

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

**CRIMINAL CASE: HAC 35 OF 2019**

**BETWEEN** : STATE

**AND** : ERNEST PICKERING

**Counsel** : Ms S Naibe for State  
: Mr T Varinava for Accused

**Date of Hearing** : 19<sup>th</sup> – 20<sup>th</sup> August, 2019  
**Date of Summing Up** : 21<sup>st</sup> August, 2019  
**Date of Judgment** : 22<sup>nd</sup> August, 2019

**J U D G M E N T**

- [1] Following my summing up, the assessors have unanimously found the Accused guilty of digital rape of his 5-year old daughter.
- [2] I direct myself in accordance with my summing up. The prosecution carries the burden to prove the charge beyond a reasonable doubt. The Accused does not have to prove anything. He gave evidence. The defence case is of denial and fabrication of the allegation against him.
- [3] The complainant is of tender age. She gave unsworn evidence. However, she was reminded to tell the truth. She told the court that she told her mother that her daddy (referring to the Accused) had touched her 'vara', meaning her genital area. She said in her evidence that the Accused touched her vagina.

- [4] The only issue is the physical act of penetration. Consent or lack of it is not an issue because the complainant is under the age of 13 years.
- [5] The complainant's mother and aunty gave evidence that the complainant told them that the Accused had touched her vagina when she first complained to the mother that her vagina was sore. On the same day the complainant was medically examined. The doctor found a 1 cm laceration beside the complainant's labia minora. The injury was about 4 to 5 days old and healing.
- [6] The relationship between the Accused and the complainant is not in dispute. Nor is in dispute that the allegation arose at the time when the complainant was under the Accused's care for one week in January 2018 when the complainant's mother left her matrimonial home following a dispute with her husband. The report of the alleged abuse was made to the mother shortly after the child was retrieved from the Accused by the mother under police supervision.
- [7] The complainant struck me as an honest witness. I believe the account of the complainant that her father had touched her genitals. That account is consistent with her report to her mother and aunty and the injury found on her genitals shortly afterwards. The only logical inference from all these proved facts is that the Accused penetrated the complainant's vagina with his fingers.
- [8] I feel sure of the Accused's guilt and convict him accordingly.



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**Hon. Mr Justice Daniel Goundar**

**Solicitors:**

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