

IN THE HIGH COURT OF FIJI AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 329 of 2023

State vs Pandit David Maharaj

For the State: Ms. U. Ratukalou and Mr. L. Tuivuya
For the Accused: Ms. N. Pratap

Date of Trial: 14th to 15th January 2025
Date of Judgment: 05th June 2025

JUDGMENT

1. The complainant in this case has been granted name suppression and henceforth will be known by the initials TFSN. No other identifying material shall be reported in any publications of this judgment.
2. The Accused appears in answer to the following Information filed on the 26th November 2023.

INFORMATION BY THE
DIRECTOR OF PUBLIC PROSECUTION

PANDIT DAVID MAHARAJ is charged with the following offences:

[COUNT 1]

Statement of Offence

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

Particulars of Offence

PANDIT DAVID MAHARAJ on the 16th day of October 2023 at Namaqumaqua Serua, in the Central Division penetrated the vagina of **TFSN** with his tongue without her consent.

[COUNT 2]

Statement of Offence

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

Particulars of Offence

PANDIT DAVID MAHARAJ on the same occasion as in Count 1, penetrated the vagina of **TFSN** with his fingers without her consent.

[COUNT 3]

Statement of Offence

SEXUAL ASSAULT: Contrary to section 210 (1) and (2) (a) of the Crimes Act 2009

Particulars of Offence

PANDIT DAVID MAHARAJ on the same occasion as in Count 1, unlawfully and indecently assaulted **TFSN** by sucking her breast.

[COUNT 4]

Statement of Offence

PORNOGRAPHIC ACTIVITIES INVOLVING JUVENILES: Contrary to section 62A (1) (b) of the Juveniles (Amendment) Act 1997

Particulars of Offence

PANDIT DAVID MAHARAJ on the same occasion as in Count 1, in private, recorded pornographic activities directly involving a juvenile namely **TFSN**.

[COUNT 5]

Statement of Offence

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

Particulars of Offence

PANDIT DAVID MAHARAJ on the 16th day of October 2023 at Namaqumaqua, Serua, Navua in the Central Division on an occasion other than in Count 1, penetrated the vagina of **TFSN** with his tongue without her consent.

[COUNT 6]

Statement of Offence

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

Particulars of Offence

PANDIT DAVID MAHARAJ on the 16th day of October 2023, at Namaqumaqua, Serua, Navua in the Central Division on an occasion other than in Count 2, penetrated the vagina of **TFSN** with his tongue without her consent.

3. The Accused was first produced in the Navua Magistrate's Court on the 20th of October 2023. The matter was transferred to the High Court as there were indictable offences in the charge. The Accused was also advised of his right to file an Alibi Notice.
4. The Accused was first arraigned in the High Court at Suva on the 3rd day of November 2023 and directions were given for Information and Disclosures to be filed and served.

5. The Accused entered Not Guilty pleas to all 6 counts on the Information on the 14th of December 2023. Directions were then given for pretrial conference and agreed facts to be filed by the parties.
6. On the 11th of March 2024, the parties filed the following Admitted Facts pursuant to section 135 of the Criminal Procedure Act 2009: -
 - (a) Pandit David Maharaj (hereinafter referred to as the Accused) was born on the 3rd of May 1954.
 - (b) TN (hereinafter referred to as the Complainant) was born on 28th December 2008 and a copy of her birth certificate is tendered by consent as a Prosecution Exhibit.
 - (c) She lived in Navutulevu village in Serua with her immediate family.
 - (d) The Accused was arrested and taken to the Navua Police Station on the 17th of October 2023.
 - (e) The Accused voluntarily handed over his Navy Green Galaxy Samsung A04 Mobile phone to Police. A copy of the Search List is tendered by consent
 - (f) Phone Details – Model # SM-A045F/DS
Serial # R9DTAOAA86Y
IME 1 1 #350970301413241/01
IME 1 2 #35589251413248/01
7. The matter was then fixed for trial from 13th to 17th January 2025.
8. At the Trial, the State called the following witnesses: -
 - (a) PW1 – TFSN
 - (b) PW2 – Mere Disese
 - (c) PW3 – Uraia Ratulevu
 - (d) PW4 – Kusitino Kuruicirinatoga
 - (e) PW5 – PC 6676 Savenaca Joape
 - (f) PW6 – Arti Mani
 - (g) PW7 – Dr. Divyani Ben Mistry
 - (h) PW8 – WPC 7788 Timaleti

9. The Accused also gave evidence under oath although he did not call any witnesses on his behalf.

The evidence for the State

10. The main evidence was given by the complainant TFSN. She testified that in 2023 she lived in Navutulevu Village, Serua, with her parents and siblings and her uncle and his family. She has lived in the village since birth and in 2023, she was in Class 8.
11. She testified that on the 16th of October 2023, she had got up and prepared to go to school, however she was later for the bus and ended up not going to school so she went home and changed. As she was at the bust stop in front of her house, a vehicle driven by the Accused, who she referred to as Tevita, came and stopped. She knew him from before as he had been in her home and she knew him as a man who repaired electrical appliances.
12. That morning Tevita told the complainant and Talei to get in the vehicle and for them to go to Maui Bay. Talei wanted to go for a ride so they agreed however they only reached Namatakula village and returned as Talei wanted to return home.
13. Once they reached home and dropped Talei, Tevita then drove her off again and they went to Namaqumaqua. When they arrived at Namaqumaqua, Tevita told her to go and lie down in the back seat and she lay down he came and took her measurements using a tape that the tailors used.
14. After taking her measurements, Tevita then took a picture of her. He promised her that he would give her some money and for her not to tell anyone.
15. After he did that Tevita then told her to take off her top and her pants. She did what he told her because she was scared of him.

16. She testified that Tevita then touched her genital area (she referred to as her “tele”) she testified that he inserted his index and middle finger into her vagina and she felt pain when he did so.
17. After he did this he took photos again – earlier he had taken photos of her body from the front and the second photo he took was of her “tele”, her genital area. He used a Samsung phone to take the photos.
18. After he took the photos, Tevita then used his tongue on her genitals and she was afraid and after he took other photos, Tevita squeezed her breasts.
19. She did not give him permission to remove her clothes, nor to touch and insert his fingers into her tele, to lick her tele or to squeeze her breasts.
20. After that Tevita then drove her back home and when she returned home she informed her mother what had happened to her that day. Her mother was very angry and she told her husband what happened. He then reported the matter to the Police.
21. The Police from Navua then came and took her statement and she was also taken to the Hospital to be examined.
22. She identified the Accused in Court as the person that she had referred to as Tevita.
23. Under extensive and lengthy cross examination, she maintained her evidence.
24. Counsel put the Accused’s case to the complainant that he never took her to Namaqumaqua and he never did any of the things that he was accused of doing. She maintained that he penetrated her vagina with his fingers, licked her vagina and squeezed her breasts on the day in question. She maintained that he took her to Namaqumaqua and did these things to her there.
25. It was put to her that she took photos of her own self that day, she denied and maintained that it was the Accused, Tevita who took her photos.

26. The second witness was her mother, and her evidence was in the nature of recent complaint evidence. She confirmed that on the day in question the complainant had not gone to school. She also confirmed that she had gone in the car with Tevita and she returned around lunch time.
27. She noticed from her daughter's face that there was something wrong. When she asked her what happened, her daughter informed her that Tevita had touched her genital area and her breasts and he took photos of her.
28. After her daughter informed her, then she informed her husband who then informed the village nurse. She identified the Accused as the person referred to as Tevita.
29. She maintained her evidence under cross examination and confirmed that she had allowed Tevita to go with the complainant in his vehicle. She also conceded that her daughter may have appeared frightened because she came home late.
30. The third witness Uraia Ratulevu is the Turaga ni Koro or village headman of Navutulevu village and he has held this post for 7 years now. On the day in question, 16th of October he had gone to Navua and while in Navua he had received a call from the complainant's father. He could not make out what the complainant's father was saying as he was travelling back to the village. On his return he met the village nurse, the Peace Corps volunteer and the complainant's father. Once he was informed on what had happened, the matter was then reported to the Police in Navua. He then identified the Accused as the person he referred to as Tevita.
31. The fourth witness was Kusitino Kuruicirinatoga. He testified that on the 15th of October 2023, he was at home when Tevita came and asked him to use his vehicle the following day. The vehicle was a rental that he had brought from Sigatoka and was supposed to be returned on Sunday however Tevita came to him and asked him to use the car on Monday and he paid by MPaisa.
32. The fifth witness was DC 6676 Savenaca Joape, currently based at the Lautoka Police Station under the Digital; Forensic Unit. He has an IT background and has completed

certificates on CompTIA Clouds plus, CompTIA plus and CompTIA network and workshops organised by the Australian Federal Police and other workshops.

33. For this case he was handed a phone by one of his fellow officers to extract photos in October 2023. He was briefed that the device contained photos of a naked young girl. He had been handed the device by an officer from the Cybercrime Unit, and he was further advised that the device had been seized by officers from Navua Police Station.
34. He gave evidence of the steps that he took to extract data from the phone using the Cellebrite software, and particularly the photos taken on the 16th of October 2023. He then generated a report, and he signed it. He identified the telephone from which he generated the report and he tendered the phone as well as the report into evidence. He also burned the photos into a CD which he also tendered into evidence.
35. This evidence was unchallenged.
36. The sixth witness was Arti Ashwina Mani Executive Officer in the Ministry of Justice. She gave evidence that the Accused had changed his name from Latchman to David Maharaj. His birth certificate also had a notification on it CN, which meant that he had changed his name.
37. The seventh witness was Dr. Divyani Ben Mistry. She medically examined the complainant, and she also filled in the Police Medical Examination form. She conducted the examination on the 17th of October 2023, and she explained her findings in Court.
38. Her specific medical findings were set out at question D12, and she found that there was old blood found on swabs and the lower vaginal wall appeared reddish. She agreed that this was consistent with penetration and could not be caused by external rubbing, she also found that the old blood found in the swab could be her menses.
39. The last witness was the investigating officer in this case WPC Timaleti. She was appointed as the investigating officer and she made the preliminary inquiries and collected statements from the witnesses in this case. She was also present when the

phone was seized from the Accused. She also made inquiries with the Births and Deaths Office in Navua and obtained records that indicated that the Accused had changed his name. Her evidence was unchallenged.

40. At the close of the State's case, the Court found that there was a case to answer for counts 1, 2, 3 and 4 and he was acquitted of counts 5 and 6.

41. The Accused elected to give evidence under oath.

The evidence for the Accused

42. In his evidence Pundit David Maharaj states that he is currently 73 years of age. He was previously known by the name of Latchman, however he changed his name upon converting to Christianity.

43. He confirmed that he was in Navutulevu village because the villagers wanted him to come and repair damaged electrical appliances there. He repaired fridges, television and washing machines. While in the village, he stayed at the house of a man called Tamai Dua. He had lived in the village for about one month on and off since he would return to Suva to get parts.

44. He also testified that he knows Opeti Nakabiti, the father of the complainant. He had asked him to come and repair a speaker and washing machine at his farmhouse.

45. On the 15th of October he assisted them by carrying their things from one house to the house they are living in now. He stayed with them and Opeti invited him to stay and have some grog with him and to watch TV on his mobile phone to watch the game between England and Fiji. He gave \$30 as his Sevusevu and as they waited for the game, the complainant asked him for a telephone to play games on. At that time he was repairing a phone so he had two phones with him and he gave her the Samsung A4 phone to play with.

46. The next morning, the complainant's mother asked him to drop the children to school as they were late, so he dropped three children to school that day, and he finished

dropping them at around 20 minutes past 9. He returned to the same house as his mobile was there.

47. When he arrived at the house, he saw the complainant there and her mother requested him to take the complainant and Talei to the shop as she heard that he was going to Maui Bay to buy a part. The three of them then went off towards Maui Bay, the complainant sitting in the front with him while the young girl, Talei, sat at the back.
48. On the way to Maui Bay, he realised that the part was not there so he turned back to the village after about 15 minutes. They returned between 9:30 and 9:45 am and he parked the car in the driveway and Talei got off. He told the complainant that he was going to Deuba to buy the part and she needed to get off. The complainant then asked him to go with him.
49. From there, the Accused took the car and parked it near the village church and he went to the house where he was staying. The complainant told him that she would wait in the car.
50. He went to the house he was staying and had his shower, ate breakfast and he returned to the car after 11 am. He requested the complainant to stay behind as he had seen blood on her pants, and she needed to stay home. She asked him to buy glue and \$20 marijuana for her friends.
51. He then went off to Grace Roads in Navua but the parts he was looking for was not there so looked for another hardware shop and he found the parts at Pacific Harbour Hardware. He left Deuba at 12:45 pm and he drove back to the village. When he arrived at the village, the complainant was waiting for him and she stopped him and asked whether he had brought what she asked for. He told her that he did not get it and instead he had bought some snacks.
52. He denied all of the allegations made by the complainant, he denied penetrating her vagina with his fingers; nor did he take any nude pictures of her or touch her breast that day.

53. Under cross examination he confirmed that he was known in the village as Tevita. His caution interview was then put to him and he agreed that nowhere in his statement did he refer to the complainant's request for glue or marijuana. There was also no reference to the exact timings, and he conceded under cross examination that he was making these up on the stand. He maintained that he did not take any of the pictures found on the phone although he did concede that in some photos it was physically impossible to take a photo on their own and there needed to be a photographer. He was shown the photos on the phone and he denied taking any of the photos of the complainant contained there.

54. That was the evidence of the Accused and the close of the trial.

55. After the Trial, the parties were given the opportunity to file written submissions to supplement the evidence led at Trial. I am grateful to counsel for their research and their submissions.

56. This matter is now adjourned for judgment.

Analysis

57. The Accused now faces 2 counts of Rape contrary to section 207 (2 (b)); 1 count of Sexual Assault contrary to section 210 (1) (a); and 1 count of Pornographic activity involving Juveniles contrary to section 62A of the Juveniles Act.

58. Section 207 provides: -

"The offence of rape

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

Penalty– Imprisonment for life.

(2) A person rapes another person if-

1. (a) the person has carnal knowledge with or of the other person
without the other person's consent; or

2. (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; or
3. (c) the person penetrates the mouth of the other person to any extent with the person's penis without the other person's consent.

(3) For this section, a child under the age of 13 years is incapable of giving consent."

59. Section 210 provides as follows: -

"Sexual assaults

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

- (a) unlawfully and indecently assaults another person; or
- (b) procures another person, without the person's consent—
 - (i) to commit an act of gross indecency; or
 - (ii) to witness an act of gross indecency by the person or any other person.

Penalty— Imprisonment for 10 years.

(2) The offender is liable to a maximum penalty of 14 years imprisonment for an offence defined in sub-section (1)(a) or (1)(b)(i) if the indecent assault or act of gross indecency includes bringing into contact any part of the genitalia or the anus of a person with any part of the mouth of a person."

60. For the 4th count, the Accused is charged with the following offence: -

"Pornographic activity involving juveniles

62A (1) Any person whether in public or in private, who—

- (a) records from, reproduces, places onto, views, or accesses on or from, media or records of pornographic activity directly or indirectly involving juveniles, or persons who look like juveniles whether they are or not;
- (b) makes, participates in, uses, observes, publishes, solicits, advertises, distributes, traffics in, lets on hire, buys, sells, offers to sell, pornographic activity directly or indirectly involving juveniles, or persons who look like juveniles whether they are or not; commits a felony and is liable on conviction—

(i)in the case of a first offender, to a fine not exceeding \$25,000 or a term of imprisonment not exceeding 14 years, or both; or

(ii)in the case of a second or subsequent offence, to a fine not exceeding \$50,000 or life imprisonment, or both. (Emphasis added).”

61. Pornographic activity is further defined at section 62A (12) as follows: -

“pornographic activity includes—

(a) an activity which is—

- (i) either indecent or obscene; or
- (ii) of a sexual nature and offensive, in any way judged by the standards of the time to be so; and

(b) any content that depicts, presents or represents—

- (i) a juvenile engaged in sexual intercourse or sexually explicit conduct;
- (ii) a person appearing to be a juvenile in sexual intercourse or sexually explicit conduct; or
- (iii) an image, animation, text material or video of a juvenile engaged in sexual intercourse or sexually explicit conduct that includes any audio, visual or text material.”

62. The Accused has entered pleas of not guilty to all counts on the Information and at Trial the State has failed to provide evidence on Counts 5 and 6 therefore he now only faces 4 out of the original 6 counts against him.

63. For counts 1 and 2 of Rape the State bears the burden of proving the following elements of the offence beyond a reasonable doubt: -

- a) That Pandit David Maharaj (Tevita)
- b) On the 16th of October 2023, at Namaqumaqua Serua
- c) Inserted his fingers into the vagina of the complainant
- d) Inserted his tongue into the vagina of the complainant
- e) Without her consent

64. For count 3 of the Information, the State had to prove the following elements of the offence: -
- a) That Pandit David Maharaj (Tevita)
 - b) On the 16th of October 2023, at Namaqumaqua, Serua
 - c) Unlawfully and indecently assaulted the complainant by sucking her breast
65. For the 4th count the State bears the burden of proving the following element of the offence: -
- a) That Pandit David Maharaj (Tevita)
 - b) On the 16th of October 2023, at Namaqumaqua, Serua
 - c) Made (took nude photos of the child complainant) and thereby participated in pornographic activities with a child
66. The Accused's defense has been complete denial and from his testimony and what has come out through submissions, his position is that the complainant may have taken photos of her own naked body and someone else may have taken those photos, not him.
67. The case turns on the credibility of the witnesses, the complainant and the Accused.
68. In assessing the credibility of the witnesses and where each party has had discrepancies shown in their evidence, the authorities are very clear – State vs Naisau [2016] FJHC 798; Abourzik vs State [2019] FJCA 98 (AAU 54 of 2016) that these discrepancies need to be substantive and significant for the Court not to rely on the same.
69. Giving evidence is not a memory test, it is important that the Court takes the witness and their testimony in its correct context, namely their age, life experience and how they are feeling on the stand that particular day. Some witnesses may have given very comprehensive statements that touch all of the elements of the charge and it could transpire that they don't come to proof on the witness stand. The Court needs to take all of these factors into account when assessing the evidence.
70. The complainant's testimony was shaken in cross examination and discrepancies were raised in her recollection and she admitted that the vehicle was parked for some time in

the village next to the church with the phone and she has also admitted that she had blood on her pants that he had given her a towel.

71. To my mind, these are peripheral discrepancies and they do not shake her basic testimony where she was very clear that on the day in question, he took her in his vehicle to Namaqumaqua and he did these things to her and he also took nude pictures of her.
72. The Accused conceded that he only made up the time frame on the witness stand and he did not disclose to the Police at the time he gave his statement under caution, of the request by the complainant to buy drugs and glue for her.
73. The telephone was proved to belong to him; the nude images of the complainant was contained in it, and “selfies” of the Accused were taken after these nude images were taken. The time that these photos were taken is consistent with the evidence of the complainant.
74. These nude images of the child complainant are “indecent or obscene and are of a sexual nature and offensive when judged by the standards of the time” and they meet the definition of pornographic activity as criminalised by section 62A of the Juveniles Act.
75. In looking at the evidence before the Court, I prefer the evidence of the complainant and I am satisfied that she has provided evidence that has met all of the elements of counts 1, 2 and 4.
76. With respect to count 3, no direct evidence was given of this however the complainant testified that the Accused squeezed her breasts. This constitutes a lesser offence of Indecent Assault
77. In deciding on the remaining counts before the Court, the Court makes the following findings: -
 - i. Count 1 – the State has established this beyond a reasonable doubt

- ii. Count 2 – the State has established this beyond a reasonable doubt
- iii. Count 3 – the State has established the lesser offence of Indecent Assault, he is acquitted of the offence of Sexual Assault.
- iv. Count 4 – the State has established this Count beyond a reasonable doubt.

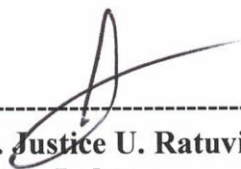
Pandit David Maharaj this is the judgment of the Court

- 1. Count 1 – Rape convicted as charged
- 2. Count 2 – Rape convicted as charged
- 3. Count 3 – Sexual Assault acquitted, convicted on the lesser offence of Indecent Assault
- 4. Count 4 – Pornographic Activities Involving Juveniles – convicted as charged
- 5. Count 5 – Rape acquitted
- 6. Count 6 – Rape acquitted

The Court will now hear from you in mitigation.

30 days to appeal





Mr. Justice U. Ratuville
Puisne Judge

**cc: Office of the Director of Public Prosecutions
Office of the Legal Aid Commission**