

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 035 OF 2024

STATE

v

AFROZ SHAH

Counsel : Mr J. Nasa for State
Mr J.K. Singh for Defence

Dates of Hearing : 29 September 2025 to 3 October 2025

Dates of Closing Submissions: 15 October 2025, 3 November 2025

Date of Judgment: : 06 November 2025

(The name of the Complainant is suppressed. He is referred to as RM)

JUDGMENT

1. The Accused is charged on the following information filed by the Director of Public Prosecutions:

AFROZ SHAH is charged with the following offences:

FIRST COUNT

[Representative Count]

Statement of Offence

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

Particulars of Offence

AFROZ SHAH between the 01st day of September, 2020 and the 30th day of May, 2021 at Sigatoka in the Western Division, had carnal knowledge of RM, without his consent.

SECOND COUNT

[Representative Count]

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Act 2009.

Particulars of Offence

AFROZ SHAH between the 01st day of September, 2020 and 30th day of May, 2021 at Sigatoka in the Western Division, penetrated the mouth of RM with his penis, without his consent.

THIRD COUNT

[Representative Count]

Statement of Offence

CRIMINAL INTIMIDATION: Contrary to Section 375 (1) (a) (i) and (ii) of the Crimes Act 2009.

Particulars of Offence

AFROZ SHAH on the 01st day of September, 2020 and the 30th day of May 2021, at Sigatoka in the Western Division, without a lawful excuse, criminally intimidated RM with threat to cause harm to the reputation of the said RM.

FOURTH COUNT

[Representative Count]

Statement of Offence

CRIMINAL INTIMIDATION: Contrary to Section 375 (2) (a) of the Crimes Act 2009.

Particulars of Offence

AFROZ SHAH on the 01st day of September, 2020 and the 30th day of May 2021, at Sigatoka in the Western Division, without a lawful excuse, criminally intimidated RM with threat to kill the said RM.

2. The Accused pleaded not guilty to the charges. At the ensuing trial, the Prosecution, having presented the evidence of the Complainant and his aunt, closed its case. The Accused was put to his defence when the Court found that the Defence had a case to answer. The Accused and his mother presented evidence for the Defence. The Counsel from both sides tendered written closing 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 each offence. That burden must be discharged beyond reasonable doubt. The burden of proof never shifts to the Defence at any stage. The Accused is under no obligation to prove his innocence or prove anything at all. The presumption of innocence in favour of the Accused will prevail until the charges are proved beyond reasonable doubt.
4. On Count 1, the Accused is charged with Rape contrary to Section 207(1) and (2)(a) of the Crimes Act. 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. Historically, "carnal knowledge" often specifically referred to penile-vaginal penetration. However, the definition of "carnal knowledge" has been broadened to explicitly include other forms of sexual penetration, such as anal intercourse (sodomy)¹. The Prosecution alleges that the Accused penetrated the anus of the Complainant with his penis without the Complainant's consent.
5. On Count 2, the Accused is charged with Rape contrary to Section 207(1) and (2)(c) of the Crimes Act. Section 207(2)(c) of the Crimes Act defines the offence of Rape as follows: a person rapes another person if the person penetrates the mouth of the other person to any extent with the person's penis without the other person's consent. The Prosecution alleges that the Accused penetrated the mouth of the Complainant with his penis without the Complainant's consent.

¹ *Nadan v The State* [2005] FJHC 252; HAA0085 & 0086.2005 (26 August 2005)

6. 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.
7. 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.
8. On Count 3, the Accused is charged with Criminal Intimidation contrary to Section 375(1) (a) (i) and (ii) of the Crimes Act. Section 375(1) (a) (i) and (ii) of the Crimes Act defines the offence as follows:

375(1) A person commits a summary offence if he or she, without lawful excuse —
(a) threatens another person or other persons (whether individually or collectively) with any injury to —
(i) their person or persons; or
(ii) their reputation or property;

9. On Count 4, the Accused is charged with aggravated form of Criminal Intimidation contrary to Section 375(2)(a) of the Crimes Act. Section 375(2)(a) of the Crimes Act states that the offender commits an indictable offence (which is triable summarily) if the threat is to cause death or grievous hurt.
10. I shall now summarise the salient parts of evidence led in this trial.

Evidence for Prosecution

PW1 - RM (17)

11. RM was born on 30 April 2008. He is 17 years old and a Form 6 student at Sigatoka Andhra Sangam College. Currently he is living with his parents and his siblings in Olosara. In 2020, he was 13 years old. On 20 September 2020, he moved from Olosara

to his Auntie Moreen's place in Korotogo for study purpose. Moreen was living with her husband Feroz Shah, his two children (Faria and Azrin), her husband's mother, her husband's two brothers, Afroz Shah (Afroz) and Jason. Afroz Shah is his uncle. RM was sharing the room with Afroz, but they slept in separate beds.

12. One day in September 2020, at around 5 pm, RM was bathing in the bathroom. Afroz slotted his phone in the gap of the bathroom door and took a video of him bathing naked. When he came out from the bathroom, Afroz called him into the room and showed him the video of him bathing naked. Afroz told him to obey his instructions and, if he failed to listen to him, he would post the video on social media. RM got scared because his body was being shown in the video.
13. On the next day, when RM came back from school, Afroz told RM to inform him (Afroz) whenever he goes to take a shower. RM obeyed his instructions. When he went to take his bath, RM knocked on the door and told him to put soap on his penis and masturbate. He just listened to Afroz and masturbated in the bathroom. Afroz slotted his phone in the gap on the door and video recorded what he was doing. Afroz then told him to have a shower and come out from the bathroom. When RM came out, he was told to dress up in front of Afroz. He followed Afroz's instructions because Afroz had threatened to post his videos on TikTok and Facebook. To blackmail RM, Afroz showed RM the video of him masturbating. RM felt ashamed. Afroz also threatened to kill RM.
14. Two or three days later, when RM went to sleep at around 8-8.30 pm, Afroz called RM to his bed. He followed Afroz's instructions because Afroz was blackmailing him. Afroz pulled down RM's pants and undergarments when he was lying down sideways on the bed. Afroz applied oil on RM's anus and then applied oil on his penis. Afroz then started penetrating RM's anus with his penis.
15. RM was experiencing anal penetration for the first time. It was painful. He tried to push Afroz away two to three times with his hands, but Afroz forced himself on him. Afroz also assaulted him. RM could not do anything. He was in pain. When he tried to yell, Afroz started blackmailing him by saying that the videos would be posted on social media. RM was then asked to go to his bed and sleep.

16. On the next day, when RM went to sleep at around 8 or 8.30 pm, Afroz called RM to his bed. RM obeyed and went to Afroz's bed because Afroz showed him the video on his phone and threatened to post it on social media. Afroz also said that his friends had already seen RM's videos. Afroz then made RM suck his penis until he ejaculates. Afroz also rubbed his penis on RM's face and made him swallow the sperm. RM felt bad. It was so disgusting. RM did not run away because Afroz threatened to kill him. Afroz held RM's head and forced RM to suck his penis. RM tried to push Afroz, but he could not. The same assaults recurred two to three times a week. Afroz also told RM to kiss his lips before going to school.
17. After some time, RM went to Shobna's place at Olosara. Shobna is Auntie Moreen's friend. One day, when RM went to a shop, Shobna had noticed that RM was looking tensed and worried. Shobna asked RM what was wrong with him. RM then told Shobna everything that had happened at Korotogo. Shobna had then told Moreen everything. RM himself told Moreen everything Afroz had done to him. Then they went to the police.
18. Under cross-examination by Mr Singh, RM agreed that Afroz's mother (Nasian) also used to sleep in the same room with her granddaughter, Faria. (Faria at that time was in kindergarten or class one). There were three beds in the room positioned close to each other. There is a partition halfway between their beds and Nasian's bed, blocking Afroz's bed from Nasian's bed. RM having drawn a sketch of the room described where the beds were positioned. The drawing was tendered by consent (DE1).
19. The reason why he went to Moreen's place was because Moreen's daughter was smart in her studies. By the time they go to sleep at night, Nasian would go to watch a TV series. Faria sometimes goes with Nasian to watch the TV series.
20. When the alleged incidents happened, Nasian and Faria were not in the room. They had gone to watch TV. He agreed that when he was lying on the bed, facing the partition, he couldn't see what's happening at the back and whether Afroz was oiling his penis. Although he did not see, he was sure that Afroz was putting oil on his penis because Afroz had asked him to pass the oil to him. He did not see Afroz penetrating his anus with his penis, but he was sure it was Afroz's penis because he felt it in his anus. He clearly saw

Afroz's penis when he was made to suck it. RM then said that he saw Afroz rubbing the oil on his penis when he turned back.

21. It was suggested to RM that if he had submitted himself to Afroz because of fear of being blackmailed, he wouldn't have resisted Afroz putting his penis into his anus and his mouth. RM explained that he pushed Afroz away when being anally penetrated because it was painful. Afroz forced RM's head onto his penis because he was not sucking Afroz's penis from top to bottom. RM did not shout and raise alarm because he was under pressure of being blackmailed and threat of being killed.
22. When being asked: '*you could have told anybody in school*', RM's answer was that: *Why should I go and say this in school? Why should I humiliate myself? In school, I can't trust the children. If I tell this to one student, he can share this to others as well.* RM finally told Shobna, because at that time, he was not residing at Korotogo and not under pressure.

PW2 - Moreen Zabin Nisha (Moreen)

23. Moreen was married to Feroz Shah, Afroz's brother. Afroz is her husband's brother, and RM is her sister's younger son. They were staying together in Korotogo till late 2021. After the conflict between Afroz and RM, they got separated and, in 2022, she moved to Olosara.
24. In January 2021, RM told her that Afroz had taken his video while he was bathing naked and threatened to post it on social media if he did not sleep with Afroz. She asked Afroz about what she heard from RM. Afroz admitted and said '*yes, I did it*', but Afroz denied having a video. She got pissed off and called her mother-in-law and RM's mother and tried to reconcile the two families. RM went back to his mother who took RM to the police station.
25. Under cross-examination by Mr Singh, Moreen admitted that she had given her statement on 30 June 2021, and, in that statement, she had told what she heard from RM the previous week. Having admitted that he did it, Afroz told her that RM came to him.

26. Under re-examination, Moreen said that when she asked Afroz whether he had sexual intercourse with RM, Afroz admitted. She asked this question based on what she heard from Shobna, her friend who left for America. RM told her only about the video.

Evidence for Defence

DW1 Afroz Shah (Afroz)

27. In September 2020, Afroz was staying in Korotogo with his brother, his sister-in-law Moreen, his brother's two daughters and RM. The house had only two bedrooms. One of the bedrooms was occupied by his brother, Moreen and one of their children. The other bedroom was occupied by him, his mother, RM and his brother's small daughter Faria.
28. Afroz denied all the allegations against him. He said that his mother always slept in his room. His bed was placed about 2 metres away from his mother's bed and he could see his mother's bed from his bed. He and his family used to go to bed between 8 and 9 pm. His mother is a heart patient and used to sleep early. She doesn't watch movies that much.
29. Moreen asked him about the videos. He denied making any videos. Moreen also examined his phone in front of his mother. Moreen did not ask any questions about him having sexual acts with RM. On 2 July 2021, he was approached by the police when he was at his sister's place in Olosara. Until then, he was not aware that a complaint had been lodged against him. He gave his phone to the police. The police found nothing in his phone. They took the phone to be sent to the Cybercrimes Unit. He was not initially charged but was charged eventually in 2024. He has no idea why RM would want to make-up a story against him.
30. Under cross-examination by Mr Nasa, Afroz agreed that RM moved to their house in Korotogo on 20 September 2020 and stayed there until early January 2021. He treated RM like a younger brother. There was no animosity between RM's family and him. He agreed that RM would not fabricate events that took place on more than one instance. He agreed that his counsel approached him while RM was giving evidence and, during that discussion, he told his counsel that his mother also slept in the same bedroom which he

shared with RM. He agreed that he had not disclosed that information to his counsel before the trial started.

DW2 Nasian

31. In 2020, Nasian was staying in Korotongo with her three sons including Afroz. In one bedroom, Moreen, her husband, and one of her daughters slept. She shared the other bedroom with Afroz, RM, and one of Moreen's daughters. They have dinner separately. She goes to bed after dinner at around 9.30 pm because she is sick. She does not watch movies at night. RM goes to bed early at around 8.30 pm. Afroz goes to bed late at around 10 pm. She goes to bed earlier than them. She never noticed anything worrying about RM.
32. Under Cross-examination by Mr Nasa, Nasian said that the partition does not block the view of RM's bed from her bed. She would have been around 58 years old in 2020. Faria was about one or two years old and was in kindergarten. Faria would follow her wherever she goes. Faria's mother would not allow Faria to watch TV during school time. She used to watch TV during daytime. On weekends, she would go to the sitting room to watch TV at night. On many occasions she would go to bed after 9.30 pm. Before going to bed, she takes rest in the sitting room talking to family members. She didn't want Moreen to bring RM home and make him stay with them. She did not like RM although he did not cause any problems. RM was a very obedient boy.

Evaluation/ Analysis

33. The Prosecution substantially rely on the evidence of the Complainant to prove the charges against the Accused. The Accused completely denies the alleged sexual and intimidating acts. He appears to say that the Complainant made-up those allegations against him.
34. The Complainant said that the Accused video recorded his naked body and his act of masturbation and threatened to post the recorded videos on social media in order to submit the Complainant to the acts of oral and anal penetration. The Complainant also said that the Accused threatened to kill him.

35. No corroboration is required in Fiji to prove a case of sexual nature. However, the Prosecution must satisfy this Court that the Complainant told the truth and prove the charges beyond reasonable doubt.
36. The identity of the Accused is not disputed. The Accused is the uncle of the Complainant. There is no dispute that the Accused and the Complainant were sharing the room at all material times.
37. The Defence highlighted a number of improbabilities in the Complainant's evidence to argue that the Complainant was not telling the truth. It was contended by the Defence that the alleged sexual offences could not possibly have taken place in the room they shared because the mother of the Accused (Nasian) and his niece (Faria) also slept in one corner of the same room. The Complainant does not deny that Nasian and Faria used to sleep in the same room as him and the Accused. His evidence is that when the sexual assaults took place around 8-8.30 pm, Nasian and Faria had gone to the sitting room to watch a television series.
38. No sensible son would ever engage in sexual acts in a room if he knew that his mother was present in the same room. Therefore, the fact that the alleged offences took place in a shared room would not affect plausibility of the Complainant's version if it can be proved that Nasian and Faria were not in the room at the material times.
39. Faria was a small kid attending kindergarten. The Complainant said that Faria used to accompany her grandmother Nasian to watch television at night. Although Nasian said that Faria's mother would not allow Faria to watch TV during school time, the alleged offences had taken place at night during school vacation. Therefore, the evidence that Faria was in the sitting room with her grandmother when the alleged offences took place is not impossible.
40. Nasian's evidence does not negate the possibility of the alleged sexual acts being committed in the bedroom when she and Faria were away in the sitting room. According to Nasian's evidence the members of the family have dinner separately. Nasian used to go to bed after dinner at around 9.30 pm. Although Nasian in her evidence-in-chief denied

watching movies at night, she admitted under cross-examination that on weekends, she would go to the sitting room to watch TV at night. Before going to bed, Nasian would take rest in the sitting room talking to family members. Therefore, the Complainant's evidence that Nasian and Faria were not in the bedroom when the alleged offences took place can be accepted.

41. It was also contended by the Defence that when the Complainant was lying on the bed, facing the partition, he couldn't have seen what's happening at his back and whether the Accused was oiling his penis. The Complainant provided a plausible explanation. Although he did not see, he was sure that the Accused was putting oil on his penis because it was the Accused who had asked him to pass the oil to him. He also said that he saw the Accused rubbing oil on his penis when he turned back. Of course, the Complainant could not have seen the Accused penetrating his anus with his penis. But he was sure it was the Accused's penis because he felt it in his anus. Certainly, he would have clearly seen the Accused's penis when he was made to suck it.
42. It was also contended that if the Complainant had submitted himself to the Accused because of fear of being blackmailed, the Complainant wouldn't have resisted the Accused putting his penis into Complainant's anus and his mouth. This contention was based on Complainant's evidence that he pushed the Accused upon being anally penetrated and that the Accused had to use force on the Complainant to make him (the Complainant) suck his penis.
43. The Complainant provided plausible explanations in this regard. He said that he pushed the Accused away because the anal penetration was painful; the Accused forced the Complainant's head onto his penis because the Complainant was not sucking the Accused's penis properly from top to bottom.
44. The Complainant explained why he did not shout and raise alarm. He said he was under pressure of being blackmailed and threat of being killed. These explanations are acceptable.
45. It was also argued that the Complainant had ample opportunity to complain to someone in school but he did not because the alleged offences never took place. The Complainant

explained his conduct as follows: *‘Why should I go and say this in school and humiliate myself? In school, I can’t trust the children. If I tell this to one student, he can share this to others as well’*. This explanation is acceptable.

46. The Complainant had finally relayed the alleged incidents to Shobna after he had left the Accused’s house. The Complainant described the circumstances under which the complaint was eventually made to Shobna. He further explained why the complaint was delayed. By the time he opened up, the Complainant was not residing at Korotogo, sharing the room with the Accused and thus not under pressure.
47. However, the complaint allegedly made to Shobna is not admissible as recent complaint because Shobna did not give evidence at the trial. It was said that Shobna is currently overseas.
48. However, Shobna’s friend Moreen (PW2) gave evidence. Moreen herself was a direct recipient of the complaint of sexual nature from the Complainant. Moreen’s evidence would be admissible to test the consistency of the Complainant if the Court could accept it as a ‘recent complaint’ despite it having been made approximately nine months after the alleged offences (According to Moreen’s witness statement she had received the complaint in June 2021, not in January 2021 as she said in her evidence). The Complainant explained why he did not complain immediately to anybody. In view of the reasonable explanation provided for the delay, the complaint should be treated as a recent complaint.
49. According to the previous statement given on 30 June 2021, Moreen had confronted the Complainant in June 2021 after she heard from Shobna about the alleged offences. In June 2021, the Complainant had told Moreen about the Accused taking video of him while bathing naked and threatening to post it on social media if he did not sleep with the Accused. Both Moreen and Complainant were consistent on this complaint.
50. Upon receiving the complaint, Moreen had confronted the Accused and asked about the videos on his phone. The Accused confirmed that Moreen confronted him about the videos. He had even given his phone to Moreen for examination in front of his mother.

That examination had been done nine months after the alleged incident. Nothing relevant was found on the phone.

51. According to Moreen, the Accused had admitted making the video but denied having a video on his phone. The Accused denied taking any videos of the Complainant. That's how the matter ended up with the police. The Cybercrime Unit had taken the phone for forensic examination. But anything extracted from the phone was produced in evidence.
52. However, the fact that Moreen had confronted the Accused about the video followed by the police taking the Accused's phone confirms that the Complainant had made a complaint to Moreen about the videos and the blackmail. The fact that the alleged videos were no longer in existence in the Accused's phone does not conclude that the Accused never made those videos. They could have been deleted in no time although no suggestion to that effect was made by the Prosecution. Therefore, the Defence argument that the alleged videos are fatal to the Prosecution's case is not tenable.
53. I observed the demeanour of the Complainant. He was straightforward. His evidence is not materially inconsistent with his previous statement to police. He is naïve and his appearance confirmed that he would not have been smart and brave enough to challenge the authority of the Accused in the alleged sexual encounter. Moreen's evidence which I accept supports the Complainant's evidence. I am satisfied that the Complainant told the truth in Court.
54. The Defence evidence is not appealing to me. The Accused's denial appears to be self-serving. He had treated the Complainant like a younger brother. There had been no animosity between the Complainant's family and the Accused. The Accused has no idea why the Complainant would want to make-up series of allegations against him. He even agreed that the Complainant would not fabricate events that allegedly took place on more than one instance.
55. Nasian is the Accused's mother and not an independent witness. She demonstrated her determination to save her son. She was not happy that Moreen brought the Complainant home. She however confirmed that the Complainant was a very obedient boy. Her evidence does not negate the version of events of the Prosecution's case.

56. I reject the evidence for the Defence.
57. There is no dispute as to the identity of the Accused. The Complainant said that the Accused penetrated his anus with the Accused's penis on more than one occasion between the 01 September 2020 and 30 May 2021. The physical element of Rape contrary to Section 207(1) and (2) (a) of the Crimes Act 2009 is satisfied. The Complainant also said the Accused penetrated his mouth with the Accused's penis on more than one occasion between the 01 September 2020 and 30 May 2021. The physical element of Rape contrary to Section 207(1) and (2)(c) of the Crimes Act 2009 is also satisfied.
58. As I said, the term consent means consent freely and voluntarily given by a person with the necessary mental capacity to give the consent. The Accused had used the Complainant's nude videos and threatened to post them on social media to submit the Complainant and get his consent for the alleged sexual acts. A consent obtained by force or threat or intimidation etc. will not be considered as consent freely and voluntarily given. The Complainant had not offered much physical resistance because he was in fear of being blackmailed and killed. The submission without physical resistance by a person to an act of another person shall not alone constitute consent. The third element of Rape as charged on Counts 1 and 2 is satisfied.
59. 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. The Accused knew that the Complainant submitted himself to the sexual acts because he had threatened to post the Complainant's nude videos on social media. The conduct of the Complainant also sent a message to the Accused that he was not consenting to the alleged sexual acts. The fourth element of Rape as charged on Counts 1 and 2 is also satisfied.
60. The Accused without lawful excuse threatened to post the nude videos of the Complainant on social media to injure the reputation of the Complainant. The offence of Criminal Intimidation contrary to Section 375(1) (a) (i) and (ii) of the Crimes Act as charged on Count 3 is made out. The Accused also threatened to kill the Complainant. The Criminal

Intimidation contrary to Section 375(2)(a) of the Crimes Act as charged on Count 4 is also made out.

61. The Prosecution proved counts 1, 2, 3 and 4 beyond a reasonable doubt. I find the Accused guilty on each count. The Accused is convicted accordingly.



Aruna Aluthge

Judge

6 November 2025

At Lautoka

Solicitors:

Office of Director of Public Prosecutions for State

JK Singh Lawyers for Defence