing the aforesaid video including its probative value pertaining to Count 3 was well established and substantiated by the prosecution through the testimonies of PW1, PW2, PW3, PW4, PW5, PW6, PW7, PW8 and PW9, and there are no prejudicial effect to the accused.

42. For the reasons stated above, I therefore find Mohammed Shafiq **guilty** of the charges of Count 1: Indecent Assault; Count 2: Rape; and Count 3: Sexual Assault, in the Information by the Director of Public Prosecutions dated 10 May 2022.

43. Mohammed Shafiq is hereby **convicted** accordingly of the aforesaid charges.

44. Thirty (30) days to appeal to the Fiji Court of Appeal.



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**Hon. Mr. Justice Pita Bulamainivalu**  
**PUISNE JUDGE**

**At Suva**

13 August 2024

**Solicitors**

Office of the Director of Public Prosecutions for the State.

Sunil Gosaiy Law Firm for the Accused