

**IN THE HIGH COURT OF FIJI**

**AT LABASA**

**CRIMINAL JURISDICTION**

**Criminal Case No. HAC 33 of 2024**

**STATE**

**-v-**

**MOHAMMED FARAAZ ISAQ  
SHEIK SHER MOHAMMED RAMZAN**

**Counsel: Mr. E. Kotoilakeba for the State  
Ms. K. Marama with Mr. T. Masiwaulu for the 1<sup>st</sup> Accused  
Ms. R. Raj with Ms. A. Vono for the 2<sup>nd</sup> Accused**

**Date of Trial: 10 September – September 2025**

**Date of Judgment: 19 November 2025**

**JUDGMENT**

**Introduction**

1. Mohammed Faraaz Isaq (“1<sup>st</sup> accused”) and Shiek Sher Mohammed Ramzan (“2<sup>nd</sup> accused”) are brothers. They were charged and pleaded not guilty to offences of violence against their cousin, Mr. Anil Prasad (“the complainant”). By an Information dated 23 April 2024, the 1<sup>st</sup> accused was charged with the offence of act with intent to cause grievous harm to the complainant, contrary to section 255(a) of the Crimes Act 2009, the particulars being that, on 3 March 2024, at Dala settlement, Taveuni, with intent to cause the complainant grievous harm, he wounded the complainant by hitting him on the head with a freezer compressor (“count one”). In the same Information, the 2<sup>nd</sup> accused was charged with assault

causing actual bodily harm, contrary to section 275 of the Crimes Act 2009, the particulars being that, on the same date, and at the same place, he punched the complainant in the chest causing him actual bodily harm (“count two”).

### **Prosecution Case**

2. As opened by Mr. Kotoilakeba, the prosecution case was that, on 3 March 2024, at around 5pm, the complainant went to a shop in Dala settlement, which was run by the 1<sup>st</sup> and 2<sup>nd</sup> accuseds’ parents, where he got into an argument with both accused. He was hit on his head with a compressor by the 1<sup>st</sup> accused, and was punched in the chest by the 2<sup>nd</sup> accused. In order to prove the prosecution case, Mr. Kotoilakeba indicated that he would call four witnesses – the complainant, two eye witnesses, and the doctor who examined the complainant.

### **Prosecution evidence**

3. The first prosecution witness was Mr. Pelasio Raiyabia, a 17-year-old school pupil. He testified that he got home from school at around 5pm on 3 March 2024. After changing out of his school uniform, he headed to the shop in Dala, about a 5-minute walk away. After making a purchase, he was at the road when he heard people shouting. From a distance of about 10 metres, he saw two people pulling the complainant, one of them was Isaac, and the second person was Junior. At this point, the 2<sup>nd</sup> accused arrived in his car and went to try to stop the fighting. He took a tyre pump from the top of the fridge outside the shop and used it to hit the complainant on his forehead. He returned the pump and left in his car. The complainant was still causing a fight with the 1<sup>st</sup> accused. The village headman arrived to stop the fighting, at which point the witness went to the complainant and made him lie down on the verandah. The complainant was drunk. He wanted to stand up and go back to causing a fight. The complainant’s wife then came and called the police. When the Court sought clarification, the witness explained that the 1<sup>st</sup> accused did not want to fight, and it was the complainant who wanted to go and cause the fight.
4. Ms. Marama did not cross-examine Pelasio. In cross-examination by Ms. Raj, it was suggested to Pelasio that he was not present at the incident, and only made

a statement because his father works for the complainant. He was adamant that he saw what happened.

5. The second prosecution witness was Dr Sulita Turaganiwai. She examined the complainant at the Emergency Department of Taveuni Hospital on 4 March 2024. Her initial impression was that the complainant was groggy as he was intoxicated. He was in pain. There was swelling on his left forehead and a 3cm x 1cm superficial laceration above his left eyebrow. There was also tenderness along the left side of his ribs. The swelling and laceration were likely caused by a heavy object with a sharp edge, and the chest tenderness was likely caused by blunt force trauma such as a closed fist. He was admitted to hospital for four days for observation. The Police Medical Examination Form was adduced as PE – 1.
6. In cross-examination for both accused, alternative causes of the complainant's injuries were suggested and accepted as possibilities by Dr Turaganiwai.
7. The next witness for the prosecution was the complainant. At around 5pm on 4 March 2024, he was drinking with friends under a tree near to his house. The 1<sup>st</sup> accused came and swore at them. Between 5pm to 6pm, his drinking party of six drank twenty four bottles of beer between them. Later, at around 6pm, the complainant went to the shop run by the accuseds' parents, which is about 15 metres away from the complainant's home. The 1<sup>st</sup> and 2<sup>nd</sup> accused punched and kicked him causing him to fall down. The 2<sup>nd</sup> accused hit him on his head with a black fridge compressor. He described being hit "*not that hard*" behind his right ear as he lay face down. He was then knocked out and was taken to the hospital.
8. When Ms. Marama put to the complainant that he had gone to the shop and punched her client in the face, he denied that. He also denied that he fell when he was pushed by the 1<sup>st</sup> accused's nephew because he was drunk. He said that he was not that drunk. His wife came when she heard the commotion after he was hit.
9. The final prosecution witness was the complainant's wife, Ms. Ronshila Saras. At around 5pm on 4 March 2024, her husband went to the shop. She heard a

commotion and took a short cut towards the shop. From a distance of about 10 metres, she saw the 1<sup>st</sup> accused punch her husband and knock him down. The 2<sup>nd</sup> accused then hit him with the black thing. She and her brothers took her husband to hospital.

10. When Ms. Marama put to the witness that she was not present at the time of the alleged incident, she insisted that she was there and saw them hitting her husband. She also disagreed that her husband likes to cause fights when he is drunk.
11. At the close of the prosecution case, I acceded to the prosecution application to amend the date of offending to 4 March 2024.

### **No case to answer submissions**

12. Ms. Marama made a half-time submission that the 1<sup>st</sup> accused had no case to answer on count one, but quite properly conceded that there was some evidence that her client had assaulted the complainant. A no case to answer submission was also advanced on behalf of the 2<sup>nd</sup> accused, the gist of which was that there was no evidence that the 2<sup>nd</sup> accused had punched the complainant's chest. It was, however, conceded that there was evidence that the 2<sup>nd</sup> accused had kicked the complainant in his ribs.
13. Mr. Kotoilakeba submitted that there was sufficient evidence to put both the 1<sup>st</sup> and 2<sup>nd</sup> accused to their defences on lesser alternative charges.
14. I ruled that both accused had a case to answer and explained their options. They both elected to give evidence and call witnesses.

### **Defence evidence**

15. The 1<sup>st</sup> accused testified that he got home from work at around 6pm on 4 March 2024. He went to the turaga-ni-koro to confirm what time they were leaving to take the reguregu to a nearby village. As he walked home, Pio swore at him and tried to punch him. Pio was in a drinking party at the complainant's place.
16. His parents told him to look after the shop as they left for the reguregu. As he was sitting on the verandah of the shop with two nephews, the complainant staggered

towards him and, without saying anything, punched him in the face. The complainant was heavily intoxicated. The complainant then asked him why he could not let them drink in peace. As the complainant went to throw another punch, his nephew, Isaac, pushed the complainant, and he fell face down on the ground next to the verandah. His other cousin, Junior Feroz, went to pick him up, and the complainant still wanted to punch him. The 1<sup>st</sup> accused noticed that the complainant had blood near his eyebrow. Even though the complainant still wanted to fight, his nephews were able to take him away. The 1<sup>st</sup> accused said it was a lie that he had punched and kicked the complainant. The complainant was the aggressor. Also, it was not true that the 2<sup>nd</sup> accused had assaulted the complainant. He had never got out of his vehicle, and went to bring the turaga-nikoro to stop the commotion.

17. In cross-examination, the 1<sup>st</sup> accused said that he was sitting on a bench when the complainant approached him and punched him without warning. His phone fell when he was punched. As he bent over to pick up his phone, his nephew intervened to stop the second punch. When it was suggested that he was the first to punch the complainant, the 1<sup>st</sup> accused denied that. He denied that he was lying to the Court.
18. The 2<sup>nd</sup> accused testified that he was driving his van on the afternoon of 4 March 2024. At around 3.30pm, he went to the complainant's father's place to borrow his tyre pump. He then went to the complainant's house where he was sworn at. When he told the complainant's father about this, he was told to go and report it. This was overheard by someone from the drinking party and, shortly afterwards, he was asked by the complainant's brother-in-law whether he was going to make a report. He went home and pumped his van tyre and then returned the tyre pump to the complainant's father. He then took passengers to the reguregu. He returned to Dala at around 6pm and saw the complainant and his brother-in-law fighting the 1<sup>st</sup> accused at the shop verandah. His nephews were trying to stop the fight, so he reversed and went to get the village headman. He denied that he had assaulted the complainant or hit him with a compressor. He did not know why the complainant and his wife would make that false allegation.

19. In cross-examination, he said that the tyre pump borrowed from the complainant's father was black in colour. He did not accept that he had alighted from his van when he saw the fight. He did not intervene in the fight and did not whack the complainant with the tyre pump. In answer to a question from the Court, the 2<sup>nd</sup> accused said that it was dark at around 6pm and the solar light was not so bright. He was able to see his nephews holding the complainant and his brother-in-law as they were trying to hit the 1<sup>st</sup> accused.
20. The first defence witness was Mr. Isaac Niutabua, a Form 7 pupil, aged 18 years. Between 5pm to 7pm on 4 March 2024, he was with the 1<sup>st</sup> accused and Junior Feroz at the verandah of his parents' shop. The complainant approached them and punched the 1<sup>st</sup> accused. He tried to land a second punch, but the witness pushed him and he fell face down on the road. After checking on the 1<sup>st</sup> accused, he went to check on the complainant, who stood up and tried to punch the 1<sup>st</sup> accused again. The 1<sup>st</sup> accused did not punch the complainant. The complainant was bleeding above his right eye. The complainant's friends came to the scene. The 2<sup>nd</sup> accused was not there at that time. The complainant was drunk.
21. In cross-examination, Isaac agreed that he saw the complainant approaching the shop. He denied that the 1<sup>st</sup> accused had punched the complainant first. He also denied that the 2<sup>nd</sup> accused had come to the scene. When it was put to him that the complainant was bleeding because the 2<sup>nd</sup> accused had hit him with a freezer/pump compressor, Isaac denied that.
22. The next defence witness was Isaac's 16-year-old brother, Mohammed Feroz. After school on 4 March 2024, he was with his elder brother, Isaac, and his uncle Faraaz telling stories on the verandah of the 1<sup>st</sup> accused's parents' shop. The complainant approached them and, without saying anything, he punched the 1<sup>st</sup> accused as he was sitting down next to Isaac. Isaac then pushed the complainant. The complainant's friends came along and picked him up, but he fell down again beside the verandah. The complainant had a cut above his left eye. When the complainant's wife arrived at the scene, the complainant had already been taken

to his uncle's house. The 2<sup>nd</sup> accused arrived in his vehicle, but did not get out. Later, the 2<sup>nd</sup> accused returned with the village headman.

23. In cross-examination by Mr. Kotoilakeba, the witness confirmed that the complainant went straight to the 1<sup>st</sup> accused and punched him. Isaac pushed the complainant away. When it was suggested that the 1<sup>st</sup> accused had punched the complainant, Feroz disagreed. He also denied that the complainant was injured when the 2<sup>nd</sup> accused hit him with a tyre pump.
24. When the Court asked Feroz to demonstrate how Isaac had pushed the complainant, he demonstrated a push to the complainant's chest.

### **Closing submissions**

25. The parties have made helpful written and oral submissions for which the Court is grateful.
26. In her closing speech, Ms. Marama emphasised that the weight of evidence supports that it was the complainant who approached the 1<sup>st</sup> accused and punched him. Both Isaac and Feroz support the 1<sup>st</sup> accused's account. Indeed, the first prosecution witness, Pelasio, testified that it was the complainant who was trying to punch the 1<sup>st</sup> accused. Pelasio also said that it was the 2<sup>nd</sup> accused, not the 1<sup>st</sup> accused, who hit the complainant with a tyre pump. As for the available lesser offences, Ms. Marama submitted that the evidence does not support that the 1<sup>st</sup> defendant assaulted the complainant. The fact that the complainant was plainly drunk undermines his reliability.
27. For the 2<sup>nd</sup> accused, Ms. Vono submitted that Pelasio's evidence about seeing her client hit the complainant on his forehead with a tyre pump in the street is inconsistent with the complainant's account that the 2<sup>nd</sup> accused hit him with a compressor behind his ear on the verandah. Also, the 1<sup>st</sup> accused, Isaac and Feroz all support that the 2<sup>nd</sup> accused never got out of his vehicle. Both the complainant and his wife are unreliable on this aspect of the prosecution case. The medical evidence does not support that the complainant was struck behind his ear with a metal object, and Isaac's testimony about pushing the complainant's

chest, and him falling on to the road, provides an explanation for the injuries the complainant was found to have suffered. In short, Ms. Vono submitted that there is simply no credible and reliable evidence that her client assaulted the complainant.

28. Mr. Kotoilakeba submitted that, contrary to the way he opened the prosecution case, the evidence of PW1 and PW4 supports that it was the 2<sup>nd</sup> accused who used a tyre pump to hit the complainant on his forehead, causing a cut above his eyebrow. He invited the Court not to accept the complainant's evidence that the 2<sup>nd</sup> accused struck him behind his ear with a compressor as he lay on the verandah. As for the complainant's allegations that the 1<sup>st</sup> and 2<sup>nd</sup> accused punched and kicked the complainant, Mr. Kotoilakeba invited the Court to accept the complainant's account, which was supported by his wife's evidence.

### **Directions/Warnings**

29. The prosecution must prove that the accused are each guilty of unlawfully assaulting and causing bodily harm to the complainant. The accused do not have to prove anything to me. The defence does not have to prove that the accused are innocent. The prosecution will only succeed in proving that the accused are guilty if I have been made sure of their guilt. Both accused are charged as principals and I must consider the evidence in relation to each of them separately. If, after considering all of the evidence, I am not sure that the either or both of the accused are guilty, my verdict must be not guilty.
30. I remind myself that if the accuseds' denials are, or may be, true, I must find them not guilty. Even if I reject their evidence, I must not find either of them guilty unless the prosecution has made me sure of their guilt.

### **Analysis and determination**

31. In many respects, this trial is the culmination of an unsatisfactory investigation and prosecution. There has been considerable uncertainty about whether the complainant was hit with a freezer compressor, as alleged in count one, or a tyre pump, as suggested by PW1. It would appear that there has been no effort to

seize and adduce the offending equipment. As mentioned above, there are glaring inaccuracies in the Information. The trial got off on the wrong foot when the prosecution opened on the basis that it was the 1<sup>st</sup> accused who struck the complainant with a freezer compressor, only for it to emerge through the prosecution witnesses that it was alleged to be the 2<sup>nd</sup> accused who struck the complainant with a compressor/tyre pump.

32. Given these inauspicious beginnings, it is hardly surprising that the Court cannot be sure of the guilt of the 1<sup>st</sup> or 2<sup>nd</sup> accused.
33. The picture that has emerged of events on 4 March 2024 is that it was the complainant who approached the 1<sup>st</sup> accused at around 6pm and unlawfully punched him in the face. The evidence overwhelmingly supports that the 1<sup>st</sup> accused was attacked by the complainant for no good reason. Isaac and Feroz testified that they were present when this happened. They both struck me as honest young men and I accept their evidence. Further support is found in Pelasio's evidence that it was the complainant who was the aggressor, and the 1<sup>st</sup> accused did not assault the complainant. There is the ring of truth to the evidence that the 1<sup>st</sup> accused was sworn at by those in the drinking party because it was thought he would make a complaint about their anti-social behaviour. It would appear that it was this that motivated the complainant, emboldened by dutch courage, to go to the shop and assault the 1<sup>st</sup> accused.
34. I do not find the complainant to be a reliable witness. His account of having gone to the shop to buy lollipops as a chaser strikes me as being wholly contrived. I am sure that he was riled up and went to confront the 1<sup>st</sup> accused out of misplaced anger. He had been drinking quite heavily before he confronted the 1<sup>st</sup> accused and was, on his own account, knocked unconscious, albeit he was not clear about what caused him to lose consciousness. Whilst the complainant's wife's evidence lends support to his account of having been assaulted by both the 1<sup>st</sup> and 2<sup>nd</sup> accused, it appears that she did not see the incident unfold. On her own account, she only took an interest *after* she heard a commotion. Her account of the incident

is inconsistent with the accounts given by the 1<sup>st</sup> accused, 2<sup>nd</sup> accused, Isaac, Feroz, and Pelasio.

35. Whilst Pelasio struck me as doing his best to give an honest account of what he saw that evening, I cannot be sure that his account of having seen the 2<sup>nd</sup> accused strike the complainant's head with a tyre pump is reliable. The weight of evidence supports that the 2<sup>nd</sup> accused did not get out of his vehicle, and was not involved in the incident at the verandah.
36. Whilst the complainant unquestionably suffered injuries requiring hospitalisation, I accept the evidence of the 1<sup>st</sup> accused, Isaac and Feroz as to how those injuries may have been caused.
37. It follows that I must find both accused not guilty and I acquit them accordingly.
38. 30 days to appeal to the Court of Appeal.



Hon. Mr. Justice Burney

**At Labasa**

19 November 2025

**Solicitors**

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