

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO: HAC 135 OF 2023**

**STATE**

**V**

**AKUILA QAU**

Counsel : Mr J Nasa for Prosecution  
Mr. R.Filipe for Defence

Dates of Hearing : 05 -06 August 2025

Date of Judgment: 20 August 2025

**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 reads as follows:

Statement of Offence

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

Particulars of Offence

AKUILA QAU on the 3<sup>rd</sup> day of September, 2023 at Nadi in the Western Division, had carnal knowledge of LILIDAMU SEVERO, by penetrating her vagina with his penis, without her consent.

2. The Accused pleaded not guilty to the charge. At the ensuing trial, the Prosecution presented the evidence of the Complainant and another witness and closed its case. The Accused was put to his defence when the Court found that the Defence had a case to answer. The Counsel from both sides tendered written submissions. Having carefully considered the evidence presented at the trial and the submissions made by the Counsel, I now proceed to pronounce my judgment as follows.
3. The Prosecution bears the burden to prove all the elements of the offence, and that burden must be discharged beyond a reasonable doubt. That burden never shifts to the Defence at any stage of the trial. The presumption of innocence in favour of the Accused will prevail until the charge is proved beyond a reasonable doubt. The Accused is under no obligation to prove his innocence or prove anything at all.
4. Section 207(2)(a) of the Crimes Act defines the offence of Rape as follows: a person rapes another person if the person has carnal knowledge with or of the other person without the other person's consent. In the context of this case, 'carnal knowledge' could be defined as an act of penetration of the vagina of the complainant with the penis of the accused. A slight penetration is sufficient to prove the element of penetration.
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. A consent obtained by force or threat or intimidation, etc. will not be considered as consent freely and voluntarily given. 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. I shall now summarise the salient parts of the evidence led in this trial. Evidence for Prosecution.

PW1 Lilidamu Severo (Lili)

6. Lili is a mother of five children. She resides in Samabula. On 2 September 2023, she and her eldest daughter (Liviana) went to White House nightclub in Martintar at around 9.30 pm and drank two bottles of Tribe. Then they went to another nightclub called Bar One at around 11 pm and drank three more stubbies (beer). She joined Bakani (one of her cousins) and his friends and drank until the bar was closed at 1 am. She and Liviana then headed down to town to look for transport to go home. In town, they were invited by a group of people to join them in drinking. They all went to Wailoaloa Beach and continued drinking till dawn.
7. When dawn broke, she met Akuila and his friends, who also joined them. She had not known Akuila before. At around 7 am, Akuila came and sat beside her and her daughter and started talking to her about a lot of things. She didn't respond because he was drunk. Akuila is broad, short and brown skinned and has a beard. She clearly saw Akiula's face in proximity.
8. After drinking for about 30 minutes, Akuila told them to get into his white rental car to go and buy more drinks. She, her daughter, another girl and a man got in. They went and bought one pack of Woodstock from a black market, and he took them to a secluded place where they continued drinking until around mid-day. Akuila wanted her to go with him to buy more drinks. She got into the car and sat in the back. He took her to a driveway opposite Nalagi Hotel and parked the car. He forced her to take off her clothes. A police car came and told them to leave the place because of his unauthorised parking. Akiula then headed back to where they were drinking.
9. When they went back, Akuila was angry and frustrated with her. He was swearing the whole time. They sat there for about 30 minutes, and he told her to get in the car with him for them to go and buy lunch. She didn't want to go, and her daughter conveyed her sentiment to him that she didn't want to go. Then Akuila got angry and started swearing at

her for not buying anything for them. She was so scared of him. She finally got into his car and sat at the back. He took her to the same place right inside the driveway opposite Nalagi Hotel, and parked at a secluded place. It was around 3 -4 pm.

10. He came out and opened the back door. He pulled her to the front seat and he managed to take off her T-shirt and the bra. She was just crying and resisting him by pushing him away hard to prevent him from taking off her pants. He punched her thighs and she was also punching his arms to stop him from doing whatever he was doing. She couldn't free herself from him. He took off her pants and her panties. She could not run away because she was scared when he threatened to kill her, showing a knife. He was saying that he is a man, and she needed to satisfy him. He lifted both of her legs and inserted his penis into her vagina twice. She was crying the whole time.
11. He got angry when she pushed him away. He got out of the car and opened the back door to harass her again. She managed to open the other door and come out. She started to run fully naked while he was chasing her around the car. She ran towards the Queen's main road shouting for help. She met one man who covered her with a cloth. Akiula told this man that she was his wife. She told this man, he was lying.
12. Akuila gave clothes to the security at Nalagi and boarded the car to escape. Two women came to help her, and they took her to the police station. She gave the description of the rapist and the car. She identified the Accused in Court as her rapist. She came to know his name only at the police station when she saw him in the cell.
13. Under cross examination by Mr Filipe, Lili admitted that she drank from night, but she knew what was done to her. She admitted that she was not concentrating on Akiula when he tried talk to her while drinking.
14. She could not seek assistance from the police opposite Nalagi because she did not have an opportunity to talk to them. Only Akuila was talking with the police. When she went back to the drinking party, she told Akuila's friend about the harassment. She could not recall

how this friend looked. But she could clearly recall Akuila's face because he was the one who harassed her.

15. At the police station, she described the rapist as an iTaukei male wearing a t-shirt. She saw Akuila in the cell at the police station the next day. The police told her that his name is Akuila. She was told to give a statement the next day afternoon. The Police did not hold an identification parade or photo identification. Her daughter had gone missing after the party. She wanted the police to ask Akuila where her daughter was as he was the one who took them there. She denied that Akuila was ever with her at the drinking party.

PW2 Akosita Waqalevu Bainivalu (Akosita)

16. On 3 September 2023, Akosita was working at Nalagi Hotel Nadi. When she knocked off from work, she came to the driveway outside the hotel. She saw the security guard crossing to the other side of the road and running towards an oncoming rental car. A lady, fully naked, was running beside the rental car asking for help. She also ran after the security guard towards the car. The car was stuck in a drain opposite Nalagi Hotel.
17. She saw the driver's clothing when he alighted from the car. He was brown-skinned iTaukei man wearing a grey t-shirt with a blue three-quarter Lee. The driver locked the car and started walking along the main road. She clearly saw the driver's face about 4 meters away from her that afternoon. She positively identified the Accused in Court.
18. This lady came and hugged them and asked them to call the police. She called the police. The driver ran away, leaving his vehicle. She wore the clothes the security man gave. She took her to the police station because there was no response from the police.
19. Under cross-examination by Mr Filipe, Akosita said that she could clearly identify the driver in broad daylight, although she saw him for the first time. The driver was inside the car, and then he came out. He was walking slowly because he was drunk. She observed

him for about five minutes. She denied that she identified Akiula only because he was in Court.

20. She gave a description of the driver on the same night and a statement on the 5<sup>th</sup>, two days after the alleged incident.

#### Evidence for Defence

##### DW1 - Akuila Qau (The Accused)

21. Akuila, is married with three children and resides at Field 28, in Ba. On 3 September 2023, he was residing at Martintar. He was driving a private car, taking jobs. On 2 September 2023, he started taking jobs around 6 pm and finished around 8 am the next morning. After that, he went to drink with friends at the Cemetery Road in Wailoaloa. They drank till 10 am and headed home. On his way home, a lady stopped his car looking for transport to Nadi Town. He told her that he was drunk, nevertheless he offered her a lift to Martintar.
22. When they came through the Goundar Road, she wanted to use a washroom as she was having diarrhoea. He stopped the car at the dairy shop and waited for her to use the washroom. While waiting, he was awoken by a few boys who started assaulting him. He parked the car and went straight home. He couldn't take the car because it ran out of fuel. He told his wife about this incident and, at around 3 to 4 pm, he accompanied his wife to the police station to report the matter. When he went to the police station, the police officers put him in the cell. He was surprised that he was put in the cell. The police denied his request to go to the hospital. He denied the allegation and said that he saw the complainant for the first time at the police station the next day.
23. Under cross-examination by Mr Nasa, Akuila admitted that on 3 September 2023, he drank with his colleagues at the cemetery in Wailoaloa but denied they had come there after midnight on the 2<sup>nd</sup>. He was interviewed by the police on 4 September 2023 where he told

the truth. In that statement at Q45 and Q 55 he told the police that he started driving after 12 in the morning on the 3<sup>rd</sup> of September 2023.

24. He admitted under oath to taking jobs after midnight in front of Ice Bar. He agreed that he raised no *alibi* with the police. He knew the name of only one driver with whom he drank. The police did not record what he said. He did tell the police and his counsel that he was home with his wife, Asenaca, at around 3-4 pm on 3 September 2023. He denied that he made up his evidence to save himself and save his marriage.

#### Evaluation /Analysis

25. The Defence does not dispute the Prosecution evidence that the Complainant was raped on 3 September 2023. It was never the Defence case that the alleged sexual intercourse took place with the Complainant's consent. The only dispute concerns the identity of the Accused. The Defence deny that the person who raped her was the Accused. Defence's position is that the Complainant mistakenly identified the Accused as her rapist.
26. There is no dispute that the Accused was not known to the Complainant before the alleged incident, although she, in her evidence, mentioned Akuila as her rapist. She said she came to know his name at the police station. She positively identified the Accused in Court as her rapist. The question is whether there was a reasonable foundation for her to identify the Accused in Court and whether her identification evidence is credible and reliable.
27. The credibility of the Complainant's evidence was not vigorously challenged, but its reliability. It is undisputed that she ran fully naked towards the Queens Highway beside a car whose driver fled the scene, leaving the car behind. She was immediately taken to the police station, where she complained that she had been raped. There is nothing for me to reject the Complainant's evidence that she was raped.
28. According to the Complainant's evidence, this is not a fleeting glance case. The Complainant's rapist had been with her from 7 am until the alleged rape that occurred in

the evening. During this period, she had been drinking in broad daylight with the rapist in proximity and had twice gone with him to buy drinks. Although she did not pay much attention to him when he came and sat beside her to talk to her, she had no reason to mistake this man who spent so much time with her.

29. It was suggested that she was drunk and her intoxication may have impaired her ability to make a correct identification. The Complainant rejected this proposition and said she was sober enough and knew what was going on. Her conduct as it portrayed in evidence, suggests that she was sober enough to identify a person. She didn't respond to this person because she knew he was drunk. She refused to go with him to buy lunch. Most of the time they had been drinking beer (stubbies) and Woodstock (8% alcohol), which have low alcohol percentage, and the drinks had been shared amongst the group. I am satisfied that she was sober enough to identify her rapist.
30. In the closing, it was submitted that although the Complainant had been to the police station on the 3<sup>rd</sup>, the police did not record her statement because she was intoxicated. This submission is based on mere speculation. Mr. Filipe never put this proposition to either the Complainant or PW2, whose statements had been recorded on 4 September 2023, to get a clarification as to why their statements were not recorded on the 3<sup>rd</sup>. PW2 was surely not drunk soon after she knocked off. There was no reasonable basis to suggest that the statements were not recorded on the 3<sup>rd</sup> because the Complainant was drunk.
31. The Complainant said that she could not recall the description of Akuila's friends who were in the drinking session. It was suggested that she could not recall because she was intoxicated. It was also suggested that if she could not recall the description of Akuila's friends, her evidence that she could clearly recall Akuila could not be believed. Akuila's friends had not spent as much time as she did with the alleged rapist. The friends had not gone to buy drinks and lunch with her. No doubt, she had a special reason to remember this man. He was the one who raped her. Her rapist should have left an indelible mark on her memory for the rest of her life.

32. It was suggested that the Complainant could have complained to the police officer who had approached them opposite Nalagi Hotel. Her explanation that she did not have an opportunity to talk to the police officer because only Akuila was talking to the police is untenable. After the first harassment attempt, the Complainant had gone with Akuila to the same spot. She was not asked why. She would not have had an option but to go with Akuila, because her daughter was still there with Akiula's friends. When she went back to the drinking party, she in fact told Akuila's friend about the harassment, although she did not tell her daughter about it. When she was asked to go with Akuila to buy lunch, she in fact resisted. She explained why she had to go with Akuila to buy lunch even after the first harassment attempt.
33. She had given the description of the rapist and his car to the police. It was not revealed in evidence as to how the Accused came into being in the police cell the following day. It can reasonably be assumed that he was arrested by the police, based on the description provided by the eyewitnesses. His evidence that he was put in the cell when he came to lodge a complaint is implausible. He was driving a private car, which he had abandoned. It would not have been difficult for the police to trace the driver of this car. The narrative advanced by the Accused as to how he ended up at the police station is far from believable and would be rejected.
34. The Complainant identified the Accused in Court as her rapist. The description she had given to the police (broad, short, brown skinned iTaukei) matches with that of the Accused. Although her statement is dated 4 September 2023, I have no reason to reject her evidence that she went to the police station with PW2 on 3 September 2023, immediately after the alleged rape occurred. Her evidence was supported by Akosita (PW2). Even the Defence does not dispute this. [Paragraph 5.1 of the written submission]
35. She had seen the Accused at the police station the following day when the things were fresh in her memory. She identified him to be her rapist. It was contended that no identification parade or photo identification was conducted, and therefore, the identification made at the police station was flawed; It was also suggested that the identification was based on the

Accused being pointed out by the police and therefore should be rejected. The dock identification was objected to by the Defence, apparently on the same basis.

36. As I said before, this is not a fleeting glance case. The holding of an identification parade was not warranted, given the circumstances under which the alleged offence occurred and the arrest was made.
37. After all, the Complainant's identification evidence was supported by Akosita (PW2). PW2 is an independent eyewitness. She accompanied the Complainant to the police station soon after the alleged rape. It was not elicited from her whether she gave the description of the Accused to the police, which she gave in Court. The circumstances under which the identification was made allowed her to make a correct identification. She clearly saw the driver and his clothing when he alighted from the car. She described the driver as a brown-skinned iTaukei man, wearing a grey t-shirt with a blue three-quarter Lee. The driver came out of the car and started walking along the main road. He was walking slowly because he was drunk. She could clearly identify this man in broad daylight, although she saw him for the first time. She observed him for about five minutes, about four meters in broad daylight. She positively identified the Accused in Court.
38. After being cautioned myself of the dangers of a mistaken visual identification as articulated in the Turnbull Guidelines, I am satisfied that PW1 or PW2 were not mistaken. I accept the evidence of the Prosecution.
39. The Accused's evidence is not appealing to me. He was giving a self-serving statement. His evidence is not consistent with his previous statement given to the police as to the time he started to run the car. He has never raised an *alibi* with the police when he was interviewed. Although he had the right to remain silent, upon being confronted with a serious allegation against him, it is not for him as a prudent man not to tell the police that he was home with his wife at the time of the alleged incident. He said he went to the police station with his wife. Then why did he not raise his defence and record an alibi statement

from his wife? These questions were not answered. I would reject the evidence of the Defence.

40. In the written submission, the Defence appears to blame the Complainant for exposing herself and her daughter to a danger by joining an unknown group of men to drink alcohol in a beach unfamiliar to her. From her uninhibited behavior, that the Complainant consumed alcohol and socialized with the Accused and his friends in a social gathering, Court is unable to draw the inference that she would have been prepared to engage in sexual activity with the Accused. I reject this proposition of the Defence.
41. I find that the Accused had carnal knowledge of the Complainant without her consent. The Prosecution proved all the elements of Rape as charged and proved the charge beyond a reasonable doubt. The Accused is accordingly convicted as charged.



Aruna Aluthge

Judge

20 August 2025

Solicitors:

Office of the Director of Public Prosecutions for State  
Legal Aid Commission for Defence