

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 048 OF 2024

STATE

v

SAMUELA SEMA

Counsel: Ms S. Swastika for State
Mr M. Naivalu for Defence

Dates of Hearing: 26 August 2025, 9 &10 September 2025

Dates of Closing Submissions: 19, 26 September 2025

Date of Judgment: 30 September 2025

JUDGMENT

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

COUNT ONE

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 of the Crimes Act 2009.

Particulars of the Offence

SAMUELA SEMA, on the 3rd day of September 2023, at Lautoka, in the Western Division, unlawfully and indecently assaulted **ILISEVA TALEI LEILANI WALE**, by kissing her lips.

COUNT TWO

Statement of Offence

SEXUAL ASSAULT: Contrary to Section 210 (1) (a) of the Crimes Act 2009.

Particulars of Offence

SAMUELA SEMA, on the 3rd day of September 2023, at Lautoka in the Western Division, unlawfully and indecently assaulted **ILISEVA TALEI LEILANI WALE**, by sucking her breast.

COUNT THREE

Statement of Offence

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

Particulars of Offence

SAMUELA SEMA, on the 03rd of September, 2023, at Lautoka in the Western Division, penetrated the vulva of **ILISEVA TALEI LEILANI WALE**, with his finger, without her consent.

COUNT FOUR

Statement of Offence

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

Particulars of Offence

SAMUELA SEMA, on the 03rd day of September 2023, at Lautoka, in the Western Division, penetrated the vagina of **ILISEVA TALEI LEILANI WALE**, with his finger, without her consent.

COUNT FIVE

Statement of Offence

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

Particulars of Offence

SAMUELA SEMA, on the 03rd day of September 2023, at Lautoka, in the Western Division, penetrated the vagina of **ILISEVA TALEI LEILANI WALE**, with his tongue, without her consent.

COUNT SIX

Statement of Offence

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

Particulars of Offence

SAMUELA SEMA, on the 03rd day of September 2023, at Lautoka, in the Western Division, penetrated the vagina of ILISEVA TALEI LEILANI WALE, with his penis, without her consent.

2. The Accused pleaded not guilty to the above charges. At the ensuing trial, the Prosecution presented the evidence of the Complainant and three other witnesses and closed its case. The Court found no evidence to maintain Count 4. The Accused was acquitted on Count 4. There was *prima facie* evidence to maintain Counts 1, 2, 3, 5 and 6, and the Accused was put to his defence on those counts. Upon being explained the rights in his defence, the Accused elected to give evidence and called 5 witnesses for Defence.
3. The Counsel from both sides tendered helpful closing submissions for which I am grateful. Having carefully considered the evidence and the submissions of the counsel, I now proceed to pronounce my judgment as follows.
4. The Prosecution bears the legal burden to prove all the elements of each offence. That burden never shifts to the Defence at any stage of the trial and must be discharged beyond reasonable doubt. The presumption of innocence in favour of the Accused will prevail until the charges are proved beyond reasonable doubt. The Accused is under no obligation to prove his innocence or prove anything at all.
5. On Count 1, the Accused is charged with Indecent Assault contrary to Section 212 of the Crimes Act. A person commits a summary offence if he or she unlawfully and indecently assaults another person.
6. On count 2, the Accused is charged with Sexual Assault contrary to Section 210(1)(a) of the Crimes Act. A person commits an indictable offence (which is triable summarily) if he or she unlawfully and indecently assaults another person.
7. On Count 3, the Accused is charged with Rape contrary to Section 207 (1) and (2)(b) of the Crimes Act. Section 207(2)(b) of the Crimes Act defines the offence of Rape as follows: a person rapes another person if the person penetrates the vulva, vagina, or anus of the other person to any extent with a thing or a part of the person's body that is not a

penis without the other person's consent. In this case, the Prosecution alleges that the Accused penetrated the vulva of the Complainant with his finger without her consent.

8. On Count 5, the Accused is charged with Rape contrary to Section 207 (1) and (2)(b) of the Crimes Act. Section 207(2)(b) of the Crimes Act defines the offence of Rape as follows: a person rapes another person if the person penetrates the vulva, vagina, or anus of the other person to any extent with a thing or a part of the person's body that is not a penis without the other person's consent. In this case, the Prosecution alleges that the Accused penetrated the vagina of the Complainant with his tongue without her consent.
9. On Count 6, the Accused is charged with Rape contrary to Section 207 (1) and (2)(a) of the Crimes Act. Section 207(2)(a) of the Crimes Act defines the offence of Rape as follows: a person rapes another person if the person has carnal knowledge with or of the other person without the other person's consent. Carnal knowledge means penetration of a vagina to any extent with a penis. In this case, the Prosecution alleges that the Accused penetrated the vagina of the Complainant with his penis without her consent.
10. 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.
11. 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.
12. I shall now summarise the salient parts of the evidence led in this trial.

Evidence for Prosecution

PW1 Iliseva Wale (The Complainant)

13. Wale (27) is a police constable based at Lautoka Police Station. On 3 September 2023, she was in WPC Lanieta's room at the Single Men's Barrack, at the Lautoka Police

Barracks. They decided to drink, and in Cpl. Ilisapeci's vehicle, they went and bought six bottles of Fiji Gold (beer). They returned to the slab behind the Single Men's Barracks and started drinking. Wale invited PC Samuela (Samu) to join them. After finishing the six bottles, they went and bought another carton of six bottles and finished that too. Samu offered to buy another carton. Wale joined Samu to go and buy another carton. While they were still drinking, Wale went to WPC Lani's room at around 3 pm. She had lunch with Lanieta (Lani) and lay down to sleep.

14. While she was sleeping, Samu came and informed that Cpl. Ilisapeci (Ilisapeci) wanted to see her. She took the lead and went to see Ilisapeci. On the way, Samu stopped her and asked her to follow the other steps, which went past Samu's room. Samu said that he had to get something from his room. Wale followed him into his room and sat down. As soon as she sat down in his room, Samu locked the door behind her. She questioned why he locked the door. He didn't say anything.
15. Samu seemed a bit drunk. He held her hands and started kissing her lips forcefully. She was scared. She kept telling him to stop and tried pushing him off, but she failed. He did not stop. He pushed her into the bed and lay on top of her. She was wearing a blue round-neck t-shirt and black shorts. He pulled her t-shirt up and started sucking her breasts. She kept telling him to stop, but he didn't. She tried pushing him off, but he was too heavy. He then put his hands into her pants and touched her clitoris. He inserted his fingers into her clitoris for almost one to two minutes. She kept telling him to stop, but he just continued. He then forcefully pulled her pants down. She tried to stop him by pushing him off, but he was very strong. He started licking her clitoris for one to two minutes. She tried to push his head off, but he held on to her thighs very strongly. He then took off his clothes and came on top of her again. Then he inserted his erect penis into her vagina. She was frightened. She tried pushing him off and kept on telling him to stop, but he didn't stop. After two to three minutes, he ejaculated inside her.
16. After he had done what he was doing, he got off her and stood up beside the bed. She asked him, "*Why did you do that to me?*" He didn't say anything. Then she asked him, "*Did you ejaculate inside me?*" He nodded to say 'yes'. She then punched him in the mouth. She said she punched him because he forced himself on her and ejaculated on her. She then told him off even more because she and his girlfriend, Siowana Taqabale

(Sio), were close friends. She walked out of the room and returned to Lani's room, where she slept. She did not tell Lani about the incident. She just kept all this to herself. After this incident, she was ashamed and scared. If she lodged a report, everybody in the Force would talk about her. She had a significant internal conflict about whether to lodge the report or not, so she stayed away from work.

17. She stayed away from work and was AWOL (Absent without Leave) for almost two weeks. The officers started looking for her. The only officer whom she trusted was Sgt Liviana (Liviana). One night, she rang Liviana and informed her about the incident. She told Liviana that Samu raped her. She didn't tell anyone else. Liviana advised her to go to the station and see one of the managers. She finally gathered up the courage and went to see Liviana at the police station. Liviana took her to ASP Meli and IP Simi Ravouvou, with whom she lodged a report.
18. Wale said that Samu was a batch senior to her and had worked many times with her. It took two years to move on from what had happened, but the incident comes back to her mind.
19. Under cross-examination by Mr Naivalu, Wale said that she consumed about 5-6 bottles before she left the party. She was half drunk. She denied having looked at Samu in a flirtatious way when body chemistry started flowing. While drinking, she saw Manoa and Neumi standing at the end of the hall. She denied that there was consensual sex. She admitted that she did not scream or shout and sought help when the assault took place because she was scared and ashamed. She gave a statement to police on 23 September 2023, 20 days after the alleged incident. By referring to her statement that she punched Samu because he had ejaculated inside her, the Defence Counsel suggested that she had protested and punched not because of the sexual intercourse, but because Samu had ejaculated inside her. She denied the Defence Counsel's proposition. She said that she punched Samu because of what he did and, more so, because he made it worse by ejaculating in her.
20. She agreed that she did not tell Samu's girlfriend (Sio) about the incident immediately. She told Sio only after the report was lodged. She agreed that she did not run but only

walked back to Lani's room after the alleged rape. She agreed that she did not shout when she left the room. She asked: *Why would I shout?*

21. She told Liviana, four days after the incident, and returned to work on 23rd September 2023. She went to Suva. She agreed that her salary was seized for being AWOL for more than two weeks. She denied that she made up the allegation to justify her absence from work. She had been AWOL even before. She agreed that as a policewoman based at the Western Police Headquarters, she could have lodged a report the very next day. She agreed that she came to the police station to report for work only after her superiors gave her an ultimatum. She agreed that she had slept in Samu's room on a previous occasion after having drinks with Samu and his girlfriend. She was familiar with Samu's room, and that's why she followed him into the room.

PW2 - Sgt Liviana Tora (Liviana)

22. In September 2023, Liviana was based at the Lautoka Police Station Uniform Branch as the Non-Commanding Officer (Team Leader). On 7 September 2023, she had gone to Keiyasi Village to attend a funeral. At about 1 am, she received a phone call from Wale, who worked under her. She thought it was an emergency. After answering the call, Wale just said hello and kept quiet. She kept asking her what happened. After some time, Wale started crying. Then she told Wale to stop crying and tell what had happened. After questioning, Wale told her that Samu had had forceful sexual intercourse with her. Wale also told her that because of the incident, she wanted to isolate herself from everybody else. She advised Wale not to do so and to wait for her return from the village to discuss the matter with the senior officers.
23. Upon her return to the Station, she found that Wale had not been coming to work. She called Wale and visited her at home. Wale was so downhearted and so sad. She managed to convince Wale to come to the Station. She recorded what she heard from Wale. After a discussion with the Inspector of Police Administration, Wale lodged a report.
24. Under cross-examination by Mr Naivalu, Liviana said that she was tasked to look for Wale because she had reported AWOL after the incident.

PW3 - Lanieta Sikivanua (Lani)

25. In September 2023, Lani was based at Lautoka Police Station. She was part of a drinking party on 3 September 2023 with Wale, Ilisapeci, and Samu. She left for her room in the barracks after finishing four bottles of the second box. Her friend had brought lunch for her and Wale. She called Wale to come and have lunch. Wale came to the room, and they had lunch. She heard someone knocking on the door. It was Samu. Samu said that Ilisapeci was at the spot. He wanted someone to go and get her. She told Wale to accompany Samu and check on Ilisapeci, so they went.
26. When Wale returned to the room, she was not normal; she didn't want to talk. Earlier, Wale was talking and laughing. Wale went straight to bed. A few days later, she invited Wale for lunch and asked what was wrong with her. Wale told her that Samu forced her into his room and raped her. She asked Wale why she didn't tell her that day, soon after it happened. Wale said she was still in shock and scared.
27. Under cross-examination by Mr Naivalu, Lani said that Wale relayed the incident after six days on 9 September. When Wale returned to the room after the alleged incident, she just walked in and went straight to the bed.

PW4- Sgt Ilisapeci

28. In September 2023, Ilisapeci was based at the CSI Unit of the Lautoka Police Station. On 3 September 2023, she was part of the drinking party with Lani and Wale that took place behind the Single Men's Barracks. She consumed a few bottles and passed out. She gained consciousness only in the afternoon.

Evidence for Defence

DW1 - Samuela Sema (The Accused)

29. Samu was staying at the Single Men's Barrack of the Lautoka Police Station. It is segregated into male and female sides. Nearly three-quarters of the barracks are occupied by male officers. His room is towards the hospital side. On 3 September 2023, which was

a Sunday, when he woke up in the morning, he heard a noise coming from the slab, the one behind the barrack. When he opened the curtains, he saw Wale, Ilisapeci and Lani drinking and making noise at the slab.

30. Wale called him and invited him to join them for a drink. He went and joined them in drinking. When he joined, only two bottles of Fiji Gold (beer) were left from a carton of six bottles. They continued drinking and bought another six bottles. While they were drinking, Wale made eye contact with him and frequently looked at him in a flirtatious manner. He thought she was having feelings for him.
31. After they finished with the second carton, he offered to buy another carton, his *sevusevu* to them. Wale said she wanted to come with him to buy the drinks. He and Wale went down to the corner shop and bought the drinks. They continued drinking at the same place till midday. When they had finished three bottles out of twelve, Lani left for the barracks. Wale also left shortly afterwards, saying that she was going to call Lani back to the drinking party. Two of his cousins, who were crossing the hospital shortcut, joined him and Ilisapeci in drinking. Shortly, Ilisapeci knocked out on the slab. He went to call Lani and Wale for them to come and take Ilisapeci, so that they could find another place to drink.
32. When he came up to Lani's room, the door was open. Wale was sitting on one bed, eating, and on the other bed, Lani was sleeping. He told Wale to wake Lani up and pick Ilisapeci. After that, he walked back to his room to put his phone on the charger. While he was walking, he saw Manoa and Neumi sitting outside his room. He went inside his room and laid down waiting for Wale and Lani to come and get Ilisapeci. Suddenly, a loud noise woke him up. At the same time, he saw Wale inside his room, closing the door. Wale came and sat beside him. The first thing Wale asked was about his de facto partner, who had attended Jasper School with her.
33. When he said that her girlfriend was in her residence in Ba, Wale started kissing him. They kissed each other for a while. Then she laid down on the bed. He joined her on the bed, kissing her. While they were kissing, she neither spoke nor pushed him off. She started kissing on the neck down and, when he pulled her t-shirt, she took it off on her own. When he pulled on her sports bra, she took it off on her own. He was kissing her

breast and went down her stomach while she was putting her hands on him. She did not try to stop him. It seemed that she was enjoying what they were doing. When he put his hand on her pants, she pulled her pants down on her own. She also took off her panties on her own. When he was licking her vagina, her hand was on his head, and she was pulling him towards her, and she was moaning. When he penetrated her vagina with his penis, she did not try to stop him. She did not scream. Everything was consensual.

34. After they had had sexual intercourse, a conversation took place where she asked him whether he had ejaculated in her. When he nodded to say 'yes', her reaction changed, and she asked him why he did that to her. Then she punched him once on his lips. There was blood on his lips. After she had punched him, she asked for her clothes. They put on their clothes. She told him that his girlfriend should never know what had happened. After that, they followed each other out of the room. Manoa and Neumi saw them walking past. They were sitting in the passage near Manoa's room. She first went to Lani's room and took Ilisapeci from the Slab.
35. Being a police officer for 7 years, he knew the punishment for rape. He would never have committed this offence. He was surprised when he learnt about the report lodged against him after a few days. He was charged 1 or 2 months after he was first interviewed. At the interview, he denied having had sexual intercourse because he was scared. When he was charged, on the instructions of his Counsel, he admitted to the sexual intercourse and said that it was by consent.
36. Under cross-examination by Ms Swastika, Samu admitted that Wale had come with his girlfriend and slept in his room before the alleged incident. He denied having locked the room with the tower bolt. He admitted to sucking Wale's breasts, licking her vagina with his tongue, and having had sexual intercourse with her. He said everything was consensual. Wale asked him whether he had ejaculated in her. When the investigation started, Wale had informed his girlfriend of what had happened.
37. Samu admitted that at no point in time before the alleged incident, he had a conversation about Wale staring at him in a flirtatious manner at the drinking party. He admitted that he never asked for her consent verbally, but her acts were consensual. He believed Wale was consenting because she did not stop him, scream, protest, or resist any of his

advances- kissing, touching, etc., and she took off her clothes on her own. She punched him only after the sexual intercourse when she learnt that he had ejaculated in her.

DW2 - PC Neumi Tabuyaqona

38. On 3 September 2023, PC Neumi was with PC Manoa in his dorm. When he was preparing lunch, he saw Samu, Wale, Lani, and another Corporal drinking on the slab. During midday, he saw Samu coming along the corridor and entering his room. About 10 minutes later, Wale also came and entered Samu's room. After that, the door was closed. After a few minutes, Samu came and borrowed his fan.
39. Under cross-examination by Ms Swastika, PC Neumi admitted that he had not mentioned in his statement that it was after 10 minutes that Wale had entered PC Samu's room.

DW3 PC Grace

40. PC Grace is a clerk under IP Dinesh at the Admin Branch at the Lautoka Police Station, which monitors manpower. For the years she had spent in this office, it was not a new thing for her to observe that Wale was often AWOL.
41. In September 2023, she was instructed by IP Dinesh to look for Wale's whereabouts and get her explanation for being AWOL. She kept making calls, but Wale would never answer her calls. After a few attempts, Wale did respond after nine days. She asked if her stoppage (of salary) had already been sent. When she asked for her explanation, Wale said that she was going to come to work the following day. When she called the next day, Wale said that she was in Sigatoka and that she wanted to clear her head. Because they had heard about the incident, a statement was required to check on her welfare before sending her a salary stoppage. Wale was not new to AWOL. But this was the first time she had an explanation for her AWOL. She reported for work on 23 September 2023. Her salary was not stopped.

DW 4 - Inspector Dinesh Chand (IP Chand)

42. On 5 September 2023, IP Chand resumed duties as the Inspector of Administration. He looked at all the administration issues and checked on officers who had been absent for

more than three days before sending their stoppage of salary. One of the officers who was not coming to work was Wale. He started inquiring about Wale. After 3 days, when he was about to get a statement from Liviana to stop the salary, Liviana informed him that Wale was a victim of sexual abuse. He advised Liviana to bring Wale and get her to lodge a report. Wale did not come till 23 September 2023. He instructed Sgt. Pramit to go and get the victim from home.

43. Wale relayed her story on 23 September 2023. She was referred to the Sexual Offences Unit, where she lodged an official report against the accused. He accepted that she had a reasonable ground for her AWOL, so her salary was not stopped.

DW 5 PC Manoa Koroi

44. On 3 September 2023, in the afternoon, he and PC Neumi were cooking lunch in the corridor of the Single Men's Barrack, where they occupied the 1st and 2nd rooms. Samu occupied the 4th room. While they were having lunch, Samu came from the males' dorm side and asked for the fan. He took the fan into Samu's room and came back. While sitting in the corridor, he saw Wale coming from the girls' dorm side after seven minutes and entered Samu's room, which was open. By the time she entered the room, the door was closed.
45. When he went closer to the room, he could hear what was going on inside the room. He heard the sound of the rocking bed and them making love and having intercourse. It sounded like they were enjoying sex. He went back to his room, where Neumi was. Samu and Wale came out together, sharing jokes. They went back to the place where they had been drinking since morning. When Samu came towards them, he and Neumi were sharing jokes about them having sex.
46. Under cross-examination by Ms Swastika, Manoa admitted that he and Samu were friends. He agreed that because he did not see what was happening inside the room, he was not in a position to comment that the sound he heard was that of someone enjoying sex. He agreed that in his statement dated 26 September 2023, he had not stated that he heard a sound of someone enjoying sex. He did not deny the proposition that he had made

up his evidence to save his friend, the Accused. He did not talk to Samu when he came out of the room because he was highly intoxicated with alcohol.

DW6 - PC Lusia Robanakavu (Lusia)

47. PC Lusia was the admin clerk of Lautoka Police Station as of 9 September 2023. She handled personnel files of the officers regarding their leaves, sick sheets, and overseas leave etc. She is aware of Wale's personal record from 2019 until 2023, when she was based at Lautoka Police Station. Wale used to go missing at work continuously. They have established that Wale had been AWOL since 2020. The officers went to bring Wale to the police station because she was missing from work. That's when she became aware of the alleged incident. They used to send stoppage of salary notices, and then she would come to work again and go missing again. Wale was issued a warning letter from the Commissioner.
48. Under cross-examination by Ms. Swastika, PC Lusia agreed that because Wale was AWOL quite often, she was given a warning letter by the Commissioner of Police in 2021. She had a habit of being AWOL. She only showed up to work on 23 September 2023 after being AWOL for 19 days. She had never brought up an allegation of rape before.

Evaluation/ Analysis

49. The Accused admits that he was engaged in the sexual activities alleged in the information. His position is that all those acts were consensual. The only contest at the trial was whether the Complainant had consented to the sexual activities that took place in the Accused's dorm on 3 September 2023.
50. The case is diametrically polarised and turns on one word against the other. The outcome depends on who told the truth in Court. However, the Prosecution must prove beyond a reasonable doubt that the Complainant did not consent. Since there is no direct independent evidence as to what transpired in the Accused's room between the Complainant and the Accused, the issue of consent must be decided on circumstantial

evidence, after drawing reasonable inferences from the conduct of the parties before, during, and after the alleged offences.

51. While no corroboration of Complainant's evidence is required to prove a sexual offence, the Court must be cautious in its evaluation and make every attempt to ensure that the truth prevails. After considering all the evidence led in the trial, if a reasonable doubt is created in the mind of the Court, the benefit of that doubt must be given to the Accused.
52. Let me first analyse the evidence of the Complainant. She is a police officer attached to the charge room when the alleged incident occurred. The Accused is one of her colleagues in the Police Force. There is no dispute that the Complainant invited the Accused to join in drinking when she saw the Accused from the slab where they were drinking. The Accused had been in his dorm at that time. It was the Accused's evidence that while drinking, the Complainant made eye contact with him and looked at him in a flirtatious manner, which the Complainant denied. The Accused appears to say that the Complainant's behaviour made him believe that she was inviting him for the alleged sexual conduct that ensued after the drinks.
53. After noticing this so-called 'flirtatious look,' the Accused had gone to the Corner Shop with the Complainant to buy another carton of beer. If the Complainant made eye contact with the Accused in such a way as to send a hidden message of love, the Accused was expected to get a clarification from the Complainant about what message she was trying to send him. The Accused confirmed that there was no conversation about what he described as the 'flirtatious look' when the two went to buy drinks. In the absence of such talk, I doubt the Complainant made eye contact with the Accused in a flirtatious manner.
54. It is not disputed that Lani and the Complainant left the drinking party early for Lani's room to have lunch. After having lunch, the Complainant said she had a nap in Lani's room. There was no indication that the Complainant intended to return to the drinking party. Although the Accused said that the Complainant went to Lani's room to get Lani back to the party, it was never put to the Complainant or Lani that they went to the room

with the intention of returning to the drinking party¹. It was in this context that the Accused had gone to Lani's room to inform that Ilisapeci wanted to see the Complainant.

55. The Prosecution's position was that, by making a false representation, the Complainant was lured into the Accused's room to commit the alleged offences. It is not disputed that Ilisapeci passed out on the slab after being heavily intoxicated. While Lani remained in her room, she had sent the Complainant with the Accused to see Ilisapeci, believing the words of the Accused. It is the Complainant's evidence that on the way, the Accused stopped her and asked her to follow him the other steps leading to the Accused's room, saying that he had to get something from his room.
56. The Accused did not deny that he went to his room instead of going to the slab. His explanation was that he went to his room to charge his phone. After putting the phone on the charger, he lay down in the room. He did not explain why he lay down in his room when he intended to get rid of Ilisapeci and continue drinking in another place.
57. The Complainant frankly admitted that she followed the Accused, entered his room and sat on his bed when she was asked to wait for him. According to the Complainant, the Accused's room was not a new place to her. On a previous occasion, she had been drinking in this room with the Accused and his girlfriend, Sio, who was her close friend from school days. She had even slept in this room. The Accused does not dispute any of these. That was the explanation for her entering the Accused's room when he was alone. This explanation cannot be rejected if she had really trusted the Accused. The evidence supports the claim that the Complainant was lured into the room by the Accused.
58. If the Complainant was lured as the Prosecution suggested, she could have realised before it was too late what the Accused was up to when he locked the door and started kissing her. The Complainant frankly admitted that she did not shout to alert others to a potential threat when she had an ample opportunity to do so. Her explanation was that she was scared because the Accused was drunk. Certainly, her fear was reasonable as she was in a locked room with a man who was drunk and strong.

¹ *Browne v Dunn* (1893) 6 R 67 Rule of practice that requires the counsel to put the substance of the contradictory evidence to the opposing witness during cross-examination, so that the witness might comment on it.

59. The Court understands the predicament of the victims of rape and their unpredictable reactions when confronted with such a situation. They would react in different ways, and the mere fact that the Complainant did not shout does not lead to the only inference that she was consenting to the alleged sexual conduct of the Accused. She maintained that even though she did not shout, she resisted every invasive act of the Accused.
60. There is no dispute that the Complainant punched the Accused at the conclusion of the alleged sexual conduct, causing him to bleed from his mouth. The Complainant had asked the Accused, "*Why did you do that to me?*" for which the Accused didn't say anything. Then she asked him, "*Did you ejaculate inside me?*" He nodded to signal 'yes'. She then punched him in his mouth. The Accused does not deny being punched, and this conversation having taken place.
61. The Defence Counsel suggested that the Complainant punched the Accused not because of the sexual intercourse but because he had ejaculated on her. The Complainant denied this proposition and explained that she punched because of what the Accused did, and, more so, because he made it worse by ejaculating on her. She further elaborated that she was also concerned that the Accused's girlfriend (Sio) was her close friend.
62. If the Complainant had agreed to have sexual intercourse with the Accused, she would not have asked, "*Why did you do that to me?*" and then proceeded to punch him. There is no merit in the argument that the Complainant punched only when she realised that the Accused had ejaculated inside her.
63. Let me now turn to the Prosecution's evidence that describes the Complainant's conduct after the alleged sexual assault. The Complainant said that after the incident, she kept away from work and was AWOL (Absent without Leave) for almost two weeks because she wanted to isolate herself from others. She had gone to Suva, Nadi and Sigatoka during this period.
64. The Complainant admitted that she went to Lani's room and slept after the alleged incident. Lani was the first person to observe the Complainant's demeanour after the alleged incident. Lani confirmed that the Complainant went straight to bed without talking.

65. The Complainant had not told Lani anything about the alleged incident. Lani however had noticed the Complainant's distressed condition, which she described as 'not normal'. Before the Complainant left the room, she had been talking and laughing. Upon her return to the room, she didn't want to talk. The Complainant's abnormal conduct prompted Lani to know what had gone wrong. On 9 September 2023, Lani invited the Complainant for lunch and asked what was wrong with her. The Complainant told Lani that the Accused forced her into his room and raped her. Lani asked the Complainant why she didn't tell her that day, soon after it happened. The Complainant said she was still in shock and scared.
66. Not every victim of sexual assault would complain to the first person she/he sees due to fear of retaliation, not being believed, blaming themselves, or the trauma of the event. Therefore, the Court should not jump to the conclusion that the Complainant was never raped merely because she failed to complain to Lani. The Court should examine the explanation the Complainant provides for her conduct. Her explanation was that she was still in shock and scared.
67. Although the Complainant did not complain to Lani or anyone immediately after the alleged incident, she relayed the incident on 7 September 2023, three days after the alleged incident. The first recipient of her complaint was Sgt Liviana, the Complainant's immediate supervisor. She had chosen Liviana to tell the story because Liviana was the only officer she trusted.
68. The circumstances under which Liviana had received the complaint were significant. Liviana described how she received the complaint when she was in the village. She thought it was an emergency because the call came at 1 am. After answering the call, the Complainant just said hello and kept quiet. Liviana kept asking what happened. After some time, the Complainant started crying. Then Liviana told her to stop crying and tell her what had happened. After repeated questioning, the Complainant told Liviana that the Accused had had forceful sexual intercourse with her. The Complainant also told Liviana that because of the incident, she wanted to isolate herself from everybody else. Liviana advised the Complainant not to do so and wait for her return from the village to discuss the matter with the senior officers.

69. The Complainant explained why she did not complain to police immediately. She said she kept it to herself because she was ashamed and scared; if she lodged a report, everybody in the Police Force would talk about her; she had a conflict with herself whether to lodge the report or not, so she stayed away from work and went to Suva. She finally gathered up the courage and went to see Liviana at the police station.
70. It is understandable how difficult it would have been for the Complainant to make up her mind to lodge a complaint, especially when her rapist had been her workmate and the boyfriend of her close friend.
71. Liviana described how she managed to convince the Complainant to complain to the police. Upon Liviana's return to the Station from the village, she found that the Complainant had not been coming to work. She called the Complainant and visited her at home. She found the Complainant to be so downhearted and sad. This evidence shows how distressed the Complainant had been after the alleged incident and it explains why the complaint was belated.
72. The Complainant had eventually complained to police on 23 September 2023, approximately 20 days after the alleged incident. The Defence argued that the Complainant did not complain to the police immediately because the sexual activities were consensual. It was also contended that her belated complaint was made up as an excuse for being AWOL, to save her salary and the job.
73. I am not convinced that the allegation is made up. If the Complainant wanted an excuse for being AWOL, she could have made up this allegation much earlier and come to the Station without waiting for almost three weeks.
74. The evidence of Liviana and Grace shows how reluctant the Complainant had been to lodge a complaint. IP Dinesh instructed Grace to look for the Complainant's whereabouts and get her explanation. Grace kept making calls, but the Complainant would never answer. When the Complainant did respond after nine days, she assured that she would come to work the following day. But she did not. When Grace called the next day, the Complainant informed that she wanted to 'clear her head'.

75. There is no dispute that the Complainant had been in the habit of being AWOL ever since she started her work in Lautoka. The Defence witnesses (Grace and Lusua) confirmed that the Complainant was a habitual absentee, and, on a previous occasion, she had even been issued with a warning letter by the Commissioner of Police. Grace confirmed that the Complainant, despite her dismal history of absenteeism, had never come up with such a serious explanation in the past.
76. Grace confirmed that the Complainant's salary was not stopped, apparently because the Complainant's explanation that she was raped had been accepted. It is hard to believe that the Complainant made up such a serious allegation against the Accused, who was her colleague and the boyfriend of her close friend, to justify her AWOL.
77. The conduct of the Complainant is consistent with that of a genuine rape victim. She was straightforward and not evasive in her answers. Her conduct in Court, which I observed closely, proved that she is a truthful witness. I accept the version of events of the Prosecution case.
78. The evidence of the Accused is not appealing to me. He was giving a self-serving account to save himself. In his caution interview, he had completely denied having had sex with the Complainant. When he was charged, he had changed his position and admitted to the sexual conduct upon his Counsel's instructions. He was not consistent in his defence. I am not convinced the Accused told the truth in Court.
79. The Accused said that the Complainant pleaded with him not to tell his girlfriend of what had happened between them. The Complainant denied making such statement. The Complainant had told the Accused's girlfriend when the investigations began. If she had pleaded with the Accused not to tell his girlfriend, she would never have told his girlfriend, Lani and Liviana.
80. The evidence of Manoa and Neumi adds nothing to the Defence case. There is no dispute that they were in the corridor when the Accused entered his room followed by the Complainant. They had not seen who closed the door and what happened in the room between the Complainant and the Accused.

81. Manoa said that he heard the Complainant and the Accused making love and having intercourse in the room which sounded like they were enjoying sex. Under cross-examination, Manoa agreed that because he did not see what was happening inside the room, he was not in a position to comment that the sound he heard was that of someone enjoying sex. He agreed that in his statement dated 26 September 2023, he had not stated that he heard a sound of someone enjoying sex. Manoa is not consistent and credible. Manoa admitted that he and the Accused were friends. I accept the proposition of the Prosecution that Manoa had made up his evidence to save his friend, the Accused.
82. No reasonable doubt is created in my mind as to the credibility and reliability of the version of events of the Prosecution case. There is no credible evidence to find that the Complainant was consenting to the alleged sexual conduct of the Accused. By her conduct, the Complainant had sent a clear message to the Accused that she was not consenting to any of the sexual acts alleged in the information. He had no reason to believe that she was consenting. The Accused admitted that he did not make any inquiry from the Complainant for him to be satisfied if the Complainant was consenting to have sex.
83. The Prosecution proved Counts 1,2,3,5 and 6 beyond a reasonable doubt. I find the Accused guilty on Counts 1,2,3,5 and 6 as charged. The Accused is acquitted on Count 4 as there is no evidence that he penetrated the vagina of the Complainant with his finger.
84. The Accused is convicted on Counts 1,2,3,5 and 6 accordingly.



30 September 2025

At Lautoka

Aruna Aluthge

Judge

Solicitors:

Office of the Director of Public Prosecutions for State
Law Naivalu for Defence