

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 81 of 2018

STATE

V

KASIANO NACANIELI ASOA

Counsel : Mrs. A. Vavadakua for the State
Mr. J. Korotini (L.A.C.) for the Accused.

Date of Trial : 25 March 2019
Date of Summing Up : 25 March 2019
Date of Judgment : 25 March 2019

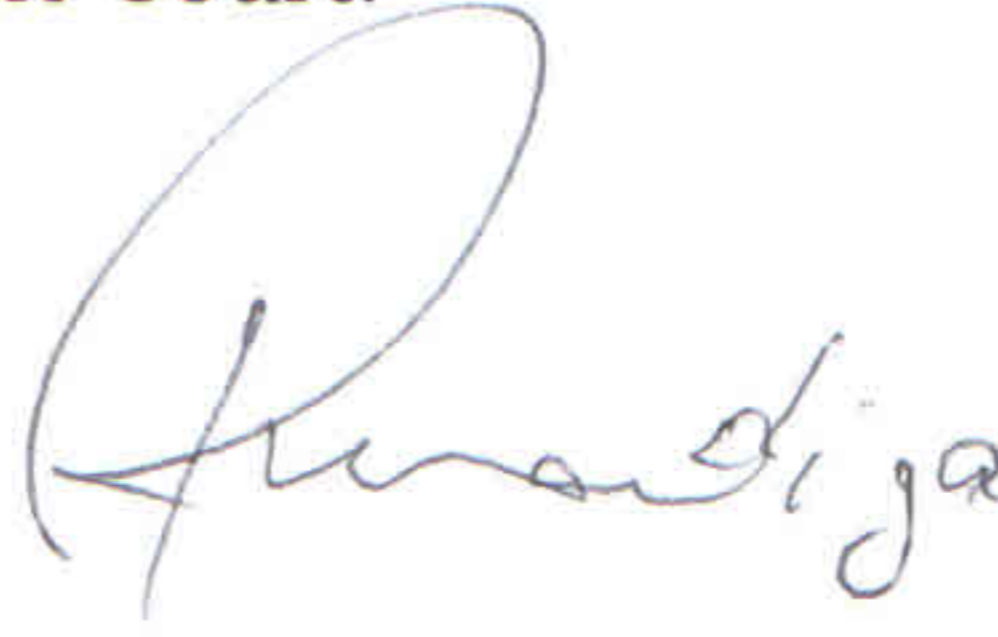
JUDGMENT

1. The accused was tried in this Court on one count of digital rape. After hearing Counsel's speeches and my summing up, three assessors returned with unanimous opinions of guilty.
2. The prosecution called three witnesses at trial. The victim then and now aged 5 told of a night she spent with her father in late October 2018. She said that he did something to her that caused her a lot of pain. She demonstrated the use of a forefinger and used the word "poke".

3. She was very carefully and sympathetically examined by the prosecutrix, who managed to put the child at her ease and extract the incriminating evidence.
4. The grandmother gave evidence that she was the main caregiver of the child and that her daughter, the child's mother had separated from the accused, the child's father. The child lived with her, but on occasions she would visit and stay with the accused who lived nearby.
5. On the day after the overnight stay at the time in question, the girl returned to her care but was crying and complaining of pain in her genital area. Inspection revealed injuries and blood. The grandmother took the child to the Police who arranged for her to be examined at a hospital.
6. A Government medical officer gave evidence of that examination. She found that the child's hymen had been broken and that the girl's labia were inflamed. Her professional opinion was that she had been penetrated by blunt force, which was consistent with the child's complaint.
7. The court, in finding a case to answer, explained to the accused his rights in defence. He immediately elected to remain silent and call no witnesses.
8. The assessors were directed not to interpret that election to the detriment of the accused but to still assess the case on the strength of the prosecution evidence.
9. In warning myself on the legal implications of a silent accused, I find that the prosecution has proved its case beyond reasonable

doubt and in agreement with the assessors I find the accused guilty and convict him accordingly.

10. That is the judgment of the Court.



P. K. Madigan
Judge



At Labasa

25 March 2019