

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO: HAC 117 OF 2023**

**STATE**

**v**

**ROMIT PARSHOTTAM aka ROMIT MEGHJI**

Counsel: Mr J. Nasa with Ms S. Prakash for State

Mr S.R. Ram with Mr N.R. Padarath, Ms Y. Sagar and Mr D. Patel  
for Defence

Dates of Hearing: 6, 7 October 2025

Dates of Closing Submissions: 22, 24 October 2025

Date of Judgment: 27 November 2025

**JUDGMENT**

(Marital Rape-Complete Denial-*alibi*-Corroboration-Recent Complaint-Demeanour-Propensity Evidence-  
Abusive History-Infidelity- Electronic Evidence)

**Introduction**

1. The Accused and the Complainant had been in a spousal relationship for over two decades and were still in that relationship when the rape allegation arose. Historically, sexual

intercourse within marriage was regarded as a right of spouses<sup>1</sup>. Proving a spousal rape allegation would be difficult because consent is commonly advanced as a defence. In this case, however, the Accused has not advanced consent as a defence. He completely denies that any sexual intercourse occurred, let alone forceful sexual intercourse. A complete denial of the alleged sexual intercourse means the Accused is putting the Prosecution to the test of proving, beyond a reasonable doubt, that the sexual act occurred at all. The Defence also raises an *alibi* and a narrative that the rape allegation was fabricated.

#### Information

2. The Accused is charged with one count of Rape on the following information filed by the Office of the Director of Public Prosecutions (ODPP):

#### *Statement of Offence*

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

#### *Particulars of Offence*

**ROMIT PARSHOTTAM**, on the 04th day of December, 2022, at Lautoka in the Western Division, inserted his penis into the vagina of **DEEPTI RANIGA**, without her consent.

3. The Accused pleaded 'not guilty' to the charge. At the ensuing trial, the Prosecution presented the evidence of the Complainant and her son, Jay Parshottam. At the close of the Prosecution's case, the Accused was put to his defence because there was *prima facie* evidence to maintain the charge. Upon his rights in his defence being explained, the Accused elected to give evidence. He also called two witnesses.

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<sup>1</sup> Historically, marriage was viewed in many legal systems as implying a wife's ongoing consent to sexual intercourse, a notion that, while largely abolished in law, can still influence social and judicial attitudes. In English common law, Anglo America and the British Commonwealth, the very concept of marital rape was treated as an impossibility. The principle was framed as an exemption to the law of rape in an English courtroom in *R v Clarence* (1888) 22 QBD 23, but it was not overturned until 1991 by the House of Lords in the case of *R v R* [1991] UKHL12 (23 October 1991), where it was described as an anachronistic and offensive legal fiction <http://www.bailii.org/uk/cases/UKHL/1991/12.html>;

Offensive legal fiction <http://www.bailii.org/uk/cases/UKHL/1991/12.html>

4. At the end of the trial, the Counsel from both sides tendered helpful closing submissions for which I am grateful. Having carefully considered the evidence and the submissions, I now proceed to pronounce my judgment as follows.

#### Burden of Proof

5. The Prosecution bears the legal burden to prove all the elements of the offence. That burden never shifts to the Defence at any stage of the trial. The Prosecution must discharge the burden of proof beyond reasonable doubt. The Defence is under no obligation to prove the Accused's innocence or prove anything at all.

#### Elements of the Offence

6. The Accused is charged with Rape contrary to Section 207 (1) and (2)(a) of the Crimes Act 2009 (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. In the context of this case, carnal knowledge means vaginal sexual intercourse. The Prosecution alleges that the Accused penetrated the vagina of the Complainant with his penis without her consent.
7. 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, threat, or intimidation, etc. will not be considered as consent freely and voluntarily given.
8. 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.
9. I shall now summarise the salient parts of the evidence led in this trial.

## Summary of Evidence

### Evidence for Prosecution

#### PW1 Deepti Satish Raniga (Deepti) -The Complainant

10. Currently, Deepti is 45 years old. She has been residing in Simla, Lautoka, ever since she got married to Romit Parshottam Meghji (Romit) in 2001. They have one child named Jay Parshottam Meghji (Jay), who is 22 years old. She is a citizen of Australia. She is currently overstaying in Fiji because her exemption visa has not been processed.
11. On 3 December 2022, she was still awake after midnight waiting for Romit to come home. He had gone for the election campaign and then to a party at Republik Night Club (Republik) at Sofitel Denarau with his cousin (Sanam), who had come from overseas.
12. Romit returned home just after 3 am (on 4 December 2022). When the alarm went off at 3.16 am, she got the notification on her phone to indicate that Romit had come home. Romit came upstairs to the master bedroom where she was, and he opened the door. [She described the layout of the house, referring to the photographic booklet (PE1) she tendered]. She was sitting on the bed in an upright position fully naked with a blanket on her. Because she is a chronic asthmatic, she usually sleeps naked as it makes her breathe more easily.
13. As soon as Romit entered the room, he said in Gujarati language, "*Jagal Che*" (meaning 'You're awake'). In a very angry voice he then said "*What are you waiting for? I.. know what you're awake for...*" (pointing to his penis), "*You want this? Huh, you want a fuck? Is that why you're awake? What happened? It's been so many months; you couldn't find someone to fuck you?*" She said "*I'm not like you, Romit. I can't just go and fuck anyone*".
14. Romit got angrier and started walking around the bed. He approached her saying "*Aha, aha, okay, okay, you want to fuck, huh? I'm going to give it to you now.*" He started ripping his clothes off and climbed onto the bed. He was fully drunk and smelling of alcohol. When he came towards her, her first instinct was how she could protect her head. She put her hands behind her head and told him "*Romit, no, please, don't hit my head, I'll go blind. You know, the doctors told you.*"

15. Romit pinned her to that headboard using his full weight, trying to put her down onto the bed. She was trying to get away from him kicking him off. She couldn't move because of his weight. He managed to pin her down on the bed. Then he inserted his penis into her vagina for about a minute and kept thrusting himself on her hard saying *“take it, yeah, take it, you wanted this, right?”* She was screaming. It was like he was punishing her. His whole body was on her. She couldn't kick him off because he was fully inside. He ejaculated inside her. He then turned over and fell asleep like he had been knocked out. Nobody else was home at that time. Her son Jay was in Australia.
16. She was still in shock. She got out of bed and went into the shower. She cried and scrubbed herself like crazy as she felt dirty that he slept with her and came inside her. He had been sleeping with other women. She asked herself- *who did he sleep with before coming and doing this to her? Was he going to pass something on to her after catching his infidelity?*
17. After having a shower, she crawled back into bed and slept next to him, trying not to make any noise to wake him. She went back to the same bed because her room was the cleanest in the house. She got scared that he would notice she was not there. She didn't want to trigger him and make him madder.
18. When she woke up in the morning, Romit pretended like nothing happened. She also stayed calm and pretended nothing happened. She did not raise the matter with him because she did not want to make him angrier. She cleaned the house, made food, and carried on with the usual household routine a woman does.
19. After midday, (on 4 December 2022), she texted her son Jay on Viber and informed him about everything that Romit did to her – that he came drunk; hit her; and forced himself on her, like forcefully had sex with her (*“jabarastik khare che”*). She messaged Jay the screenshot of the time Romit came home. Jay was not happy and asked if she had protected her head. She also told her mother on the same day. Her mother said *“You know, it happens a lot in our community. He's your husband. You don't worry, everything will be okay”*. Her parents did not want her to go back to make their marriage work. But she wanted to save the marriage.

20. Deepti then described what she called an “on and off abusive relationship” that made them sleep in separate rooms. Since September 2022, she stopped sleeping and having sex with Romit after he was caught on live CCTV footage bringing a girl home in her car to sleep with him. He confessed to her that he brought a prostitute nurse. She thought it was his secretary Eesha, who had been breaking up their marriage. She was in Brisbane at that time having suffered a heart attack. She could not take the stress when she learnt that Romit was bringing other women into her bed instead of being by her side. She sent the footage to his cousin and called the neighbor Nicole to stop the car.
21. She described an incident where she was assaulted after a holy function held in the Marriott Hotel. His secretary (Eesha) happened to be in that same hotel. There was an argument about Eesha being with him every time they checked into a hotel. Romit got mad and beat her badly. When she reached home, she took photos of all the bruising on her chest, arms, and all the blood marks.
22. A few years before the alleged rape, she went for her eye testing at OPSM at Garden City in Brisbane. She was told that her eyesight was declining quite fast. Romit was sitting outside the room. The doctor, based on the test results, suspected that she had been battered and said “*Is your husband abusive? You don't have to be afraid, tell me, the AFP are outside, they will take him away right now*”. She did not want to tell anyone the truth. In Gujarati families, anything that happens stays in the house. She said to the doctor that her husband didn't do anything.
23. After the incident on 4 December 2022, Jay came home after finishing his exam. Romit packed his bag and left the house on 23 December 2022, saying “*I don't want to live with you anymore*”. Romit said he's moving into his parents' house. She did not want to leave the house because she wanted to keep her marriage intact for her and her son, and she had nowhere else to go. Financially, she was dependent on him.
24. After leaving the house, Romit was calling and threatening her to leave his house saying that he no longer wanted her. She received a letter from Romit's lawyer asking her to leave the house. After 22 years of marriage, she had nowhere to go. Jay had left for the Gold Coast,

and she was scared of living alone. She made up her mind to file a DVRO<sup>2</sup> because she was terrified when Romit was calling her and telling her to leave the house.

25. In January 2023, she applied for a DVRO to protect herself. Messrs Iqbal Khan & Associates assisted her in filing the DVRO application. They wanted to know the most recent form of abuse. She told the incident on the bed in December. Mr Khan explained that it's marital rape. Mr Khan told her that marital rape had to go down on the application for DVRO because it is a serious offence, and to protect her the police would need to know that he (Romit) is violent. She said Romit is her husband. Mr Iqbal Khan advised her to file DVRO if she wanted to feel safe and before Romit locks her out of the house.
26. When she went to the police station, Officer Shanel took her into a room and wanted her to give full details of the most recent form of violence. She said she "...*just wanted a DVRO*". But the said officer needed to put everything on record of what Romit had done to her. She gave a detailed statement to police on 30 January 2023.
27. Deepti then explained why she was late in reporting. She didn't report the matter to the police straight after it occurred because her mother told her that it was not a big deal; it happened to everybody; she had never gone to the police before; and the police were Romit's friends. When travelling to Suva, Romit would speed like crazy, driving at 160kmph or 180kmph, and the police officers would wave and salute him. They wouldn't stop him. They would later come and pick up cartons of beer for their functions.
28. Under cross-examination, Deepti admitted that she gave the statement to the police on 30 January 2023 after receiving legal advice, and in this statement she made no mention of her son Jay and her mother. She agreed telling the police that the 'whole incident' happened in one minute. She explained the 'incident' was about him having sex with her. Romit entered the house at 3.16 am and she was not sure how much time it took from when he entered the house to the time she finished the shower. She admitted that the spare room Romit used to sleep in was not depicted in the photographic booklet. She did mention to the police about the spare room, but not sure if she showed it to them.

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<sup>2</sup> Domestic Violence Restraining Order

29. She arrived in Fiji at about 5 am on 3 December 2022. On the same day, Romit came from Samoa and landed in the afternoon. Romit did ask her if she could join him in attending the party with Sanam on the same day at Republik, but she declined because she was a bit jetlagged and needed to rest for the upcoming functions.
30. She did tell the police about the alarm that went off at 3.16 am and the notification she got on her phone contemporaneously. The police did not take the photographs of the alarm. She did inform the police that there were cameras in her house. She had called IT staff Noman Patel and requested for his help in accessing the footage of Romit taking a girl home as she could not access the footage herself. But she did not bother to take the footage as at 3-4 December 2022.
31. On the night of 4 December 2022, she was awake waiting for Romit to come home. Romit messaged her, roughly after 1 am, saying that he was on his way home. She still has that message on her phone. When she was shown the screenshot of the text message, allegedly sent at 3.41 am, which was disclosed to the Prosecution by the Defence (DE3), she admitted only the message "*I am on my way*" and denied the time recorded on it to be the correct time she received it.
32. She admitted communicating with Romit as per the disappearing messages that followed. She admitted that the text message (DE3) was shown to her by the police way back in 2023. She told the police that the time in the message was incorrect. She showed the Viber message on her phone to the ODPP and questioned how it was altered. But she did not go to the police and record a statement to that effect. She was told by the ODPP about an *alibi* witness by the name of Riyaz.
33. Deepti admitted all the Viber messages exchanged between them after 4 December 2023: the prescription sent on 5 December 2022; the message - "*Can you bring hairspray, when you come home baby?*"; the screenshot of the customer complaint on 10 December 2022; the message sent from upstairs on 14 December 2022 inquiring whether he could make shisha for her; the message sent on 15 December 2022, advising him to use the key to open the room door as she had locked it for safety. On 17 December 2022, she messaged asking him to bring some gastric tablets ("*Somach*"). On 20 December 2022, she messaged "*why*

*are you talking so roughly with me? I'm doing everything for you. Come home to good home. Just look at the one I've sent you".*

34. On 31 December 2022, she admitted writing the following to ignite love in him after he had left her on 23 December 2022:

*Babe, today is the last day of 2022. I want to thank you for being a good father to Jay and a good husband. For always looking after us and keeping us safe, from making us laugh using your crazy ways and crazy faces. Even for my morning coffees [coffee cup emoji] that you gave me that was my most special start to every day and I look forward to you every morning having a coffee surprise and how special you make me feel starting my day off right with your love [Heart Emoji]. I thank God daily for you and everything you do for us. Thank you for everything babe, I love you always, always have, always will you are my [heart emoji].*

35. On 31 December 2022, she admitted sending him a video of a love song they used to listen to together.
36. After she got the heart attack in August 2022, she saw a doctor in Fiji. Romit was crying when Romit heard the doctor say on the phone about the serious condition she was in. Soon thereafter, she flew to Brisbane for further treatments where she was admitted into the heart department in Greenslopes Hospital. Part of the medical bills were paid by Romit when creditors were coming after her.
37. Even before September 2022, she had heard a lot of stories of Romit's infidelity. She admitted stating to the police that Romit confessed to sleeping with many women since 2012. In June or July 2022, at her father-in-law's birthday party, Jay had seen Eesha kissing his dad. But she believed Romit's words until he was caught on the CCTV footage with a girl in September 2022.
38. She admitted pulling Romit from Eesha at the Hive nightclub. She has a video of Eesha assaulting her in the club. She admitted living a lavish life which Romit financed, buying expensive things like Louis Vuitton bags and spending more than \$10,000 in tours to Australia. After the December incident, everything was cut off. She went to Court asking for daily expenses like medicine etc.

39. Deepti admitted approaching one Sanjay Pala in January 2022 to reconcile with Romit. In a meeting arranged by Sanjay Pala at her in-law's place, Romit refused outright to be with her. When Romit came home with Sanjay Pala to get his things from her room, she was told to go back to Australia because he didn't want her anymore.
40. After Romit left home on 23 January 2022, she went to her in-law's house with Jay at night to be locked out of the house. Her mother-in-law said to her husband not to open the door because Romit had decided that he did not want them anymore. Although she wanted to get back with him and live with him in his house, she finally realized that this was not going to happen. She then, on 30 January 2022, made the complaint and applied for a DVRO so that she could remain safely in the house. She got court orders in her favour to stay in the house and stop Romit from travelling overseas. She named Eesha in that application. He also threatened her that her parents won't even find her body to be cremated if she revealed the videos of him with the girls.
41. She admitted that Romit did not go to Eesha after they were separated but married a different woman named Falguni Mehta, against whom she had also applied for a DVRO, which was dismissed. She admitted talking to other people, including his cousin Mira about her family dispute after the marriage broke down. She denied having told Ashika Rao that she made up a rape allegation to make her case stronger. She was not sure if she had shared her secret details about her marriage with Ashika Rao, who was not a close friend.
42. She admitted that Riaz Imtiaz Ali (Riyaz) used to drive them when they went out for night drinking parties. She admitted seeing Riyaz's statement. She confirmed that the photograph showing Romit and Sanam had been taken at 12.59 am at Republik. She admitted sending a text message (DE3) to Sanam on 4 December 2022 at 3.47 pm. She admitted attending a wedding with Romit two days after the alleged rape incident and admitted the photograph (DE2) taken at the wedding with Romit. The photograph does not show any bruises on her arms because they were hidden on a side.
43. She spent most of her adult life in Australia where she got her high school education, which included sexual violence and reporting sexual violence. She admitted that she didn't need a

lawyer to tell her that there is a thing called 'marital rape'. She did not complain about domestic violence to Australian Federal Police because she still wanted to save her marriage.

44. Romit was not sleeping in the same room as her but that night he did. He refused to sign her exemption visa, which had expired in September 2022.

PW2 - Jay Parshottam (Jay)

45. Jay is the son of Deepti and Romit. He is studying at Bond University, Gold Coast. He resided with her mother at Simla, until he moved to Australia for studies in 2022. He stopped studying in 2023 when his parent's divorce led to lack of financial support for his university fees.
46. On 4 December 2022, he was at his cousin's house in Gold Coast. Just around midday, his mother called on Viber and informed that his father had hit her again and forced himself onto her. During the phone call, she was uncontrollable, emotional and crying a lot. He was very close to her mother since the beginning. He was extremely upset and became very emotional.
47. He later returned to Fiji as his university ended. He did not confront his father straight away about what he heard because it was just a private matter that his mother had told him about.
48. The relationship between his parents at the start was very loving, but turned abusive in later years, including verbal and physical abuse. The police did not directly contact him about the matter. In September 2023, he indicated his intention to give evidence on the request of his mother. He wanted the police to hear his side of the story. Accordingly, he recorded a statement on 19 September 2023.
49. Under cross-examination, Jay admitted stating to police that *"I can recall sometimes in December last year, 2023. I can't recall the date. I need some time to think"*. After the statement was given, the date was checked. It was a very traumatizing phone call to receive when he was in the gym with his cousin. After giving the statement, it struck his memory that the exact date was 4 December because he had a lot of memories of that day. He admitted that his father is paying for his fees and the payment was stuck because he had failed some subjects when his parents were splitting up.

50. On 9 December of 2022, he had come to Fiji after the exams. He always wanted to do what was right. His mother did not tell him that she was raped. She just said he (his father) forced himself onto her. He did not have a full and clear understanding of what actually happened.
51. Under re-examination by the State, Jay said that he checked his photos on the phone and later found the time stamp that showed it was 4 December 2022.

#### Evidence for Defence

##### DW1 - Romit Parshottam (Romit)

52. On 3 December 2022, Romit came back from Samoa around 5 pm, and got home (1 Karawa Place, Simla) around 6.10 pm. He quickly changed and first went to the election rally in Shirley Park and then to Field 40. He got home around 8 pm, and then left for Nadi to meet his cousin (Sanam Raniga), who had arrived from Auckland. His ex-wife Deepti was supposed to go with him but she did not want to join because she was tired.
53. Riyaz (Riyaz) drove him to Nadi in his new BMW X7. Riyaz used to be his driver whenever they went out. He took Riyaz because he was tired after a long flight and in case he had drinks, he would not drive. First, he went to Bulabard in Wailoaloa Beach to meet some of his friends. He then went to Republik night club at Sofitel Denarau where he met his cousin, Sanam and friends. He would have had a few glasses of vodka and soda. They were there until it closed around 3 am. Riyaz was waiting for him at the lobby outside the Republik.
54. Once the club was closed, they dropped Sanam and her partner at the Hilton. When they left Nadi, he messaged Deepti on his way at 3.41 am to inform her that he was on his way home. He recognised the screenshot of the text message from his phone timestamped at 3.41 am. He took out the screenshot to be attached to the affidavit when the DVRO with a rape allegation was served on him in 2023. The text message was tendered as DE3. He would have sent it as soon as he left Denarau or near the airport. It took probably around 45 minutes to arrive in Lautoka. He dropped off his driver, Riyaz at his house near Girmitt Centre and then reached home after less than 5 minutes. He would have arrived home between 4.15 am to 4.30 am.

55. As soon he got home, he went straight to his room upstairs. He did not press any alarm when he arrived. The keys are usually kept behind the hallway. He would not recall if the room door was locked or not, but usually it is locked. There are cameras in his house. He went into the room and turned the lights on. He then went to the shower. Deepti was awake and lying on the bed, probably watching TV. He did not say anything.
56. After the shower, he went on the bed. He just said he had a good night with the cousins and needed to sleep because he had to go to another rally in the morning. Nothing happened before going to sleep. He denied having an argument and having a forceful sexual intercourse with Deepti. When he woke up in the morning around 10 am, Deepti was already awake. She was downstairs doing her normal work and arranging lunch.
57. Romit denied that he had stopped sleeping/ having sex with Deepti since September 2022 and that he was sleeping in a different room. He slept with Deepti, but whenever they had arguments, he used to sleep in another room. They often had arguments, but they were normal arguments that happen in marriages. He denied hitting her. She didn't like who he was hanging out with. She was always questioning about his travels and communicating with his family.
58. After the incident on 4 December 2022, they communicated with each other as usual and exchanged calls and Viber messages. He recognised the screenshots of the text messages exchanged between them from 5 December 2022 till 31 December 2022. He tendered them marked as DE2.
59. After they had physically separated on 23 December 2022, in a meeting held at his parents' house, an attempt was made to reconcile. At this meeting, the Accused specifically stated that he needed to take a break from the marriage. He asked Deepti to move out of the house and go back to Brisbane. An email was drafted in this regard by himself and Sanjay Pala and forwarded to Deepti's brother. The DVRO came to him around 31 January 2023.
60. Under cross-examination, Romit said that he met Deepti through online chat and married her after a love affair. On 3 December 2022, upon his return to Fiji from Apia, he went to Shirley Park around 6.10 pm to attend an election rally where he met Riyaz. Prior to 4.30 pm, he

could not have been at the rally. Riyaz was not an employee of PMeghji. Riyaz got his own taxi. Riyaz was loyal to him and anyone whom he drives. He would give money to Riyaz for driving services.

61. Romit is the Director for PMeghji Group of Companies. Eesha was a friend and an employee of one of his companies for more than a decade. He denied having been in an extramarital affair with Eesha. He admitted drinking with Eesha and her friends at Republik and Hive nightclubs. He agreed that Deepti would occasionally confront Eesha at social encounters. Deepti always blamed him and was suspicious of an affair with any girl whom he spoke to.
62. Romit admitted that his family went to Marriott for a holy function in 2021 where Eesha also had a room booked for her. He admitted that Deepti confronted him as to Eesha's presence at the Marriott. He denied that he got angry and brutally beat up Deepti to the extent of her sustaining bruises. He denied that his son, Jay, had confronted him about that incident. He wouldn't recall if he had accompanied Deepti to an eye doctor in Brisbane. He denied having been made aware that Deepti was suffering from an eye problem as a result of possible concussion after being assaulted. He admitted bringing a girlfriend home when Deepti was away in Brisbane.

DW2 - Riyaz Imtiaz Ali (Riyaz)

63. Riyaz is a taxi driver. He used to drive Romit's vehicles whenever his family went clubbing or restaurant dinners. They used to pay him \$100. On 3 December 2022, Romit came around 8 or 9 pm and picked him up. They went to Wailoaloa Beach where Romit had his dinner. From there they went to Sofitel. He dropped Romit and was waiting at the lounge. When the nightclub closed at 3 am, he drove Romit and two of his family members to Hilton. After dropping Romit's relatives, they came back home in Lautoka. He called his wife to open the gate around 4.15 am. After dropping Riyaz at his home, Romit drove his BMW home. Romit was not that drunk by that time.
64. Under cross-examination, Riyaz said that he had met Romit at Field 40 rally around 6.30 pm, where Romit informed him that he (Romit) would call him. He went to Shirley Park rally around 4.30 pm. He could not recall the exact time. It was still daylight. He gave a

statement to police on 29 July 2024. The police were speaking to him in Hindi. After recording his statement, it was read back to him in Hindi. The statement had been recorded in English. He just signed it. When a statement was shown to him, Riyaz identified his signature and said he could not read English.

65. He agreed that \$100 is a lot of money for a job as a taxi driver. That is why whenever Romit calls him, he would make himself available for Romit. He does jobs for many businessmen, not only for Romit. Romit trusts him as a taxi driver. That's why Romit gave him his brand-new BMW to drive. He did not make himself available immediately after receiving a call from police because he was in Suva. He denied taking time to speak to Romit.

DW3 - Ashika Rao (Ashika)

66. Ashika had known Deepti since 2018-19 through her sister. She again met Deepti at a wedding in 2021 and became good friends. Deepti invited her to her place for drinks after she returned from Singapore in October 2022. They were both having marriage problems. She continued the friendship with Deepti till 2023. In 2023, they had a phone conversation about the DVRO and the rape case pending against Romit. Deepti said in Hindi that "*Romit didn't do it, she had no other option, and she lied about the rape*". She was shocked after hearing what Deepti said. They did continue the conversation a few times after that. In December 2023, she stopped talking to Deepti completely.
67. Ashika described how she ended up in Court to give evidence. When Romit's case was ongoing, she shared what Deepti said with two of her friends namely Marshall and Alvin. Alvin knew Romit and had told Romit of what he (Alvin) had heard from her. She was then contacted by a lawyer named Niven and had a discussion.
68. Under cross-examination, Ashika said she was qualified to be a primary teacher but is currently running a cake business. Teachers are obliged to report sexual offences that comes to their knowledge. She did not approach the police because she had no evidence to prove what she heard from Deepti. She didn't think it was crucial. She didn't know that her statement was needed.

## Evaluation/ Analysis

69. It is the Prosecution's case that the Accused penetrated the Complainant's vagina without her consent shortly after he arrived home at 3.16 am on 4 December 2022. The Prosecution substantially, if not entirely, relies on the Complainant's evidence. It called PW 2 to support the Complainant's evidence that she had made a complaint to her son immediately after the alleged rape.
70. The Defence vehemently denies the allegation and maintained that the Complainant concocted the allegation to gain leverage during an acrimonious marital breakdown fueled by jealousy and vindictiveness. It advanced an *alibi* and asserted that the Accused was still on his way from Denarau at the time of the alleged rape.
71. Like in many rape cases, there is no direct evidence in the present case other than that presented by the Complainant, which the Prosecution claims to be the truth. The Defence argues that the charge entirely rests on an uncorroborated allegation, unsupported by any forensic, medical or independent evidence.
72. Under Fiji law, specifically Section 129 of the Criminal Procedure Act 2009, no corroboration<sup>3</sup> of the complainant's evidence is necessary to prove a charge of a sexual nature. A person can be convicted of Rape based on the uncorroborated evidence of the complainant alone<sup>4</sup>. The primary goal of abolishing the rule on corroboration was to place victims of sexual offenses on an equal footing with victims of other crimes, such as assault or robbery<sup>5</sup>.

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<sup>3</sup>In the context of sexual offences, corroboration refers to independent evidence that confirms or supports the complainant's testimony in a material particular, making it more probable that the crime occurred and that the accused committed it.

<sup>4</sup> The corroboration requirement stemmed from an archaic and discredited belief, articulated by Sir Matthew Hale in the 17th century, that "rape is an accusation easily made and hard to be proved, and harder to be defended by the party accused". This reflected a stereotype that women and girls were prone to lie about sexual assault. The removal of the rule aimed to eliminate this inherent prejudice from the justice system.

<sup>5</sup> In most other cases, no common law rule required corroboration; the credibility of the single witness was a matter for the jury or judge to assess

73. The removal of the corroboration requirement did not alter the fundamental standard of proof in criminal trials, which is proof beyond a reasonable doubt. The Prosecution still bears the burden of convincing the Court that the Complainant told the truth and prove beyond a reasonable doubt that the Accused penetrated the Complainant's vagina with his penis, and that the penetration was unconsented.
74. In the absence of any forensic or medical evidence, the Court should take into account the demeanour of the Complainant and look for supporting evidence to satisfy itself that the Complainant told the truth in Court. In gauging the trustworthiness of the Complainant's evidence, all the circumstances, particularly her conduct before, at the time and after the alleged rape, should be closely examined.
75. In coming to conclusions about the Complainant's conduct, particular caution has been exercised to avoid generalisations about how a genuine victim should act or respond. Rather, the Court finds facts based on objectively verifiable evidence, not on subjective assumptions about typical victim behaviour. The analysis focuses on facts, contradictions, and inconsistencies that make the core allegation implausible, rather than on whether the Complainant's actions align with what is often assumed of a rape victim.

#### The Complainant's Conduct before the Alleged Rape

76. Apart from the Complainant's testimony as to the Accused's alleged 'on and off' abusive relationship in the past<sup>6</sup> and her claim that they slept in separate rooms after the confirmation of his infidelity in September 2022<sup>7</sup>, there is no evidence suggesting that the Complainant and the Accused were in a hostile relationship immediately before the alleged rape.
77. It is undisputed that both of them travelled home on the 3 December 2022 from two different countries. Upon their arrival, they were to attend a social gathering in Denarau on the same night. The Accused invited the Complainant to join him, but she declined only because she was jetlagged. After socialising in Denarau, the Accused on his way messaged the Complainant on her Viber, stating "*I am on my way home*". She kept awake even after

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<sup>6</sup> Vide discussion in paragraph 115

<sup>7</sup> Vide discussion in paragraph 121

midnight awaiting the Accused's arrival. Apart from the conflict as to the time she had received the said Viber message, everything else in her narrative was undisputed suggesting that they were in a good matrimonial relationship during that time, which the Defence argues to be inherently inconsistent with a rape allegation<sup>8</sup>.

#### The Complainant's Conduct during the Alleged Rape

78. Polarization of the narrative begins with what transpired in the bedroom where she alleges she was raped. The crucial issue is whether the alleged sexual intercourse took place at all. On this central question, the Prosecution bears the burden of proving both the fact of penetration and the absence of consent beyond reasonable doubt.
79. The Complainant's account is that the alleged forced act of intercourse occurred immediately upon the Accused entering the room and asking in a very angry voice *"You're awake"? What are you waiting for?"*. She admits receiving the text messages from the Accused on his way. Having communicated *"I am on my way home"*, it is highly unlikely that the Accused was surprised to learn that the Complainant was still awake, prompting him to ask the question *"You're awake"? What are you waiting for?"*.
80. The Complainant said that the Accused was heavily drunk when he entered the room. If what she told is the truth, it may be argued that the alleged conduct of the Accused is consistent with that of a drunk person. However, there is no credible evidence that the Accused was heavily drunk by the time he entered the room.
81. Having admitted that he would have had a few glasses of vodka mixed with soda at the night club, the Accused denies he was heavily drunk. The Accused's conduct before his arrival at home does not suggest that he was heavily drunk. In the photograph taken at 12.59 am at the night club with his cousin (MFI-2), the Accused looks very sober. On the way home, he was

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<sup>8</sup> I acknowledge that the legal premise that a "good matrimonial relationship" is inherently inconsistent with a rape allegation is largely outdated and has been widely challenged in modern legal systems. Consent to marriage or a relationship does not imply a blanket, irrevocable consent to all sexual activity within that relationship. A person has the right to withdraw consent at any time, and sexual intercourse without specific consent, even by a spouse, can constitute rape or sexual assault.

messaging the Complainant to inform her that he was on the way. This is consistent with Riyaz's evidence that the Accused was on his phone and not sleeping on his way, and that the Accused was not drunk when they arrived in Lautoka. The Accused had driven his BMW home safely after dropping Riyaz at his place. I am not convinced that the Accused was heavily drunk.

82. I would agree with the Defence submission that the Complainant's description of the Accused's alleged conduct as being *abrupt and mechanistic* sounds *artificial and rehearsed*. He had texted her courteously from the road. There is no trace of hostility, irritation, or conflict in those communications. Against that background, her evidence that the Accused entered the room and without any exchange, dialogue, or build up immediately became aggressive, and within minutes committed a rape, is inherently implausible.

#### The Complainant's Conduct after the Alleged Rape

83. The Complainant described the alleged assault as a traumatic event, stating she felt "*filthy*" and "*disgusted*". Yet, her conduct immediately following this alleged violation is difficult to reconcile with her testimony. She said that immediately after the assault the Accused knocked out on the bed, and that she went to have a shower. In the shower, she scrubbed herself "*like crazy*" because she felt dirty that he slept with her and came inside her. She was concerned that he would have passed something (disease?) on to her after him sleeping with other women<sup>9</sup>.
84. After taking the shower, she had returned to the bed on which she was allegedly raped and slept next to the alleged rapist. Her explanation was that her bed being the cleanest in the house catered for her asthmatic condition. She also got scared that her absence in the room would "*trigger him more*". Her conduct of voluntarily returning to the bed and sleeping with

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<sup>9</sup> The Complainant's disgust for the Accused on account of his perceived infidelity may not give rise to the only inference that she was distressed after a rape

the person who allegedly just violently raped her is extraordinary and, on the evidence, highly improbable.

85. Furthermore, when the Complainant woke up in the morning, she stayed calm and did not raise the matter with the Accused. She cleaned the house, prepared food and carried on the usual household routine a housewife does. At 3:47 on the same evening, she messaged the Accused's cousin (Sanam) to apologise for her absence at the previous night's social gathering (MFI-2). There is no hint of distress, trauma, or fear in these communications, which occurred hours after the alleged incident. This behavior is inconsistent with the trauma the Complainant herself described in her evidence.
86. According to the Complainant, the Accused had used excessive force and pinned her to the headboard using his full weight. She maintained that she was bruised during the encounter. However, she admitted attending a wedding with the Accused two days after the alleged incident and the photograph that was taken at the wedding (DE-2). That photograph does not suggest that she was traumatised or violently raped two days prior by the man standing next to her. She was full of smiles with the Accused. It does not show any bruising on her hands either. Her explanation that the bruises are not shown because they were on the side is not acceptable. She was wearing a sleeveless blouse and if she had visible bruises on her hands, she would not have attended that wedding wearing a sleeveless blouse to expose her bruises. This photograph does not support her evidence that she had bruises after a forceful sexual intercourse.
87. The Viber messages exchanged between the Complainant and the Accused from 5 December to 31 December 2022 (MFI-1), which I have reproduced in the summary of evidence<sup>10</sup>, are also not consistent with the trauma the Complainant herself described in evidence. The tone of those communications is affectionate, domestic, and routine. It is not compatible with the Complainant's claim of fear, disgust, or emotional devastation she claimed to have experienced.

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<sup>10</sup> Vide paragraph 33

88. It is surprising that the Complainant messaged the Accused at 1:34 am on 15 December 2022, wanting him to unlock the door and come into the same room where she was allegedly raped merely 11 days ago. On 20 December 2022, the Complainant was worried in her text message that the Accused was talking to her so roughly when she was doing everything for him. After the Accused left her on 23 December 2022 and started living with his parents, she continued to text him affectionately. On 31 December 2022, she wrote the most affectionate text<sup>11</sup>. It was written 27 days after the alleged incident. In that she has expressed warmth and feeling of safety with him. I agree with the Defence that her spontaneous declaration of love, gratitude and feeling of safety sit uneasily with the allegation of a violent sexual assault by the same man less than a month earlier.
89. Having heard the evidence of her going through such terrible experience at the hands of the Accused, I am unable to accept her explanation that she was still "*trying to make the marriage work*". There was no suggestion or evidential basis that those affectionate communications were triggered by trauma or psychological disturbance. Conceding that the victims of rape react differently to the trauma of a serious sexual assault, any conclusion that her conduct was caused by psychological disturbance would constitute conjecture.

#### Recent Complaint

90. The recent complaint evidence is admissible as an exception to the rule against hearsay only to show the consistency of the complainant's conduct, and to negative consent in sexual cases<sup>12-13</sup>. It is not evidence of the facts complained of, and it cannot be treated as corroboration<sup>14</sup>. A complaint must refer to material and relevant unlawful sexual conduct by the accused. While it need not describe every detail of the act, it must clearly suggest a sexual

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<sup>11</sup> Vide paragraph 34

<sup>12</sup> *Kory White v R* [1998] UKPC 38; [1999] AC 210

<sup>13</sup> Section 120 of the Criminal Justice Act 2003 in the UK has expanded the "recent complaint" exception, which originally only applied to sexual offenses, to cover all offenses. Evidence of a recent complaint may now be admissible not only to show consistency with the complainant's testimony but also as evidence of the facts stated within the complaint itself. The common law doctrine of "recent complaint" was abolished in Canada in 1983 by amendments to the Criminal Code, specifically by the enactment of section 275.

<sup>14</sup> *Raj v State* [2018] FJHC 7; *Spooner v R* [2004] EWCA Crim 1320

offence. For recent complaint to be admissible, both the complainant and the witness complained to must testify<sup>15</sup>.

91. The common law doctrine of 'recent complaint' is based on the 'historical myth' and outdated assumption that a victim of sexual assault would disclose the violation at the first reasonable opportunity and that a failure to do so made their testimony less credible<sup>16</sup>. The Prosecution rely on this doctrine to prove the consistency of the Complainant's conduct after the alleged offence.
92. The Complainant said that she complained to both her son (Jay) and her mother immediately after the alleged rape. The Complainant's mother did not give evidence to confirm that she received the alleged complaint. The absence of the mother's evidence renders the purported complaint inadmissible.
93. The Complainant said she had "*texted*" Jay and informed everything what his father did to her "*that he came drunk, hit her and forced himself on her, like forcefully had sex with her*". Jay testified that he received a "*phone call*" from his mother around midday on 4 December 2022, during which she told him that the Accused "*hit her again and forced himself on her*".
94. The Complainant's complaint was that the Accused "*forced himself onto her*". Does this complaint necessarily connote that the Complainant was raped or sexually assaulted? Whether it 'necessarily connotes' a specific allegation of sexual assault depends on the exact circumstances and the evidence presented. Jay specifically said that his mother did not tell him that she was raped. He frankly admitted that he did not have a full and clear understanding of what actually happened between his parents. This purported complaint in the context in which it was made could have referred to physical altercation and does not refer to material and relevant unlawful sexual conduct by the Accused. This complaint therefore is not admissible.

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<sup>15</sup> Raj v State [2018] FJHC 7

<sup>16</sup> The common law doctrine of "recent complaint" was abolished in Canada in 1983 by amendments to the Criminal Code, specifically by the enactment of section 275.

95. Even if this complaint is held to be admissible, it lacks credibility because the Complainant has provided inconsistent accounts of events. The Complainant said she texted Jay that she was raped whereas Jay said he received a call (not a text message) from the Complainant. In her statement to the police, the Complainant had not mentioned about her complaining either to her mother or her son. This significant omission renders the subsequent oral testimony highly suspicious, pointing to a recent fabrication or an embellishment to 'bolster a weak case'.
96. Jay is admittedly very close to her mother. Having recorded a belated statement on 19 September 2023, approximately 9 months after the alleged incident, he has apparently come forward to bolster his mother's case. Although he testified about a call received on 4 December 2022, in his statement he had stated "*I can't recall the date. I need some time to think*". If he had a lot of memories of that day and he had the message on his phone as he said for the first time under re-examination<sup>17</sup>, he could have recalled the exact date and told the police straightaway that he received the call on 4 December 2022.
97. For these reasons, I would reject the purported recent complaint evidence adduced by the Prosecution.

The Complaint eventually made to Police

98. The next pertinent question is whether the complaint eventually made to police is genuine. The complaint to the police was made on 30 January 2023, approximately two months after the alleged incident. The Complainant gave three reasons for the delay: her mother told her that "*it's not a big deal*"; she had never gone to police before; and the police are the Accused's friends.
99. Her mother had told her "*you know, it happens a lot in our community. He's your husband. You don't worry, everything will be okay*". Complainant's mother did not give evidence to confirm this evidence. In any event, the courts generally prohibit the introduction of evidence

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<sup>17</sup> In his evidence in chief, Jay said he received a phone call, not a text message

that relies on generalised assumptions. The Complainant's suggestion that her behaviour is explained by an alleged cultural normalisation of such assaults, based on her mother's out-of-court statement, is unreliable, irrelevant, and constitutes an unacceptable introduction of cultural stereotyping into evidence. I agree with the Defence that a specific culture is somehow "ambivalent to rape" is a prejudicial generalisation.

100. The Complainant is an Australian citizen. She spent most of her adult life in Australia where she received high school education, which included sexual violence and reporting sexual violence. She was indeed advised by the eye doctor in Brisbane on how she could react to domestic violence. She admitted that she didn't need a lawyer to tell her that there is a thing called 'marital rape'. She was aware of her rights. Therefore, any perceived 'ignorance' of the law, could not have delayed or prevented her from reporting the alleged abuse.
101. Many cultures have strong *taboos* or stigmas surrounding sexual violence, which can discourage victims from coming forward for fear of being ostracized by their community and family. The Complainant appears to suggest that she belongs to such a culture. She said "*...in Gujarati families, anything that happens stays in the house*". However, she proved herself to be an exception to that culture when she requested her neighbour Nicole to stop the Accused's car when he (Accused) was caught on CCTV bringing a girl home at Karava Place. She in fact admitted talking to other people, including his cousin Mira, about her family dispute after the marriage broke down.
102. Even if the Complainant's evidence that the Accused is friendly with the local traffic police is true, she had ample opportunity to complain to the high-ranking police officers in Suva or any other place.
103. I acknowledge that the victims of rape may delay reporting the crime due to a complex variety of reasons such as fear, shame and guilt, dependency, cultural *taboos* and stigma. When the perpetrator is a family member, the relationship makes reporting more difficult due to fear of upsetting family stability, loss of economic support, or simply not wanting to get a loved one in trouble. However, I am not convinced that the Complainant's delay occurred due to any of those reasons.

104. After the Accused left home on 23 December 2022, she was under no pressure, coercion or influence that could have prevented her from complaining. If fear/distrust of local police or family pressure were truly stopping her, such fear would not explain her conduct of eventually making a complaint to the police at Lautoka on 30 January 2022. Although the Complainant stated she was still trying to make the marriage work for her and her son, I am not convinced on the evidence led in this trial that her relationship with the Accused prevented her from reporting if she had been raped in such a violent manner. The delay lacks reasonable explanation.

#### Demeanour of the Complainant

105. The demeanour can be used to assess a witness's credibility, though its reliability is debated and it is crucial to avoid stereotypes<sup>18</sup>. In the absence of supporting evidence, the Court should be cautious about placing undue weight on demeanour alone, as reactions to trauma vary widely and it cannot displace objectively verified facts<sup>19</sup>. The primary assessment of a witness's truthfulness must come from the content of her testimony and its consistency with other independent evidence.

106. During evidence-in-chief, the Complainant cried continuously while describing her alleged suffering. During cross-examination, she hardly cried and she appeared comfortable. This selective expression of emotions put me on guard against placing much reliance on her demeanour in the face of overwhelming objectively verifiable evidence thus creating reasonable doubt on her credibility.

#### Motive to Fabricate: Vindictiveness and Jealousy

107. The Defence's argument that the Complainant had a clear motive to fabricate the rape allegation, triggered by vindictiveness and jealousy cannot be rejected on evidence. The complaint to the police was made only after reconciliation talks failed and the Accused and

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<sup>18</sup> *Balekana v State* [2024] FJCA105 (4 June 2024)

<sup>19</sup> *Dauvucu v State* [2024] FJCA 108 (30 May 2024)

his lawyers took steps to evict her from the matrimonial home. After reconciliation efforts failed, she made up her mind to file a DVRO application because she was terrified when the Accused was telling her to leave the house. Financially, she was dependent on the Accused. She would have realised that she was going to lose not only the matrimonial home, but also the lavish lifestyle which admittedly included \$10K worth foreign trips and expensive branded stuff like Louis Vuitton handbags.

108. The Complainant's evidence suggests that the initial intention of her approaching the police was not to make an allegation of rape against her husband. When she approached Messrs Iqbal Khan & Associates to file the DVRO application, she was advised to add the rape allegation (that being the latest) to make her case stronger and convince the police that the Accused is violent. She received further instructions to file the DVRO if she wanted to feel safe and before the Accused locks her out of the house. The first detailed complaint was made to the police after receiving this legal advice and the rape allegation was disclosed only when the police officer, Shanel, questioned her. Under these circumstances, the Defence's contention that the allegation was fabricated cannot be rejected.
109. According to the Complainant, she had stopped sleeping with the Accused ever since he was caught on CCTV bringing a girl home in September 2022. However, in her statement to the police, she admitted stating that even before September 2022, she had heard a lot of stories of the Accused's infidelity and him confessing to sleeping with many women since 2012.
110. It seems that the Accused's perceived infidelity had never been a problem for her until it escalated to the point of the Accused bringing other girls into her bed during her absence. Her evidence demonstrates that the main source of her emotional impact was rooted in the specific feelings of jealousy and the fear of losing the marriage and home due to the husband's infidelity. This is evident in her admission that she was more interested in retrieving CCTV footage of her husband bringing home a girl rather than obtaining footage that could confirm her allegation of his arrival at home at 3.16 am on 4 December 2022; she called Nicole to stop the Accused's car when she suspected that the Accused had brought his secretary Eesha to her bed in her absence; the arguments that had erupted at the Marriott Hotel were based on the suspicion that the Accused had booked a room for Eesha; her disgust

for the Accused after the alleged rape was rooted in perceived infidelity; to support her DVRO applications, she not only joined Eesha, the woman she suspected of having an affair with the Accused, but also his new wife after the Accused remarried.

111. The Defence called Ashika Rao (DW3) to establish that the Complainant concocted the allegation of rape against the Accused. Ashika said that in a telephone conversation in 2023, the Complainant admitted that *“Romit didn't do it, she had no other option, and she lied about the rape”*.
112. The Complainant does not deny that Ashika used to be a family friend with whom she would have discussed family problems. Ashika also had family problems. It is natural that women often form strong supportive bonds and find comfort in sharing their experiences, particularly around family issues, when they perceive themselves to be ‘in the same boat’. But the Complainant denies having made an admission to Ashika that she fabricated the rape allegation.
113. The Prosecution challenged Ashika's credibility on the basis that she had made a belated statement only when she was approached by a defence counsel (Niven). It was argued that if Ashika was aware that the Complainant had made up a rape allegation, she would have complained promptly to the authorities because, being a primary school teacher, she was obliged to report sexual offences that comes to her knowledge. Ashika explained that she was no longer a teacher; she didn't think reporting was crucial; and she had no evidence to prove what she heard from the Complainant was true. These explanations for her belated statement are tenable.
114. There is no logic in Prosecution's contention that Ashika is unreliable because she had recorded a belated statement. Even if Ashika was a teacher at that time, she was not obliged to report because she had not received a complaint of sexual offence from a student. The alleged confession relates to making a false complaint, which is an offence. Ashika's friendship with the Complainant at that time would have discouraged her from reporting. She had later severed the friendship with the Complainant, and she would have had no option but to tell the lawyer (Niven) what she heard from the Complainant because it had already

been conveyed to the Accused by his friend Alvin. I have no reason to reject Ashika's evidence. It reinforces the Defence's position that the rape allegation was fabricated.

#### The Abusive History and Infidelity

115. The Prosecution advanced these two narratives concerning the general conduct of the Accused to show that he was likely to have committed the offence (propensity evidence or similar fact evidence)<sup>20</sup>. However, not only did the Prosecution fail to prove those narratives it also did not establish a logical nexus between those narratives and the alleged offence. No documentary evidence to support these allegations had been disclosed to the Defence in advance. When ambushed at trial, oral evidence was allowed to be led in the interests of justice because the Complainant, in her prior statement, had mentioned about a DVRO.
116. The Complainant alleged that the relationship was "*on and off abusive*" citing prior assaults, including one at the Marriott Hotel and others that allegedly caused "*excessive head trauma*." However, no documentary or independent evidence was adduced to support the Complainant's claim that she was battered. Her claim that she was warned by a Brisbane-based eye doctor that she would lose her eyesight if struck again was not supported by medical evidence. She failed to tender any complaint made to the authorities or the photographs which she said she took after being assaulted at the Marriott. Jay, who was attending the holy festival at the Marriott, did not confirm having seen any injuries on the Complainant. Without giving specific details, he made a general statement that the relationship of his parents turned abusive. The Prosecution advanced only the Complainant's uncorroborated narrative to establish a pattern of abuse. In the absence of any objectively verified evidence, these claims cannot support the allegation of physical abuse and its connection to the alleged rape.
117. The Accused denied ever assaulting the Complainant. However, he acknowledged frequent normal arguments in a marriage. Those arguments were a result of the Complainant's suspicions regarding the Accused's associations with the girls and his family relationships.

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<sup>20</sup> Propensity evidence is not admissible if its sole purpose was to show that the accused is of a certain character and acted in conformity with that character. This is because it could lead to a verdict based on prejudice (the jury decides the person is guilty because they are "a bad person") rather than the facts of the case. Such evidence may be admissible for other, non-propensity purposes, like proving motive, opportunity, or intent.

The Complainant's admission that she had an argument with the Accused at the Marriott when she suspected that he had booked a room for Eesha is consistent with his evidence. Those arguments appear to have gradually led to the breakdown of their marriage.

#### Infidelity

118. Generally, evidence of an Accused person's bad character or prior bad acts is inadmissible if its sole purpose is to prove that he had a propensity to commit the offence charged. Having admitted clubbing and socialising with (girl) friends of his staff including Eesha, the Accused denies that he was having extra marital affairs. He does not deny that Eesha was present with him at the holy festival at the Marriott in her capacity as his company secretary. He admits taking a (girl), whom he described as a friend, home when the Complainant was away. There is no credible evidence to substantiate the Accused's alleged infidelity.
119. The narrative based on infidelity is purely intended to portray the Accused as a person of a bad character. Before bad character can be admitted, the Court must be satisfied that the evidence was relevant to an issue at trial. These matters, even if true, are irrelevant to the factual issue before the Court. They do not establish a propensity for sexual violence, nor do they prove any element of the charged offence. Moral prejudice occurs when cases are decided based on the 'kind of person' the accused is perceived to be, rather than on their actions<sup>21</sup>. I agree with the Defence that the Accused's alleged infidelity is not a substitute for proof of rape.

#### Sleeping Separately

120. The Complainant maintained that the Accused had been sleeping in a spare room since September 2022. The Accused denied this. However, he admitted sleeping in a separate room when they had heated arguments. There is no dispute that the Accused slept next to the

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<sup>21</sup> R v Norris, 2020 ONCA 847 (CanLII)

Complainant after the alleged incident of rape. If he used to sleep in a separate room, why he slept with her on 4 December 2022, was not explained.

121. The police had taken photographs of the house and compiled a booklet of the photographs (PE1) that they thought were crucial to the Prosecution's case. There is no reason for them not to photograph the spare room if it were pointed out by the Complainant and not to include those photos in the booklet. It seems that the police had taken no photographs of any spare room or of the pathway leading to it. This omission is significant because the existence, location, and access to the spare room were central to testing the credibility of the allegation.
122. During cross-examination, the Complainant admitted sending a text message to the Accused on 15 December 2022, wanting him to unlock the door and come into the room where she was. On 4 December 2022, the Accused had gone directly to the room where the Complainant was, suggesting that he used to sleep with the Complainant in the same room. When her evidence was challenged, she said that both rooms shared a common entrance. There is no credible evidence that the Accused used to sleep in any spare room for three months prior to the alleged incident. Even if there was a spare room, access to that room was only possible through the main bedroom, directly contradicting the Complainant's version of events.

#### Timeline Conflict and the Defence of Alibi

123. According to the Complainant, the time of the Accused's arrival at home is not a guesswork but based on the time recorded on her phone when the alarm went off. She maintained that the Accused entered the house at 3.16 am after which the alleged rape occurred within minutes. The Accused maintained that he arrived home at about 4.30 am and vehemently denied engaging in any sexual activity with the Complainant around 3.16 am or anytime on the morning of 4 December 2022. Given the *alibi* raised by the Defence, the resolution of this timeline conflict in its favour is crucial to the Prosecution's case.
124. The Complainant's assertion that the Accused's arrival time is based on the phone's alarm time can be a relevant piece of electronic evidence, but its admissibility in court depends on

specific legal requirements. For this type of evidence to be admitted and given weight by a court, the following factors would generally need to be established:

- I. **Authentication and Integrity:** The data must be authenticated, meaning it must be proven to be a true and accurate reflection of the event it claims to represent and that it has not been tampered with or altered. The person presenting the evidence may need to testify to its authenticity.
- II. **Reliability:** The reliability of the phone's timekeeping and alarm function may be scrutinised. An expert witness in digital forensics might be required to validate the origin and integrity of the data from the device's file system or the service provider's records.
- III. **Hearsay (if applicable):** While time stamps are generally considered machine-generated records and may not be hearsay, any accompanying messages or voice recordings might be subject to complex hearsay rules, depending on the jurisdiction and the purpose for which they are introduced.
- IV. **Proper Collection/Chain of Custody:** The method by which the evidence was collected is important. It should be handled in a forensically sound manner to prevent contamination, and an unbroken chain of custody must be maintained and documented to ensure its integrity.

125. Apart from these legal requirements, every person charged with an offence has the right to be informed in advance of the evidence on which the Prosecution intends to rely, and to have reasonable access to that evidence<sup>22</sup> so that the authenticity of its source could be scrutinised. The Prosecution having failed miserably to meet those legal requirements and without ensuring the constitutional right of the Accused, attempted to tender a screenshot allegedly taken from the Complainant's phone to contradict the version of the Defence. The Court disallowed the Prosecution's application in the interests of justice.

126. It is well established that when an *alibi* is raised as a defence, the Prosecution has the burden to disprove it and prove the charge beyond a reasonable doubt. Therefore, it was crucial for the Prosecution to prove beyond reasonable doubt that the Accused entered the house at 3.16 am. By using digital evidence extracted from the CCTV device and the Complainant's phone, the Prosecution could have easily done that. But they did not do that.

127. It was the Complainant's evidence that she did tell the police about the alarm that went off at 3.16 am and the notification she got on her phone; she sent a screenshot of her phone with

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<sup>22</sup> Section 14(2)(e) of the Constitution

the time stamp to Jay; she did inform the police that there are cameras in her house (which she had used to spy on the Accused in September 2022).

128. The disclosures show that the police had not taken the photographs of the alarm and checked the CCTV footage or the Complainant's phone to verify the accuracy of the Complainant's version. If Jay had received a screenshot with a timestamp as he said, he could have told the police about it and presented it to the police to be disclosed. This is a significant evidentiary gap that is fatal to the Prosecution's case.
129. The Accused had maintained his *alibi* since his first interview and given formal notice of *alibi* in March 2023. The Defence had disclosed a screenshot of the Accused's phone to dispute the timeline of the Prosecution's version as to the alleged offence. The police and the ODPP were well aware way back in March 2023 that the Accused is taking up the defence of *alibi* and relying on the screenshot (DE3) from his phone. The Prosecution had ample opportunity to check the authenticity of the screenshot (DE3) and challenge its credibility at the trial, but they failed to do that.
130. The Complainant admitted that the text message disclosed by the Defence (DE3) was shown to her by the police way back in 2023. According to the Complainant, by showing the Viber message on her phone recorded at 1 am to the ODPP, she had told the police that the time recorded in that message was incorrect. She even questioned how it was altered, though she did not record a statement to that effect. If the Complainant is telling the truth, the police and the ODPP have not exercised due diligence and miserably failed in their professional duty. I am not inclined to believe that they would have been so unprofessional and negligent to disregard this crucial piece of evidence, if brought to their attention.
131. The Prosecution argues that the Accused could have shown the Viber message (DE3) on his phone to Court if he were telling the truth. This argument is not valid because the Accused was under no obligation to prove his *alibi* or prove anything at all. In any event, the Accused was never challenged to show his phone to Court<sup>23</sup> so that at least a negative inference

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<sup>23</sup> Compelling an accused to provide access to his personal device and its contents could potentially violate his rights, as the phone may contain incriminating evidence. Generally, authorities need to obtain a valid search warrant or a production order based on probable cause to compel the accused to grant access to their phone's contents. Without such legal process, a court may not have

against his credibility (if permitted under the Constitution) could have been drawn<sup>24</sup>. It was never put to the Accused in cross-examination that the timestamp on the screenshot (DE3) was altered.

132. The Accused is not sure from where he had sent the impugned text message (DE3). He said he would have sent it when he was near Denarau or airport. It was argued that the Accused was uncertain because he had been drinking alcohol. There is no dispute that the Accused consumed alcohol that night. The pertinent question is whether his consumption of alcohol is linked to the alleged offence. No such link is established. I have already found that the Accused was not heavily drunk when he entered the house<sup>25</sup>.
133. It is also argued that the demeanour of the Accused is consistent with his arrogance that the Complainant described him to be. When the cross-examination began, the Accused looked a bit angry and he raised his tone and was squeezing his biceps. He was reacting to the cross-examiner asking things like, "*you take drugs; you bribe the police*" etc. Anybody confronted with such unfounded allegations would obviously be agitated. It doesn't mean the Accused is lying or that he is a rapist.
134. The Prosecution also argued that if the Accused was telling the truth, his evidence could have been corroborated by calling Sanam, his cousin. This argument is misconceived as the Defence is under no obligation to prove the Accused's innocence. Sanam had come from New Zealand to attend a wedding. Absence of Sanam's evidence does not affect the Defence's theory.
135. To bolster the *alibi*, the Defence called Riyaz (DW2). Riyaz confirmed that the Accused was at Republik Nightclub until it was closed at 3 am and, after dropping the Accused's relatives at Hilton- Denarau, they came back home in Lautoka with the Accused around 4.15 am.

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the authority to issue a direct order to "show the phone" in Court. It is typically the responsibility of the challenging party (the prosecution) to issue a formal request, motion, or subpoena for the evidence, rather than the court automatically demanding it.

<sup>24</sup> Protections against self-incrimination may not have been invoked, because the text message (DE3) does not incriminate the accused.

<sup>25</sup> Vide paragraph 81

136. The Complainant admitted that Riyaz's services had been sought in the past to drive her family to the parties. Riyaz's evidence was challenged on the basis that he was biased and inconsistent with his previous statement.
137. Riyaz is an independent taxi driver and not an employee of the Accused. Riyaz had spent the whole night driving the Accused for which he was paid \$100. His admission of being paid \$100 for his service, being given the Accused's brand new BMW to drive and his expression of friendship and loyalty to the Accused do not necessarily suggest that he is biased or dishonest.
138. The objection taken to use Riyaz's alleged previous statement to discredit his evidence was allowed because he did not adopt and own that statement. The prior statement must be the witness's own statement, not a second hand account of what someone else said the witness said. The statement that was put to the witness was one written in English by the officer who recorded it. Riyaz had given his statement in Hindi and it was read back to him in Hindi. He admitted his signature, not the content. Before the Court, there was no certified translation from English to Hindi, the only language Riyaz could read, that was read back to the witness by the officer who recorded it.
139. Since ascertainment of truth is the ultimate purpose of the trial, I had a cursory look at the alleged previous statement of the witness in the interest of justice. I could not find any material inconsistency between that statement and his evidence. Riyaz's testimony was that he could not recollect the exact time he met the Accused at the Shirley Park. What is material is the time he arrived home in Lautoka with the Accused. Even though there was an inconsistency as to the time he met the Accused at the Shirley Park rally on 3 December 2022, he had maintained that he arrived home at around 4.15 am on 4 December 2022.
140. Riyaz's recollection that he arrived home with the Accused around 4.15 am was based on the fact that he had called his wife to open the gate around that time. That may not be a plausible reason for him to recollect an event that occurred three years ago. However, if he was sure he was at the night club with the Accused until it was closed at 3 am, it is possible for them to arrive in Lautoka around 4.15 am, after dropping the Accused's cousin at Hilton before heading to Lautoka.

141. Riyaz's evidence is not implausible. There is no valid reason for me to conclude that he fabricated his evidence to help the Accused. His evidence is consistent with the timeline given by the Accused and the text message (DE3) the Accused tendered.
142. The Defence does not have to prove his *alibi*. The Defence evidence created a reasonable doubt that the Accused may not have arrived home by 3.16 am on 4 December 2022, soon after which the Complainant says she was raped. That doubt is not eliminated.

#### Conclusion

143. The Prosecution bears the onus of proving the charge beyond reasonable doubt. The rape allegation rested entirely on the testimony of the Complainant which is not credible and reliable. The Complainant's conduct before, during and after the alleged rape is inconsistent with her evidence that she was violently raped. Her demeanour in Court is also not consistent with that of an honest rape victim. The Accused is consistent in his denial and *alibi*, which raised a reasonable doubt in the version of events of the Prosecution. The evidence supports the Defence's claim that the Complainant fabricated the allegation.
144. I reject the evidence of the Prosecution and accept that of the Defence. The Prosecution failed to disprove the *alibi* and eliminate the doubt. The benefit of that doubt must be given to the Accused. After considering all evidence, I hold that the Accused must be found not guilty.
145. The Prosecution failed to prove the charge beyond reasonable doubt. The Accused is found not guilty of Rape as charged. He is acquitted accordingly.



  
Aruna Aluthge

Judge

27 November 2025

At Lautoka

Solicitors:

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- Samuel Ram Lawyers for Defence