

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 337 of 2023

STATE

v

IOANE TAUKEISALILI

Counsel: Mrs. U. Ratukalou and Ms. K. Dugan for the State
Mr. W. Navuni and Mr. A. Waqainabete for the Accused

Date of Trial & Closing submission: 3 – 14 March 2025 and 8 April 2025

Date of Judgment: 27 May 2025

JUDGMENT

1. **Ioane Taukeisalili**, the accused, is indicted with a count each of *Sexual assault* and *Rape*, laid out as follows in the Information by the Director of Public Prosecutions dated 21 November 2023 and filed on 23 November 2023:

COUNT ONE

Statement of Offence

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

Particulars of Offence

IOANE TAUKEISALILI on the 1st of November 2023, at Lami in the Central Division, unlawfully and indecently assaulted **SALOTE NAIULA** by sucking her breasts.

COUNT TWO

Statement of Offence

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

Particulars of Offence

IOANE TAUKEISALILI on the same occasion in Count 1, had carnal knowledge of **SALOTE NAIULA** by penetrating her vagina with his penis, without her consent.

2. Ioane Taukeisalili pleaded *not guilty* and tried for the aforesaid offences [3 – 14 March 2025; Closing submission – 8 April 2025], and this is the Court’s judgment.

Burden & Standard of proof

3. Pursuant to sections 57 and 58 of the Crimes Act 2009 including Woolmington v DPP [1935] AC 462 at 481 (HL), the prosecution bears the burden to prove *beyond reasonable doubt* all elements of the offences of Count 1: Sexual assault and Count 2: Rape in the indictment.

Physical and fault elements of Sexual assault

4. Count 1: Sexual assault is contrary to section 210(1) & (2)(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; ...

5. The physical and fault elements for the offence of *Sexual assault*, in this instant, are:

- i) A person i.e. the accused Ioane Taukeisalili;
- ii) Unlawfully and indecently assaulted the complainant Salote Naiula; and
- iii) Did so intentionally.

Physical and fault elements of Rape

6. Count 2: Rape is contrary to section 207(1) & (2)(a) 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—

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

206.- In this Part —

(3) The term “penetrate” does not include penetrate for a medical, hygienic or law enforcement purpose only.

(4) If “carnal knowledge” is used in defining an offence, the offence, so far as regard that element of it, is complete on penetration to any extent.

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*, in this instant, are:

- i) A person i.e. the accused Ioane Taukeisalili;
- ii) Penetrated the complainant Salote Naiula’s vagina with his penis;
- iii) Without the complainant’s consent [See ss. 206(1) - (2)]; and
- iv) Did so intentionally and / or recklessly

[i.e. fault element – see Crimes Act 2009, s.23(1) - (2); and Tukainiu v State [2017] FJCA 118; AAU0086.2013 (14 September 2017) at paragraphs 31 - 34 per Prematilaka, JA - *reckless*.]

8. In Tukainiu v State (supra), at paragraphs 31 – 34, Prematilaka, JA held:

[31] Therefore, since section 207(2)(a) (i.e. the law creating the offence of rape) does not specify a fault element for the physical element i.e. the act of penetration without the victim’s consent (amounting to a circumstance), section 23(2) would become applicable and recklessness becomes the fault element for the physical element of rape. This is the same with section 207(2)(b) and 207(2)(c) as well, though not applicable in this case.

[32] Section 14 states inter alia that in order for a person to be found guilty of committing an offence the existence of the physical element and the require fault element in respect of that physical element must be proved (by the prosecution). Fault elements of an offence could be intention, knowledge, recklessness or negligence but the law creating the offence may specify any other fault element as well [vide section

18(1) and (2)]. Therefore, I conclude that the prosecution in a case of rape has to establish (a) carnal knowledge (i.e. penetration to any extent); (b) lack of consent on the part of the victim; and (c) recklessness on the part of the accused as defined in section 21(1).

[33] Section 21(1) states, 'A person is reckless with respect to a circumstance of – (a) he or she is aware of a substantial risk that the circumstance exists or will exist; and (b) having regard to the circumstances known to him or her, it is unjustifiable to take the risk.'

[34] If recklessness is a fault element for a physical element of an offence, proof of intention, knowledge or recklessness will satisfy that fault element [vide section 21(4)]. Therefore, in a case of rape the fault element would be established if the prosecution proves intention, knowledge or recklessness as defined in sections 19, 20 or 21 respectively. The presence of any one of the three fault elements would be sufficient to prove the fault element of the offence of rape.

9. At trial, prosecution called 2 witnesses i.e. PW1: Salote Naiula (Complainant); and PW2: Jone Boqawai.

10. As for the defence, DW1: Ioane Taukeisilili the accused, DW2: Dr. Ravneet Singh and DW3: Paulini Saurogo gave sworn testimony, and tendered the following defence exhibits [**DEs**]:

DE1 – Medical report of Salote Naiula (complainant) by Dr. Ravneet Singh dated 2/11/2023; and

DE2 – Forensic Microscopy report no. 23/11/23 for Laboratory Case no. 04/11/23 by Paulini Saurogo, Senior Forensic Biologist dated 19/12/2023.

PROSECUTION case via PW1 and PW2

PW1 – Salote Naiula (Complainant)

11. **PW1 Salote Naiula, the complainant, in examination-in-chief**, testified that she is 23 years old, her date of birth is 13 January 2002, and currently employed at Max Value supermarket, Flagstaff, Suva, residing at Pender Street. PW1 stated that her mother's name is Amele Likusolo and father's name is Leone Apisai. PW1 stated that she has 5 siblings. PW1 stated that she attended Nabuabuco District School at Naelevuki village in Naitasiri, and received secondary

education at DAV College in Ba. PW1 stated that she then attended Fiji National University (FNU) at Natabua Campus, Lautoka, for 2 years. PW1 stated that she was sickly when growing up. PW1 stated that she normally has stomachache and back pain, which she usually has since she was small. PW1 stated that the pain started when she was small and also when she was raped by her grandfather. PW1 stated that the stomach and back pains still affect her as an adult. PW2 stated that to relieve herself of these pain, she just normally lies down and take Panadol. PW1 stated that in 2023 she worked at Max Value in Lami as a cashier. PW1 stated that she started work at Max Value in April 2023 and ended in November 2023. PW1 stated that around this period in 2023, she had a boyfriend by the name of Jone Boqawai. PW1 stated that in 2023, she lived in the hostel at Delainavesi and moved there in April 2023. PW1 stated that living in that hostel was ok, but the way they communicate and converse in the hostel with the other girls was not good. PW1 stated that also the fare was expensive, and in the case when she knocks off late, it is expensive to take a cab from her workplace to the hostel. PW1 stated that she left the hostel on 5 October 2023. PW1 stated that she left the hostel because Ioane had offered his home for her to move in because it was only him and his wife who were at home. PW1 stated that she also found it difficult being a private student at the FNU and with all the expenses affecting her budget with the budget constraint. PW1 stated that the first time she met Ioane was on a Wednesday on 26 April 2023 her first day at work at Max Value. PW1 stated that Ioane was the lead security at Max Value. PW1 stated that they shook hands and he introduced himself saying, "Bula I am Ioane. I'm from Namosi". PW1 stated that she met Ioane everyday when she is at work. PW1 stated that Ioane treated her at work like his own daughter. PW1 stated that when Ioane offered for her to stay with him and his wife at his home, she said that it is a good idea, only if his wife allowed her to come and stay with the two of them. PW1 stated that after conversing with Ioane, she then moved in to their home on 5 October 2023. PW1 stated that when moving out of the hostel and into Ioane and his wife's home, she felt it was much easier for her in terms of catching one bus only to work and back home, and she could also save more money. PW1 stated that Ioane's home does not have a room, but only a curtain separates where they sleep from the living room. PW1 stated that when the curtains are put down to separate the bedroom from the sitting room, and they sleep in the bedroom side while she sleeps on the sitting room side. PW1 stated that Ioane's wife's name is Lelea who was kind and they communicated well. PW1 stated that when she moved in, Ioane was kind and they

communicated well. PW1 stated that she moved out of Ioane's house when the incident happened, the very next day. PW1 stated that the incident happened on 1 November 2023 when she was at home with Ioane and Lelea had gone to Labasa for work purpose. PW1 stated that on that morning at around 8.00am to 9.00am she was actually doing the laundry in the living room. PW1 stated that she used the washing machine in the living room and rinsed the clothes outside about 5 to 6 steps away from the house. PW1 stated that the washing machine is located near the main door being the only door of the house, and she placed the washing machine there. PW1 stated that Ioane was in the house where they use to sleep, when she was doing the laundry. PW1 stated that after rinsing the clothes, she brought back the clothes to the washing machine to be dried, and then hung the clothes on the clothes line for airing. PW1 stated that after hanging the clothes to dry, she then came back inside the house, lay down and felt pain on her back. PW1 stated that she then asked Ioane if he could massage her back because she heard from other staff at work that he does massaging. PW1 stated that when she asked Ioane to massage her, he was awake and lying down on the mattress and on his phone. PW1 stated that Ioane then told her to take off her t-shirt and just wrap herself with the *suluvakatoga*, which she did. PW1 stated that she changed into a sulu, bra and underwear. PW1 stated that Ioane wore trousers and nothing on top. PW1 stated that that was the first time she asked Ioane to massage her since hearing from her work mates that he does massaging. PW1 stated that she changed in the bedroom area while Ioane came out to the living room area. PW1 stated that after she had changed, Ioane brought the oil and told her to lie down on the mattress and this was around 9.30am to 10.00am in the morning. PW1 stated that Ioane then started to massage her legs and towards her stomach while kneeling on her right side. PW1 stated that Ioane used oil and both hands to massage her. PW1 stated that Ioane massaged her for 30 seconds on her leg up to her stomach. PW1 stated that after 30 seconds, Ioane told her to lie on her stomach so that he can massage her back, which she did. PW1 stated that Ioane then started massaging her thighs up to her shoulders while kneeling in between her legs to massage her thighs, and before that he pulled up her sulu so that he can do that. PW1 stated that he then pulled up her sulu right up to her head and then started massaging her thighs up to her shoulders. PW1 stated that when Ioane started massaging her, she at first felt uncomfortable and her feelings did not change. PW1 stated that Ioane then told her to turn, then he turned on the music box and then massaged her thighs again up to her breast. PW1 stated that she then asked him, "Ioane what are you doing?"

You are not supposed to do this”, to which he replied, “It’s ok, it’s just us in the house”, and PW1 felt scared when he said that. PW1 stated that he used both hands to massage her breast. PW1 stated that he then massaged up to her shoulders including both of her hands and tried to kiss her, and she then tried to scream but couldn’t as he was trying to kiss her and his legs had locked both of her thighs while he laid on top of her. PW1 stated that he distracted her from screaming. PW1 stated that she tried to push him away but couldn’t because she had stomachache and felt weak due to his weight lying on top of her. PW1 stated that one of his hands was holding onto her hand while he used his other hand to forcefully pull down her panty, which he managed to pull halfway up to her knee. PW1 stated that at that moment, she was weak, and then he pulled down his trousers, then completely pulled down her panty, he then knelt in between her legs then laid on top of her and inserted his penis into her vagina. PW1 stated that she felt pain on her vagina when he inserted his penis into her vagina, and in 10 seconds she had passed out. PW1 stated that Ioane pushed his penis into her vagina for 3 times, and she kept asking him, “What are you doing?” because she did not dream that he would do that to her. PW1 stated that she did not give Ioane permission for him to insert his penis into her vagina. PW1 stated that before Ioane inserted his penis into her vagina, he sucked both her breasts using his mouth. PW1 stated that she did not give permission to Ioane to suck her breasts. PW1 stated while passed out, she could hear Ioane calling her name, and then she regained consciousness, and he told her not to tell his wife nor her boyfriend, and she just nodded. PW1 stated that when she opened her eyes, she was lying naked on top of the mattress, while Ioane stood in front of her wearing his trousers and seeing her in tears and then he went to look for a cloth to wipe her tears. PW1 stated that she cried because what Ioane did to her was indecent. PW1 stated that Ioane then apologized of what he had done to her, he then brought the sulu and covered her with it, and he went to have his shower. PW1 stated that remained lying there when Ioane went to have his shower because she was feeling weak. PW1 stated that after Ioane had his shower, he then came back to her and asked her if she is going to work, to which she replied by shaking her head to indicate ‘no’. PW1 stated that Ioane then left home, and after 5 minutes she felt lighter and then messaged her boyfriend via Facebook Messenger to come and pick her to take her to the hospital. PW1 stated that her boyfriend replied that he will come and for her to wait for him at the bus stop. PW1 stated that she then took a shower, got dressed and walked down to the bus stop at around 10.00am. PW1 stated that her boyfriend picked her up from the

bus stop and took her to the Lami Health Center, and on the way, she told him what had happened and crying while relating the incident to him. PW1 stated that she told her boyfriend that Ioane had harassed and raped her. PW1 stated that he then asked her as to when this happened, to which she replied that it happened this morning. PW1 stated that at the Lami Health Center, she did not tell the doctor what had happened, but only told the doctor of the abdominal and stomach pain because she was still scared, and she thought that if she tell them that she was raped, they would not listen to her given that the first time she was raped, she had told the police and doctors but did not get any feedback until now. PW1 stated that she was 5 years old attending kindergarten, in classes 4 and 7, when she was raped by her grandfather. PW1 stated that when her boyfriend picked her up, they then went to pick up Ioane's sister and went to the family home. PW1 stated that they reported this matter to the Lami Police Station on the next day after her boyfriend Jone insisted that they do so. Leave was then granted for PW1 to engage in Dock ID. Upon looking around the courtroom, PW1 then pointed at Ioane Taukeisalili sitting in the accused box.

12. In **cross-examination** by defence counsel Mr. Navuni, PW1 stated that in April 2023 she resided at a female hostel at Delainavesi. PW1 stated that she had a very difficult time at that hostel in terms of conversing with the girls at the hostel. PW1 stated that at that time she working and studying at FNU as a private student and having budget constraints. PW1 stated that Ioane Taukeisalili offered her to stay with his and his wife at their place. PW1 did not agree with the suggestion that it was not Ioane who had offered her to stay at his place, but it was her who had asked Ioane and his wife to stay at their residence. PW1 stated that she moved out of the hostel at Delainavesi on 5 October 2023 and into Ioane and his wife's residence at Kalekana settlement surrounded by 4 to 5 other houses. PW1 stated that from Ioane's house, the next house is about 5 meters away, and opposite is Joana's cement house with a porch occupied by 5 people. PW1 did not agree with the suggestion that there is a couple with their 4 children who reside in that cement house, and on the other side of Joana's house is a wooden purple house. PW1 stated that she stayed for a period of about 20 to 25 days from 5 October 2023 to 1 November 2023 at Ioane's residence. PW1 agreed that Kalekana settlement is a densely populated squatter settlement. PW1 did not agree with the suggestion that she was dropped off

at Kalekana around 9 o'clock by a soldier namely Apisai. PW1 did not agree with the suggestion that she was not washing on the morning of 1 November 2023. PW1 did not agree with the suggestion that on that day when she came home, she had gone over to Ioane Taukeisalili and punched him on his shoulder and asked him to massage her because of the sickness she had that morning. PW1 stated that Ioane agreed to massage her and then she went to change in the bedroom room while Ioane came out to the living room area to allow her to change. PW1 stated that no one watched her take off her clothes. PW1 stated that Ioane did not molest her or do anything to her while she was changing in the bedroom area. PW1 did not agree with the suggestion that Ioane massaged her in the living room and not the bedroom. PW1 did not agree with the suggestion that she was not rape nor sexually abused by Ioane Taukeisalili, and that he did not suck her breasts. PW1 did not agree with the suggestion that Ioane did not push his penis inside her vagina 3 time forcefully without her consent. PW1 did not agree with the suggestion that she returned to Ioane's family home because the rape and sexual assault did not happen. PW1 agreed that she was examined by Dr, Ravneet at CWM hospital. PW1 did not agree with the suggestion that when they went to lodge the rape and sexual assault complaint, it was her boyfriend Jone who was relating the actual complaint to the police. PW1 did not agree with the suggestion that the rape and sexual assault did not happen.

13. In **re-examination** by the prosecutor, PW1 stated that she did not punch Ioane's shoulder, but asked him to massage. PW1 stated that Ioane raped her and sucked her breast. PW1 stated that Ioane penetrated her vagina 3 times.

PW2 – Jone Boqawai

14. **PW2 Jone Boqawai**, in **examination-in-chief**, testified that he is 32 years old and self-employed operating a small business at home, residing in Lami village his mum's village. PW2 stated that in 2023 he was working at FMF as their merchandiser looking after the Lami area and stayed in Kalekana. PW2 stated that in 2023 he was dating Salote and they had a relationship in the months of September and October. PW2 stated that he ended the relationship with Salote in mid last year. PW2 stated that he recalls 1 November 2023. PW2 stated that on

that date, he started on with his work as usual, checking out the 3 shops that he looks after, that is, Shop N Save, Max Value and RB Patel. PW2 stated that while he was checking RB supermarket, he received a message on Facebook Messenger for him to go and pick Salote up. PW2 stated that Salote was messaging him to go and pick her up as soon as possible. PW2 stated that she said for him to come and pick her up as soon as possible, and the message that she sent was just crying emojis. PW2 stated that he asked her as to what had happened, and she replied just for him to go over to her as soon as possible since something really bad happened to her. PW2 stated that upon receiving this message from Salote, he quickly got into his car and went straight to her, and picked her up from Kalekana. PW2 stated that once he picked Salote up, they went straight to the Lami Health Center. PW2 stated that it was actually his idea for them to go to the Lami Health Center just to check on her if she is ok. PW2 stated that when she got into the vehicle, she started explaining to him what actually happened. PW2 stated that she actually said that Ioane raped her. PW2 stated that he saw her being so terrified that morning, knowing that something really bad happened to her. PW2 stated that after dropping her off at the Lami Health Center, he then told her to call him back. PW1 stated that he then drove to Max Value and asked Ioane if what had happened is true, to which he denied it, and said that he just massaged her tummy. PW2 stated that he then went straight back to work. PW2 stated that he went to see Salote when she called again at around 7 to pick her up from the Lami Health Center. PW2 stated that after picking her up from the Lami Health Center, they then went to Ioane's residence to pick her stuff. PW2 stated that after picking up her stuff from Ioane's residence, they then went straight to his place. PW2 stated that the matter was reported to the police the next morning. PW2 stated that the report was made the next morning and not on the same day because she was still scared or going out for safety reasons. PW2 stated that he knows Ioane for a year or so, and if he sees him again, he would be able to recognize him. Leave was then granted by the Court for PW2 to engage in Dock ID. Having looked around the courtroom, PW2 then pointed at Ioane Taukeisalili sitting in the accused box.

15. In **cross-examination** by defence counsel Mr. Navuni, PW2 stated that on 1 November 2023 he was in a relationship with Salote. PW2 stated that they were in a relationship for a period of 2 months in September and October. PW2 stated that in 2023 he was a sales merchandiser with

Flour Mills of Fiji (FMF), and resided in Kalekana, Lami. PW2 stated that his place at Kalekana to that of his girlfriend Salote Naiula is more than 500 meters since she was staying close to the main highway while he stayed right on top. PW2 stated that there is lots of road and cross-cut at Kalekana settlement that joins where he stays to where his girlfriend stays. PW2 stated that he lived in Kalekana for about 3 years. PW2 stated that he is not actually familiar with Kalekana, but he knows that there are a lot of shortcuts and road that people use in Kalekana. PW2 stated that Kalekana is a very big area. PW2 stated that he is actually not familiar with Ioane's residence since he has never been there. PW2 stated that he recalls 1 November 2023 and the reason why he is in Court relative to that date. PW2 stated that he did testify yesterday that when he was doing his thorough checks at the shop, he received a text message from Salote seeking assistance for him to pick her up. PW2 stated that he picked up Salote from the Kalekana bus stop where she was waiting. PW2 stated that what he saw when he picked her up that morning is something that he could not forget. PW2 stated that she was in deep pain and suffering kind of pain, and they went straight to the Lami Health Center. PW2 stated that it was his idea to take her to the Lami Health Center. PW2 stated that when she got into the vehicle, she started explaining what had happened to her. PW2 did not agree with the suggestion that Salote had informed him that the cause of her pain was from her stomach pain, and that she gave a different explanation as to the cause of her pain. PW2 stated that he was terrified by the Salote's demeanour and expression that he saw that morning, knowing something really bad had happened to her. PW2 stated that he went to drop Salote at the Lami Health Center, and told her to call him back after being examined by the doctor. PW2 stated that he then went to pick Salote from the Lami Health Center and brought her stuff from Ioane's residence at Kalekana. PW2 stated that Salote was still in pain when he went to pick her up from Lami Health Center with the same expression of pain that he saw when he picked her earlier. PW2 stated that the doctors gave Salote her medication. PW2 stated that from Lami Health Center, they went straight to his place, and she was still in pain. PW2 stated that at his place, they both slept together. PW2 stated that Salote took her medication before they slept together and her pain calmed down after taking those medication. PW2 stated that in the course of the night while sleeping, she experienced pain. PW2 stated that on the very next day, they went to lodge a report of rape. PW2 stated that she was scared to go out because of safety reasons, but he managed to convince her to lodge the report. PW2 stated that he was present during the time the report was lodged,

and he was sitting close to Salote. PW2 did not agree with the suggestion that he influenced Salote concerning the story line given to the police. PW2 did not agree with the suggestion that Salote did not want to lodge a report to the police concerning what had happened.

16. PW2 was not **re-examined** by the prosecutor.

17. Having called PW1 and PW2, the prosecutor then closed the State's case, and defence indicated that there will be no submission of no case to answer, but opt that the accused Ioane Taukeisalili testify under oath and also call DW2 Dr. Ravneet Singh.

DEFENCE case via DW1, DW2 and DW3

DW 1 – Ioane Taukeisalili

18. **DW1 Ioane Taukeisalili**, in **examination-in-chief**, testified that he is 36 years old and currently remanded. DW1 stated that prior to being remanded, he was working at Max Value supermarket in Lami as security. DW1 stated that he is originally from Nakavika village in Namosi. DW1 stated that he is married to Alarita Lelea who is from Navukailagi, Gau. DW1 stated that he resides at Kalekana settlement. DW1 stated that the reason he is before this Court is because Salote Naiula accused him of rape and sexual assault. DW1 stated that Salote Naiula is his work mate and they are not related. DW1 stated that he came into contact with Salote Naiula when she began working at his workplace in 2023. DW1 stated that he only got to know Salote Naiula when she joined his workplace, and Salote Naiula was then staying at the Delainavesi hostel. DW1 stated that he did not have any time to converse or talk to Salote Naiula at work. DW1 stated that he did not offer Salote to stay at his house, but she is the one who asked him for assistance so that she can save money to go abroad. DW1 stated that she asked for assistance because she found it difficult to pay \$50 weekly, and she asked so that she can save the money so that she can go overseas or abroad. DW1 stated that he then asked her to wait for him for awhile so that he can ask his wife and see whether his wife permits it or otherwise. DW1 stated that for his wife to give her permission for Salote to come and reside

with them, and if his wife says yes then he will tell Salote again. DW1 stated that his wife said 'yes', and he began living with Salote at Kalekana. DW1 stated that the inside of his house is partitioned with a sleep sheet and on the side, he put the curtain, and in the room area there is a bed and window, TV rack, and the inside of the house there is a washing machine, kerosene stove for cooking, a door, and the cooking area has louvre blade windows. DW1 stated that there are 3 neighbouring houses next to his house which are all occupied and he knows the occupants, but does not know the number of occupants in each house. DW1 stated that the place where he lives is a densely populated area. DW1 stated that he can recall 1 November 2023. DW1 stated that on the morning of 1 November 2023 he was at his family house in Wailekutu, and left at 6.45am to go to Kalekana reaching at 7.00am, and when he reached Kalekana, Salote was frying English cabbage with tomatoes, and then he went and lie down and began video calling his wife. DW1 stated that his wife was then at Labasa for work, and in 2023 she worked in Labasa for the military. DW1 stated that after video calling his wife, Salote then called him to go and eat and so he said goodbye to his wife and then they ate that morning. DW1 stated that after eating, he went and lie down and started messaging his wife. DW1 stated that after messaging his wife, Salote ran towards him and punched his right shoulder and said, 'It's a first day of a month'. DW1 stated that he then grabbed her left hand and she screamed, and he asked her what happened, to which Salote said that she has a stomachache and what happened to Alisi also happened to her. DW1 stated that she then asked him if he could massage her, and he told her to wear a wrap around sulu, and he stood up from the bed to go through the door to the sitting room, then she went inside the room to wear the wrap around sulu and came inside the house then he started massaging her. DW1 stated that Salote changed inside the room and he was then inside the sitting room by the door. DW1 stated that he then told her to lie face down to massage her back. DW1 stated that she lied down facing the floor and he then massaged her leg and hips inside the sitting room which has the main door that was open. DW1 stated that before massaging Salote that morning, there were some people present outside the house who were the two landlords, three were in the second house, four were in the neighbouring cement house including 3 ladies and their kids sitting outside on the porch. DW1 stated that he massaged Salote Naiula, first on her back, and told her to face down so that he can massage her back. DW1 stated that he massaged the lower and upper parts of her back. DW1 stated that he then massaged her hand and leg. DW1 stated that he then told her to turn around to face up so

that he can massage her stomach. DW1 stated that after he massaged her stomach, he told her that he has finished and going to have his bath. DW1 stated that he did not pull up her *suluvakatoga* from her thighs to her shoulders. DW1 stated that he did not lock her thighs with his hands and lie on top of her while massaging Salote Naiula. DW1 stated that Salote Naiula did not try to scream while massaging her. DW1 stated that he did not lie on top of Salote Naiula while massaging her. DW1 stated that he did not forcefully penetrate Salote Naiula's vagina with his penis while massaging her, and neither did he do this 3 times. DW1 stated that he did not pull down Salote Naiula's panty. DW1 stated that he did not kiss Salote Naiula's two breasts while massaging her. DW1 stated that he did not kiss her lips while massaging her. DW1 stated that Salote Naiula did not complain of pain in her vagina while massaging her. DW1 stated that after the massage, he then asked Salote Naiula what happened, and she said 'It's ok', and she was lying down on the floor then he went to have his bath. DW1 stated that when he came back, Salote Naiula was lying down on his bed, and then he asked her whether she is going to work, to which she replied no because there is more pain on her stomach. DW1 stated that after 10 then he went down to the bus stop, and before boarding the bus, Jone came and asked him where Salote is, and then he told Jone that Salote is lying down at home, and then Jone asked him what happened, to which he replied that she was sick. DW1 stated that after that, he then boarded the bus and went to work. DW1 stated that when he reached work, Jone came to him and asked him, 'What did you do to Salote?', to which he replied that he didn't do anything and if they can go and talk outside. DW1 stated that after they talked outside, Jone then left. DW1 stated that at about 6.45pm, Salote messaged him and explained to him that she will do go down with his sister Verina to their family house in Wailekutu. DW1 stated that he then told her to put the key where he always keeps it. DW1 stated that the message is on his messenger and already passed the message to Mr. Navuni the defence counsel. DW1 stated that that was the last time he communicated and encountered Salote Naiula.

19. In **cross-examination** by the prosecutor, DW1 stated that he got to know Salote in April 2023 when she started working in Max Value. DW1 stated that he knew she was a cashier and she knew that he was the lead security at Max Value. DW1 stated that Salote was his work mate and considered her as a friend from work. DW1 stated that they knew each other for about 6 months

from April to November. DW1 stated 'no' to the suggestion that at work they met and talked, joked around, and also had meals together. DW1 stated that when he is at work, Salote is also at work as cashier, and would talk to her sometimes at work. DW1 stated that Salote told him that she was staying at a hostel in Delainavesi at that time, and shared her financial hardships with him, and he felt sorry for her. DW1 stated that only when Salote asked him, he then told her that he needs to ask his wife's permission for Salote to move in and stay with them, and then he will back to her. DW1 stated that he asked his wife Lelea if Salote can come and live with them. DW1 stated that he does not have a certificate or degree or formal qualification to massage. DW1 stated that he massages the body parts of another person with his hands. DW1 stated that he uses his hands directly on the body, and sometimes use oil when massaging. DW1 stated that the base of his house at Kalekana does not sit on the ground but raised by wooden posts, and so his house is raised above the ground. DW1 stated that there is only one wooden door and that is the main door, and upon entering that door, one enters into the living room, and there is a big cloth or sheet that separates the living room from his bedroom. DW1 stated that the partitioning cloth does not touch the floor and is not really high. DW1 stated that he sleeps on a mattress in his room. DW1 stated that when the main door is open, he can see the living room and bedroom. DW1 stated that if the curtain to the bedroom is drawn then he can only see the living room if the main door is open. DW1 stated that on the morning of 1 November 2023 he was lying down in his room. DW1 stated that when Salote asked him to massage her, he was inside his bedroom. DW1 stated that he told her to change and wear a sulu, and came to the living room because she had to change in his bedroom. DW1 stated that she was in his bedroom, and the cloth or curtain was drawn so he could not see her changing. DW1 stated that he then massaged Salote inside the house while the door was open. DW1 stated that when he was massaging Salote, he could see the people around his house. DW1 did not agree with the suggestion that because he was massaging Salote, he could not see the people from the neighbouring houses. DW1 stated that there is a house located just opposite the door of his house, houses on the sides of his house, and a house located behind his house. DW1 agreed with the suggestion that because he was massaging Salote, he did not see the people occupying the houses on the side and behind his house, but only saw the ones in front of the main door. DW1 stated that Salote had a sulu tied around at her chest. DW1 stated that when he massaged her, he was physically close to Salote. DW1 stated that he used oil to massage part of Salote's body including her back. DW1 did not

agree with the suggestion that he pulled up Salote's sulu to massage back, but instead said that Salote pulled down her sulu. DW1 agreed with the suggestion that when her sulu was down, he saw her naked back. DW1 stated that Salote wore a sulu and white mini shorts. DW1 stated that he began to massage Salote's thighs. DW1 stated that he did not massage her front shoulders nor her breast. DW1 stated that this was the first time for him to touch Salote's body. DW1 did not agree with the suggestion that whilst touching Salote's stomach, thighs, legs, shoulders and breast, he became aroused. DW1 did not agree with the suggestion that he tried to kiss her and she questioned him as to what he was doing. DW1 did not agree with the suggestion that he told her that it was ok as it was only the two of them in the house. DW1 did not agree with the suggestion that he then lay on top of her and sucked her breast. DW1 did not agree with the suggestion that he then pulled her panty to her knees and took off his pants. DW1 did not agree with the suggestion that he then pulled off her panty entirely from her body. DW1 did not agree with the suggestion that he then penetrated Salote's vagina with his penis 3 times. DW1 did not agree with the suggestion that he penetrated his penis into her vagina for 10 seconds until she became unconscious. DW1 did not agree with the suggestion that when he saw her unconscious, he then stopped putting his penis into her vagina and started calling her name to wake up. DW1 did not agree with the suggestion that because he stopped, he did not ejaculate. DW1 did not agree with the suggestion that when Salote woke up, he then told her not to tell Jone or Lelea. DW1 did not agree with the suggestion that he wiped tears off Salote's face and covered her with a sulu. DW1 did not agree with the suggestion that after that he then went to have his bath. DW1 agreed with the suggestion that he then asked Salote if she was going to work, and after she replied 'no', he then left home for work.

20. Defence counsel did not **re-examine** DW1.

DW 2 – Dr. Ravneet Singh

21. **DW2 Dr. Ravneet Singh**, in **examination-in-chief**, testified that he is currently a medical officer and Obstetrics & Gynaecology Registrar at CWM hospital. DW2 stated that he has been a medical officer for the past 4 years and studied at the Fiji National University (FNU). DW2 explained that obstetrics and gynaecology deal with women's health, pregnancy and non-pregnancy related health including infections and sexual health. DW2 stated that it also deals

with surgical procedures that they do including caesarean sections and hysterectomies. DW2 stated that on 2 November 2023, he was based at CWM hospital and also on call and observed a patient by the name of Salote Naiula. Leave was then granted by the Court for DW2 to be shown a copy of the medical report. Upon being shown the medical report, DW2 confirmed that it is the medical report of Salote Naiula done by him dated 2 November 2023. DW2 stated that he medically examined Salote Naiula at 4.45pm on 2 November 2023. DW2 stated that section D(10) of the medical report contains the history related by the patient as to what happened to him or her. DW2 stated that the history related to him by Salote Naiula as documented in the report is that she came in with a complaint that she was sexually assaulted by her flat mate who was also her co-worker, and it happened at their shared residence at around 9.00am on the previous day 1 November 2023. DW2 stated that when he saw her, she was awake, alert and well kept. DW2 stated that after the history comes the physical examination from head to toe. DW2 stated that they did a pelvic examination using a speculum, and there was whitish discharge in the wall of the vagina, but no physical injuries or bruises on the body. DW2 stated that he did not observe any markings or tattoo on the body. As to his professional opinion, DW2 stated that based on the history and examination, the patient had claimed to be sexually assaulted, but there was no physical evidence of any injury, and there was discharge on the vaginal vault which could have been semen. As to his professional opinion on whether forceful penetration of the vagina by a penis could cause vaginal injury, DW2 opined that generally it can and cannot be, and generally meaning that if it is a younger adolescent female who has been penetrated, there could be injuries, but if it is an older female who is sexually active than there might not be injuries if it is penile penetration. DW2 opined that if there are no injuries, it does not rule out sexual assault. Defence counsel then tendered the medical report of Salote Naiula by DW2 Dr. Ravneet Singh dated 2/11/2023 marked as defence exhibit 1 – [**DE1**].

22. DW2 was not **cross-examined** by the prosecutor.

DW3 – Paulini Saurogo

23. **DW3 Paulini Saurogo**, in **examination-in-chief**, testified that she is currently the Senior Scientific Officer of the Fiji Police Force Biology and DNA Laboratory. DW3 stated that she

has been employed by the Fiji Police Force Biology and DNA Laboratory since 2014, appointed as a Scientific Officer in 2018 and then as Senior Scientific Officer in 2022. DW3 could not recall the date 19 December 2023 nor receiving a sample report of rape. Leave was then granted by the Court for DW3 to be shown a Forensic Microscopic report. Upon being shown the said report, DW3 stated that she conducted the microscopic forensic examination for this particular report. DW3 stated that the report is a forensic microscopic examination relating to the matter of Ms. Salote Naiula, the victim, and Mr. Iowane Taukeisalili, the suspect. DW3 stated that on 3 November 2023, Maikeli Rauqueque received the following items from WPC 5416 Mereseini of Lami Police Station; the sexual assault evidence [SAE] kit identification code is 10958 – 10195 containing the following Exhibits: Exhibit no. 1 – HVS swab [HVS – high vaginal swab]; Exhibit no. 2 – HVS swab; Exhibit no. 3, 4, 5 – LVS swab [LVS – low vaginal swab]; Exhibit no. 6 – oral swab; and Exhibit no. 7 – Anal swab. DW3 stated that after the examination, she obtained the results and noted them in the forensic microscopic result. DW3 stated that result of her findings of the 7 Exhibits is that there were no sperm head or spermatozoa detected. DW3 stated that sperm head is the same as spermatozoa which are sperm cells, and the morphology is more like a tadpole without the tail. Defence counsel Mr. Navuni then tendered via DW3 as defence exhibit 2 [**DE2**] the Forensic Microscopy report no. 23/11/23 for Laboratory Case no. 04/11/23 by Paulini Saurogo, Senior Forensic Biologist dated 19/12/2023.

24. In **cross-examination** by the prosecutor, DW3 stated that the sperm head or spermatozoa are usually sought for in the victim's exhibit in relation to the possible ejaculation of the suspect's penis in the victim's vagina. DW3 stated that she wouldn't be able to detect any sperm head or spermatozoa if the victim had showered soon after the sexual intercourse, and if the suspect did not ejaculate. DW3 stated that there has to be ejaculation by the male suspect in order to find a sperm head or spermatozoa. DW3 stated that for pre-ejaculation, in most cases, no seminal fluid is released, but in some instance, the seminal fluid can contain a small amount of sperm head or spermatozoa from the previous ejaculation. DW3 stated that for post-ejaculation, it will contain a large concentration of sperm head or spermatozoa, and it depends on the location of where the fluid was deposited in the vaginal canal. DW3 stated that if ejaculation is retained at the high vaginal canal, there is high likelihood that there will be concentration of sperm head contained,

but if it is deposited at the lower end, there are a few external factors that will have an impact on the level of concentration of the sperm heads. DW3 stated that a factor would be if the victim had showered or douched, that flushes out the seminal fluid from the low vaginal canal.

25. DW3 was not **re-examined** by defence counsel.

26. Upon the defence closing its case, both counsels then made closing submissions, and this is the Courts judgment on Count 1: Sexual assault and Count 2: Rape in the indictment.

ANALYSIS of the prosecution vis-à-vis defence evidence

27. The physical and fault elements for **Count 1: Sexual assault**, in this instant, are:

- i) A person i.e. the accused Ioane Taukeisalili;
- ii) Unlawfully and indecently assaulted the complainant Salote Naiula; and
- iii) Did so intentionally.

28. The physical and fault elements for **Count 2: Rape** of the indictment are:

- i) A person i.e. the accused Ioane Taukeisalili;
- ii) Penetrated the complainant Salote Naiula's vagina with his penis;
- iii) Without the complainant's consent; and
- iv) And did so intentionally and / or recklessly.

29. Having carefully scrutinized the entire evidence, I find as follows:

- a) The identification of the accused Ioane Taukeisalili is well substantiated and established.
- b) The accused Ioane Taukeisalili and PW1 Salote Naiula (complainant) were both present in the accused home on the morning of 1 November 2023, and Ioane Taukeisalili massaged Salote Naiula.

- c) The contentious issues are whether the accused Ioane Taukeisalili sexually assaulted and raped Salote Naiula when massaging her on the morning of 1 November 2023, bearing in mind the respective elements of the offences of *Sexual assault* and *Rape* highlighted in paragraphs 5, 7, 27 and 28 herein, which the prosecution must prove *beyond reasonable doubt*.
- d) PW1 Salote Naiula, the complainant, is a credible, reliable and truthful witness, and her demeanour while testifying has enhanced the credibility and reliability of her account. Thus, I attach immense weight to her account, believe and accept it as proving *beyond reasonable doubt* that on 1 November 2023 Ioane Taukeisalili: (i) sexually assaulted her by sucking her breasts; and (ii) raped her by penetrating her vagina with his penis without her consent.
- e) PW2 Jone Boqawai is also a credible, reliable and truthful witness whose account does not in any manner or form contradict that of PW1. PW2's demeanour at trial has also enhanced the credibility and reliability of his account, and I therefore attach considerable weight to his account, which account of recent complaint has also enhanced the credibility and reliability of PW1's testimony.
- f) PW2's testimony held together with that of PW1 are consistent, credible and reliable, and any discrepancy does not, in my view, 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:

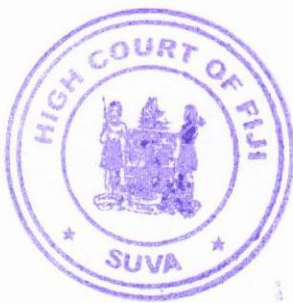
[15] It is well settled that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be discredited or disregarded. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake 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.

- g) I reject the account given by DW1 Ioane Taukeisalili and hold that he is not a credible and reliable witness, and I attach less weight to his testimony notwithstanding the testimonies of DW2 Dr. Ravneet Singh and DW3 Paulini Saurogo including **DE1** and **DE2**, which combined weight remains heavily outweighed by the testimonies of PW1 Salote Naiula and PW2 Jone Boqawai.
- h) Given a) – g) above, I accept the testimonies of PW1 Salote Naiula and PW2 Jone Boqawai as being credible, reliable and truthful, and concurrently reject that of DW1 Ioane Taukeisalili.

CONCLUSION

30. For the reasons stated above, I therefore find that the prosecution has proved *beyond reasonable doubt* that **Ioane Taukeisalili** is indeed **guilty** of the charges of Count 1: Sexual assault and Count 2: Rape in the Information by the Acting Director of Public Prosecutions, and I **convict** him accordingly of the aforesaid charges.

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



Hon. Mr. Justice Pita Bulamainavalu
PUISNE JUDGE

At Suva

27 May 2025

Solicitors

Office of the Director of Public Prosecutions for the State.

Legal Aid Commission for the Accused