

IN THE MAGISTRATES' COURT OF FIJI

AT BA

[CRIMINAL JURISDICTION]

Criminal Case No: CF 412/22

STATE

v.

**RINA BIKASHNI DEVI**

For Prosecution:

WPC [4897] V. Singh

For Accused:

Appearing with Mr. R. Charan

Plea:

31/8/2022

Trial:

11/12/2023 & 13/12/2024

Judgment:

10/1/2025

**JUDGMENT**

**Background**

1. The accused, **Rina Bikashni Devi** is charged as follows,

**COUNT 1**

***Statement of Offence***

**Assault Causing Actual Bodily Harm**: Contrary to Section 275 of the Crimes Act 2009

***Particulars of Offence***

**Rina Bikashni Devi** on the 29<sup>th</sup> day of August, 2022 at Ba Sangam Primary School, Ba. In the Western Division, assaulted **RN** thereby occasioning him actual bodily harm.

*[The name of the victim is anonymized for the protection of the victim as a Juvenile]*

2. The accused was first produced in Court on 31/8/2022, she appeared with Counsel and preferred the Hindutani language. Counsel informed the Court that the accused can take her plea, the same was put to the accused and she pleaded Not Guilty to the charge. Bail was subsequently granted to the accused and the matter progressed through its pre-trial stages.
3. Following the completion of pre-trial a Trial date was fixed and Trial was set for 17/4/2023. The trial set for 17/4/2024 was vacated upon the application made by defence for an adjournment of which

the Court allowed the adjournment however issued cost against defence in the sum of \$300. A fresh trial date was fixed for 11/12/2023.

4. Trial proceeded as scheduled and both parties were ready to proceed with Trial.
5. At Atrial, the Prosecution called 3 witnesses – **PW 1: RN(Victim)**, **PW 2: J.N** and **PW 3: Amelia Kacia**, **PW 4: Doctor Ashil Kant Ram** and **PW 5: PC 7783 Seni Bolaitamana**, they also tendered into evidence the Wrist Watch as **PEX 1**, the Medical Report of the victim as **PEX 2** and the victim's school t-shirt as **PEX 3**.
6. At the end of the Prosecution's case, the Court found a case to answer against the accused person was given her rights and she opted to give evidence. Defence sought an adjournment for their case, they intended to call 3 witnesses. Continuation of trial was scheduled for 4/6/2024 however the Court did not sit on like date as such the matter was then fixed for continuation to 13/12/2024.
7. Trial continued with defence case on 13/12/2024, defence called 2 witnesses – the accused DW 1 and DW 2 APS (a juvenile). Defence closed its case and sought time for closing submissions, the Court gave directions for filing of the same within 14 days following which Judgment will be pronounced – there is no closing submission before the Court.
8. Today is for Judgment.

#### **Innocent until proven guilty**

9. The right of an accused person to be presumed innocent until proven guilty according to law is a right guaranteed under Section 14(2) (a) of the Constitution. (*Qio v State* [2015] FJCA 68; AAU0140.2014 (28 May 2015))

#### **Burden and Standard of Proof**

10. The burden of proof lies with the prosecution as stipulated in section 57 of the Crimes Act 2009 which states as follows:

***'57 (1) The prosecution bears a legal burden of proving every element of an offence relevant to the guilt of the person charged.'***

***(2) The prosecution also bears a legal burden of disproving any matter in relation to which the defendant has discharged an evidential burden of proof imposed on the defendant.'***

11. The standard of proof lies with the prosecution as stipulated in section 58 of the Crimes Act 2009 which states as follows:
- '58 (1) A legal burden of proof on the prosecution must be discharged beyond reasonable doubt.'***
12. The burden of proof of a case against an accused rest fairly and squarely always on the prosecution, that is the State-the complainant. The prosecution is never relieved of that responsibility and it does not shift to the accused at all. If the evidence creates any doubt, should be given to the accused.
13. Each and every element of the offence should be proved beyond reasonable doubt by the Prosecution.

#### **SUMMARY OF EVIDENCE AND ANALYSIS**

14. The Prosecution must prove all the essential elements of **Assault Causing Actual Bodily Harm**:
- the accused- **Rina Bikashni Devi**
  - assault the victim - **RN**
  - causing actual bodily harm on the victim

**Section 4 of the Crimes Act 2009** defines '**harm**' as follows:

*Any bodily hurt, disease or disorder (including harm to a person's mental health) whether permanent or temporary and includes unconsciousness, pain disfigurement, infection with a disease and physical contact with a person might reasonably object to in the circumstances (whether or not the person was aware of it at the time).*

15. The Court will not regurgitate the entirety of the evidence however will only make reference to the salient aspects of the evidence that is vital to the elements of the offending in each count via the charge.
16. I must remind myself again that the accused is still innocent until proven guilty by the prosecution. The Prosecution has the duty to prove the guilt of the accused and the standard of proving the guilt is beyond reasonable doubt. The duty of proving the guilt of an accused never shifts to the accused at any time of a criminal trial.
17. There is no dispute as to the identification of the accused person, she the teacher of the victim at the time of this alleged offending.

18. **PW 1's** evidence is that on 29/8/2022 at around 8am he was in school at Ba Sangam Primary School and his teacher Mrs Datt was also present, Mrs Datt is their math teacher. Sometimes later at 9am he had been playing with his wrist watch and Mrs Datt asked for the wrist watch so he gave it to her, Mrs Datt took the wrist watch and hit the watch on the victim's head. He was shown the wrist watch and showed the Court the part of the watch that Mrs Datt used to hit his head, she hit him with the strap of the watch specifically the metal buckle of the watch. He showed Court there he was hit; it was at the center of the top of his head. There was blood coming out as a result of him being hit and Mrs Datt told Arav to wipe the blood from his head. Mrs Datt then washed his t-shirt because the blood went on the t-shirt and he was just wearing his vest while the t-shirt was washed and hung to dry. His friend Tilesh then went and reported the incident to the Head Teacher. He also later told his mother about what happened in Class. He told the Court that after he was hit by Mrs Datt he then collected the watch but the watch was broken as the strap had come off the watch face, it was no longer attached. He was shown the t-shirt and identified as being his and also showed the Court where the blood stain was – the stain is at the back of the shirt. In cross examination he told the Court that Mrs Datt had hit him with a black strapped watch however what was shown to him is a green strapped watch, he maintained however that Mrs Datt hit his head with his wrist watch and it was the 'iron' part of the watch that hit his head. He also told Court that the watch broke when Mrs Datt hit his head with it. He disagreed with defence that the watch broke because he had been playing with it with his friend. It was proposed to him that he had been playing the weekend before the 29/8/2022 and had injured his head as a result of it – the victim denied this. He also denied that he broke the watch and made up this story because he was afraid to tell his parents. He also told the Court that he was taken to hospital after the incident by his mother and the Doctor bandaged his wound.
19. **PW 2's** evidence is that he was present on the alleged day of offending, Mrs Datt was present and she had hit PW 1's head with the wrist watch. PW 1 is his best friend and after he was hit there was blood on his head so he helped with wiping the blood and they also got ice to put on his head. Mrs Datt washed PW 1's t-shirt and after washing it she dried it, PW 1 was in his vest during this time. He was shown the watch and identified it as PW 1's watch and he knew this because PW 1 had been showing it to him that morning. He testified that the teacher hit his head very hard and that is why the watch is broken. The incident happened in the morning during math class. He also told the Court that he had been asked by the Police about the incident and he told the Police that there was a sore on PW 1's head and that the sore was drying up and healing – he tells the Court

that this is what his Madam – Mrs Datt had informed him to say to the Police. He was shown the t-shirt and identified it as PW 1's, he showed the blood stains on the t-shirt also. In cross examination, he maintained that Mrs Datt had hit PW 1's head with the wrist watch and blood came out of PW 1's head.

20. It is testified by **PW 3** that she is the mother of the victim and she came to know about Mrs Datt hitting her son's head with his wrist watch. She confirmed that PW 1 had taken a new watch to school and it belonged to his father but was given to him to wear to school as PW 1's father was not using it. She was shown the watch and identified it to be the same watch that was given to PW 1 when he went to school that day, she tendered the watch as **PEX 1**. PW 1 had also told her when he returned from school that day that his teacher had hit his head with the wrist watch because he was not concentrating on what the teacher was teaching. PW 1 showed her where the blood came out on his head and she showed it in Court to be at the top of his head. She had the matter reported and also took the victim to hospital for medical examination at the Ba Health Centre of which a medical report was conducted. The doctor examined the cut and said it was a fresh cut then they were directed to go to the nurse to clean the cut and put bandage on it also. PW 1 was also taking tablets for 3 – 4 days after that then he went back to school, he was afraid to go back to school after the incident.
21. The Doctor, **PW 4** testified that he had examined PW 1 on 29/8/2022. He testified that there was superficial laceration on the peri occipital region 1cm x 1cm and there was no active bleeding but clots of blood noted. It was a clean cut just on the epidermis but not to the dermis and clots of blood was noted. He testified that the clean cut is neat so can be from a sharp object. He tendered the **Medical Report** as **PEX 2**. In cross examination, he told the Court that he had a dressing applied and the patient's mother was informed to bring the patient daily for a dressing change. The patient was also given medication for pain and also a tetanus injection. His evidence also is that the cut is from a sharp object and it is possible that can be caused by the edge of the watch buckle – the metal part, he showed this in Court whilst being shown PEX 1.
22. **PW 5** is the investigating officer and he uplifted all the exhibits. He also uplifted the victim's t-shirt and identified it in Court. He tendered the t-shirt as **PEX 4**. He also prepared the Search List and was shown in Court and identified it and tendered it as **PEX 3**. He testified that the shirt had the blood stains on it and showed that in Court.
23. The defence version is that the accused denies the assault. Her version is that on the day of the alleged offending, the victim was not concentrating on the math lesson and she took the watch

away. She denied that she hit the victim with the watch. It is the defence premise that the injury was from the weekend immediately prior to 29/8/2022. The evidence through PW 2 is not material to the defence premise, he more less confirmed that Mrs Datt was in the classroom as well as the victim, he could not offer any definitive evidence on the alleged offending.

24. Evidence from **PW 1** and **PW 2** are testimonies of direct evidence to the fact to be proved. The advantage of such evidence is the premise that *'he speaks the truth, saw it done'* and the only question is whether he is entitled to belief. The disadvantage of such evidence is that the witness may be false and corrupt and the case may not afford the means of detecting falsehood. It is for that reason the credibility of a witness is to be tested seriously and such test offers a measurement of witness's evidence in light of spontaneity, consistency or inconsistency, probability or improbability, independency (interest or disinterest).
25. The credibility of witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal account of a particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions.
26. I heard the evidence from PW 1 and PW 2 and their evidence was consistent with each other as well as each of them being firm in their evidence on the occurrence of the assault by their teacher on PW 1. Both were spontaneous in their evidence and I observed too their ability to recollect that happened in class on 29/8/2022. PW 1 did not deny that he had been playing with his watch as well as not concentrating on the lesson, he sat in Court and told this Court he took off the watch when asked by the teacher to which his teacher then used to hit his head. He said there was blood coming out from his head, PW 2 confirms this and PEX 4 is indicative of the blood stains. The evidence by PW 4 and via PEX 2 confirms that there was a fresh cut on the victim's head. PW 4 also confirmed that the cut can be caused by the buckle of the wrist watch if hit hard enough. It is the evidence of PW 2 that their teacher had hit PW 1's head hard and as a result of it the watch broke – PW 1 also testified to this in his own evidence. I have had a view of all the exhibits, I noted the strap of the watch is disjointed and I note the thick metal buckle on one end of the strap. The strap end with the buckle is still attached to the watch face however the other strap is disjointed. I find that applying a hard hit of the watch can amount to the watch being broken. I find that the

- metal buckle at the end of one the strap is thick and the edge of which can cause an injury if applied with some degree of force. I find it probable that such buckle if hit hard on the victim's head can cause the injury that was sustained by the victim. The doctor testified that the cut was fresh – it was not an old sore. PW 1 in his evidence told the Court that he did not have any pre-existing sore prior to the offending, the cut was because of what his teacher Mrs Datt did that day.
27. The evidence of all the Prosecution witnesses is consistent with each other and their evidence was not discredited by defence in cross examination. I find the evidence by each of the Prosecution witness to be credible.
28. I disbelieve the version of the defence, I find that the accused version of evidence incapable of belief. Her evidence was inconsistent with the evidence of DW 2, I find that she was frustrated that morning from the victim not paying attention as she was giving her lesson as a result, she took his wrist watch away and then hit the victim's head with it. She said in her evidence that she was trying to teach the beginning of a new lesson that morning and needed the student's attention – when she did not receive that from the victim, I find it lead to her frustration thus causing her to hit the victim with the watch.
29. Considering the evidence in totality, I believe that i the accused did hit the victim with the wrist watch and he sustained injuries as a result of that.
30. The Court finds that the Prosecution has proved beyond reasonable doubt the charge of **Assault Causing Actual Bodily Harm**, against the accused.
31. Therefore, the Court finds the accused is guilty of **Assault Causing Actual Bodily Harm** and convicts the accused, accordingly.
32. The Prosecution to submit an updated previous conviction of the accused and the accused will submit mitigation.
- 28 days to appeal to the High Court**

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**S. Nasedra [Ms.]**  
**[Resident Magistrate]**

**Divisional Prosecuting Office/West**  
**Accused – Ravneet Charan Lawyers**