

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

**CRIMINAL CASE NO: HAC 140 OF 2022**

**STATE**

**-v-**

**VINOD KUMAR**

**Counsel** : Ms P. Mishra for State  
: Mr. S Kumar for Accused - Prosecution case  
: Mr. Khan, I for Accused – Defence Case

**Date of trial** : 3<sup>rd</sup> April 2024, 4<sup>th</sup> April 2024 and 24<sup>th</sup> July, 2024  
**Date of Submission** : 30<sup>th</sup> July, 2024 and 22<sup>nd</sup> August, 2024  
**Date of Judgment** : 17<sup>th</sup> March, 2025

**JUDGMENT**

1. The Director of Public Prosecutions, filed an Information against Vinod Kumar. The complainant's name has been suppressed as per Court Order and she will be referred to as "AKK".

**Counts 1**

**Statement of Offence**

**RAPE:** Contrary to section 207(1) and (2) and (3) of the Crimes Act 2009.

**Particulars of Offence**

**VINOD KUMAR** between the 1<sup>st</sup> day of January and the 1<sup>st</sup> day of April 2022, at Duilomoloma Road, Waila, in the Eastern Division, had carnal knowledge of **AKK**, a child under the age of 13 years.

## **Counts 2**

### **Statement of Offence**

**RAPE:** Contrary to section 207(1) and (2) (b) and (3) of the Crimes Act 2009.

### **Particulars of Offence**

**VINOD KUMAR** between the 1<sup>st</sup> day of January and the 1<sup>st</sup> day of April 2022, at Duilomoloma Road, Waila, in the Eastern Division, penetrated the vagina of **AKK**, a child under the age of 13 years, with his finger.

## **Counts 3**

### **Statement of Offence**

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

### **Particulars of Offence**

**VINOD KUMAR** between the 1<sup>st</sup> day of January and the 1<sup>st</sup> day of April 2022, at Duilomoloma Road, Waila, in the Eastern Division, unlawfully and indecently assaulted **AKK**, by touching her breasts and kissing her lips.

## **Counts 4**

### **Statement of Offence**

**CRIMINAL INTIMIDATION:** Contrary to section 375(1)(a)(i)(iv) and (2)(a) of the Crimes Act 2009.

### **Particulars of Offence**

**VINOD KUMAR** between the 1<sup>st</sup> day of January and the 1<sup>st</sup> day of April 2022, at Duilomoloma Road, Waila, in the Eastern Division, without lawful excuse and with intent to cause alarm, threatened to use paraquat to poison **AKK**.

## **AGREED FACTS**

2. Parties filed the following agreed facts;

- (i) AKK, hereafter referred to as ‘A’. Her date of birth is 5<sup>th</sup> July 2011.
- (ii) In 2022, AKK was a Year 6 student at Saraswati Primary school.
- (iii) The Accused is Vinod Kumar, hereafter referred to as ‘Vinod’.
- (iv) A’s biological mother is Ashika Ashna Devi, hereafter referred to as ‘Ashika’.
- (v) Vinod and Ashika are legally married and have two biological children namely Aviksha and Justin.
- (vi) In 2022, Aviksha was a Year 2 student at Saraswati Primary School whereas Justin was 2 years old.
- (vii) Vinod legally adopted AKK when he married her mother, Ashika in 2012.
- (viii) AKK, Aviksha and Justin call Vinod ‘Papa’ meaning father.
- (ix) Between 1<sup>st</sup> January, 2022 and 1<sup>st</sup> April 2022, Vinod, Ashika, AKK, Aviksha and Justin lived at Duilomaloma Road, Waila, in the property of Vinod’s Uncle namely Gordan Chand.
- (x) This property consisted of two houses. Vinod, Ashika, AKK, Aviksha and Justin occupied one house whereas the other house was occupied by Vinod’s uncle namely Gordan Chand.
- (xi) Between 1<sup>st</sup> January, 2022 and 1<sup>st</sup> April, 2022, Ashika mostly worked night shifts at Waila Mini Mart.
- (xii) Between 1<sup>st</sup> January, 2022 and 1<sup>st</sup> April, 2022, Vinod was a digger operator by profession. However, after COVID-19, he did not have a fixed employment and would do causal work.
- (xiii) During the period Ashika would work night shifts, Vinod would stay home with AKK, Aviksha and Justin as he would look after them.
- (xiv) AKK was medically examined by Doctor Avelina Rokoduru on 11<sup>th</sup> April, 2022 at Medical Services Pacific.
- (xv) Vinod was interviewed under caution and formally charged on 11<sup>th</sup> April, 2022 at Nausori Police Station.
- (xvi) The following document and its content have been agreed to be tendered by Prosecution and Defence.
  - (a) Birth Certificate of AKK.

### **PROSECUTION CASE**

3. Prosecution tenders original Birth Certificate of AKK – **Prosecution Exhibit No. 1** – [As per Agreed Facts No. xvi (16)].
4. Prosecution witness 1 (PW!) – AKK (herein known as the “complainant”) states that whatever she will say in court will have to be the truth.
5. She testified by saying that she is in class 8 and lives in Labasa with her aunt and uncle. She used the Bible to take her oath. She again informs the court that she is aware of the importance of telling the truth.
6. PW1 states that her mother is Ashika. As for the accused, she would call him “papa”.
7. Whilst she was in class 6 , her mother works at Waila Mini Mart. Her mother would go to work at 8pm

and she returns home at 8am, the next morning. Her father at that time was a digger driver. He goes to work at 8am and returns at 5pm.

8. When her mother goes to work at 8pm, she would be at home with her youngest sister, brother and father. She sleeps in the second room with her younger sister. They share the same bed. Her parents and younger brother sleeps in the first room. The rooms do not have any windows or doors.
9. At night as they sleep, the lights were switched on at all times as her younger sister was always scared. These lights which were always switched on were in their room and the kitchen.
10. She had a good relationship with her mother Ashika. She has a good mother. From January 2022 to April 2022, she does not have a good relationship with her father, Vinod. The reason being that her father used to beat her.
11. At night her father would come to her room [*Prosecution witness 1 started crying*]. He would touch her, kiss her and touch her private parts. Her father would take off her clothes and his clothes too. He would also touch her breast. She further states that her father would come over her, putting his private part into her private part and pushed it in. When her father does that to her she would feel bad.
12. Her father would touch her on her breasts by squeezing them. He would squeeze her breast from inside her top. He would do that to her on daily basis from January 2022 to April 2022. She does not feel good when her father does that to her.
13. She also states that her father would sometimes kiss her on the lips. He also would touch her private parts or vagina by inserting his fingers. At that time, she would be wearing clothes when her father inserts his fingers into her vagina. He does that under her clothes when inserting his fingers into her vagina. Her father started doing that to her in January 2022. She felt pain when he does that to her.
14. PW1 elaborates by saying that the main private part is called the penis. She felt pain when he pushes his private part into her private part. She felt the pain in her vagina.
15. When she tries to evade her father, he would threaten her by saying “that if she tells anyone he would cut up all her family members”. He also threatened to poison her food by putting paraquat in it. She used to feel scared when he threatens her.
16. At the time of these incidents her mother was at work and her sister was sleeping beside her. She informed her sister and mother about what happened to her. Her sister also saw it too. It was in April, 2022 that she reported to her mother and told her about what her

- father did to her. When she told her mother, her mother instructed her to pack her clothes and that of her siblings too. Her mother was rushing and crying.
17. She further reported to her mother that her father touches and kisses her. He would also asked her to touch his private part and he would touch hers. She did not tell her mother everything that her father did to her as she was ashamed to do so.
  18. After her mother told her to pack the clothes, mother went to her grandfather's house. Her grandfather's wife called them into the house.
  19. Her mother reported this matter to the Police. She cannot recall the date. She recalled going to the doctor who did her medical check-up and blood test.
  20. She was able to see her father clearly whilst he was doing all of that to her as there was a light in her bedroom. Had known her father Vinod since she was a baby.
  21. *[Prosecution requested for Prosecution Witness to identify Accused in the dock]. Defence objects to the lifting of the screen.*
  22. Prosecution Witness 1, states that she had seen Accused kiss her mouth, touched her breast, inserted his finger into her vagina and pushed his private part into her private part. She was able to see all of those because there were lights switched on in her bedroom and the kitchen. Lights were bright like the Court room lights. There was no obstructions to her view.
  23. She confirms that the accused who entered her room and did all those things to her is the accused who is her step father and his name is Vinod Kumar.
  24. PW1 again states that the male private part is the penis and her private part is her vagina.
  25. In cross examination she states that she gave her report to a police woman who wrote same in the computer.
  26. *[Defence – the dates were typed correctly in Personal Computer (PC)?]* PW1 responded that the dates were typed correctly and if there was an amendment, she would have placed her initial there.
  27. If she is shown her statement, she can confirm her signature. *[Defence makes an application to show the witness her statement]*. PW1 confirmed that the document is her statement by glancing at her signature.
  28. *[Defence refer Prosecution Witness 1 to Question 21 and ask there is an over write?]* PW1 agreed and states that she did not initial the amendment as she did not see it. However, she confirmed that it started in 2022. She cannot recall as to when her mother started doing night shift.

29. PW1 further states that a woman police officer wrote her statement. She was comfortable with giving her statement to the police officer. The statement was written in English.
30. She agreed to the suggestion that in her statement, she did not inform the police officers that her father beat her, took off his clothes and hers, squeezed her breasts or pressed his private parts into hers, as she was ashamed to do so. However, she denied misleading the Court. She also denied the suggestion, that someone coached her to say those answers in court.
31. PW1 also denied speaking to a police officer or a DPP lawyer. However, she agreed to providing a different statement to the police officers and giving a different version in Court. She was reluctant to inform the police officers as to what happened to her. She denied providing a false statement to the police officers.
32. She states that her mother goes to work every day. In the night she occupies one bed with her sister. So when father comes to her, they were able to fit into one bed as he lies on top of her. When her father comes into their room, lie on top of her, her sister would be awake and she witnesses all. Her sister does not say anything as she would be scared to do so.
33. Whilst living at Duilomaloma Place, her father prepared food parcels for her and her sister. He would also prepare their mother's food too. Her mother would cook the food and leave home for work at 4pm. At that time, she and her sister would be at their grandfather's house. They were scared to go to their house. Only her brother would be at their home. They would only go home when their father calls them when its night time.
34. PW1 also said that she does not eat at home or at school. *[She did not respond when asked about the paraquat poisoning]*. She further states that she reported the matter to her mother after 90 days because when their mother is at home, they were not there and vice versa. When her mother is at home, she would be at school.
35. Further states that their house is a two bedroom wooden house with a cement floor. She denied the version that her bedroom is close to her grandfather's house. She also states that during the alleged acts, the kitchen and bedroom lights were switched on. The bedroom light was above her head.
36. She also states that if she is tired, she falls into a deep sleep. However, if she is not tired she is a light sleeper. PW1 confirms that the person who lay on top of her, penetrated her vagina and it was painful. She did not cry but whispered to her father as to not to wake her sister up. However, her sister was already awake. She did not ask her sister for help as she was young.
37. PW1 further states that when she was young, she broke her collar bone. She broke her collar bone as a result of playing. She denied falling from a tree as they were not allowed to climb trees. She also denied falling from a bicycle.
38. She further states that all allegations against her father were not fabricated but the truth. **[Defence tendered PW1's statement dated 10/04/2022 as Defence Exhibit No. 1]**

39. During re-examination she confirmed that her evidence provided in court were the true recollection of what her father did to her. She was not coached by anyone to say those things in court.
40. Doctor Avelina Watisowa Rokoduru (PW2) testified that on 11/04/2022 she was the Medical officer at Medical Services Pacific Clinic at Waimanu Road. She prepared a Medical Report where she had examined a child namely AKK. She signed Medical Report and said that if Medical Report is shown to her, she is able to recognise same.
41. *[Prosecution application to show the Medical Report to the doctor to Prosecution witness 2]*. PW2 confirmed that the document is a Fiji Police Medical Report which she had prepared for AKK. She had signed on two places D (16) and E (19). Her initials are on pages 1, 2 & 3.
42. The examination started on 10.27am on 11/4/2022. AKK was brought in by a police officer and her mother Ashika Kumar. She said that in section B(5) mother consented to the examination since AKK is a minor. In D (11) AKK was calm and confident.
43. Further examination in D (12) - Specific Medical Finding Hymen not intact. Bruising noted at the introitus (opening of the vagina 2 o'clock outside opening of the hymen). Hymen not intact – there is a break in the continuity of the hymen. D (14) Hymen not intact supports events as related by patient, AKK. D (15) she did not require admission to hospital but required medication for Sexually Transmitted Diseases (STD). Victim states that the man Vinod looked after her since she was 10 days old. *[Prosecution tendered the Medical Report of AKK dated 11/04/2022 as **Prosecution exhibit no. 2]***.
44. In cross examination, PW2 reads D (10) – *“She has been sexually assaulted by one Vinod Kumar, her step father for the last 3 weeks...”* She had examined AKK’s breasts but did not find any marks. Hymen not intact due to penetration. However, a fall on a stick directly can affect the hymen. Research also found that horse riding, bicycle riding and gymnastic is not common for someone to lose their virginity. It has to be a considerable force. She cannot believe that a weak person can lose virginity as suggested above by the Defence.
45. It took her 27 minutes to examine AKK. She further states that AKK would have been 10 years at the time of the alleged incident. There can be hormonal changes at the age of 10 years. She disagreed to the suggestion that bruising can occur due to rubbing. She states that bruising has to occur due to some degree of force because blood vessels has ruptured beneath the skin.
46. There was no re-examination.
47. Ashika Ashna Devi (PW3) states that in 2022 she was married to Vinod Kumar. They have 2 daughters namely AKK, Aviksha Christine Kumar and 1 son, Adrial Kumar. Vinod Kumar is not AKK’s biological father.

48. When AKK was born, she was a single mother. She married Vinod Kumar, when AKK was 10 days old.
49. On 19/01/2022 she started working at Waila Mini Mart. For quite sometimes she would do night shift from 8pm to 8am. At that time she lived with her husband and 3 children. When she leaves for work, Vinod Kumar looks after the children.
50. She recalls the date, 09/4/2022, as on that date she was supposed to go for night shift. As she was about to have dinner, her second daughter Aviksha came and asked her if she was going to do night shift. She said yes. Aviksha told her not to go to work. She asked Aviksha as to why she asked her not to go to work. Her daughter responded that when they go to sleep, their father comes and disturbs her sister. When she enquired from Aviksha as to what does she means, that her father disturbs her sister. Her daughter told her that when she goes to work, their father comes and kisses her sister.
51. When she heard what her daughter said, she realised that something is wrong in the house. She then instructed Aviksha to go and call her sister who was at her grandparents' house next door. AKK came home. PW3 then told Aviksha to go to her grandparents' house for some time as she wishes to speak to her sister.
52. After Aviksha left, she told AKK to sit beside her as she wishes to ask her something. Then she enquired from AKK as to what does her father do to her, when she goes to work. Her daughter AKK started crying. She told AKK not to cry but to tell her as to what has happened. AKK told her that when she goes to work, their father goes to her, harasses and kisses her. Furthermore, he asked her to touch his private parts and he also touches her private parts. She also told her that their father does not let her sleep in the night. He harasses her and does bad things to her. As AKK was relating to her as to what had happened, AKK was sobbing and her legs and hands were shaking.
53. She then enquired from AKK as to the reason she had not informed her earlier of what was happening to her but she said that she scared as the father had threatened to cut her if she had told her of same. She got emotional and she was crying. They were both crying. She then instructed AKK to pack her clothes. Aviksha came home and she told her to pack her clothes too. At that moment she did not think of anything else but to take her children away from there.
54. PW3 states that she went to the children grandfather's house and dialled 919. A lady police officer answered the call. She told the police officer of what happened and police officer told her that Nausori Police Station will contact her soon and she is to provide them with her address.
55. After a while, the Nausori Police officers contacted her and asked for her home address. She reported the matter to Nausori Police Station.
56. She identified Vinod in the dock.
57. In cross examination, she states that her evidence in court is exactly what AKK had told her. She did not witnessed what had happened but states that for a small girl like her daughter, it would not be possible for her to say such things.

58. No re-examination.
59. At the close of the Prosecution case, the court ruled that there is a case to answer. The Court provided the accused with his rights pursuant to section 231 (2) of the Criminal Procedure Act, 2009. The accused opted to provide sworn evidence and call witnesses.

### **DEFENCE CASE**

60. Accused namely Vinod Kumar (DW1) opted to give sworn evidence. He testified that he is married and have three children whose ages – 4 ½, 9 and almost 14 years.
61. His parents are still alive so he takes care of them and his own family too. He is in court for the allegations of four rape charges. He understands all the allegations against him but denied all. He further states that the allegations against him were all false.
62. He further states that in 2011, he married Ashika Ashna Devi. His wife had a child by the name of AKK. The child was 10 days old. He brought them from Labasa to Duilomaloma Road. He named the child and also took care of her.
63. His neighbours were – Gordon Gynendra Chand and his wife Sara Wati. His children were close to their neighbours. These neighbours would take care of his children.
64. He further states that with the current charges, the police officers contacted him sometimes in April but only recalled it was a Friday when the police officers arrested him. The officers did not provide him with his right to counsel. They only asked for his name. One officer told him that he raped his daughter. He responded that he did not do anything. At the time of his arrest, his family members, his aunt Sara Wati and Uncle Gordon were at the verandah.
65. The police officers escorted him to Nausori Police Station and interviewed him. He denied the allegations.
66. Before this incident none of his children had complained to him. He gave them all the necessities. He assumed that it was his brother in law, Rohit who may have influenced the victim. He had chased Rohit away from their home twice.
67. In cross examination he agreed that AKK is not his biological daughter. He adopted AKK after he had a relationship with Ashika. His only biological children are Aviksha and Justin. AKK is his eldest child.
68. In 2022, AKK was 11 years old. He was in a good relationship with her mother, Ashika.
69. He was a Digger Operator – sometimes he would work late but mostly during the day. On 01/01/2022 to 01/04/2022 his wife Ashika works at Waila Mini Mart doing shift work usually from 8pm to 8am the next day. He agreed that when Ashika was at work, he would be with the children at their house. From that period, he would be the only adult male there. He was in-charge of his three children AKK, Aviksha and Justin. There are 2 bedrooms in his house. One used by AKK and Aviksha but if they have visitors, they used the same room. On 01/01/2022 to 01/04/2022 his daughters used same room.

Sometimes when his mother visits, she would use same room too. He disagreed that his mother would visit when he is away from home.

70. DW1 also states that the lights in his daughter's room would be sometimes on and at times it would be switched off. He knows when the children switched the lights on or off. He also agreed that if the lights were switched on AKK would be able to see him. DW1 also agreed that he had gone into the children's room from 01/01/22 to 01/04/2022 since he was the one looking after the children at night. However, he denied penetrating AKK's vagina on 01/01/2022 to 01/04/2022, when he would go into their room. He also denied inserting his fingers into AKK's vagina on 01/01/2022 to 01/04/2022 and said these allegations were false. DW1 also denied touching AKK's breasts, kissing her lips and criminally intimidating her by saying that he would put paraquat in her food. He still denies the allegation against him. He also denied beating AKK to cause her fear so that she does not report him.
71. He further agreed that the doctor in her evidence states that AKK's hymen was not intact. That does not mean that he had done something to her. He denied raping AKK on 01/01/2022 to 01/04/2022.
72. In re-examination he concedes that AKK is not his biological daughter. He states that before the incident, no one knew about the way he treated her.
73. **Saras Wati** (Defence Witness 2 – DW2) testified that she is married to Gordon Gynendra Chand. They have one child. She recalled that from January to April, of 2022, she was residing at Diulomaloma Road, Sawani, Nausori. She has been acquainted with the accused Vinod Kumar, since he was 14 years old. Accused's house was separate from theirs but are joined by a shed. He was living with his wife and children. One of them is Angel also known as AKK.
74. She states that on 01/01/2022 to 01/04/2022 she would bath both AKK and her sister Avishka Kumar. During that time period, AKK complained to her and requested that she save her father from prison. Her father did not do anything wrong. She did not report that to the police officers.
75. In cross examination DW2 states that she knew the accused from Labasa, as they were neighbours.
76. She said that she was always at the accused house. However, she agreed that if she was at her house, she cannot be at the accused house at the same time. DW2 states that she knows what happens at the accused house, as his two daughters were always with her. She further states that if she was not at the accused house, she would not know what happens there.
77. There was no re-examination.
78. Close of the Defence case.

## LAW

### Counts 1 and 2 – Rape

79. Section 207(1), (2)(b) and (3) of the Crimes Act reads as follows:

*207. — (1) Any person who **rapes** another person commits an indictable offence.*

80. Section 207(2) (a), (b) of the Crimes Act is reproduced below.

*(2) A person **rapes** another person if —*

*(a) the person has carnal knowledge with or of the other person without the other person’s consent; or*

*(b) 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.*

81. Therefore, when Section 207(1) is read with Section 207(2) (b) it would read as follows:

*207. — (1) Any person who **rapes** another person commits an indictable offence.*

*(2) A person **rapes** another person if —*

*(b) 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.*

82. Section 207(2) (b) refers to a person penetrating 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.

83. Section 207(3) of the Crimes Act provides that “*For this section, a child under the age of 13 years is incapable of giving consent.*”

### Count 3 – Sexual Assault

84. Section 210(1)(a) of the Crimes Act, 2009 states;

*“210. (1) A person commits and indictable offence (which is triable summarily) if he or she –*

*(a) unlawfully and indecently assaults another person; ...”*

#### **Count 4 – Criminal Intimidation**

85. Section 375 (1)(a)(i)(iv) and 2(a) of the Crimes Act, 2009 stipulates as follows;

*“375. (1) A person commits a summary offence if he or she, without lawful excuse –*

*(a) threatens another person or other persons (whether individually or collectively) with any injury to –*

*(i) their person or persons; or...*

*With intent -*

*(iv) to cause alarm to that person or those persons; or...*

*(2) If the threat is –*

*(a) to cause death or grievous hurt; or...”*

#### **ELEMENTS OF THE OFFENCE**

##### **Counts 1 and 2 - Rape**

86. Therefore, in order for the prosecution to prove the First count of Rape, they must establish beyond any reasonable doubt that;

- (i) The accused;
- (ii) During the specified time period (in this case between the 01 January, 2022 and 01 April, 2022);
- (iii) At Duilomaloma Road, Waila, in the Eastern Division;
- (iv) Penetrated the vagina of AKK with his penis; and
- (v) At the time AKK was a child under 13 years of age.

87. Similarly, in order for the prosecution to prove the second count of Rape, they must establish beyond any reasonable doubt that;

- (i) The accused;
- (ii) During the specified time period (in this case between the 01 January, 2022 and the 01 April, 2022),
- (iii) At Duilomaloma Road, Waila, in the Eastern Division;
- (iv) Penetrated the vagina of AKK with his fingers; and
- (v) At the time AKK was a child under 13 years of age.

##### **Elements for the offence of Sexual Assault**

88. In order for the prosecution to prove the third count of Sexual Assault, they must establish beyond any reasonable doubt that;

- (i) The accused,
- (ii) Unlawfully and Indecently; and

(iii) Assaulted the Complainant.

89. The Accused is guilty of Sexual Assault, if he unlawfully and indecently assaulted the victim. The word “unlawfully” simply means without lawful excuse. An act is an indecent act if right-minded persons would consider the act indecent. Assault can be defined as an application of unlawful force on another’s body.

### **Elements for the offence of Criminal Intimidation**

90. Now for the elements of the offence of Criminal Intimidation under the relevant provisions as alluded to are basically as follows:

- (i) The Accused;
- (ii) Without lawful excuse;
- (iii) Threatened another person; and
- (iv) with intent to cause alarm to that person

91. The nature and confines of Element (iii) can either be general or specific. This decision is the prerogative of Prosecution. In **DPP v Solomon Tui [1975] 21 FLR 4**, the Court stated “*It is an essential feature of the criminal law that an accused person should be able to tell from the indictment the precise nature of the charge or charges against him so as to be in a position to put forward his defense and to direct his evidence to meet them.*”

### **BURDEN AND STANDARD OF PROOF**

92. As Viscount Sankey observed in **Woolmington v. The Director of Public Prosecutions [1935] UKHL 1**,

“...throughout the web of the English criminal law, one golden thread is always to be seen, that it is the duty of the prosecution to prove the [defendant’s] guilt beyond reasonable doubt.”

93. **Section 57** of the *Crimes Act 2009* makes clear that the prosecution bears the legal burden of proving every element of an offence relevant to the guilt of the person charged and **section 58** of the *Crimes Act 2009* makes clear that this legal burden must be discharged by the prosecution beyond reasonable doubt.

94. That legal burden and standard of proof applies in respect of a Defendant on each of the Counts.

### **ANALYSIS**

#### **Counts 1 and 2 - Rape**

95. The identity of the Accused is not an issue here as the parties are a step- daughter and a step-father. They are well acquainted with each other. The accused had raised the complainant from 10 days old.

96. The issue of consent, with regards to counts 1 and 2, will not arise in this case. A female of over the age of 13 years is considered by law as a person with necessary mental capacity to give consent. In this case, at the time of the alleged incidents, the complainant was below the age of 13, and therefore, she has no mental capacity to consent.
97. The only issue here is to whose version the court should believe.
98. I observed the demeanour of the complainant and that of the accused. The complainant, whilst providing evidence in court was so calm and confident. I note that she spoke so clearly and courageously for a young girl of her age. I do not have any doubts that she had invented this serious allegations against her step-father who raised her from when she was 10 days old.
99. I also observed how she described the accused actions of inserting his penis and fingers into her vagina which caused her pain. I note from her reactions, that she looked disturbed and sad.
100. The accused in his evidence was not trust worthy. He evaded eye contact with the court. He totally denied the allegations of rape against him.
101. The offences of rape as per counts 1 and 2 has been established. Prosecution has proved all the elements of the offence beyond reasonable doubt.

### **Count 3 – Sexual Assault**

102. I also have no doubts in the complainant's evidence when she states that the accused between 01/01/2022 and 01/04/2022 unlawfully and indecently assaulted her by touching her breasts and kissing her lips.
103. The offence of sexual assault as per count 3 has been established. The Prosecution has proved all the elements of the offence beyond reasonable doubt.

### **Count 4 – Criminal Intimidation**

104. The complainant's evidence with regards to the offence of criminal intimidation was unreliable. In her evidence she states that when she tries to evade the accused, he would warned her not reveal these things to anyone or else he would cut up all her family members. She further states that the accused threatened to kill her by putting paraquat in her food. However, during cross examination, she did not respond to the defence counsel's question with regards to the allegation of paraquat poisoning.
105. Furthermore, the charge only mentioned the accused threatened to use paraquat to poison her. There was no mention of the accused threatening to kill all her family members.
106. The offence of criminal intimidation against the accused in count 4 has not been established.

## CONCLUSION

107. I am satisfied that the Prosecution has proved beyond reasonable that the accused committed the first, second and third counts as charged.
108. However, the Prosecution failed to prove beyond reasonable doubt that the accused committed the fourth count as charged.
109. In conclusion, I find the accused guilty of the first count of Rape contrary to section 207(1), (2) and (3) of the Crimes Act, 2009, second count of Rape contrary to section 207 (1), (2)(b) and (3) of the Crimes Act, 2009 and third count of Sexual Assault contrary 210 (1)(a) of the Crimes Act, 2009. He is convicted accordingly.
110. As for the fourth count of Criminal Intimidation contrary to section 375(1)(a)(i)(iv) of the Crimes Act, 2009, I find the accused not guilty as charged. He is acquitted forthwith.
111. That is the Judgment of this Court.



  
Waleen M George  
**Acting Puisne Judge**

Dated at Suva this 17<sup>th</sup> day of March, 2025

**Solicitors:** Office of the Director of Public Prosecutions, Suva for the State  
Sunil Kumar Esquire for the Accused during Prosecution case  
Iqbal Khan and Associates for the Accused during defence case