

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 57 of 2024

STATE

-v-

SOLOMONE TIKOITOTOGO

Counsel: Mr. E. Kotoilakeba for the State
Ms. K. Marama for the Accused

Date of Trial: 14 and 16 April 2025

Date of Judgment: 16 May 2025

JUDGMENT

(The complainant was 16 years of age at trial. Her name is suppressed and I shall refer to her as CX in this Judgment)

1. Mr. Solomon Tikoitotogo (“the accused”) is charged with the following two counts:

INFORMATION BY THE
DIRECTOR OF PUBLIC PROSECUTIONS

SOLOMONE TIKOITOTOGO is charged with the following offences:

COUNT 1

Statement of Offence

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

Particulars of Offence

SOLOMONE TIKOITOTOGO sometime between the 1st day of October 2023 and the 31st day of October 2023 at Vunivolo settlement, Loa in the Northern Division, forcefully inserted his penis into the vagina of CX without her consent.

COUNT 2

Statement of Offence

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

Particulars of Offence

SOLOMONE TIKOITOTOGO sometime between the 1st day of October 2023 and the 31st day of October 2023 at Vunivolo settlement, Loa in the Northern Division, on the same occasion as in count 1 above, unlawfully and indecently assaulted CX by sucking her breasts.

Elements

Count 1

2. To establish count 1 the prosecution must prove beyond reasonable doubt:
 - (i) That the accused penetrated the complainant's vagina with his penis. The slightest penetration suffices.
 - (ii) That the complainant did not consent to that penetration.
 - (iii) That the accused knew that the complainant did not consent to that penetration.

Count 2

3. To establish count 2 the prosecution must prove beyond reasonable doubt:
 - (i) The accused sucked the complainant's breasts; and
 - (ii) The assault was unlawful and indecent.

4. An assault is the deliberate and unlawful touching of another person. The slightest touch is sufficient to amount to an assault and it does not have to be a hostile or aggressive act or one that causes the complainant fear or pain. 'Unlawful' means without lawful excuse. The word "indecent" means contrary to the ordinary standards of respectable people in this community. For an assault to be indecent it must have a sexual connotation or overtone. If an accused touches the complainant's body which clearly gives rise to a sexual connotation that is sufficient to establish that the assault was indecent.

The trial

5. The trial was conducted over two days – 14 April and 16 April 2025.
6. The prosecution called two witnesses - CX and her mother.
7. The accused elected to give evidence in his own defence, and did not call any witnesses.

Key issues

8. There was no dispute at trial that CX and the accused were neighbours in the small settlement of Vatuvonu in Loa. The accused, who was 59 years old at the material time, accepts that he had sexual intercourse with CX in October 2023. The only issues I have to determine are whether that sexual intercourse was consensual and, if non-consensual, whether the accused reasonably believed that CX consented.

The prosecution case

9. CX was 14 years of age at the time of the alleged offending in October 2023. She had just turned 16 years of age a month before the trial commenced.
10. She had known the accused for a long time and called him 'uncle'. He would often ask her to go to the shop for him.
11. Explaining what happened to her in October 2023, CX said:

"One time I was at home and Solo called me. I thought his gonna send me to the shop he gave me \$5.00 when I took the \$5.00 he pulled my collar he pull me into his house and he said if I cry or I do something that he'll kill

me. After that he came he took off my clothes my pants and then he had sex with me. He pull up my t-shirt and suck my breast, My Lord. And he again told me if you said this to somebody else I will kill you. So I came I wear my pants and I ran home and then I never told anyone. That's it, My Lord."

12. CX said that the accused made her lie down and he said that if she shouted or cried he would kill her. She wanted to cry and shout, but was scared of him because he would kill her. When asked to explain further, CX said that:

"He used his penis, My Lord, and then he had sex with me through my vagina, My Lord."

13. CX did not inform anyone about what the accused had done to her because she was scared that he would kill her.
14. The matter only came to light when her mum took her to Natuva Hospital for a check-up and they learned that she was pregnant.
15. She told her mum that the accused had done it to her in his house. Upon hearing this, her mum was angry with the accused.
16. In cross-examination, it was suggested to CX that she had gone to the accused's home and asked him to show her what sex was like. She denied this, and also denied the suggestion that she had told the accused that she had watched it on the phone and wanted to know how it was done. CX rejected the suggestion that she had, in effect, pestered the accused into having sex with her.
17. CX's mother testified that her daughter had raised with her that she was not having her menses. She reassured CX that this was normal.
18. Sometime later, she took CX to see a doctor in Natuva and was informed that CX was 7 to 8 months pregnant. She asked CX whether she had a boyfriend at school or in the village and CX said that she did not have a boyfriend. When she pressed CX on how she got pregnant, CX told her that it was the accused. She told her that the accused had called her in the morning to give her \$5.00 and

then pushed her inside and fondled her breasts and did something to her. CX said that she had not told her because she was scared that if she told anyone the accused would kill her.

19. On their way to the hospital at Tukavesi, she saw the accused on his way to go fishing. She confronted him about how he could do such a thing after they had allowed him to stay at the settlement. The accused denied getting CX pregnant. She was angry with the accused and told him that he had better pack his stuff and go before the boys at home find out what he had done. She never saw the accused back in Loa after that day.
20. The accused's record of interview under caution was read into the record by agreement. The allegation that, sometime in October 2023, he had raped CX in Loa, causing her pregnancy, was explained to him.
21. The accused accepted that the allegation was true and went on to explain that he did it because CX had come to him. He denied having threatened to kill her if she told anyone.
22. Ms. Marama realistically did not make an application at the close of the prosecution case. I explained the accused's options and he elected to give evidence in his own defence.

Defence Case

23. The accused said that, in October 2023, CX had gone to him and asked him to show her what the father and the mother used to do having sex in the night. He told her to go outside, but she did not follow his instructions. She kept on forcing him. She said that she could take the pain. He then told her to take off her clothes and they had sex.
24. The accused denied pulling CX inside his house, forcefully taking off her clothes and pulling her legs up. He did not threaten to kill her. When Ms. Marama asked what he had to say about the allegation, the accused said that he sought forgiveness.

25. Under cross-examination, the accused denied pulling CX into his house by her collar. When it was put to him that, after he raped her, he then sexually assaulted CX by sucking her breasts, he agreed.
26. When it was put to the accused that the reason he left Loa was because he was afraid and was ashamed of what he did to CX, he agreed. When the Court sought to clarify his position, the accused said that he left Loa because he was *“afraid”*.
27. In re-examination, the accused said that CX consented to have sex with him.

Closing submissions

28. I heard closing speeches on 16 April 2025.
29. Mr. Kotoilakeba submitted that CX’s testimony was consistent and unshaken in cross-examination. The complaint she made to her mother supports her credibility. In contrast, the accused’s evidence was shaken in cross-examination. Mr. Kotoilakeba submits that the prosecution has met its burden of proving that the accused is guilty as charged.
30. In her closing speech, Ms. Marama argues that CX’s failure to inform her mother about the alleged rape undermines her credibility and supports that it was CX who requested to have sex with the accused. Were it not for the pregnancy, no one would have been aware of the sexual encounter between the accused and CX.

Legal Directions/Warnings

31. The prosecution must prove that the accused is guilty. The accused does not have to prove anything to me. The defence does not have to prove that the accused is innocent. The prosecution will only succeed in proving that the accused is guilty if I have been made sure of his guilt. If, after considering all of the evidence, I am not sure that the accused is guilty, my verdict must be not guilty.

32. I remind myself that if the accused's denials are, or may be, true, I must find him not guilty. Even if I reject the accused's evidence, I must not find him guilty unless the prosecution have been made me sure of his guilt.
33. The prosecution relies on the accused's voluntary statements against interest in his record of interview. Properly analysed, the record of interview is a mixed statement. Both the inculpatory and the exculpatory parts of his record of interview are evidence for me to weigh.
34. Since the defence have, in essence, advanced CX's wish to conceal her promiscuity as her motive to have lied about the accused's use of and threats of force in raping her, I warn myself that the accused bears no onus to prove a motive to lie, and rejection of the motive asserted does not necessarily justify a conclusion that the complainant's evidence is truthful. A motive to lie or be untruthful may substantially affect the assessment of the credibility of a witness, but it would be wrong to conclude that the complainant told the truth because there is no apparent reason for her to lie. There might be a reason for her to be untruthful that nobody knows about.
35. The prosecution has, to a limited extent, placed reliance on CX's complaint to her mother as supporting her credibility on the key issue of consent. I remind myself that a complaint is not evidence of truth. Also, just because a person gives a consistent account about an event does not necessarily mean that account must be true.
36. Having said that, in cases of rape and other sexual offences, evidence that the complainant made a complaint is admissible to show that her conduct in complaining was consistent with her evidence in the witness box. In order to be admissible, the complaint must have been made at the first reasonable opportunity. It is a matter for the court to determine whether the complaint was made as speedily as could reasonably be expected.
37. In this case, CX did not tell her mum or anyone else about the alleged offending until it was discovered that she was 7 to 8 months pregnant.

38. It must be kept in mind that there may be many reasons why a complainant of a sexual offence might not immediately make a complaint, whether to family, friends or others. Research shows that complainants of sexual offences react in different ways. Some complain close in time to the alleged offending. Others do not. This can be because of threats of harm, shame, shock, confusion or fear of getting into trouble, not being believed, causing problems for other people, or because of fear about the process that may follow. Importantly, there is no such thing as a "typical" response. Different people react to situations in different ways. A complaint made some time after the alleged offending does not of itself mean the complaint was untrue, just as an early complaint does not of itself mean it was true.
39. Finally, since the prosecution seem to rely on the accused having left the village after being confronted by CX's mother as evidence of consciousness of guilt of rape, I must caution myself that before I act on the evidence of flight I must be satisfied that the guilt of which the accused is said to be conscious is of the offences charged, and not some other offence or other discreditable conduct.

Analysis and determination

40. This has been a short trial. As discussed above, the issues I must determine are within a narrow compass.
41. Essentially, what it boils down to is whether I am sure that the complainant is a truthful and reliable witness whose evidence, considered separately in connection with each count, makes me sure that the accused is guilty as charged. Also, I must be sure that the accused's denials are untrue.
42. It follows that the prosecution case relies solely on my assessment of the complainant's reliability and credibility.
43. CX gave evidence in a calm and measured way. She was clear and coherent in her recollection. Her descriptions of what the accused did to her were unembellished and plausible. She was not shaken in cross-examination.

44. Reading the accused's admissions under caution in context, it is clear to me that he was not admitting that he raped CX. Rather, he was accepting that he had sex with her, resulting in her pregnancy. His explanation that CX came to him is consistent with his evidence under oath that it was CX who instigated that sexual intercourse.
45. Nevertheless, the accused's evidence about CX forcing herself on him strikes me as being inherently implausible. CX regarded him as an uncle. She was 14 years of age. He was a well-worn 59-year-old man.
46. CX would often go to the shop for the accused. Her account of him having used this usual routine as a ruse to lure her to his house has the ring of truth about it. I found the accused to be evasive on this aspect of the case. Whilst he accepted that he would often send CX to the shop, he maintained that this was on days other than the day of the alleged offending.
47. As for the delayed reporting, CX gave a reasonable explanation for not having reported to her mother sooner what the accused had done to her. I reject the defence case that the delay in reporting until it was discovered that CX was pregnant undermines her credibility. I am sure that the reason that she did not tell her mum sooner was because she was genuinely afraid of the accused after he made threats against her.
48. Albeit it was made some 8 months after the incident, I find that CX's consistent complaint that the accused dragged her into his house and sexually abused her supports her credibility.
49. I am not persuaded, however, that the accused's sudden departure from the village adds anything to the prosecution case. His evidence was that he left because he was "*afraid*". It seems to me that he would have had good cause to be afraid, given that he was accused of impregnating his 14-year-old niece, irrespective of whether the pregnancy resulted from consensual sex (defence case) or rape (prosecution case). To my mind, the accused's flight from the village is not evidence supportive of his guilt.

50. I reject the defence theory about the complainant's motive for making false allegations against him. That is all part and parcel of the fantastical theory that it was CX who co-opted the accused.
51. I have no hesitation in rejecting the accused's denials.
52. After carefully considering all the evidence, I find the complainant to be a truthful and reliable witness. I have no hesitation in accepting her testimony about what the accused did to her one morning in the month of October 2023.
53. I accept the complainant's evidence that the accused penetrated her vagina forcefully without her consent and that he also sexually assaulted her on the same occasion by sucking her breasts. The fact that he used force to drag CX into his house and undress her, and later made threats to secure her silence, makes me sure that the accused knew that the complainant did not consent to that sexual activity.
54. It follows from what I have said above that I am sure that the accused is guilty as charged and I convict him accordingly.
55. 30 days to appeal to the Court of Appeal.




Hon. Mr. Justice Burney

At Labasa

16 May 2025

Solicitors

**Office of the Director of Public Prosecutions for the State
Legal Aid Commission for the Accused**