

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 075 OF 2025

BETWEEN : **STATE**

AND : **VIJEN SINGH**

Counsel : **Ms M Naidu and Ms L Latu for the State**
Ms A Dean and Ms S Moceinawaqa for the Accused

Date of Hearing : **27 - 28 August 2025**

Date of Judgment : **19 September 2025**

JUDGMENT

Charges

- [1] The Accused is charged with one count each of Digital Rape and Sexual Assault of a 12-year-old girl. The alleged offences were committed on different unknown dates between February 2024 and March 2025 at the complainant's residence in Narere.

Burden and Standard of Proof

- [2] The Accused has pleaded not guilty to the charges. The burden is on the prosecution to prove each charge beyond reasonable doubt. This burden never changes and never shifts to the Accused.

Elements of Offence

- [3] To prove digital rape, the prosecution must prove that the Accused penetrated the vagina or vulva of the complainant with an object or his body part other than

the penis. Slight penetration is sufficient. It is not necessary to prove lack of consent when the complainant is under the age of 13 years, because a child under the age of 13 years is legally incapable of giving consent to a sexual act.

- [4] To prove sexual assault, the prosecution must prove that the Accused unlawfully and indecently assaulted the complainant. The word "unlawfully" simply means without lawful excuse. An act is an indecent act if right-minded persons would consider the act indecent. In other words, was the act so offensive to current standards of modesty and privacy as to be indecent?

Separate Consideration of Charges

- [5] The evidence on each count must be assessed separately and independently of each other. The outcome of one charge does not necessarily lead to the same outcome for the other charge.

Admitted Facts

- [6] The identity of the Accused is an admitted fact. He is 45 years old, born on 19 June 1979, and is the younger brother of the complainant's paternal grandfather.

Background and Family Details

- [7] The complainant is a 12-year-old student at Ahmadiyya Muslim Primary School, Narere. She resides at Lot 26, Makita Street, with her father, stepmother, younger brother, older brother, and grandfather after her parents separated. Her biological mother lives separately in Sakoca.

First Alleged Incident

- [8] The complainant recounts that in February 2024, while alone at home, her grandfather, Vijen Singh took her into her bedroom, removed her clothes, and inserted his middle finger into her private part, causing her pain and distress. She describes shouting, having her mouth covered by the Accused, and feeling unable

to physically resist him due to his size. The incident ended when her brother returned home, at which point the Accused left to open the door and the complainant dressed herself. She later disclosed the event to her brother, who did not believe her, and she was afraid to tell others out of fear of being hit.

Second Alleged Incident

- [9] Approximately a month after the first incident, the complainant claims that while sleeping at her grandfather's house with her younger brother, Vijen Singh tapped her leg and touched her breast from inside her dress. She saw the Accused, as the room was illuminated by the kitchen light. During this episode, her grandfather was present nearby but allegedly did nothing, even when she told him about the touching immediately afterward.

Disclosure and Complaint

- [10] The complainant states that the alleged assaults were eventually disclosed to her aunt, Vashni Devi, on 3 March 2025, following an altercation with her brother and ongoing emotional distress. She recounts that Vashni took steps to have Vijen removed from the house. Over time, she also informed her teachers and later the police. The timeline and reasons for delayed disclosure were explained, including her fear of further harm from the Accused and lack of belief among adults.
- [11] Vashni Devi, gave evidence regarding the allegations made by the complainant. Vashni resides on Makita Road, Narere, and has lived there for 22 years. She explained that her house is extremely close to the complainant's - only about five meters apart. Vashni has known the complainant since birth and described a close relationship, explaining that the complainant frequently visits her house for food, clothing, and support, particularly when no adults are present at the complainant's home. Vashni stated that she regularly provides assistance to the complainant due to the child's lack of basic necessities and supervision.

- [12] On the 3 March 2025, Vashni testified that while preparing her sister for school, she heard the complainant crying outside. Upon questioning, the complainant, who was visibly upset and crying, disclosed that her grandfather, Vijen Singh, had touched her inappropriately. The complainant provided details: while home alone, Vijen sent her brothers away on errands, took her to a room, removed her clothing, and inserted his finger (specifically the middle finger) into her private part. Vashni recounted that the complainant was extremely distressed throughout the disclosure, crying and turning red as she spoke.
- [13] Following the disclosure, Vashni confronted the complainant's grandfather, Ajesh Singh, regarding the allegations. Vashni then insisted that Vijen Singh be evicted from the house. Over the course of several days, Vijen initially agreed but later refused to leave without a court order, leading Vashni to report the incident to police, after which the police removed him from the premises.
- [14] Vashni also recounted another incident disclosed by the complainant, where Vijen allegedly entered her room at night, tapped her leg, and squeezed her breast while she was in bed. Specifics regarding which leg or breast were not given, and the complainant said she recognized Vijen due to illumination from the kitchen light.
- [15] During cross-examination, Vashni confirmed that the complainant's disclosure to her on 3 March 2025 was the first time she had complained to her about sexual abuse, and that the complainant had not previously raised such complaints. Vashni confirmed the details were later provided to the police. She also stated she had accompanied the complainant home from court after the child's earlier evidence, but their conversation only concerned the complainant's fear during identification of the Accused. They did not discuss the evidence or court proceedings in detail.

Defence's Case

- [16] During cross-examination of the complainant, Ms Dean challenged inconsistencies in her account, particularly regarding the dates of the alleged incidents (her statements to police suggested 2025, while her in-court evidence referred to 2024). The defence also probes physical possibilities, such as whether the complainant could have resisted, the layout of the bedroom, and whether the Accused was present at relevant times, asserting that he may have been living and working away from Suva during the allegedly relevant period. The defence further proposes that the allegations arose from familial tensions and not actual events, which the complainant denies.
- [17] The Accused elected to remain silent and not call any witnesses. That is perfectly his right, and no adverse inference is drawn against him for exercising that right.

Prosecution Case and Analysis

- [18] The prosecution case is substantially dependent on the truth of the complainant's evidence. If her account of the two instances is true, then the Accused is guilty of the charges. But if her account is false or may be false, then the Accused is not guilty.
- [19] I am mindful that the complainant is a child, and special measures were used to receive her evidence. The purpose of these special measures was to place the witness at ease when giving evidence and not to prejudice the Accused.
- [20] I approach the complainant's evidence dispassionately, without sympathy or prejudice. Her evidence need not be corroborated in order to be accepted. However, there is no independent evidence that supports her account that the Accused raped and sexually assaulted her.

- [21] The complainant, a 12-year-old girl, gave a clear and consistent account of two separate incidents involving the Accused. Her description of the first incident includes specific actions: being taken to her bedroom, having her clothes removed, and the Accused inserting his middle finger into her private part where she urinates from, hence, satisfying the element of penetration.
- [22] Her account of the second incident, being touched on the breast while sleeping, constitutes an unlawful and indecent act.
- [23] Under the law, a child under 13 cannot legally consent to any sexual act.
- [24] Evidence of complaint was led to show consistency in the conduct of the complainant, but the complaint was delayed for about one year and was prodded out by the complainant's aunt. However, there is a reasonable explanation for the delayed complaint. The complainant delayed disclosure due to fear of being harmed and disbelief from family members, which is common among child victims of sexual abuse.
- [25] Vashni Devi, the complainant's aunt, testified that the child disclosed the abuse to her in a distressed state. Vashni's close proximity to the complainant's home and her longstanding relationship with the child lend credibility to her testimony. She took immediate action by confronting family members and reporting the matter to the police.
- [26] The complainant's account includes specific details about the setting, timing, and sequence of events. The Accused's alleged presence at the complainant's residence is consistent with his familial role and proximity. The complainant identified the Accused during the second incident by the illumination from the kitchen light, reinforcing her ability to recognize him.

[27] Minor discrepancies in dates are common in child testimony and do not negate the substance of the allegations. The complainant explained her inability to resist due to fear and the Accused's physical dominance, and she denied fabricating the allegations.

[28] I believe the complainant when she said that on one occasion the Accused inserted his middle finger into her private part where she urinates, and that on another occasion, he touched her breast while she was sleeping.

[29] I am satisfied that the prosecution has proved both charges beyond a reasonable doubt.

Verdict

[30] I find the Accused guilty of Digital Rape and Sexual Assault and convict him accordingly.



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Hon Mr Justice Daniel Goundar

Solicitors:

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