

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**CRIMINAL MISC. NO. HAM 206 of 2025**

**BETWEEN** : **ISTIFAQ AHMED ALI**

**APPLICANT**

**A N D** : **THE STATE**

**RESPONDENT**

**Counsel** : Mr. I. Khan with Mr. S. Heritage for the Applicant.  
: Ms. S. Swastika for the Respondent.

**Date of Hearing** : 11 September, 2025

**Date of Submissions** : 11 September, 2025

**Date of Ruling** : 12 September, 2025

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**R U L I N G**

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*(The name of the complainant is suppressed, she will be referred to as "Z.N")*

**BACKGROUND INFORMATION**

1. The applicant faces two counts of rape, contrary to section 207 (1) and 2 (b) of the Crimes Act 2009.
2. It is alleged that the applicant, on an occasion between 1<sup>st</sup> day of January 2019 and 31<sup>st</sup> day of December 2019, in respect of count one, and on a

separate occasion within the same period, other than that referred to in count one, penetrated the vagina of “Z.N” with his finger, without her consent.

3. On 4<sup>th</sup> April 2023, the applicant pleaded not guilty to both counts. After several adjournments, a pre-trial conference was held on 31<sup>st</sup> October, 2023.
4. During the pre-trial conference, defence counsel informed the court that the defence would be calling three witnesses, including the accused. The defence position relied upon was one of complete denial.
5. The matter was initially adjourned for trial proper on 24<sup>th</sup> June 2024. However, due to a judicial training, it was rescheduled to 10<sup>th</sup> June, 2024 for trial proper. On 10<sup>th</sup> June, state counsel informed the court that they intended to commence the trial the following day.
6. On 11<sup>th</sup> June 2024, state counsel filed and served additional disclosures. The trial was adjourned to allow defence counsel to take further instructions. The matter was adjourned to 2<sup>nd</sup> October 2024 for trial proper. On 23<sup>rd</sup> September 2024, upon the application of defence counsel in HAM 228 of 2024, the trial was adjourned to 2<sup>nd</sup> December, 2024. At the request of defence counsel, the matter was again adjourned to 21<sup>st</sup> July, 2025. When the matter was called on 7<sup>th</sup> July 2025, both counsel were engaged in a murder trial, accordingly, the matter was adjourned to 15<sup>th</sup> September, 2025 for trial proper.

### **APPLICATION TO THE HIGH COURT**

7. In the notice of motion dated 4<sup>th</sup> September 2025, the applicant seeks the following orders:

*a) That the information dated the 3<sup>rd</sup> day of February 2023, be declared as defective in breach of section 58 of the Criminal Procedure Act 2009;*

b) *That further and better particulars be provided by the State in the information which are as follows:*

- i. *Dates in which the alleged incidents had occurred, and;*
- ii. *Time in which the alleged incidents had occurred.*

c) *That the State be directed to amend the information;*

d) *Any other orders and/or relief as this court may deem fit;*

e) *That the time for service of this Motion be abridged.*

8. This application is made pursuant to section 290 (1) (c) of the Criminal Procedure Act. The application is opposed by the state.

9. The applicant filed his affidavit in support sworn on 4<sup>th</sup> September, 2025 and affidavit in reply sworn on 11<sup>th</sup> September 2025. The state counsel filed the affidavit of Laisiasa Baleilevuka sworn on 10<sup>th</sup> September 2025. Both counsel filed simultaneous written submissions and agreed for the court to rule on the written submissions filed.

### **SUBMISSIONS BY THE APPLICANT**

10. The applicant's counsel argued that the information filed by the Office of the Director of Public Prosecutions is vague, as the date range mentioned that is 1<sup>st</sup> January, 2019 till 31<sup>st</sup> December, 2019 is not specific. There is no certainty as the exact dates on which the complainant alleges the two incidents occurred has not been specified in the information filed.

11. Furthermore, the vagueness of the dates in each count has made it difficult for the applicant to adequately prepare his defence. Counsel submitted that better and further particulars are required to enable the accused to respond meaningfully to the charges.

12. As a result of the vague dates and the absence of timing of the allegations, counsel argued that a fair trial is not possible, which could lead to a miscarriage of justice.
13. Counsel further contended that the accused's constitutional right to be informed of the evidence the state intends to rely upon includes the time and date of the alleged incidents.

### **DETERMINATION**

14. Before proceeding any further, it is important to consider section 58 of the Criminal Procedure Act which is as follows:

*Offence to be specified in charge or information with necessary particulars*

*Every charge or information shall contain –*

- a). a statement of the specific offence or offences with which the accused is charged; and*
- b). such particulars as are necessary for giving reasonable information as to the nature of the offence charged.*

15. The information filed by the office of the Director of Public Prosecutions dated 3<sup>rd</sup> February, 2023 is as follows:

#### **Count One**

#### **Statement of Offence**

**Rape:** contrary to section 207 (1) and (2) (b) of the Crimes Act 2009.

### **Particulars of Offence**

Istifaq Ali on an occasion between the 1<sup>st</sup> day of January 2019 and 31<sup>st</sup> day of December 2019 at Vitogo, Lautoka in the Western Division penetrated the vagina of “Z. N” with his finger, without her consent.

### **Count Two**

### **Statement of Offence**

**Rape:** contrary to section 207 (1) and (2) (b) of the Crimes Act 2009.

### **Particulars of Offence**

Istifaq Ali on the same occasion other than that mentioned in count one, between the 1<sup>st</sup> day of January 2019 and 31<sup>st</sup> day of December 2019 at Vitogo, Lautoka in the Western Division penetrated the vagina of “Z.N” with his finger, without her consent.

16. The purpose of section 58 is to ensure that the accused is put on notice of the offences he is facing, with particulars sufficient to provide reasonable information as to the nature of the charges (*see Keni Dakuidreketi vs. Fiji Independent Commission Against Corruption [2011] HAM 38/11S, 52/11S & 55/11S, Ruling 24 June, 2011, Gyan Deo vs. State [2011] HAA 10/11B, 6 July, 2011*). In my considered judgment, the charges disclose all the essential elements of the two offences. The fact that the dates are from January to December does not, in itself prejudice the accused, as the complainant will be subject to cross-examination on this point should the defence choose to pursue it.
17. It is also noted that the applicant is seeking the specific time at which the alleged incidents occurred. This, however, is a matter for evidence to be

adduced at trial. The purpose of the particulars of offence is to identify the nature of the state's case which the accused will be required to meet at trial. There is no legal requirement that the particulars of offence must set out the evidence to be adduced by the state. The accused has been served with the disclosures, which are sufficient to enable the preparation for his defence.

18. Moreover, as evident from the court record, counsel for the accused had no issues until this late stage, when the trial is scheduled to start next week, on 15<sup>th</sup> September 2025. A perusal of the pre-trial conference minutes indicates that the defence is one of complete denial. This defence, in my view, is relatively straightforward and does not hinge on the specific dates of the allegations. Counsel for the applicant did not identify any prejudice that may be caused to the accused. In any event, the right to cross-examine the prosecution witnesses remains available to the accused and will, no doubt, assist in the presentation of his defence.

19. The information, in its current form, is legally sound and conforms to the applicable law. What is of concern to me, however, is the timing of this application. This file was first called in this court on 1<sup>st</sup> December, 2022. Furthermore, the accused, in an unusual contention at paragraph 13 of his affidavit, states "... I am unable to use the defence of alibi as the dates covers the whole year of 2019..." This assertion, is contrary to section 125 of the Criminal Procedure Act, as well as the defence strategy outlined by the defence counsel during pre-trial conference.

20. In *Shekar & Shankar v State, Criminal Appeal No. AAU0056 of 2004, (15 July 2025)*, the Court of Appeal at paragraph 14 made the following observations about the purpose of a charge:

*"The purpose of the charge is to ensure that the accused person knows the offence with which he is being charged. Whilst the particulars should be as*

*informative as is reasonably practicable, it is not necessary slavishly to follow the section in the Act."*

21. In *Isireli Leweniqila v State (2004) HAM 0031/04S (2 June, 2004)* Shameem J. (as she was) made a pertinent observation as follows:

*"The application "for further and better particulars", an application frequently made in civil proceedings, is misconceived in a criminal proceeding. The only question is whether the charges and the disclosed statements give to the defence sufficient information with sufficient particularity to meet their defence."*

22. The applicant contends that the particulars of the offence as charged are insufficient to inform him of the nature of the allegation. In support of this submission, reference is made to the decision of the Court of Appeal in *Pauliasi Nauasara v. The State, Criminal Appeal No. AAU 108 of 2018 (27 July 2023)*. However, the facts in that matter on appeal are materially different from the circumstances prevailing in the present case.
23. The central issue in *Nauasara's case* (supra) concerned the date of the alleged offence of murder. With respect, the Court of Appeal did not take into account the fact that the appellant in that matter had given evidence, admitted to the assault on the victim, and had advanced his defence accordingly. The Court of Appeal also did not consider the issue of prejudice to the appellant (if any).
24. In contrast, the defence in the present matter is one of complete denial. The particulars of the alleged offences, as set out in the information, provide sufficient information to the applicant regarding the nature of the offence of rape as charged.

25. The court must remain mindful of the broader principles of fairness and access to justice, particularly in cases involving child complainants. The expectation of precise chronological recall from a 14-year-old child, is not only unrealistic but contrary to established jurisprudence recognizing the cognitive limitations of minors. The law does not require mathematical precision in the framing of charges, provided the accused is reasonably informed of the nature of the allegation and afforded a fair opportunity to respond.
26. In the present matter, the particulars of the charge specify the act complained of, the approximate date and location of the alleged incident, and the identity of the complainant and the accused. These elements, taken together, are sufficient to inform the applicant of the case he is required to meet.
27. The court is further satisfied that the objection raised by the applicant does not occasion any prejudice that would warrant the grant of the orders sought. The applicant retains the procedural safeguards necessary to challenge the credibility and reliability of the complainant's account, including the opportunity to cross-examine the other prosecution witnesses.

## **CONCLUSION**

28. In view of the foregoing analysis, the court is satisfied that the information filed complies with section 58 of the Criminal Procedure Act and is not defective. The particulars of the offence, as drafted, satisfy the statutory requirements set out in section 207 of the Crimes Act 2009.

29. The application is dismissed due to lack of merits



**Sunil Sharma**  
**Judge**



**At Lautoka**

12 September, 2025

**Solicitors**

**Messrs Iqbal Khan and Associates for the Applicant.**

**Office of the Director of Public Prosecutions for the Respondent.**