

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO HAC 159 OF 2019**

**STATE**

**v**

**ISAAC LAL**

Counsel: Mr L. Baleilevuka for State  
Mr J. Niudamu for Defence

Dates of Hearing: 24, 31 October 2023

Closing Submissions: 27 November 2023

Date of Judgment: 29 November 2023

**JUDGMENT**

1. The accused is charged with one count of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Act 2009. The information read as follows:

Statement of Offence (a)

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

Particulars of Offence (b)

**ISAAC LAL** on the 2<sup>nd</sup> day of September 2019 at Nadi in the Western Division, penetrated the vagina of **SHIVASHNA PRASAD** with his penis, without her consent.

2. The accused pleaded not guilty to the above charge. At the ensuing trial, the Prosecution presented the evidence of the complainant and one other witnesses. At the close of the Prosecution case, the accused was put to his defence. Only the accused presented evidence for the Defence. At the end of the trial, the counsel from both sides tendered written submissions.
3. Having carefully considered the evidence presented at the trial and the submissions filed by the counsel, I now proceed to pronounce my judgment as follows.
4. The Prosecution bears the burden to prove all the elements of the offence. That burden must be discharged beyond a reasonable doubt. The burden never shifts to the accused at any stage of the trial. The presumption of innocence in favour of the accused will prevail until the charge is proved beyond reasonable doubt.
5. According to Section 206 of the Crimes Act, the term consent means consent freely and voluntarily given by a person with the necessary mental capacity to give the consent. The submission without physical resistance by a person to an act of another person shall not alone constitute consent. Consent obtained by force, threat or intimidation etc. will not be considered as consent freely and voluntarily given.
6. To establish the fourth element of Rape, the Prosecution must prove that the accused knew or believed that the complainant was not consenting or that he was reckless as to whether the complainant was consenting or not.
7. I shall now summarise the salient parts of the evidence led in this trial.

PW 1 -Shivashna Prasad (The Complainant)

8. Shivashna currently is an Assistant Manager at CartMax. On 2 September 2019, at around 7.30 a.m., she came for an interview at S. Nagindas. Her mother also told her to go for an interview for the post of Journalist at the Ministry of Information. That was because Isaac Lal, the accused, who worked at the same Ministry had informed her mother that there was an opening for the post of Journalist.
9. She knew Isaac Lal because he was a customer of her mother's canteen. She had known him since her school days. In 2018, she used to go to Isaac Lal's office when she was at school to get some printouts. After that, she had not been there for a long time. The Ministry of Information building is right next to the Nadi Police Station. Apart from the Ministry of Information office, there are a lot of other offices including that of the DPP on the 1<sup>st</sup> floor, in the same building.
10. On 2 September 2019, when she came to the Ministry of Information office for the interview at around 2 p.m., she did not see anybody in the office except for Isaac Lal. She greeted Isaac Lal as usual. She gave her documents for printing when she realised that her birth certificate was missing. She called a friend Sonny in town to go and collect the birth certificate from the Manager at Live Cinema.
11. While checking the documents, Isaac Lal started a conversation about the girls and her partner back then. Then he went out for lunch, having locked the office while she went down to Nadi Bus Stand to collect the birth certificate from Sonny. After collecting the birth certificate, she came back to the Ministry office. Isaac Lal too came to the office after lunch at around 2.30 p.m. No one else was there in the office at that time too.
12. She gave Isaac Lal her documents and told him to make 10 copies. Isaac Lal commented in Hindi that her breasts had grown bigger. She just ignored it. She wanted his job done and said to him- *'just don't talk to me like that'*. Then he said, *Lata, you look sexy*, and

asked *when the European guy climbed on you, how it felt*. Making it more disgusting he said in Hindi, *jab charis kaise lagis* for which she was astonished. When she asked him why he was talking to her like this, he continued with the printing. Finally, he said, *hum jeeb lagaye ga tum gora ke bhai jaye ga*, (When I put my tongue, you will forget that European).

13. While the printing was being done, he came closer to her to give the certificates. Upon seeing a white dot on her shirt, he tried to take it out. She told him- *it's a new top, it's just a thread there, don't worry about it*. The touch turned into kissing and, when she tried to back him off, he reached out on her breast to give her a mark there. When she pushed him off to grab her bag, her file fell on the floor. When she was bending over to grab the file, he took advantage. After taking off her pants, she felt him penetrate her vagina two times with his penis. She was wearing loose pants and a top that day. He was holding her hands, so she couldn't move. She was shocked at what was happening. For many years, she had known him but she did not expect this to happen. He did it without her consent.
14. After inserting his penis into her vagina two times, Isaac Lal quickly went near the door to check the door, thinking there might be someone. She pulled up her pants and went out. Before that, he came closer again, and bit her on the right breast as well. She slapped him and told him that she would never come back to the office again. He asked her if she was going to town to mark these things. She did not say anything and came out. When she came out, there was an iTaukei man sitting on a chair, swinging and facing the other side. He was in the staff area.
15. She walked past the door and went down the stairs. The police station was under construction. She did not know what to do. Her mother's canteen was closed. She tried to call her mother because no adult whom she knew was there. She made her way to Nadi Sangam School where her cousin Oneshika was. She was little and in Year 9. She told her cousin that Isaac tried to have sex with her. She could not tell everything, because her cousin was just 14 years old. Oneshika told her to go to the police station. Near the

Health Centre, she met her aunt Rainaz Prasad. Rainaz is a police officer. She told Rainaz that Isaac raped her. Rainaz knew Isaac. Rainaz took her to the police station where she recorded her statement. She was taken for a medical examination.

16. Under cross-examination, Shivashna admitted that her mother was running a canteen, just beside the Nadi Magistrate's Court. She agreed that on the first floor, there were offices including the Nadi Police Prosecution Office. She agreed that Isaac Lal was in-charge of his office, and he was the one who offered the post of Journalist. She denied that she told Isaac Lal to bite the thread on her dress. She denied joking with Isaac. Everything happened when she entered his office for the second time. She denied kissing and moaning. She denied seeing one Rupeni during her visit to the office. She denied taking his hand and placing it on her vagina. When he stared with a kiss, she said she pushed him off. When she bent down to take her bag, he slipped off her pants with one hand and she felt the penetration from her back. She was wearing skirt-like pants with elastic. She kept resisting when he was holding her hands. She did not shout because she was scared. She told him '*I wouldn't do such a thing because I don't want to cheat on my boyfriend who is not there in the country*' and she slapped him. She agreed that when she came out after the incident, she saw one
17. When she slapped, Isaac Lal asked her whether she would tell her mother about the incident. She did not say anything. She knew Isaac Lal was closer to her mother than her. She called and told her mother before going to the police station. Her mother told her not to lodge a case. She disagreed and went straight to the police station.

PW 2 Rainaz Nisha

18. Rainaz has been a police officer for the past 18 years. In 2019, she was attached to Nadi Police Station. On 2 September 2019 at around 2.30 p.m., when she was coming down from the Nadi Courthouse, she met Shivashna, her niece, who was standing right in front of the police station. She was crying and shivering. She looked nervous and frightened.

She asked Shivashna *-what happened? Why are you crying?* Shivashna told her that Isaac Lal had forceful sexual intercourse with her. She then took Shivashna to the police station. The police did the investigation, recorded her report and took her for medical examination.

19. Under cross-examination, Rainaz said she knew Isaac Lal who was working for the Ministry of Information. Before recording Shivashna's statement, she did not declare her interest in this case to her supervisors that she is related to the complainant.

PW 3- PC Talemaitoga

20. In 2019, PC Talemaitoga was based at the Nadi Police Station. On 2 September 2019 at around 2.30 p.m. while he was at the station, Shivashna came in with a schoolgirl. Shivashna was crying and was leaning on the schoolgirl. He knew Shivashna because her mother used to run the canteen beside the Nadi Magistrate Court.

PW 4 Dr Shanil Sen

21. Dr Sen has MBBS with a postgrad Diploma in Public Health. He tendered the Fiji Police Medical Examination Form prepared by Dr Courtney Pene, the examining doctor, (PE-1) because Dr Pene was not available in Viti Levu. The report has been prepared after examining Shivashna Prasad on 2 September 2019.
22. According to Dr Pene's medical findings, an ecchymosis or a bruise was noted on the bilateral breast caused due to the suction effect probably given by a love bite.
23. Upon physical examination of Shivashna's vagina, doctor Pene noted no cuts, no active bleeding, nor lacerations. However, the vaginal canal was noted to be anthropometric (redness). Also noted was a white discharge in the vaginal canal. The vulva was sensitive

and painful for the patient when being touched and tender upon palpation. The medical findings are suggestive of forceful vaginal penetration.

24. Under cross-examination, the doctor agreed that these medical findings are possible also in a consensual sex. The Doctor Pene's conclusion as to forceful penetration must have been drawn from a holistic approach after considering the medical findings and the history provided by the patient during the medical examination.

#### Case for Defence

##### Isaac Lal (The Accused)

25. Isaac Lal said that he is a father of three children. On 2 September 2019, he was at the Ministry of Information office in Nadi where he was the Information Officer. He was the head of the staff of three.
26. He had known Shivashna from her days in primary school. She was raised by a single mother who used to come to his office for photocopying because everything was expensive. Shivashna's mother would come every week and cry about the problems she faced. Shivashna would come occasionally whenever she needed photocopying.
27. On 2 September 2019 (Monday) he received a call from Shivashna's mother at around 9 a.m. and informed her that her daughter was coming to town on job hunting. She wanted him to help Shivashna write her CV and her application letters. Shivashna walked straight to his office and sat down. She was complaining about the hot weather. There was nobody else in his office at that time. They were engaged in a conversation about her overseas travel and her partner. They spent time talking and laughing. She gave him the documents and he went through her application correcting it.

28. Shivashna had put on weight. She was very talkative and very open like free for all. Whilst in the conversation, he saw a thread on her top. He asked her, eh! *Why don't you pull it out?* He tried to pull it but he couldn't. She then asked him to bite it. As he bit it, she leaned forward toward him and they started kissing.
29. Shivashna said she was sweating and she started wiping herself as they continued kissing. As he was not in the mood, he went back to his table and talked to her when she would pass jokes. He stood up again and they started kissing again while playing with her breast. While it was going they were both aroused and she was making some gestures and noises. His hands reached her private part and then he started rubbing it. She was moaning and while they were still kissing, she took his hand and put it inside her panty and her vagina. Then she asked-*'khabhi koi ke geeb lagaye?'* (Have you licked anyone?) He asked her if the white man licked her. He passed a joke and said, *'If I lick you, you will forget the white man'* and then she said, oh! *You are just full of talk.*
30. After a while, he sat down because he felt a bit awkward since they were in the office and thought that Rups would come in. He went back and sat down, but no one came. After that, they continued talking and laughing and then her assistant Rups walked in.
31. Shivashna said that her birth certificate was missing. He advised her to get a copy and come back. He went for lunch. They walked out together. He had lunch and came back, after 10 – 15 minutes. Shivashna was back, she came and sat down in the office. He made ten photocopies of the birth certificate and gave them to Shivashna.
32. He started kissing again. After a while, he said, okay, enough! She said, 'No, no', and she grabbed her hand and told her to come to her. He said, 'No' and went to his table and sat down. She invited him again! So, he went to her. She grabbed his hand, jumped on the chair and turned the other way. She pulled her pants down. He helped her pull her pants, lifted his *sulu* and then they had sexual intercourse.



33. After a few minutes, by the time they were done, she turned around, put her clothes on and sat down. She said, "*Bhai I cheating he, hum cheating khardiya*" ('this is cheating, I've cheated'). He went down to the toilet and, when he came back, he didn't see Shivashna again. He inquired from Rupeni about Shivashna. Rupeni had no idea where Shivashna had gone.
34. He said that he was not too sure it was loud enough for Rupeni to hear Shivashna moan. He had so many missed calls from her mother after that. The next day, the police called and he went down to the police station.
35. He accepts that it was wrong to do it in the office but he did not force her. Shivashna's mother called her to say that her daughter would report if he did not give her \$10,000. He said he didn't have that much money, he could only give \$5,000. Then she was agreeable to get \$5,000 in cash. When he was in the cell at the Nadi Magistrate Court, Shivashna's mother came crying asking for the money. He said he didn't have money.
36. Under cross-examination, Isaac Lal denied that it was he who had initiated the sexual encounter. If he made forceful advances, she would have made noises and everyone would have known. He agreed that at the caution interview, he denied everything in terms of sexual intercourse. That was a mistake on his part. When it was suggested that if it was consensual, Shivashna would never have gone to the police station immediately after the sexual intercourse, Isaac Lal said that she did not go straight to the police but to the school.
37. Under re-examination, Isaac Lal said that he denied having had sexual intercourse at the caution interview because the interviewing officer was his friend and he thought it would have been a bad reflection on him as a senior officer to admit to having sexual intercourse at the office. He gave the interview on the instructions of the Legal Aid Commission lawyer who visited him at the police station.

38. The Prosecution agreed to the statement given to police by Rupeni, whose name appeared in their list of witnesses, to be tendered in defence evidence as this witness was not present in court. Rupeni Waqavono's statement given to police on 3 September 2019 was tendered in evidence marked as DW-1.

Rupeni Waqavono

39. In his statement that was given to the police 03 September 2019, Rupeni had told that he worked as a cameraman and editor for Ministry of Information office where Isaac Lal was the Information Officer. On 2 September 2019 Isaac Lal was in the information office and Shailey's daughter came with a file and went into the office of Isaac Lal at about 10 am. They were talking and laughing and then Isaac came out of the office to print some documents for Shailey's daughter. She later left the office. She came back and walked straight into the office of Isaac Lal at around 01:20 p.m. During this time Shailey's daughter and Isaac were talking for about 20 minutes and then they were silent for about 30 - 40 minutes.
40. He then stood up and walked towards the counter at the main entrance, but he did not see anyone in Isaac's office. Between 03:45 pm – 4:00 pm, they both came outside the office and Isaac walked to the entrance and stood there till Shailey's daughter got to the door. He did not see her face, but it felt different. There was a silence between them. They then both went outside of the office.

### **Evaluation/ Analysis**

41. There is no dispute as to the identity of the accused. It is agreed that the accused penetrated the complainant's vagina on 2 September 2019 at his office. The only dispute is whether the sexual intercourse was consensual. The complainant says that it was not

while the accused says it was consensual. Who told the truth in Court? The case turns on one word against the other. However, it was on the Prosecution to prove beyond a reasonable doubt that the accused penetrated the complainant without her consent.

42. The sexual intercourse had taken place at the office of the accused at around 2.30 p.m. The complainant admitted that she did not shout or raise alarm. It was suggested that she did not raise alarm because the sexual intercourse was consented. There is no dispute that, at the time of the alleged offence, only the accused and the complainant were present in the office. The complainant had known the accused for many years and was shocked at what was happening. The accused was holding her hands tightly so that she couldn't move. Being faced with such an unexpected situation, and due to the shock and the fear, it is possible for her to behave in the manner she had behaved. She had not seen anyone else in his office before the incident. She saw an iTaukei man only when she left out. Therefore, it was also possible for her to think that shouting would not help her. It is also possible for her to think of the negative consequences of shouting. There is no stereotype that a victim of rape should behave in a certain manner. I find that the conduct of the complainant is not inconsistent with that of a rape victim.

43. Soon after the alleged incident, the complainant was confused as to what to do. She knew no adults in the town, so she rushed to the Nadi Sangam School where her cousin Oneshika was. She told her cousin that the accused tried to have sex with her. She could not tell the full story because Oneshika was just 14 years old. She called her mother who advised her not to lodge a report. Nevertheless, she went ahead and lodged a report without heeding her mother's advice. She did not care about her mother's advice as she knew how close her mother was to the accused. She took the advice of her cousin instead and went in search of the police station. She had almost reached the police station when she met her aunt Rainaz (PW 2). She told Rainaz that Isaac raped her. Rainaz is a police officer who took her to the police station where the report was lodged.

44. Rainaz confirmed that the complainant was standing right in front of the police station when she meet her. She described how the complainant looked at that point in time. The complainant was crying and shivering, she looked nervous and frightened. She asked the complainant-*what happened? Why are you crying?* Shivashna told her that Isaac Lal had forceful sexual intercourse with her. In view of the evidence of her work colleague PC Talemaitoga, there is no reason for me to disbelieve Rainaz's evidence although she is related to the complainant.
45. PC Talemaitoga further confirmed that the complainant arrived at the Nadi Police Station with a schoolgirl and, whilst at the station, she was crying and was leaning on the schoolgirl. The complainant's conduct is totally consistent with that of a rape victim.
46. The complainant had been medically examined soon after the alleged rape. According to Dr Pene's medical findings, the vaginal canal of the complainant was noted to be anthropometric (red). Also noted was a white discharge in the vaginal canal. The vulva was sensitive and painful for the patient when being touched and upon palpation. The medical findings are consistent with a forceful vaginal penetration.
47. The recent complaint of the complainant, the distressed condition in which she was in soon after the incident and the medical evidence are consistent with a forceful sexual penetration.
48. The fact that the complainant had come to the accused's office twice on the day of the incident to get some documents photocopied for a job interviews is not in dispute. She gave a plausible explanation for her second visit to the office. The accused had encouraged the complainant's mother to send the complainant to his office under the guise that a vacancy was in existence in his officer for the post of journalist. There is no evidence of close relationship between the complainant and the accused prior to the alleged incident. It is highly unlikely for a woman of her age would agree to a sexual intercourse at a public office during working hours voluntarily.

49. The Defence could not highlight any inconsistency in her evidence with her previous statement, suggesting that she has maintained her consistency in respect of her complaint. In the witness box, she was straightforward and not evasive. Her demeanour in Court is consistent with that of an honest rape victim. I accept that the complainant told the truth in Court.
50. The accused in his evidence said that the sexual intercourse took place and it happened with the consent of the complainant. Conversely, in his caution interview, he had denied having had sexual intercourse at all with the complainant. This inconsistency was admitted by the accused in his evidence. His explanation for this inconsistency is that it was a mistake on his part. He further said that the interviewing officer was his friend and he thought it would have been a bad reflection on him as a senior officer to admit to having had sexual intercourse at the office. He further said that he gave the interview on the instructions of the lawyer from Legal Aid Commission.
51. I am unable to comprehend what better reflection he could have expected on him when he decided to admit in Court what he had denied in his caution interview that he had sexual intercourse in his office of which he was the boss, albeit with the consent of the complainant. If the interviewing officer was his friend, the accused should have felt more relaxing to tell the officer friend that he had had sexual intercourse and that he did so because the complainant consented to it. I can't help but accept that the accused changed his stance and concocted his evidence to suit his defence.
52. When it was suggested that the complainant would never have gone to the police station immediately after the sexual intercourse if it was consensual, the explanation of the accused was that she did not go straight to the police station but to the school. The complainant satisfactorily explained why she went to the school first before going to the police station.

53. The accused said that if he made forceful advances on the complainant, she would have made noises and everyone would have known. This evidence is not consistent with his own evidence that the complainant was moaning and making sounds during sexual intercourse. Moaning is good enough to attract the attention of the other people in the office if she had ever moaned. I have already explained why I should accept the explanation that the complainant has advanced for not shouting.
54. The accused further said that the complainant's mother called him to say that her daughter would report to police if he did not give her \$10,000; and he in reply indicated that he didn't have that much money, but he could only give \$5,000 and that the complainant's mother was agreeable to receive \$5,000 in cash; and when he was in the cell at the Nadi Magistrate Court, complainant's mother came crying, asking for the money. He said he didn't have that much money.
55. If what the accused told in his evidence was the truth, it would have been a good explanation to bolster his defence that the complainant made up this allegation to demand hush money from him. However, his counsel never put this stance to the complainant when she was under cross-examination. It can reasonably be assumed that the accused had never instructed his counsel on this and that he did not do so because such a conversation never took place. Furthermore, if the accused was already in the cell when the complainant's mother came demanding money, it is clear, that the proposed deal (to pay \$5000 hush money) had not worked out and that's why he was in remand. It is not logical for the complainant's mother to come and demand money from the accused when it was clear to her that her daughter had already complained to the police. I am sure, the accused made up this story to support his defence.
56. If the accused was engaged in consensual sex with the complainant, why would he ever agree to pay \$ 5,000 to the complainant? If the complainant demanded hush money and held him to ransom, being a senior government officer, he could have reported the matter

immediately to police. He has not done that. I am convinced that the accused made up this story to bolster his defence.

57. The evidence of Rupeni Waqavono does not carry much weight for two reasons. First, his evidence was not tested in cross-examination and his absence in Court deprived me of the opportunity to observe his demeanour while giving evidence. Second, Rupeni had been a subordinate officer working under the accused. His ability to give independent evidence is highly doubted. Even if I accept that Rupeni told the truth, his evidence is not capable of supporting the defence version or creating any doubt in the Prosecution case.
58. Even if I accept that Rupeni told the truth in his statement, his evidence is not capable of supporting the defence version or creating any doubt in the version of events of the Prosecution case. There is no dispute that a complainant came to the office of the accused twice that day and, on none of those occasions, no one except the accused had been present in the office. That should be the reason for the accused to feel free to have sex with a girl in his office. In these circumstances, it is unlikely that Rupeni was in a position to tell what had actually transpired between the complainant and the accused in the accused's office.
59. There is also no dispute that the accused and the complainant were engaged in a conversation although there is dispute as to the actual time they had spent on that conversation. Rupeni's statement that the accused and the complainant were talking for about 20 minutes and then muted for about 30- 40 minutes, (suggesting that the silence occurred during sexual intercourse) cannot probably be true if what the accused told in Court was the truth when he said that the complainant was moaning and making sounds during the sexual intercourse.
60. Rupeni had further stated that between 03:45 pm – 4:00 p.m., the complainant and the accused both came out together and the accused stood at the door till the complainant got there. However, the complainant had gone to pick her cousin from the Sangam School

during school time (before 3 p.m). PC Talemaitoga confirmed that at around 2.30 p.m. the complainant came to the station with a schoolgirl. PC Talemaitoga is an independent witness and I accept that he told the truth. In this light I reject the evidence of Rupeni that the accused and the complainant came out of the office together at around 4 p.m.

61. Rupeni's observation of the complainant as she came out of the office was that she was 'different' and that there was silence between them. According to the accused, when he came back from the washroom the complainant had just vanished even without informing him. That's why he had to inquire about her whereabouts from Rupeni. Even if I accept that Rupeni told the truth, this behaviour of the complainant further suggests that the sexual intercourse was not consensual.
62. I reject the evidence of the Defence. It did not create any doubt in my mind as to version of event of the Prosecution which I accept. The find that the sexual intercourse was not consensual. The evidence is overwhelming for me to find that the accused had reasons to believe that the complainant was not consenting to a sexual intercourse. The Prosecution proved the case beyond reasonable doubt.
63. I find the accused guilty of Rape as charged and convict the accused accordingly.



At Lautoka

29 November 2023

Aruna Aluthge

Judge

Solicitors:

Office of the Director of Public Prosecutions for State

Legal Aid Commission for Defence