

IN THE MAGISTRATES' COURT OF FIJI

AT BA

[CRIMINAL JURISDICTION]

Criminal Case No: CF 142/21

STATE

v.

SHIVASHNA SHAMAL NAIDU

For Prosecution: PC [3878] N. Singh
For Accused: Appearing with Mr. Bancod. R
Plea: 7/3/2025
Trial: 10/7/2025 & 12/12/2025
NCTA Ruling: 10/7/2025
Judgment: 6/2/2026

JUDGMENT

ORDER: *The name of the juvenile victim is suppressed to protect their privacy from publication and/or future reference.*

A. Background

1. **Shivashna Shamal Naidu** [hereinafter referred to as 'the Accused'] is charged with the offence of **Common Assault** contrary to Section 274 of the Crimes Act 2009.
2. Allegations leveled against the accused is that she on the 4th day of March, 2021 at Vatulaulau Sanatan Primary School, Ba in the Western Division, unlawfully assaulted **NN**.
3. The accused first appeared before Court on 25/3/2021 at which time this Court's predecessors was still sitting, she was accorded all her rights at her first appearance and was subsequently released on bail.
4. On 4/3/2025 the matter first came before me; it was pending a fresh trial date to be fixed. For appropriate reasons this Court decided that the accused plea be retaken as such Counsel for the accused sought a short adjournment for the same.
5. When the matter was called again on 7/3/2025 the accused plea was taken before her Counsel, she pleaded Not Guilty to the charge.

6. Following the taking of her plea, each party informed of relevant PTC issues subsequent to which a Trial date was set for 10/7/2025.
7. Trial proceeded on 10/7/2025, the Prosecutions witnesses are **PW 1 – NN** the victim and **PW – 2 Karishma Chand**.
8. At the close of the Prosecution's case, the Defence made an oral application for *No Case to Answer* on the charge. In this Court's Bench Ruling on 10/7/2025, it found a case to answer as such the matter progressed to the defence case and the accused was given his rights.
9. The defense called its case on 12/12/2025 calling 2 witnesses inclusive of the accused. **DW 1- Praveen Kumar** and **DW 2 – Shivashna Shamal Naidu** (Accused), resultantly the matter was adjourned for closing submissions from defence and thereafter for Judgment.

B. Innocent until proven guilty

10. 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; AAU140.2014 (28 May 2015)).

C. Burden and Standard of Proof

11. The standard of proof is beyond reasonable doubt and the burden of proof of a case against an accused rests fairly and squarely always on the prosecution, that is the State-the complainant.
12. 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. Each and every element of the offence should be proved beyond reasonable doubt by the Prosecution.
13. In **Woolmington v DPP (1935) AC 462** it held that '*no matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the accused, is part of the common law*'. Therefore, the burden of proof of the accused person's guilt beyond reasonable doubts lies with the prosecution. If the evidence creates any doubt, should be given to the accused.

In **State v Seniloli [2004] FJHC 48; HAC0028.2003S** (5 August 2004) her Ladyship Justice Nazhat Shameem (as she was then) told to assessors (summing up);

"The standard of proof in a criminal case is one of proof beyond reasonable doubt. This means that you must be satisfied so that you feel sure of the guilt of the accused persons before you express an opinion that they are guilty. If you have any reasonable doubt as to whether the accused persons committed the offence charged against each of them on the Information, then it is your duty to express

an opinion that the accused are not guilty. It is only if you are satisfied so that you feel sure of their guilt that you must express an opinion that they are guilty. One of the defence counsel asked you if you had the slightest doubt about the accused's guilt. **That is not the correct test. The correct test is whether you have any reasonable doubt about the guilt of the accused.**"

As Lord Devlin mentioned in the Privy Council in **Jayasena v. The Queen (1970 8)**

"A fact is said to be proved when, after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

Therefore, if the court or prudent man thinks the accused is guilty for offence in considering all the facts placed before them without any reasonable doubt, then charge has been proved beyond reasonable doubt and the accused should be convicted as per charged. If the court or prudent man thinks that the accused is not guilty of the offence in considering all the facts placed before them, then the charge has not been proved beyond reasonable doubt. If evidence creates some reasonable doubt in mind of court or prudent man, the benefit of doubt must be given to accused and accused should be acquitted and discharged from the proceedings. This is the golden rule of criminal law and "one who says the fact exists should prove that fact no burden lies on one who denies it- as legal maxim "Ex qui affirmat non ei qui negat incumbit probatio". On the other hand, court should consider what actually happened and not what adduced by witnesses- as legal maxim "In traditionibus scriptorum non quod dictum est sed quod gestum est inspicitur" have to be noted.

D. Summary of the Evidence

14. The **victim** in his evidence told the Court that in year 2021 he was in Class (Year) 1 and has forgotten his teacher's name. He testified that on the day and time of the offending, he had been standing by the door of his classroom and looking out at his class teacher who had been attending to road patrol on the day, while he was looking at his class teacher one Ms. Pandey came and slapped him on his face and his face hit the door knob. Ms. Pandey slapped him on the right side of his face and as a result the left side of his face hit the door knob. He later went home and it was then that he experienced pain and he then told his mother and the matter was then later reported to the police. When asked if he saw Ms. Pandey in Court, he pointed out the accused in the box as Ms. Pandey.
15. In cross examination the victim confirmed that Ms. Pandey had slapped him when she had come into his classroom. When asked if the doorknob was above or below his head he answered 'no' to both – he told the Court the door knob was just a little below his head. He maintained that his head hit the door knob but it did not make any sound and his class mates saw it but they weren't shocked by it. He also told the Court that at the time he was slapped it only pained a little but when he went home it was paining a lot. When asked if there was a cut on his face, he stated yes but then said it wasn't a cut – it was 'inside'. He maintained that it did hurt at the time it happened. His class teacher did not come back to the classroom after she left for school patrol so he couldn't tell her about what had happened. He

went with his sister in the bus after school that day but they had separate seats in the bus. He did not tell his sister about Ms Pandey slapping him. He described the setting of the classroom door – he told the Court the door opened inside into the classroom and when you come from the front the door opens to the right hand. From where he had been standing on the day, the door knob was on his left-hand side and Ms Pandey slapped him on his right side. He agreed with the defense counsel that he went home and met his mother – he said she hugged him and fed him but he bathed himself, he denied the mother kissing him – just hugged him. When asked if he was told by his mother to eat – he agreed however he said that while eating his food he could feel the hurt on his cheek but didn't tell his mother. It wasn't until in the night when he had gone off to sleep was when it started paining and he then told his mother. He was then taken to his grandmother so that ice can be put on the paining area and from there his father was called, he was at work at that time. He was taken to the police station the next day; he was not taken to school. He testified he also got a medical to resulting with the doctor giving him medicine. He also got new shoes from his mother for being good – she agreed that his mother got him shoes because he had good grades in school. He agreed the incident happened on a Thursday; he did not go to school the next day (Friday) however he was back in school the following Monday. He agreed he met Mr. Praveen on the Monday however denied that he told him what had happened to him. He did not know any cleaner lady in school – he did not know any cleaner lady by the name of Kusum Lata. When suggested that Kusum Lata was cleaning outside the victim's classroom at the time of the alleged offending and did not see or hear any slap – the victim maintained that he was slapped by Ms. Pandey and also said that he did not see any lady cleaning outside. When he was asked if he got new clothes on the day of trial – he agreed and said his mother got him his clothes. He denied the proposition by defense that his mother had told him to say that Ms. Pandey had slapped him in order to bribe Ms. Pandey for money.

16. **PW 2's** evidence is one of recent complaint, she is the mother of the victim. The victim had come home from school that afternoon and it was after a while that he then told his mother that he was not feeling well and that he had been slapped by a teacher, he was crying. He was 6 years old at that time. He showed his mother that he was slapped on the left side of his face. She could not recall the date of when it happened but remembered that it had been a Friday. She was told by the victim who the teacher is and PW 2 knew of the teacher as she would see her when they would go for Parents' Day for their children in school. She identified the teacher as the same teacher that was in Court on the day of the trial – the teacher was seated in the accused box.
17. While being cross examined she told the Court she didn't greet the victim with a hug when he returned from school that day, she also did not bathe him rather he bathed himself and when asked if she fed him, she said he didn't eat. She also testified that the victim did not say much when he came home that afternoon. It had been only her and her children at home and her mother who resided close by. Her husband was away at camp for work as an excavator operator and earned \$300 - \$320 per week. She agreed to the defense assertions that it was during COVID19 and her husband was receiving less income because he would only work 2 – 3 days per week and earned around \$100 - \$120 per week. She also agreed that the victim would sometimes be naughty but not all the time, she agreed that

during sometimes he is naughty she would be mad and would discipline him but she would never hit the victim or her children. She told the Court that when the victim had come home, he was in pain but did not saying anything at first. It wasn't until the night when the victim started to experience pain on his left cheek and it was then that she took the victim to her mother's place so that ice can be put on the victim's face, he had continued crying that night though. They put ice on the victim face because he was saying it was painful and the ice was to ease the pain. She said there was no cut on the victim's face but there was a bruise – it was red and showed the Court the left cheek area/side of the left cheek. She and her kids had spent the night at her mother's place since her husband was not at home. The next morning between 10am – 10.30am they then went to the Police Station. She told the Court the victim was in pain so she first went to the Police Station to lodge complaint and they then went to the Police Station. She also did not go and complain to the school teacher because the victim had been in pain. She denied that she bought the victim shoes after he was taken for medical. She agreed that the victim's grades were too good in 2021 however now (at the time of the trial) his grades were going down. She did not speak with the head teacher at any time but the head teacher did visit their home and they had come and asked to settle the matter. They had asked that she withdraw the case – she denied that she was going to receive any money for it. It was put to her that she never withdrew the case because she was never given any money – she said *'no – her husband said not to withdraw the case because the victim had been in pain and they needed justice for that'*. The defense suggested that PW 2 was lying and that she had told the victim to lie about this incident about Ms. Pandey – she denied this and told the Court that she is telling the truth. It was also suggested to her that they had been struggling as a family in 2021 in light of COVID19 – she agreed that at the time their income was low but her husband was still earning some money and would at times bring home \$600. When suggested by the defense counsel that they had been struggling to survive – she told the Court that they were but didn't face much difficulty as she was also helping her husband out by planting vegetables and having that available at home. She denied that she told the Head Teacher she wanted to withdraw the case. She denied the suggestion that the police said it was too late to withdraw the case. She denied that she told the victim to say all this so that they could get money of the accused. When suggested that the injuries sustained by the victim could have happened while riding the bus going home – she told the Court that the victim came home and then told her what happened in school with the teacher. It was also suggested that the victim only experience pain when he came home because the injury was just sustained at that time – she denied, she again told the Court that the victim was in pain but did not say anything at first – but he shortly told her what happened in school and that the teacher had slapped her. She denied that the victim is scared of her – she had asked him and he told her everything that happened. When suggested that the victim follows her orders, she told the Court that she tells her children the right thing so that they'll follow it. She was suggested that she had bribed the victim with new shoes to lie about this incident – she denied this and told the Court that she never told the victim any of these things. She was asked if she knew any Kusum Lata – a cleaner lady, PW 2 told the Court she did not know of such lady nor has she seen her. She denied she ever asked for money regarding this matter. When she was asked again as to which side the cut was on – she said the right cheek.

18. In re-examination she told the Court that the injuries sustained by the victim was to the left side of his face, there was no injuries to the right side.
19. The defense version was told through their two witnesses, **DW 1 – Mr. Praveen Kumar** who is the Head Teacher at Vatulaulau Sanatan Primary School and was so too at the time of the alleged offending, together with the **accused** also offered evidence – **DW 2**.
20. **DW 1** was not present at the time and place of the alleged offending but had been in the school vicinity. His evidence primarily centers on the surrounding circumstances of the offending, more so after the occurrence of the incident. His evidence takes him back to 5/3/2021, he testified that they were not aware that anything had happened until he got the call from the Ba Police Station on 5/3/2021 to which he was then informed and he later told the accused to report to Ba Police Station. He confirmed he was in school on 4/3/2021 and was in his office. When he got the call on 5/3/2021 from the Police regarding the complaint against the accused, he had then called the accused into his office and asked if any incident had happened to which she replied that there had been none and also stated that if he didn't believe her to check the CCTV footage. He told Court the police had uplifted the CCTV footage to be used in their course of their investigation. **DW 1** also confirmed that the if a teacher attended to road patrol/duty at the end of the day then the neighboring teacher will have to supervise both the classed during that time. The accused had been supervising Classes 1 and 2 at the alleged time of the offending. He testified that he had also asked the victim's class teacher who attended to the road duty and she informed him that nothing happened – no assault. He also had asked the victim's entire class but they said they did not see anything – he had asked the victim's class the following Monday. Part of his evidence is also him and some of his colleagues went to visit the victim's family as suggested by one of his colleagues who had been teaching at the school longer than him (**DW 1**). When they attended to the victim's home – his grandparents were there and then after a while his parents came as they were staying a little further away. The victim had been sleeping at the time they reached there. When his parents came there the victim's father then said they will go to the Police Station the next day to withdraw the case. He also testified that the police officers also visited the school to visit the scene of the alleged offending, they also saw the door and the door knob – it is his evidence that the door knob was very low compared to the height of the child, he also told Court that the door knob was half way down the child.

DW 2 in her evidence told the Court that in 2021 she had been teaching Class 2 while the other class that she was supervising that afternoon was Class 1. The classrooms were adjacent to each other (side by side) with there being a partition in the middle. She was supervising the movement of the students outside of their classrooms as it was the end of the day and students were moving out to go to their respective mode of transportation to return home. She told the Court she never at any time hit or slap the victim – there was no reason for her to do that as he was not naughty. She told the Court that it was not allowed to hit any student – it is against school policy. She did not know the victim's family. She does not know the victim's mother. She was not the victim's class teacher. She never had any

interaction with the victim's mother – no interaction at all with her regarding this case. She assisted the police with the CCTV video footage.

E. Evaluation of the Evidence and Finding

21. It is for this Court to now determine whether there is sufficient evidence adduced in respect of each one element of the charged offence beyond reasonable doubt.
22. The entirety of the evidence is before the Court Record, it will not be regurgitated in this Judgment however the salient points only will be addressed in as far as it is relatable to the elements of the offence of which the accused is charged.
23. In analyzing whether there is any evidence in respect of each element of the offence, the prosecution must prove beyond reasonable doubt all the elements of **Common Assault** which are as follows:

(i) The accused (Shivashna Shamal Naidu)

(ii) unlawfully assaulted (slapped)

(iii) the victim (NN)

24. There is no dispute as to the identification, the defence line of cross examination lives me to find that they raised no contest to the accused being present at the school, Vatulaulau Sanatan Primary School in Ba. She is a teacher at the said school and was present at the place of offending on the material date and at the material time.
25. There also appeared to be no dispute that the victim was present in the classroom on the material date and time. It was elicited during the defense evidence in chief that the victim was in a different class and that the accused was not his teacher however the accused had been looking after both classes at the alleged time of offending given the victim's teacher had been attending to road patrol duty.
26. His Lordship Justice Temo in the case of **State v Namado - Summing Up [2012] FJHC 1172; HAC094.2010S**, where explained to some extent and relevancy, the act of 'assault',

"To assault someone is to apply unlawful force to the person of another, for example, to punch someone in the face, without any justifiable reason, is to apply unlawful force to the person of another. Likewise, to touch and squeeze someone's breast and/or vagina, without that person's consent, is to apply unlawful force to the person of another. It wouldn't amount to an assault, if a doctor examine a patient by touching and squeezing a patient's breast and/or vagina with that person's consent, in the course of conducting a medical examination. To constitute an assault, the application of force to the person of another must be done with no legal justification whatsoever, that is, it was done unlawfully."

27. It is clear to the Court that there is a conflict between the evidence of the Prosecution witnesses and the evidence of the defence witness. While there is no contest to two of the elements of the charged offence the defense negates the element of unlawful assault.

28. In the case of *Gounder v State* [2015] FJCA 1; AAU0077.2011, the Court of Appeal – Full Court, in cases such as this where there is conflicting versions, stated the following;

“Brennan and Deanne JJ in the Australian High Court case of Liberato and Others v The Queen [1985] HCA 66; (1985) 159 CLR 507 at 515 (minority) held, when a case turns on a conflict between the evidence of a prosecution witness and the evidence of a defence witness, it is common place for a judge to invite a jury to consider the question: who is to be believed? (...) The jury must be told that, even if they prefer the evidence for the prosecution, they should not convict unless they are satisfied beyond reasonable doubt of the truth of that evidence. The jury must be told that, even if they do not positively believe the evidence for the defence, they cannot find an issue against the accused contrary to that evidence if that evidence gives rise to a reasonable doubt as to that issue.

29. Further the Court of Appeal made reference to a decision of the Court of Criminal Appeal of the Supreme Court of New South Wales in *R v Li* [2003] NSWCCA 386; (2003) 140 A Crim, R 288 in which decision following the minority decision in *Liberato* quashed the convictions and ordered a new trial and held that, *the issue can never be which of the cases is correct or who of the complainant and the accused is telling the truth: (...) the test was whether, taking into account the whole of the evidence, including what had been said by the appellant in his recorded interview, and the witnesses called in his case, they were satisfied beyond reasonable doubt of the truth of the complainant's evidence.*

30. Both evidence from **PW 1** as well as **DW 1** (Accused) 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).

31. 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.

32. The dicta in *DPP v Veresa* [2012] FJMC 167; *Criminal Case 1560.2007 (17 July 2012)* outlined the lucid observations of Justice O'Halloran in *Faryna v. Chorny* [1952] 2 D.L.R. 354 is noteworthy to mention at this juncture;

If a trial Judge's finding of credibility is to depend solely on which person, he thinks made the better appearance of sincerity in the witness box, we are left with a purely arbitrary finding and justice would then depend upon the best actors in the witness box. On reflection it becomes almost axiomatic that the appearance of telling the truth is but one of the elements that enter into the credibility of the evidence of a witness. Opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what he has seen and heard, as other factors, combine to produce what is called credibility [...].

Other factors that can be considered are, (a) **the demeanor of the witness while testifying, (b) the character of the witness testimony, (c) the extent of the capacity of the witness to perceive, recollect and communicate the matter in which the witness testifies, (d) the witness character for honesty or veracity, the existence or non-existence of bias, (e) statements made previously by the witness that is consistent or inconsistent with the testimony at the hearing, (f) the attitude of the witness towards the action in which the witness testifies.**

In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Only thus can a Court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skilful exaggeration with partial suppression of the truth. Again a witness may testify what he sincerely believes to be true, but he may be quite honestly mistaken. For a trial Judge to say "I believe him because I judge him to be telling the truth" is to come to a conclusion on consideration of only half the problem. In truth it may easily be self-direction of a dangerous kind.

The trial Judge ought to go further and say that evidence of the witness he believes is in accordance with the preponderance of probabilities in the case and, if his view is to command confidence, also state his reasons for that conclusion. The law does not clothe the trial Judge with a divine insight into the hearts and minds of the witnesses. And a Court of Appeal must be satisfied that the trial Judge's finding of credibility is based not on one element only to the exclusion of others, but is based on all the elements by which it can be tested in the particular case. (Emphasis is mine)

33. I have considered the evidence of the Prosecution and the Defence together with the elements of the offending to be established by Prosecution.
34. I remind myself that the accused is still innocent until proven guilty. The burden of proof never shifts to the accused. The accused doesn't have to prove her innocence. The threshold to be met by the Prosecution is a high threshold and to bring home a conviction, the Court must be satisfied beyond reasonable doubt that the accused did in fact commit the offence alleged.
35. The victim in his evidence continued to maintain through his evidence in chief, cross examination and re-examination that he was slapped by the accused on 4/3/2021. He was by the door looking out to the road watching his school teacher who was conducting school patrol – he and the other students were

waiting to be released to go home, the accused was controlling his class as well as the other class that she (accused) taught. It was during the time the victim was by the door that the accused came and slapped him on the right side of his face resulting in the left side of his face hitting the door knob. He experienced some pain at that time but a little – it wasn't until he got home that he experienced more pain. He told the Court it wasn't a cut – it was pain on the inside. He informed his mother sometime later that afternoon of Ms. Pandey slapping him earlier that afternoon. He experienced pain that night which resulted in his mother and grandmother attending to him by putting ice on his face. The matter was reported to the police the next day.

36. In *Faryna v. Chorny* the credibility of a witness can be measured in certain tests, the **test of spontaneity**, the **test of consistency and inconsistency**, the **test of probability and improbability** and the **test of independency** (interest or disinterest).
37. The victim relayed to his mother about Ms. Pandey slapping him soon after he reached his home while returning from school on 4/3/2021. He told the Court that while he was eating, he was experiencing some pain to his left cheek and it became more painful later that night. There was no room for the victim to concoct a story – the matter was reported to the Police on the very next day.
38. In the unfolding of the evidence, a few things became apparent to the Court. Firstly, the alleged offending took place in the afternoon between 2pm – 2:10pm which is when students are released at the end of school day. Secondly, the accused was managing both classes, Class 1 in which the victim was in and Class 2 which is the class the accused is in conduct of. Thirdly the victim and other students had been lining up to await the clearance from the accused as to when they can proceed outside to their respective transportation methods. These portions of the evidence were consistent between the victim's version as well as the two defense witnesses. I am therefore inclined to find that it had been a busy point in the afternoon where teachers would be in control of their respective classes awaiting the clearance from the road patrol teacher to indicate when/if a class is to be released to their respective transportation methods. The evidence of the victim is also consistent with the proposition of the defense in terms of the lay out of the door into their class room and how/where the door knob was placed. He told the Court that the door opened inside into the classroom and when you come from the front the door opens to the right-hand side. From where he had been standing on the day, the door knob was on his left-hand side and Ms Pandey slapped him on his right side thus the left side of his face hit the door knob. His evidence is also consistent with his mother's evidence – he got home and did not say much, it wasn't till sometime later that he then told his mother about what Ms. Pandey did – he told his mother as he was experiencing some pain to his left cheek especially when he tried to have his dinner that same evening. He told the Court that there was no cut but it was pain on the inside and while saying this in Court he continued to motion to Court indicating that it was more an internal pain than external. He consistently maintained that the door knob was just a little below his head and when he was slapped by Ms. Pandey from the right side of his face – the left side of his face hit the door knob. That piece of evidence was also consistent with his mother's evidence who told the Court

that her son had pain on the left side of his face, there was no injuries to the right side, as well as telling the Court that she had to find ice from her mother's place to put on her sons face to ease the pain.

39. I now consider whether the evidence of the Prosecution witnesses was probable or improbable. Simply put to consider whether something is probable means that there is a high likelihood of it being true while improbable has the opposite finding – low likelihood of it being true. Looking at the overall context of the evidence, it remains consistent that the time of the alleged offending was during the end of the school day when students would be busy getting ready to exit their classrooms and the school while teachers would be busy managing their respective classes. It is more probable to find that the victim had indeed been standing by his class room door at this time while looking out at his class teacher who was handling road patrol waiting for the 'green light' for them to move out of the class to then catch their buses. It is also probable to find that the accused had a lot to handle at the material time given that she was to manage her class and the victim's class (Class/Year 1) thus it leads me to find that the only probable inference or conclusion that can be drawn is that the accused while seeing the victim standing close to the door and looking out proceeded to then control and discipline the victim by slapping him on the right side of the victim's face. There are no major discrepancies in the version of the Prosecution through **PW 1** and **PW 2**, both maintained their versions during their evidence as discussed in the above preceding paragraphs.
40. Lastly, is the test of independency. The evidence of **PW 2** supported the evidence of **PW 1** in that the victim had experience pain to the left side of his face - his left cheek when he had returned from school on 4/3/2021 and then again later on in the night. The pain was from the slap by Ms. Pandey. Although the defense cross examined the two prosecution witnesses on having this incident fabricated for the sake of bribing the accused – each of the witnesses maintained their version with **PW 1** not denying that his mother would buy him new things however he still retained his evidence stance that he was slapped by Ms. Pandey. **PW 2** also did not deny that it was during COVID 19 and they were struggling however she fervently denied the proposition of ushering her son, the victim to concoct this incident for the sake of bribing the accused. Both the witnesses evidence stood independently on it's own and was probable and consistent and also in considering the preponderance of it their evidence harmonizes with each other as well.
41. I have considered the evidence of the Prosecution and I find their evidence to be consistent, probable and spontaneous leaving no opportunity for such instances to be invented. I also find their version to be capable of belief.
42. The charge is of Common Assault, the defense argues that there were no injuries substantiated – the stance is misconceived in that regard. To this I also add that the defense had every opportunity to cross examine the victim on any such medical report that may have been made available (if so) to the victim and the defense to cause any discredit to the evidence of the Prosecution – this however was not done.

43. The defense cross examined at length on the child being ushered to have this complaint fabricated for the purposes of his mother to then blackmail the accused, that appeared to be a huge part of their defense which goes to questioning the motive of the victim in raising this complaint. To this, the Court heard from the accused herself that she does not know who victim's mother is other than being a mother of a student who attended the school she taught at. The accused also stated that she has never had any interactions with the victim's mother even after the occurrence of the alleged offending – this Court finds that the assertions made by the defense in this regard does not hold water. Their defense has been that **PW 2** cooked up this scheme to then have the report as a form of black mail or means to bribe the accused, yet the **Accused** herself told the Court that she had no such interactions with the victim's mother nor did **PW 2** have any interactions with her. I find their version to be improbable and inconsistent in that regard.

44. The defense also raises the CCTV footage that is used in school that captures the surroundings and activities in school. In the accused evidence together with her witness they both testified that the CCTV Footage would have captured the incident occurring on the day of the offending – this footage was never utilized by the defense in their case to assist their position or at least offer assistance to the Court. At the cross examination of the Prosecution witnesses the Court observed that questions posed was generally to the effect of the footage existing and having an overall coverage of the school however when it came to the defense evidence it became more definite that the footage would have captured what happened on 4/3/2021 between the accused and the victim – this was never specifically put to the witnesses of the Prosecution. In **State v Bainimarama [2024] FJHC 169; HAA036.2023 (14 March 2024)** the Court highlighted again the well laid down rule of practice in **Brown v Dunn**;

*"The general rule of practice ('**Brown v Dunn Rule**') requires that where it is intended that the evidence of the witness on a particular matter should not be accepted, that which is to be relied upon to impugn the witness's testimony should be put to the witness by the cross-examiner for his or her comment or explanation. Thus, as a general rule, defence counsel should put to witnesses for the State/Crown for comment any matter of significance which is inconsistent with or contradicts the witness's account and which will be relied upon by the defence. In **MWJ v The Queen [2005] HCA 74; (2005) 80 ALJR 329 at 333 [18]; [2005] HCA 74; 222 ALR 436 at 440-441**, it was noted that in many jurisdictions this rule has been held to apply in the administration of criminal justice." [Emphasis mine]*

45. It is also the defense version that there was a cleaning lady by the name of Kusum Lata that had been present nearby when the alleged offending occurred and did not witness anything occurring between the accused and the victim – this referred to 'cleaning lady' was also never called by the defense, again it calls to question the veracity and the capability of belief of the defense version.

46. I find that the accused had indeed slapped the victim on 4/3/2021 without any justifiable reason thus amounting to an unlawful assault on the victim.
47. After hearing the entirety of the evidence and in light of the foregoing discussion, I have come to the finding that the evidence of the Prosecution is credible and I find that the Prosecution have proven beyond reasonable doubt the charge against the accused.
48. I accept the version of the Prosecution and I reject the evidence of the defense. I find the evidence of the Prosecution to be consistent per se and with the other evidence before the Court.
49. Considering the evidence in totality, I find that the Prosecution has proven beyond reasonable doubt the charge against the accused.
50. Therefore, I find the accused is guilty as charged and the Court convicts the accused forthwith accordingly.
51. The Prosecution is to move to PC's and Defense to Mitigation.

28 days to appeal to the High Court.

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S. Nasedra [Ms.]
[Resident Magistrate]

Divisional Prosecuting Office/West

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