

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 44 of 2023

STATE

-v-

KAIOTI ROGONAVANUA

Counsel: Mr. E. Kotoilakeba for the State
Ms. V. Kirti for the Accused

Date of Trial: 15 – 18 September 2025

Date of Judgment: 28 November 2025

JUDGMENT

(In order to protect her identity, I shall refer to the complainant as “C” in this Judgment.)

1. An Information dated 20 June 2023 charged Mr. Kaioti Rogonavanua (“the accused”) with a count of assault causing actual bodily harm, contrary to section 275 of the Crimes Act 2009, the particulars being that, on 2 June 2023, at Savusavu town, he assaulted C by punching her, thereby causing her actual bodily harm (count one), and a count of rape, contrary to section 207(1) and (2) (a) of the Crimes Act 2009, the particulars being that, on 2 June 2023, at Savusavu town, he penetrated C’s vagina with his penis without her consent.
2. The accused pleaded not guilty and the matter proceeded to trial.

The prosecution case

3. In outline, the prosecution case is that C, aged 22 years at trial, was in Savusavu town at around 3am on 2 June 2023 waiting for the bus to connect with the Taveuni ferry. She went to relieve herself at a dark place near the taxi stand. As she stood up, she saw the accused standing in front of her, who asked where she was from and where she was going. He accused her of lying and punched her in the face. She was knocked out and, as she regained consciousness, the accused was pulling down her pants. He touched her private parts and put his penis inside her vagina for about four to five minutes. He threatened to kill her if she shouted for help. When she told him to stop, he said that he wanted them to be a couple. As she did not wish to remain in the dark passage, she told the accused to go with her to her grandmother at the taxi stand. With the light from his phone, he showed her a plastic with marijuana and marijuana in aluminum foil.
4. When they reached a place lit by the street light, she saw his face and clothes. He was wearing blue $\frac{3}{4}$ pants and a t-shirt with different colors. They were close to each other when she observed him by street light. At the taxi stand, she informed an old lady what he had done to her. Upon seeing that she was hurt, the old lady called security, and the accused ran away. The security guard called the police who came and took C to the station to make a statement. She gave a description of her assailant as being a bit taller than her with similar skin colour.
5. Later, at the bus stand, the police brought a man in a police vehicle. When she identified him, he was arguing with the police officer. She told the police to check his pockets, and they found a plastic of marijuana. He was wearing the same clothes she had earlier described. She boarded the Taveuni bus and, when she reached Natewa, the police came and took her back to Savusavu. She was taken to the hospital and thoroughly examined. Rape kit swabs were taken. Several months later, a buccal swab was taken at Totogo police station.
6. C pointed to the accused in the dock as the man she had seen in the police vehicle in the early hours of 2 June 2023.

7. In order to prove its case, the prosecution relies on a number of strands of evidence, principally C's testimony, medical evidence and, crucially, DNA evidence that the prosecution says proves beyond doubt that the accused's semen was found inside C's vagina.

Defence case in outline

8. The accused denies being the rapist. He relies on alibi evidence. By implication, C's identification of him is mistaken. He offers no explanation for the presence of his semen inside C's vagina. He challenges the admissibility of the DNA evidence on the basis that he did not voluntarily consent to a sample being obtained from him. He alleges police impropriety. The prosecution is also put to strict proof of the chain of evidence.

The voir dire

9. Voir dire grounds, dated 20 August 2025, were filed challenging the admissibility of the Forensic DNA Report and the accused's record of interview. At the start of the trial, the prosecution confirmed that it did not seek to rely on the record of interview. The narrow focus of the voir dire was therefore essentially whether the accused had given free and informed consent for a buccal swab to be taken.
10. In order to prove its case in the voir dire the prosecution relied on the Consent Form For Reference DNA Collection, signed by the accused dated 3 June 2023 and called three police witnesses.
11. Cpl 5635 Samisoni testified that he was based in the Crime Scene Investigation Department at Savusavu police station in June 2023. On 3 June 2023, he was working the main shift from 7am to 4pm. He explained the procedure that he followed in collecting a buccal swab from the accused. He explained the consent form to the accused in the iTaukei language. He was informed that he had the right to refuse consent. The accused was not forced or pressured into signing the consent form. Cpl Samisoni identified the consent form signed by the accused, which was adduced as VD PE-1. Cpl Samisoni also explained how he took the buccal swab and later handed the sample to the Forensic Bio Lab in Suva.

12. In cross-examination, Cpl Samisoni denied that he was informed by the interviewing officer that the accused had complained of being assaulted. When asked whether the accused had received medical treatment, Cpl Samisoni explained that his role was to take the sample. The interviewing officer would be better placed to talk about medical issues.
13. Sgt Saiyasi gave evidence via Viber from China, where he was attending a workshop. He conducted the accused's interview under caution. Prior to the interview, the accused was fit and did not make any complaints. The interview was suspended in order for the accused to be medically examined on 2 June 2023. On 3 June 2023, he was present when the scene of crime officer took a buccal swab from the accused. In accordance with standard procedures, the scene of crime officer explained the consent form to the accused. The accused was not induced or forced to consent to the sample being taken.
14. In cross-examination, Sgt Saiyasi accepted that the accused had told him that he had been assaulted by police. He could not recall whether Cpl Samisoni was made aware of this complaint. He agreed that he had not relayed the accused's medical condition to Cpl Samisoni.
15. PC 6065 Jacob arrested the accused on the morning of 2 June 2023. He was at the Savusavu police station when a distraught woman complained that she had been raped by an iTaukei man. She described him as being a bit short and smelling of liquor. He went with his Unit IC on mobile patrol to search for the suspect. They could not find him in town so they went along the Labasa and Savusavu Highway. At around 6.15am, they found a suspect walking at the end of Naqere. They identified him by his height and clothing, and also his gait. The suspect flagged down their vehicle, and then ran away when he realised it was a police vehicle. PC Jacob ran after him and caught him. He resisted arrest and PC Jacob used reasonable force to restrain him. He was escorted to the police station, searched, and locked in a cell.
16. In cross-examination, PC Jacob confirmed that the accused was drunk at the time of his arrest. He denied punching the accused. When it was put to him that he

had used force to effect the arrest, he responded that he had used reasonable force. Whilst the suspect smelt of liquor, the manner in which he ran away led PC Jacob to conclude that he was not that intoxicated.

17. The accused gave evidence in the voir dire. He testified that, after drinking in town with friends, they could not find transport, so he set off on foot with two other men. As he came close to Savarekareka, a police vehicle stopped in front of him and PC Jacob questioned him. PC Jacob gave him a few punches to his ribs and he fell on the tar seal road. He did not respond because he was drunk and weak. He had not tried to run away from the police. He was taken to the police station and put in a cell. He was assaulted by three officers in the cell block. Cpl Samisoni took his DNA sample before he was taken to hospital. He agreed to the DNA sample because the police kept telling him off.
18. In cross-examination, the accused accepted that the consequences of giving a DNA sample were explained to him, and he had signed the consent form. He agreed with the suggestion that he had freely consented to the buccal swab.
19. The defence called Dr. Quentin Uluilakeba, a Medical Officer at Savusavu Hospital. He testified that he examined the accused on 2 June 2023, at 10.16pm. He found no bruises or lacerations. Upon palpation, there was tenderness in the right chest area. He explained that tenderness is identified by a patient verbalising pain. There was no crepitation. In other words, there was no indication of air escaping into his chest. The Police Medical Examination Form was adduced as VD DE-1.
20. After hearing submissions from both parties at the conclusion of the voir dire, I ruled that the Forensic DNA Report was admissible in the trial proper. I indicated that I would provide reasons later. These are my reasons.

Reasons for ruling on admissibility of the Forensic DNA Report

21. The central issue was whether the prosecution had proven that the accused's consent to the buccal swab was given voluntarily, and was not given as a result of police misconduct.

22. I am sure that the accused gave voluntary and informed consent for his DNA sample to be taken. I accept Cpl Samisoni as an honest and reliable witness whose evidence makes me sure that the consent form was fully explained to the accused in a language he understood. The accused essentially accepted as much when this was suggested to him in cross-examination. I also consider it pertinent that the accused denies any involvement in the rape of C. He says that he was not at the scene. In these circumstances, I can see no sensible reason why he would have refused to consent to his DNA sample being taken.
23. I reject entirely the allegations of police brutality. PC Jacob's account of the circumstances of the arrest has the ring of truth about it. I accept that he used reasonable force to effect the arrest, and that he observed visible injuries on the accused at the time of his arrest. The accused's florid account of assault by several officers in the cell block does not ring true, and is not supported by the medical evidence.

Trial proper - evidence

24. In trial proper, C gave an account supporting the prosecution case outlined above.
25. In cross-examination, C accepted that she had never seen the accused before 2 June 2023. She said they were standing not far away from the street light when she observed him from a distance of about two metres. Before they brought the accused to the bus stand, the police had brought two other men. When they brought the accused, it was only the accused inside the police vehicle. When it was suggested to C that the accused was not the man who attacked her, C answered that he was lying.
26. PC Jacob gave evidence consistent with his evidence in the voir dire.
27. Dr Rayape was a Medical Officer serving at Savusavu Hospital in June 2023. On the afternoon of 2 June 2023, she conducted a thorough examination of C and recorded a detailed history that she was raped in the early hours of 2 June 2023, at around 3am, by a drunken iTaukei man. Dr Rayape found a number of injuries on C, which she recorded in the Police Medical Examination Form (PE-1). Vaginal

and oral swabs were taken. The swabs were packed, sealed and labelled as part of the rape kit. Dr Rayape testified that her medical findings were consistent with the history provided.

28. In cross-examination, Dr Rayape confirmed that the medical examination started about 11 hours after the rape.
29. Cpl Samisoni also gave evidence consistent with his evidence in the voir dire. In the presence of the accused and the interviewing officer, he put the DNA sample in an exhibit bag. He stated that there was no way that the sample could have been contaminated after he sealed the exhibit bag. He confirmed the chain of custody. The consent form was adduced as PE-2. Cpl Samisoni also received the sealed rape kit from the Investigating Officer, which he handed to Mr Thompson Daurewa at the police forensic science laboratory in Suva.
30. In cross-examination, Cpl Samisoni confirmed that he delivered the accused's DNA sample and the rape kit, containing the swabs taken from C, to Mr Daurewa on 15 June 2023.
31. Sgt 4289 Baravilala serves in the Crimes and Investigation Unit at the Forensic Science Services Department in Suva. On 5 December 2024, he collected a buccal swab sample from C. The sample was placed in a sealed bag and handed to Mr Daurewa.
32. Detective Constable Paulini Bamasi is the Investigating Officer in this case. She serves in the Sexual Offences Unit at Savusavu police station. She escorted C to Savusavu Hospital on 2 June 2023 and received the sealed rape kit from Dr Rayape. When she returned to the police station, she handed the sealed rape kit to Cpl Samisoni. The IO was not cross-examined.
33. The next prosecution witness was Mr Thompson Daurewa. He is a Scientific Officer working at the Forensic Biology and DNA Laboratory in Nasova. He obtained a degree in Forensic Science from the Management and Science University in Malaysia, and has received training in DNA analysis and the handling of exhibits. On 15 June 2023, he received exhibits from Cpl Samisoni. He checked

the condition of the exhibits and that the paperwork was in order. He assigned a laboratory reference number to each exhibit and ensured they were properly stored. On 5 December 2024, he received a related exhibit from Sgt Baravilala, and followed the same procedures. Mr Daurewa was not cross-examined.

34. The final witness for the prosecution was Ms. Paulini Saurogo. She is the Senior Scientific Officer working at the Forensic Biology and DNA Laboratory in Nasova. She prepared the Forensic DNA Report, which was adduced as PE-6. Ms. Saurogo explained how the DNA profiles were obtained and analysed. In her expert opinion, the DNA recovered from C's vaginal swabs was the accused's DNA.
35. In cross-examination, Ms. Kirti highlighted that there had been a long delay in the submission of C's buccal swab and queried whether this would affect the quality of the samples. Ms. Saurogo explained that it would not because the DNA had been extracted shortly after the rape kit was received on 15 June 2023. This was treated as a priority case because the police had provided a buccal swab taken from a suspect. The comparison could only be completed after the delayed submission of C's reference sample.
36. At the close of the prosecution case, the accused elected to give evidence in his case and it was indicated that alibi witnesses would be called.
37. The accused is a 32-year-old farmer. In the early hours of 2 June 2023, he was drinking with two brothers at a nightclub in Savusavu. When they left the club, at around 1.30am, they could not find a taxi. They started to walk in the direction of Naqere. He was walking slowly, lagging behind his brothers. As he neared St Bedes College, a police car stopped behind him and he was questioned. He was then handcuffed and put inside the police vehicle. He was taken to the police station, searched, and put in a cell.
38. He denied punching C's face and raping her.
39. When it was suggested to him in cross-examination that he had gone to look for a taxi at the taxi stand in town, the accused disagreed. He agreed that the bus stand

and taxi stand are close together. He denied assaulting and raping C.

40. The accused agreed that the police took him to the bus stand. When the prosecutor suggested that they had done so in order that C could easily identify him as her rapist, he readily agreed. When asked why his DNA was found inside C's vagina, he replied that he did not know. In answer to a question from the Court, the accused said that he felt really drunk that night. It took him about an hour to walk to St Bedes.
41. Mr. Maleli Rakula testified that he was drinking in his village on the evening of 1 June 2023. He then went to a nightclub in town with the accused and Petero. They left the club at around 1.30am and were looking for transport. He was not sure of the time but, after a long wait for a taxi, he suggested to the accused and Petero that they should walk to Naqere. He did not wait for the other two, and just kept walking until he reached his namesake's place in Naqere. He wanted to take the lead because he was drunk. The last time he saw the accused was when they were walking together in town.
42. In cross-examination, Mr. Rakula accepted that he did not know whether the accused had gone back into town as he was walking to Naqere.
43. Mr. Petero Kainago testified that, after drinking in the village, he went into town with a group of around seven men. He was drinking in a club with the accused and Maleli. After leaving the club, they looked for transport. After 2.30am, they planned to walk home. By the time he reached the hospital, he could not find the accused. This was probably around 3.30am.
44. In cross-examination, Mr. Kainago agreed that the hospital is near to town. He does not know whether the accused went back into town that morning.

Closing submissions

45. In her helpful written and oral submissions, Ms. Kirti dealt with the elements of the index offences. In seeking to persuade the Court that the quality of the identification evidence is poor, Ms. Kirti highlighted that the identification was made

in darkness, and C was only able to describe her assailant's clothing. Also, the police did not follow a proper formal identification procedure.

46. Ms. Kirti submitted that the DNA evidence does not prove the charges against the accused. When the Court asked her how she invited me to approach the evidence that her client's sperm was found inside C's vagina, Ms. Kirti replied that the presence of the accused's DNA does not establish the elements of rape. When further pressed on the defence case as to how her client's semen found its way into C's vagina, Ms. Kirti explained that the accused denies having sexual intercourse with C, and does not know how his DNA was found inside her.
47. As for the alibi evidence, Ms. Kirti submitted that the alibi witnesses were consistent, and their credibility was not shaken.
48. Mr. Kotoilakeba submitted that C identified the accused by observing him for quite some time by street light. When I expressed my concerns that it was wholly improper for the police to get positive identification by taking a suspect in their custody to be confronted by an identification witness, Mr. Kotoilakeba agreed. He further agreed that the police ought to have conducted a formal identification parade.
49. Mr. Kotoilakeba was on firmer ground in submitting that the medical evidence supports that C suffered bodily harm. Also, he made the valid point that it doesn't take a genius to realise that the only way for the accused's semen to get inside C's vagina was through sexual intercourse. The evidence overwhelmingly supports that C did not consent to sex with the accused. The so-called alibi witnesses do not provide the accused with an alibi. In any event, the presence of his semen inside C rebuts the alibi to the criminal standard. Warming to his theme, Mr. Kotoilakeba submitted that, in the absence of some sort of voodoo, the only rational explanation for the presence of his semen is that the accused ejaculated inside C.

Analysis and disposal

50. The prosecution must prove that the accused is guilty. The accused does not have

to prove anything to me. The defence does not have to prove that the accused is innocent. The prosecution will only succeed in proving that the accused is guilty if I have been made sure of his guilt. If, after considering all of the evidence, I am not sure that the accused is guilty, my verdict must be not guilty.

51. Since the accused elected to give evidence in his own defence, I remind myself that even if I reject his evidence the prosecution must still prove its case to the criminal standard.
52. This has been a somewhat unusual rape trial in the experience of this Court. All too often, rape kits are not available at our medical facilities. In this case, the DNA evidence has been crucial in establishing beyond any doubt that the man C described as punching her and forcefully penetrating her vagina was the accused. I find him guilty as charged and convict him accordingly.
53. I must commend Dr Rayape Racaca for the thoroughness of her medical examination and the manner in which she gave evidence at trial. Were it not for her diligence in taking vaginal swabs and carefully handling that evidence, there is a real possibility that identity would not have been established to the criminal standard in light of the problem with the police identification procedure.
54. Likewise, I have been most impressed by and commend the professionalism of Ms. Saurogo and Mr. Daurewa of the Forensic Biology and DNA Laboratory.
55. Whilst there is undoubtedly much room for improvement, I am heartened that this case demonstrates that, with proper training and adequate resourcing, the criminal justice system in Fiji is well capable of delivering justice for the victims of serious sexual offending.
56. I do not lose sight of the fact that PC Jacob was instrumental in ensuring that C's complaint was taken seriously and pursued expeditiously. Without his swift efforts the accused would not have been apprehended, and a rapist would have escaped justice.
57. Finally, I must apologise for having taken longer than I would have liked to deliver this Judgment. The victims and those accused of perpetrating sexual violence are

entitled to have matters disposed of as expeditiously as possible. Regrettably, under-resourced court reporting capacity in the High Court at Labasa meant that it took more than two months for the trial transcript to be produced. Steps will be taken to address this issue.

58. 30 days to appeal to the Court of Appeal.



A handwritten signature in black ink, consisting of a stylized initial "WB" followed by a long horizontal line extending to the right.

Hon. Mr. Justice Burney

At Labasa

28 November 2025

Solicitors

**Office of the Director of Public Prosecutions for the State
Office of the Legal Aid Commission for the Accused**