

THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 163 of 2024

BETWEEN : **STATE**

AND : **KOLINIO NATURAGA**

Counsel : **Mr S Seruvatu for the State**
Ms O Grace & Ms E Motokainava for the accused

Hearing : **18 August, 25 & 26 September 2025**

Closing addresses : **23 October 2025**

Judgment : **23 December 2025**

JUDGMENT

[1] The complainant has been granted name suppression. Therefore, any public record of this proceedings must not contain any information that may lead to the identity of the complainant. She is referred to as 'TK' in this judgment. I have deliberately avoided identifying details that may lead to identifying the complainant.

[2] The accused is charged with three counts, being one count of rape, one count of sexual assault and one count of indecent assault. The three offences are alleged to have occurred on 26 May 2024. The accused is alleged to have penetrated the complainant's vagina with his penis (Rape - Count 1), sucked her breast (Sexual Assault - Count 2), and kissed her neck (Indecent Assault - Count 3). No evidence was led by the prosecution in respect to the particulars of the offences of Counts 2 and 3. As such, at the conclusion of the prosecution evidence, the accused was acquitted on both counts.

[3] That being the case, the following analysis is confined to the first count of rape. The particulars in the Information for Count 1 read:

Kolinio Naturaga on the 26th day of May, 2024 at Valelevu, Nasinu in the Central Division, penetrated the vagina of [TK] with his penis, without her consent.

[4] The accused denies committing the offence.

Elements of offence of Rape

[5] In order for the prosecution to establish the offence of rape, it must prove the following elements beyond a reasonable doubt:

- i. On 26 May 2024, the accused penetrated the vagina of TK with his penis.
- ii. TK did not freely and voluntarily consent to the penetration.
- iii. The accused knew that TK was not consenting.

[6] The slightest penetration is sufficient to establish the element of penetration.

[7] Pursuant to section 206 of the Crimes Act, '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. Consent obtained by force or threat or intimidation, will not be considered to be consent freely and voluntarily given. Consent or the absence of consent can be communicated by the words or acts of the complainant. The knowledge of the accused that the complainant did not consent is a matter for inference for the court from all the proven facts.

Burden of proof and assessment of the evidence

[8] The accused is presumed to be innocent until he is proven to be guilty. As a matter of law, the onus or burden of proof rests on the prosecution throughout the trial, and it never shifts to the accused. There is no obligation or burden on the accused to prove his innocence. The accused has a right to remain silent and no adverse inference can be drawn if he remains silent.

- [9] The burden is on the prosecution to prove the charges beyond reasonable doubt. Each element of the charge must be proved but not every fact of the story. If there is a reasonable doubt, so that the court is not sure of the accused's guilt, or if there is any hesitation in my mind on any of the elements, the accused must be found not guilty of the charges and, accordingly, acquitted.
- [10] The accused chose to give evidence, but he does not carry any burden to prove or disprove anything. The burden remains on the prosecution to prove his guilt beyond a reasonable doubt.

Approach to the assessment of the evidence

- [11] I approach the evidence dispassionately, without sympathy or value-laden rules regarding how men and women should conduct themselves. It is entirely a matter for me to decide which witnesses are credible and reliable and which part of their evidence I accept as true.
- [12] If the account given by the accused is or may be true, then he must be found not guilty. But even if the account given by him is entirely rejected, that does not relieve the prosecution of its burden of making sure by evidence of the accused's guilt.
- [13] TK alleges that a male penetrated her vagina while she was sleeping. She did not see the identity of the offender. She states that a short time later the accused admitted to raping her. The accused denies raping the complainant and denies making any admission.

Evidence

- [14] The prosecution called three witnesses, being the complainant (PW1), her husband (PW2) and PC 6384 Jone Tikolevu (PW3). The accused provided evidence in his own defence.
- [15] Prior to the alleged rape, the complainant and her husband (PW2) were good friends with the accused and his wife. They had known each other for several years. Their

daughters were in the same class. The accused and PW2 had played rugby for the same team for several years. It appears that the two families were close.

[16] The events relevant to these proceedings began on Saturday, 25 May 2024. The accused and PW2 played rugby that afternoon. Following the game, the complainant and PW2 went to a relative's house to drink kava. The accused joined them later. A number of them, including the accused, PW2 and the complainant, subsequently went to a nightclub and drank alcohol until about 1am when the nightclub closed. Several of them then travelled by car to the Valelevu Police Barracks, stopping along the way to purchase alcohol.

[17] The facts up to this point are not in dispute. It is from this time that the versions begin to differ.¹

[18] The accused was a police officer at the time. He was staying in a room at the single men's barracks. Neither the complainant nor her husband were police officers. They say that they, and others, were invited by the accused to drink in his room. The accused was not asked about this. In any event, when they reached the barracks they made their way to the accused's room. It appears that he had gone to his room first with another couple then came back to collect the complainant and PW2 – guests are not permitted at the single men's barracks which may explain why the complainant and PW2 were brought separately.

[19] When the complainant and PW2 arrived at the accused's room the other couple were already drinking alcohol. The accused stayed only a short time then left to drink with other police officers at the married men's barracks.

[20] The two couples remained in the room. The two men drank two bottles of beer, after which the other couple left the room, leaving just the complainant and PW2. The room was described by the complainant as small. The complainant stated that she did not feel well and wished to go home, but her husband wished to stay. She went to leave but saw a police officer outside and worried that they would get in trouble if seen. She returned to the room, told her husband about the officer and turned off the

¹ I have read the transcript several times and I must say it is very difficult to gain a clear picture from any of the witnesses as to what occurred after they arrived at the Police Barracks. The reason being, the gaps in the evidence of each witness.

light. The complainant was still feeling unwell and vomited into a bag. They then took the mattress off the bed and placed it on the floor. They took their clothes off and had sexual intercourse. They then fell asleep next to each other, still naked, using the blanket as a pillow.

[21] Later, whilst the complainant was sleeping, she felt a penis inside her vagina and thought it must be her husband, as they were the only two persons in the room. She told her husband that that was enough. This woke her husband, who saw a man on top of his wife and yelled out. The offender then fled through a louver window.

[22] PW2 was about to chase the offender but the complainant stopped him. She was frightened by the attack on her. Once she had put on her clothes, PW2 left the room to look for the offender. The complainant went looking for help. She found none and came back to the room. A short time later her husband also returned to the room and told her to wait inside. He then left the room again in order to keep looking for the offender.

[23] PW2's evidence at this point reads,

...So, I came out again and as soon as I reached the second toilet, I met Kolinio [the accused] with only the shirt, only the vest and no pants. No underwear and no pants.

....

As soon as I approached Koli, the first thing he said is that; he said 'sorry, my brother... sorry my brother for the things that I have done, ... I thought that was my wife' ... Then I believed in myself that it was him [ie the offender that had raped his wife].

[24] Upon hearing this, PW2 states that he then began punching the accused. He then called out to the complainant to come and see the person that had raped her. The complainant states that when she went toward her husband, she saw that he was with the accused and that the accused was wearing a muscle vest with no pants – the vest was hanging down to the accused's thighs and, therefore, she did not know whether

the accused was wearing any underwear. The complainant swore at the accused and asked him how he could do this to her with their families being so close. The complainant's evidence is that the accused apologized for what he had done and said he thought that the complainant was his wife.

[25] The complainant then left to report the rape. She approached two police officers who were in a police vehicle. One of the officers was PW3. She told them she had been raped. PW3's evidence is that when she approached them the complainant '*appeared very distressed. At the time she was crying, in a state of shock...she was really scared*'. The two officers accompanied the complainant back to the accused and PW2.

[26] PW3 confirmed that when they saw the accused and PW2, the accused was injured. He stated that the accused was not wearing pants but was not able to state whether the accused was wearing any underwear. PW3 stated that the complainant told the accused off for raping her but the accused did not say anything in response. The accused obtained trousers from another officer at the barracks and they all made their way to the police station. Both the complainant and PW2 state that during this time the accused kept apologising for what he had done in front of the police officers. The complainant stated, '*He was saying that he was sorry for what he did, and he didn't mean to and he said, do whatever you want to do, take it to court report me, I don't care, I'm really sorry for what I did, I thought it was my wife, and then a few seconds again he started saying, I thought it was another person's name, and then a few seconds again he's saying I'm really sorry*'. PW2 also stated that the accused '*was just apologising in front of those officers [at the police station] and admitting that he did it...He was saying, I'm sorry, I thought it was my wife*'. PW3's evidence is that the accused did not say anything in his presence. The prosecution did not call any other police officers to verify whether the accused made these admissions.

[27] PW2 stated in his evidence that when they were waiting at the police station he asked '*some of the police officers that were standing outside, what will they do with the evidence in the room...because my wife's chain and the earrings were still in the room,*

so I told them if we could go back to the room, so they said, wait...for the forensic'.

PW2 further stated:

... as soon as the forensic team was in the room, they called and they were asking me if there was a pants and a boxers, and the boxers was hanging on the louvers frame and they were asking me and I told them it wasn't mine, where Koli jumped out from.

[28] The accused offers a different version on the material events. He states that after returning to the barracks that morning, he went to drink with other police officers at the married men's barracks. They were drinking 'hot stuff' and then he passed out. He was later woken by Apenisa when it was daylight. The accused made his way to the bathroom but there was no toilet paper so he decided to have a shower. He left his pants at the bathroom but was wearing his underpants. He began walking to his room to grab a towel. As he was doing so, he met PW2 who immediately began punching him. The accused did not know why he was being punched and asked what he had done and asked PW2 to forgive him if he had done something wrong. The husband continued to punch the accused and then the other police officers came and stopped PW2.

[29] The accused denied raping the complainant. He denied admitting to raping the complainant and stated that he had asked for forgiveness in a general way because he was being punched and thought that the complainant's husband was punching him for a reason.

Analysis of the Evidence

[30] The alleged offence occurred in the accused's room at the single men's barracks at Valelevu at about 5am on 26 May 2024. The complainant's evidence is that she was raped by an unknown offender in the accused's room. She had felt the offender's penis

inside her vagina. The offender fled through a window when he was discovered. This is corroborated by her husband's evidence who saw the offender on top of his wife and also saw the offender flee through the window.

[31] Having heard the evidence of the complainant and her husband, I am satisfied that a male penetrated the complainant's vagina with his penis whilst the complainant was asleep and, thus, without her consent. The male person will have known that the complainant was not consenting by the fact that she was asleep. That he fled the scene upon being discovered supports this.

[32] The only question is whether the male offender was the accused. The burden is, of course, on the prosecution to establish beyond reasonable doubt that the male offender was the accused.

[33] Neither the complainant nor her husband saw the face of the male offender. PW2 stated that the figure of the offender was similar to the accused and that he assumed, based on this and the fact the rape occurred in the accused's room, that the male person was the accused. This evidence falls well short of the threshold of being beyond reasonable doubt. I place no weight on the mere fact that the outline of the offender's build was similar to the accused. The accused's room is in the single men's barracks. There will have been a large number of male persons in the vicinity that morning. Any one of the male persons could have entered the room. The prosecution did not present any evidence on how the male person entered the room, ie through the window which he fled from or by forcing the door. It was put to the accused in cross-examination that he removed the louver blades to gain entry. The accused stated that this was not possible '*because it [the louver blades] has a grill and a netting*'. The prosecution did not present any forensic evidence or witness testimony that the louver blades had been removed - it was simply stated by the complainant and her husband that the male offender jumped through the louver window.

[34] The only direct evidence that the accused was the male person that raped the complainant are his alleged admissions to the complainant and her husband. Both state that the accused apologized and expressly stated to them that he had thought it was his wife. It is necessary to set out exactly what the two prosecution witnesses stated in respect to the admissions. The complainant's husband was the first to encounter the accused after the rape. It is difficult to know precisely how much time had passed between the offender fleeing the room and PW2 discovering the accused at the bathroom. Between that time, PW2 had waited for his wife to dress, then gone in search of the offender, returned to the room and headed out a second time. It was almost certainly at least a few minutes. The accused was found only a short distance from his room. The evidence is that the accused was not wearing pants. PW2 says that the accused was also not wearing underpants. The complainant was unable to verify this and nor was PW3. The accused stated that he was, in fact, wearing underpants. The prosecution did not call the second police officer who accompanied PW3 who may have shed light on this. In any event, PW2's evidence is that as soon as he saw the half-naked accused, the accused immediately told PW2, '*sorry my brother, for the things that I have done, I thought that was my wife*'. These words caused PW2 to believe that it was the accused that had raped the complainant.

[35] The complainant's evidence is similar to her husbands'. She stated in evidence that when she saw that her husband had caught the accused the first words said by the accused to her were, '*I thought you were my wife, I thought you were Nisi*'.

[36] The complainant stated that the accused kept apologising and continued doing so in front of the police officers. She stated:

...When we came towards the police station, he [the accused] was admitting to his wrongs, saying that not only in front of me and my husband, it was in front of a few police officers. He was saying that he was sorry for what he did, and he didn't mean to and he said, do whatever you want to do, take it to court, report me, I don't care. I'm really sorry for what I did, I thought it was my wife and then a few seconds again he started saying, I thought it was another

person's name. And then a few seconds again he's saying, I'm really sorry, I'm going to take it as a man for what I did, you take me to court, do whatever you want to do. And then he started apologizing to my husband, and then started apologizing to me again...

[37] The complainant's husband offered similar evidence. He stated that the accused '*was just apologising in front of those officers [at the police station] and admitting that he did it...He was saying, I'm sorry, I thought it was my wife*'.

[38] The accused denied making any admissions. It was put to PW2 in cross-examination that there was no admission and that PW2 had, in fact, questioned the accused as soon as he saw him – this was denied by PW2. It was put to the complainant in cross-examination that the accused was, in fact, apologizing for the problems that were then happening between the accused and his wife (the complainant being a friend of the accused's wife). The complainant denied this. It was put to the complainant that she was close to the accused's wife to which the complainant agreed. She also agreed that she would do anything to protect her friendship with the accused's wife. It was put to the complainant that she had made up the story about the accused because she wished to paint a bad picture to protect the wife. The complainant denied this.

[39] What, then, to make of the alleged words of the admissions by the accused?

[40] The evidence of the complainant and her husband is that the accused apologised to both of them and stated that he thought the complainant was his wife. Those words by themselves are not an express admission that the accused penetrated the complainant's vagina with his penis. Nevertheless, those alleged words expressed in their context could not have any other plausible meaning other than it was the accused who had raped the complainant. The rape had occurred only about 10-15 minutes beforehand in the accused's room. The accused was found half naked a short distance away. What else could the accused have been speaking about. Certainly, the accused

does not offer an alternative interpretation. He simply states that he did not make the admission.

[41] Did the accused say those words? As stated, he denies having done so. He says that PW2 began punching him immediately he saw him that morning – PW2 having assumed that the accused was the person who raped his wife and the assumption being made on the basis that it happened in the accused's room and the accused was found close by and not fully dressed. The accused offered an explanation for the latter. It is his evidence that he was sleeping outside the married men's barracks. He had been woken up by Apenisa and then left to the toilet but discovered there was no toilet paper. Therefore, he decided to have a shower. He left his pants in the bathroom but was wearing his underpants. He intended to go to his room to grab a towel. As he was doing so, he met PW2 and the altercation ensued.

[42] Having observed the complainant and her husband I am satisfied that they were truthful witnesses. I do not accept that either witness deliberately provided false evidence against the accused. There is no obvious reason why they would have lied. They were good friends with the accused and his wife. They had spent the previous night socialising – drinking kava, going to a nightclub and then drinking in the accused's room at his invitation. There is no evidence that the complainant or her husband had any grudge or issue with the accused before the events on 26 May 2024.

[43] The only question I have concerns the reliability of their recollection of the accused's alleged admissions. It is timely to set out the following remarks in *Bharwada Bhoginbhai Hirjibhai v State of Gudjarat* (1983) 3 SCC 217:

*A witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a videotape is replayed on the mental screen ... **The powers of observation differ from person to person.** What one may notice, another may not. An object or movement might emboss its image on one person's mind,*

whereas it might go unnoticed on the part of another It is unrealistic to expect a witness to be a human tape recorder..... In regard to exact time of an incident, or the time duration of an occurrence, usually people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time sense of individuals, which varies from person to person.... Ordinarily a witness cannot be expected to recall accurately the sequence of events which takes place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on...²

[44] There is a real prospect that the complainant and her husband may not have correctly recalled the events, their sequence and/or the specific words said at the time. The events occurred more than a year ago. The complainant and her husband had consumed alcohol and kava that previous evening – it is not clear how much, although they had been drinking over several hours. They were both intoxicated and the complainant had been feeling ill, so ill that she had vomited. Add to that, they had not slept long when the complainant was raped. The rape and the subsequent events will have been traumatic and somewhat chaotic. It is possible that their recollection of the events and words said when they confronted the accused is not accurate. I appreciate that each corroborates the other in respect to the admission. However, the complainant and her husband live together and have likely recounted the events to each other frequently since 26 May 2024 and may, inadvertently, have convinced themselves of the words said that morning.

[45] What concerns me most, however, is the evidence that has not been produced by the prosecution. The complainant stated that the accused made the admissions in the presence of the police officers. One of those officers was PW3. He stated that the accused did not say anything when the complainant was scolding the accused for having raped her. The prosecution could have called the other police officers that

² My emphasis.

were present that morning to corroborate the complainant and her husband but have not done so.

[46] What also is not produced by the prosecution is the forensic evidence, if any. There is a suggestion that louver blades were removed by the offender to gain access to the room. No evidence was produced of this. The offender fled the room through the window upon being discovered. Quite likely he left his pants and underpants in the room. The accused was found without his pants (and possibly also his underpants). PW2 stated that the forensics team told him they found pants and boxers on the louver frame in the room. This evidence has not been produced.

[47] The location of the accused's pants is an important piece of evidence. He was found not wearing pants after the complainant was raped. Potentially, this evidence could have placed the accused in the room independent of the alleged admissions. It should have been a straightforward matter for forensics to collect the evidence in the room – if it existed, which according to PW2 was the case. Looked at from another angle, the accused claims that he left his pants in the bathroom. The first police officers on the scene do not appear to have shown any interest in enquiring why the accused was not wearing pants (in a report of rape). It was an opportunity for the police to check the veracity of the accused's story at a critical time.

Conclusion

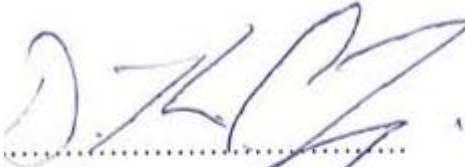
[48] I am satisfied beyond reasonable doubt that the complainant was raped on the morning of 26 May 2024 whilst she and her husband were sleeping in the accused's room. However, neither the complainant nor her husband saw the face of the offender before the offender fled out the window. The only direct evidence available that the offender was the accused were his alleged admissions to the complainant and her husband.

[49] I must be satisfied beyond a reasonable doubt that the accused made the admissions as recounted by the complainant and her husband. For the reasons stated, I am left with a reasonable doubt. I cannot be sure that the complainant and her husband have reliably recalled the admissions by the accused. In the final analysis, it is the evidence that the prosecution has not produced that causes me to not be sure.

[50] I wish to make it clear that I found the complainant to be a truthful witness. She has been let down by the events on the morning of 26 May 2024 and let down by the investigation. Important evidence has not been produced because it was not collected and/or not tendered at trial.

[51] In view of the above, I am not satisfied beyond a reasonable doubt that the accused committed the offence of rape. Accordingly, I find the accused not guilty of any of the three counts for which he is charged, and, as such, he is acquitted.




.....
D. K. L. Tuiqereqere
JUDGE

Solicitors:

Office of Director of Public Prosecutions for the State

Office of Legal Aid Commission for the Accused