

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

Criminal Case No. HAC 64 of 2023

STATE

-v-

VINIT VISHAL DEO

**Counsel: Mr. T. Tuenuku for the State
Mr. K. Hassan for the Accused**

Date of Trial: 16 - 17 January, 2025

Date of Judgment: 14 February, 2025

JUDGMENT

1. The complainant has been granted name suppression. I refer to her as “the complainant” in this Judgment.
2. Mr Vinit Vishal Deo (“the accused”) is charged with the following five counts:

**INFORMATION BY THE
DIRECTOR OF PUBLIC PROSECUTIONS**

VINIT VISHAL DEO is charged with the following offences:

COUNT 1

Statement of Offence

ABDUCTION OF YOUNG PERSONS: Contrary to section 285 of the Crimes Act 2009.

Particulars of Offence

VINIT VISHAL DEO on the 14th of September 2023 at Labasa in the Northern Division, unlawfully took [complainant], a young person being under the age of 18 years, out of the possession and against the will of her mother [name suppressed].

COUNT 2

Statement of Offence

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

Particulars of Offence

VINIT VISHAL DEO on the 14th of September 2023, at Labasa in the Northern Division, unlawfully and indecently assaulted [complainant] by kissing her on the mouth.

COUNT 3

Statement of Offence

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

Particulars of Offence

VINIT VISHAL DEO on the 14th of September 2023, at Labasa in the Northern Division, on the same occasion as in count 2 above, unlawfully and indecently assaulted [complainant] by fondling her breasts.

COUNT 4

Statement of Offence

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

Particulars of Offence

VINIT VISHAL DEO on the 14th of September 2023, at Labasa in the Northern Division, on the same occasion as in counts 2 and

3 above, inserted his penis into the mouth of [complainant] without her consent.

COUNT 5

Statement of Offence

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

Particulars of Offence

VINIT VISHAL DEO on the 14th of September 2023 at Labasa in the Northern Division, on an occasion other than counts 2, 3 and 4 above, inserted his penis into the mouth of [complainant] without her consent.

Elements

Count 1 – Abduction of young persons

3. To establish count 1 the prosecution must prove beyond reasonable doubt that:
 - (i) The accused unlawfully took the 15-year-old complainant;
 - (ii) Out of the possession and against the will of the complainant's parents.

Count 2 – Indecent assault

4. To establish the offence of indecent assault, the prosecution must prove beyond reasonable doubt that:
 - (i) The accused kissed the complainant on her mouth; and
 - (ii) The assault was unlawful and indecent.

Count 3 – Sexual Assault

5. To establish the offence of sexual assault, the prosecution must prove beyond reasonable doubt that:
 - (i) The accused fondled the complainant's breasts; and
 - (ii) The assault was unlawful and indecent.

Counts 4 and 5 – Rape

6. To establish the offences of rape, the prosecution must prove beyond reasonable doubt that, on two separate occasions:
 - (i) The accused penetrated the complainant's mouth with his penis; and
 - (ii) The complainant did not consent to those acts; and
 - (iii) The accused knew that she was not consenting.

7. 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

8. The trial ran for two days, from 16 to 17 January, 2025.
9. The prosecution called two witnesses, the complainant and her mother.
10. The accused elected to give evidence, and did not call any witnesses.

The prosecution case

11. It is agreed by the parties that, at the time of the alleged offending, the accused, a 28 year old farmer, and the complainant, a 15-year-old school pupil, were known to each other. The accused is the complainant's stepfather's cousin. They were neighbours, with the accused's parent's house being one house away from the complainant's house.

12. It is also agreed that, on Thursday, 14 September, 2023, at around 3.15pm, the complainant left school for home, and that the accused picked her up in front of the Nacula Shopping Centre in his private vehicle VRN EM 720.

13. The complainant testified that, as she was walking home from school, she met her friend along the main road in Nacula. They were about to enter Nacula Supermarket when she saw her uncle, the accused. He called her by her nickname [nickname suppressed]. He asked after the complainant's father, and she informed the accused that he had gone fishing.
14. The accused said for her to get in the car as he had to pick something from home, and he would drop her at home. The complainant told her friend that her uncle would drop her in his car, and she tried to get in the back seat, but the door would not open, so she sat in the front passenger seat.
15. When the car reached their junction, the accused asked her if she wanted to go for a ride. She asked him where, and he replied "*somewhere vacant*". The complainant replied "*No. I want to go home*". The accused then accelerated, and took the complainant to Benau. He drove to the road that leads to the cane farm.
16. He stopped the vehicle, locked the doors, drew all the curtains, and tried to kiss her. The complainant felt scared, and told the accused that she wanted to go home. He told her to wait, and then pulled her hair and kissed her on her lips. She did not kiss him back because she didn't want it. She was pushing him away, but he kept pulling her.
17. The accused pulled her school uniform, put his hand inside her bra, and caressed her naked breasts. He used one hand, and was trying to remove his pants with the other hand. The complainant pushed him away, but he kept forcing himself on her.
18. The accused took down his pants, pulled the complainant's hair, pushed her head down, and told her to suck his penis. She did not want to, but he pushed her head down and his penis entered her mouth. He did it four times. The complainant described what happened in the following terms:

"When he was forcing me I felt something came out of my mouth. It went into my mouth, and I wanted to vomit."

19. The accused pushed her up and pulled up his pants. The complainant told him that she wanted to go home. He said they would go home, but when they got to their junction, he sped up and drove to Naseakula, at the floodgate, where he did to her again what he had done in Benau. The complainant was pushing him away, but he made her suck his penis three times. After that, he pulled up his pants and drove her home.
20. The accused dropped her outside his house, and she had to walk back home. Before she got out of the vehicle, the accused told her not to tell anyone. He said that if she told her father when he returned from fishing, he can punch or do something to her father.
21. When she reached home, the complainant's mum asked her why she was late, and she told her mum that she had come with her friend. She did not tell her mum what had happened to her because she was feeling weak and scared. The accused had threatened her not to tell her dad. She was also concerned about her mum's high blood pressure.
22. The following morning, the complainant informed her friends what the accused had done to her, and they informed her teacher. The school Principal was notified, and a report was made to the police.
23. The complainant told the police what the accused had done to her, and when her mum was brought to the police office, she also told her mum that the accused had taken her in his car, kissed her, caressed her breasts, and forced her to suck his penis.
24. Under cross-examination, the complainant confirmed that she had left school at 3.15pm, and reached Nacula Supermarket at 3.40pm. She said that she asked the accused to open the back door, but he said for her to sit in the front. It was the first time that she had been in the accused's car.
25. When it was put to the complainant that the accused did not take her to Benau, and that her evidence was a tissue of lies, the complainant answered: *"He did take me to Benau, things that happened is true."*

26. When it was suggested to the complainant that the accused had not taken her to Naseakula floodgate, the complainant said that he had taken her there. When it was again suggested to the complainant that the accused had not taken her to Benau, or the Naseakula floodgate, but took her directly home, the complainant said that he had taken her to Benau and Naseakula.
27. When the Court sought to clarify what time the complainant had arrived home on 14 September, she answered that it was probably after 5.00pm.
28. The complainant's mother ("CM") testified that the complainant would usually leave home for school at around 7.15am, and would be home by around 4.25pm or 4.30pm. The latest she would expect the complainant home was around 4.45pm.
29. CM said that she was at home on 14 September, 2023 waiting for her children to return home from school. Her boys reached home around 4.30pm, and her daughter had still not reached home. She was a bit worried. As she was about to walk down the road to look for her, she saw her daughter walking towards their driveway. This was at around 4.50pm.
30. When she entered the house, she asked the complainant why she was late home, and the complainant informed her that she had walked home with her friend. The complainant also said that she had a severe headache, and wanted to rest.
31. The following afternoon, CM received a call from a social worker informing her that they would pick her up, and take her to the police station. When she arrived at the police station, she saw the complainant sitting there. She felt scared about what had happened and went to sit beside her daughter. The complainant told her that she had lied to her on Thursday afternoon because she was scared to tell her that she had gone in her uncle's car. She also told her that her uncle had locked the car and taken her to Benau, and parked at a vacant place. He was kissing her and caressing her breasts. He pushed her down, and put his penis in her mouth. CM was angry when she heard this.
32. CM described the complainant as a very soft girl. Even if her brothers fight her, she couldn't fight back.

33. In cross-examination, CM was asked about her relationship with the accused and his family. She said that they had a good relationship. When it was suggested to CM that she had enough trust in the accused and his family to allow the complainant to go for a car ride with him, she replied that she didn't even know that the accused had a car. When pressed on whether she would have given permission for the complainant to go for a drive with the accused, CM replied that, even though the relationship was good, she would still not allow her daughter to have that car ride.
34. When the Court queried whether defence counsel was challenging CM's evidence about what time the complainant arrived home from school, Mr. Hassan confirmed that he was not challenging that evidence.
35. At the close of the prosecution case, I found that the accused had a case to answer, and he elected to give evidence in his own defence.

The defence case

36. When asked whether he knew the complainant, the accused said that he knew her by her nickname. He testified that he met her at the Nacula Shopping Center on 14 September, 2023, at around 3.50pm. She was in her school uniform. He told her that he was going towards her house, and could drop her.
37. The complainant tried opening the back door, but could not. She sat in the front passenger seat, and he dropped her at her home at 4.10pm. He then went to his home, picked up some items, and then drove to Korotari.
38. When asked by the Court how long it took to drive from the supermarket to the complainant's home, the accused answered: *"7 to 8 minutes"*.
39. When asked by Mr. Hassan whether he had looked at his watch to confirm the time was 4.10pm, the complainant answered that, at that moment, his wife had called him, and he looked at the time on his mobile.
40. The accused denied everything that the complainant testified he had done to her.

41. When cross-examined as to what possible reason the complainant may have for making up false allegations against him, the accused said that he did not know the reason.

Closing submissions

42. I heard closing speeches on 17 January, 2025, essentially taking me through the written submissions filed by both parties on 17 January, 2025. I have considered everything advanced by both parties.
43. The prosecution submit that the complainant was a truthful witness, and that it is a *“very bizarre position to take”* to suggest that the allegations were made up by the complainant and her family for reasons known only to them.
44. The prosecution narrative is that the evidence establishes that the alleged offending was comprised of three *“phases”*: *Phase 1* – the deception phase; *Phase 2* – the use of authority phase; and *Phase 3* – the taking advantage phase.
45. In addressing recent complaint evidence, Mr. Tuenuku submits that the complainant gave a reasonable explanation for not telling her mum about what the accused had done to her as soon as she got home on 14 September, 2023. He also postulates whether what the complainant told her mum can properly be considered as a recent complaint given that her evidence was that she first complained to her friends, then to her teacher, then to the police, and, finally, to her mum.
46. Mr. Tuenuku submits that all these complaints fall within the exception to the hearsay rule. He goes further, and argues that the consequence of telling multiple people of your complaint on the same day is that *“the prosecution can pick from that pool of so-called recent complaint witnesses.”*
47. For the defence, Mr. Hassan argues that the prosecution did not adduce any medical evidence to support the complainant’s allegations. For reasons best known to himself, he also points out that the prosecution did not adduce the complainant’s birth certificate. Finally, and presumably in support of his overarching contention that the complainant was not a truthful witness, Mr. Hassan

makes the point that the complainant did not even try to call for help or make any effort to escape.

48. In fairness to the defence, the Court inquired of Mr. Hassan whether he wished to draw to the Court's attention any inconsistencies between what the complainant said in her sworn evidence, and the content of her witness statement. Mr. Hassan made the following points, which he submits go to the root of the complainant's credibility:

- (i) The complainant said in evidence that the accused drove right inside the cane field, whereas in her witness statement she said that it was only a few metres away from the main road.
- (ii) The complainant said in her witness statement that the accused pulled her by her blouse, but did not mention this in evidence.
- (iii) The complainant did not mention in her witness statement the number of times that the accused made her suck his penis, or that he ejaculated in her mouth, whereas in evidence she mentioned four times, and also said that something went into her mouth and came out of her mouth.
- (iv) In her witness statement, the complainant said that she felt like vomiting after the rape at Naseakula floodgate, whereas she did not say this in evidence.

Analysis

49. 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.

50. At the outset, it is helpful to identify the issues in dispute in this case.

51. It is not disputed that the complainant and the accused are well known to each other. Identity is not in issue.

52. The defence says that false allegations against the accused have been concocted for no apparent reason.
53. 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.
54. It follows that the prosecution case relies solely on my assessment of the complainant's reliability and credibility.
55. Since the accused elected to give evidence in his own defence, I remind myself that even if I reject his evidence the prosecution must still prove its case to the criminal standard.
56. I also remind myself that there is no burden on the defence to prove that the complainant had a motive to lie. In this case, the accused has made it clear that he is not aware of any reason why these allegations have been fabricated against him.
57. It would be wrong, however, for me to conclude that the complainant and her mother are telling the truth because there is no apparent reason for them to lie. There might be a reason for them to be untruthful that nobody knows about.

Recent complaint

58. 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.
59. The fact that there was opportunity to make the complaint to others before it was made to the witness to whom it was made does not make it inadmissible. Nor is

there any reason to prevent more than one complaint being admitted if both were made within a reasonable time.

60. In the present case, the complainant complained to her friends at school on the very next day after the alleged offending. She repeated those complaints to her teacher, and to the police on the same day. When her mum came to see her at the police office, she also complained to her mum.
61. The prosecution called only the complainant's mother to give complaint evidence. What witnesses to call is generally within the discretion of the prosecution. The overriding duty is one of fairness. So, for example, if a complainant had made several *inconsistent* complaints, it would not be proper for the prosecution to call only the witness whose evidence was closest to the evidence that the complainant was expected to give at trial.
62. There is no evidence before me as to the terms in which the complainant complained to her friends and teacher. I am mindful also that the complaint to her mother was made *after* she had spoken to the police about the alleged offending.
63. In these circumstances, I have decided that the complaint evidence does not materially assist me in my assessment of the complainant's credibility.
64. As for the defence submission that the complainant failed to give a reasonable explanation for not complaining to her mum as soon as she arrived home, I have no difficulty in rejecting that argument.
65. The complainant testified that she was scared, not feeling well, and was concerned about her mum's health problems. This is a perfectly reasonable explanation for a teenager, who had just endured a shocking experience, not saying anything about it to her mother that evening. The fact that she did not immediately tell her mum does not undermine her credibility.

Determination

66. The complainant was seventeen years old when she gave evidence at trial. I was impressed by her fortitude in speaking about such deeply personal and upsetting

incidents in such a calm and measured way. Her descriptions of what the accused did to her were unembellished and plausible.

67. I say plausible because I am sure that the accused had the opportunity to sexually abuse the complainant inside his car.
68. It is undisputed that the accused offered to give the complainant a lift home in his car, and that he picked her up in front of the Nacula Shopping Centre. The accused's evidence was that he picked her up at around 3.50pm.
69. I acknowledge, of course, that the accused would not have had the opportunity to rape and sexually assault the complainant if he drove her directly home and dropped her at 4.10pm.
70. I am sure that he did not drop her home at 4.10pm. The complainant's evidence that she got home at around 5.00pm finds support in her mother's evidence that the complainant arrived home at around 4.50pm, and gave an explanation for her late arrival.
71. I find CM to be a truthful and reliable witness. Her evidence about worrying about her daughter's late arrival home from school, and preparing to go out and search for her, rings all too true.
72. I find the accused's account of receiving a call from his wife at precisely the moment he was dropping the complainant at home to be all too convenient, and contrived.
73. It follows that I am sure that the accused had control over the complainant inside his car for around one hour.
74. 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 on the afternoon of 14 September 2023.
75. I accept the complainant's evidence that, rather than taking her directly home, he drove her to Benau. She was able to give a detailed description of where she was taken, and what the accused did to her at that location.

76. I am sure that the complainant kissed her and caressed her breasts under her bra, before forcing his penis into her mouth against her will. The fact that the complainant did not mention in her police statement that the accused had ejaculated in her mouth does not cause me to doubt her sworn evidence. My impression of the complainant at trial was that she is an innocent and fairly naïve young woman. Even at trial, she did not have the vocabulary to describe ejaculation, so it is hardly surprising that she did not explain that to the police when aged only fifteen.
77. Similarly, the complainant's detailed description of the route the accused took to Naseakula floodgate, and what he did to her there, could not have been made up by the complainant. I am sure that the accused penetrated the complainant's mouth with his penis without her consent at Naseakula floodgate. The fact that she said in her witness statement that she felt like vomiting at Naseakula floodgate, whereas it was her testimony at trial that she felt like vomiting during the first rape, does not cause me to doubt her truthfulness about those two incidents.
78. Indeed, none of the so-called inconsistencies relied upon by the defence cause me to doubt the complainant's essential truthfulness on the central issues I am required to determine. Put another way, I consider those inconsistencies/omissions to be peripheral.
79. I did not find the accused to be a truthful witness. For the reasons given above, I reject his innocent explanation of having dropped the complainant home at 4.10pm.
80. Although the defence did not file an alibi notice, it seems to me that the defence of fabrication, nevertheless, raises alibi. According to the accused's account, he had dropped the complainant at home, and was elsewhere at the time of the alleged offending.
81. Whilst I have not been invited by defence counsel to give myself a conventional warning, I remind myself that the fact that I am sure that the alibi raised is false

does not of itself prove the accused's guilt. Sometimes an innocent person who fears the truth may not be believed may instead invent an alibi.

82. I am sure that the accused was in his car with the complainant at the material time, at both Benau and Naseakula floodgate, and I am also sure of all the elements of the offences charged.
83. I do not hesitate in rejecting the accused's total denial of any sexual offending against the complainant.
84. It follows from what I have said above that I am sure that the accused is guilty as charged, and I convict him accordingly.
85. You have 30 days to appeal to the Court of Appeal.




Hon. Mr. Justice Burney

At Labasa

14 February, 2025

Solicitors

**Office of the Director of Public Prosecutions for the State
Jiten Reddy Lawyers for the Accused**