

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 110 OF 2025

BETWEEN : STATE

AND : ASHNEEL SHANKAR NAICKER

Date of Hearing : 25 – 26 August 2025

Date of Judgment : 5 September 2025

**Counsel : Ms S Bibi for the State
Ms S Chand for the Accused**

JUDGMENT

[1] This case concerns the issue of consent within an intimate relationship.

[2] The Accused who is an electrician by profession is 26 years old and his partner, the complainant is 35 years old. They were in a live-in relationship and resided at Jittu Settlement, an informal settlement in Raiwaqa, Suva. They have one child together.

Prosecution Case

[3] The complainant testified that on 29 April 2025, the Accused returned home around 5 p.m, and they argued in their bedroom about his late arrival. When she questioned him, he became furious and physically assaulted her. His sister intervened and removed their baby from the room. The complainant, exhausted, crying, and suffering from a fever, went to sleep. Around 1 a.m., the Accused returned with the baby and had sexual intercourse with her. She

stated that she was in pain due to unhealed childbirth injuries and told him to stop, but he did not. The next day, she left the house to attend the hospital.

[4] Under cross-examination, she stated that the Accused first slapped her and then strangled her. A month after giving birth, she had left the Accused and stayed with her aunt and cousin after he discovered her messaging another man. The incident on 29 April occurred a week after she had moved back in. She denied that the argument was about financial priorities but admitted it was over a body wash he refused to buy immediately. She became angry when he reacted negatively to her persistence.

[5] Initially, she claimed she went straight to the police station on 30 April 2025, but later clarified that she first went to her aunt's home in Nakasi, and her aunt accompanied her to the station that afternoon.

Defence Case

[6] The Accused testified that when he arrived home from work on 29 April 2025, there was no food prepared, despite having asked the complainant to make a meal. His sister offered him tea and bread and said she would cook later. He changed clothes in the bedroom, and as he was about to leave, the complainant confronted him about not buying her jewellery and other items. He asked to have tea first and discuss later, but she insisted and became physical when he tried to walk away. She attempted to scratch his face, prompting him to push her away. She then tried to strangle him while he held her hands back.

[7] His sister entered the room and removed the baby. He then took the complainant to the kitchen to give her water, describing her condition as "possessed." While drinking, she spilled water on her top. He changed her top and told her to rest. He then had tea and went to play soccer. He returned around 10 p.m., showered, ate dinner, and slept in the sitting room.

- [8] After midnight, the complainant called him to sleep in the bedroom. He initially refused, but went to quiet her down. After five minutes, she snuggled up to him, indicating she wanted sex. Concerned about her health post-childbirth, he tried to dissuade her, but she persisted. They then had sexual intercourse. During the act, she repeatedly asked him to buy her things. Their son was asleep on the bed. Afterward, he went to sleep as he had to go to work the next morning.
- [9] The Accused's sister, Nikki, testified that she saw the complainant physically assaulting the Accused and behaving strangely, as if possessed. She saw the complainant screaming, grabbing the Accused's collar, and punching his chest. Concerned for the baby's safety, she removed the child. After calming down, the Accused gave the complainant water and left for training. That night, he slept in the living room with Nikki. After midnight, the complainant persistently called him to the bedroom. Nikki did not know what happened afterward, but the next morning, the complainant left with her cousin, saying she was going to the hospital. She did not return that night.
- [10] The complainant's cousin, Ronald, and his mother, Lalita, also testified for the defence.
- [11] Ronald stated that he took the complainant to the hospital on 30 April 2025. She complained of neck pain and spoke slowly. After the hospital visit, she stayed at his house. He overheard her asking someone for money over the phone. When he confronted her, she threatened him and his mother, then laughed.
- [12] Lalita testified that the complainant had an argument with her one Saturday after the Accused was charged, during which the complainant threatened to frame them as she had done to her husband.

Analysis

- [13] The identity of the Accused is not in dispute. It is agreed that he had sexual intercourse with the complainant sometime after midnight on 30 April 2025.
- [14] The issues in dispute are:
- Whether the complainant consented to the intercourse
 - Whether the Accused knew she did not consent
- [15] The prosecution must prove beyond reasonable doubt that the Accused engaged in sexual intercourse without the complainant's consent.
- [16] Consent must be freely and voluntarily given. It may be expressed verbally or through actions. Similarly, lack of consent may be communicated non-verbally. Consent obtained through persuasion is still valid. However, the law states that a person who does not physically resist is not, by that fact alone, deemed to have consented. Submission due to threats or violence is not considered consent.
- [17] In assessing consent, the nature of the relationship is relevant. In live-in relationships, regular sexual relations are often expected. Even in strained relationships, partners may consent reluctantly or out of a sense of duty. Such consent is still valid.
- [18] However, a woman has the right to refuse consent—even to her husband or partner. The distinction between genuine consent and mere submission must be determined objectively, using common sense and understanding of human behaviour.
- [19] The prosecution must also prove that the Accused knew the complainant did not consent. This is a subjective test, inferred from the facts and circumstances.

- [20] If the complainant's claim that she told the Accused to stop and he did not is true, then lack of consent and knowledge thereof are proven.
- [21] However, if the Accused's account that it was the complainant who initiated intercourse and he initially resisted is true, then both elements are not proven.
- [22] The Accused's evidence was consistent, logical, and convincing. His account regarding the complainant's manipulative and threatening behaviour was supported by his sister, and the complainant's cousin and aunt.
- [23] I find that the complainant's evidence was less coherent and persuasive than the Accused's evidence. I accept the Accused's version that the complainant initiated and consented to intercourse, as she had done previously in their relationship.
- [24] Accordingly, the prosecution has failed to prove the Accused's guilt beyond reasonable doubt.

Verdict

- [25] The Accused is found not guilty and is acquitted of the charge.




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Hon Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State

Legal Aid Commission for the Accused