

**IN THE MAGISTRATES' COURT
AT BA
CRIMINAL JURISDICTION**

Criminal Case No. 476/2023

BETWEEN: STATE

PROSECUTION

AND: S.G

ACCUSED

AND: A.G.G

FIRST JUVENILE

AND: S.A.N

SECOND JUVENILE

Counsel: WCPL 4897 Venu Singh for Police Prosecution
Ms. B. Kumari for the Accused
Ms. L. Naikawakawavesi for the First Juvenile
Ms. M. Totovosau for the Second Juvenile

Date of Prosecution's Case: 15 January 2025
Date of NCTA Ruling: 14 February 2025
Date of Defence's Case: 4 June 2025
Date of Judgment: 12 December 2025

JUDGMENT

Introduction

1. The names of the victim, Accused and the Juveniles are suppressed for the purposes of recording and publication.
2. The Accused, the First Juvenile and the Second Juvenile were all charged and produced in Court on 21 November 2023 for 1 count of Indecent Assault contrary to section 212(1) of the Crimes Act 2009.
3. At the time the Accused and the two Juveniles were produced in Court, Prosecution had filed separate charges against the Accused and the two Juveniles.
4. On the 14 May 2024, Prosecution filed Amalgamated Charges wherein the Accused and the two Juveniles were charged for 1 count of Indecent Assault and the Accused was further charged for 1 count of Breach of Bail Conditions. The particulars of the offences are:

*Count 1
Statement of Offence*

Indecent Assault: Contrary to Section 212(1) of the Crimes Act 2009.

Particulars of Offence

S.G, A.G.G and S.A.N on the 19th day of November 2023 at Kasaitar, Ba in the Western Division unlawfully and indecently assaulted J.J.K a 10 year old child by touching his buttock.

Count 2
Statement of Offence

Breach of Bail Conditions: *Contrary to Section 25(1)(b) and 26(1) of the Bail Act 2002 and the Bail Amendment Act 2012.*

Particulars of Offence

S.G. *on the 19th day of November 2023 at Kasaitar, Ba in the Western Division whilst being bailed by Ba Magistrates Court vide CF 455/21 on the condition not to re-offend, breached the said condition by re-offending.*

5. On 17 May 2024, in the presence of their counsel, the Accused and the Juveniles pleaded Not Guilty to the respective charges they were charged with. After subsequent adjournments, the matter was set for Trial.
6. On 15 January 2025, the date of Trial, Prosecution called 2 witnesses and thereafter closed its case. Counsel for the Accused then made an application pursuant to section 178 of the Criminal Procedure Act stating that a case was not sufficiently made out against the Accused to require him to make a defence for Count 2 only.
7. Counsel for the First Juvenile conceded that there was a case sufficiently made out against the First Juvenile to require him to make a defence for Count 1. Counsel for the Second Juvenile also made an application pursuant to section 178 of the Criminal Procedure Act stating that a case was not sufficiently made out against the Second Juvenile to require him to make a defence for Count 1.
8. Counsel for the Second Juvenile filed submissions on 22 January 2025 and Prosecution filed Reply submissions on 28 January 2025. On 14 February 2025, the Court found the Accused not guilty as charged for the offence of Breach of Bail Condition and acquitted him forthwith. With respect to the application made on behalf of the Second Juvenile, the Court dismissed the application for no case to answer as it found that a case has been made out against the Second Juvenile to sufficiently require him to make a defence in respect of the first count of Indecent Assault.
9. The procedure under section 179 of the Criminal Procedure Act was explained to the Accused and the two Juveniles. It was also explained to them that they had a right to remain silent. The Accused and the First Juvenile chose to give evidence and the Second Juvenile chose to remain silent.
10. On 4 June 2025, the Accused and the First Juvenile gave evidence but did not call any witnesses. The Second Juvenile elected to remain silent and not call any witnesses. After the Accused and the First Juvenile closed their case, counsels for the Accused and the two Juveniles as well as Prosecution sought time to file Closing submissions. Closing submissions were filed by the counsel for the Accused and the two Juveniles on 18 June 2025, however, no submissions were forthcoming from Prosecution.
11. Having considered the evidence before the Court and the submissions filed by Defence, I now pronounce my Judgment.

Burden of Proof

12. It is imperative to highlight that as a matter of law, the onus or burden of proof rests on the prosecution throughout the trial and it never shifts to the accused. There is no burden on an accused to prove his or her innocence as an accused is presumed to be innocent until proven guilty.
13. It is for the prosecution to prove the accused's guilt beyond a reasonable doubt. If there is doubt, so that the court is not sure of the accused's guilt, or if there be any hesitation in the court's mind on any of the ingredients or on the evidence led by prosecution, the accused must be found not guilty of the charges and accordingly acquitted.

Summary of Evidence

14. J.J.K ('the victim') testified that on 19 November 2023 at around 5:20pm, he had been looking for his father when the Accused called him and told him – the victim that his father was there and to come.
15. The victim stated that the Accused was at House No. 1. The victim testified that 3 people were present and that they were the Accused, S.A.N and A.G.G. The victim identified the Accused and the two Juveniles.
16. The victim testified that somebody pushed him down which caused him to fall, landing on his stomach and then one boy held both his hands and one boy was holding both his legs with the Accused then pulling his shorts, taking a video and touching his bum.
17. Detective Sergeant 2408 Annual Prakash ('D/Sgt Prakash') gave evidence regarding the Accused making admissions in his Caution Interview from Q&A 33-36 regarding the allegation made against him. The Caution Interview conducted in Hindi was tendered as 'PEX1A' and the Translated Caution Interview was tendered as 'PEX1B'.
18. The Defence counsels then agreed to have the video which had been shown to the victim tendered by consent. As such the video was tendered as 'PEX2'.
19. The Accused in his evidence states that on 19 November 2023, he told the victim to sit with him and the two Juveniles when he noticed that the victim was short of breath. The victim sat down and then started playing with his hands and then climbed onto the Accused back, wanting to take off the Accused's pants. The Accused states that he turned the victim around and then the First Juvenile pulled the victim's pants down. The Accused stated that as he was about to pinch the victim, the Second Juvenile made the video. The Accused maintains that they had been playing at the time and since the video had been made that is why the victim got angry.
20. The First Juvenile in evidence stated that him, the Accused and the Second Juvenile had been sitting outside when the victim came looking for his father. The First Juvenile then stated that things got playful and then the victim punched the Accused and that was when the Accused told the First Juvenile to hold the victim's hand which the First Juvenile said he did but holding his wrist for less than 10 seconds and then let go off whilst the Accused pulled the victim's pants in a playful manner.

Evaluation of Evidence

21. It is important to note that the Second Juvenile chose to remain silent and not call any witnesses, the Court is mindful that no adverse inference can be made against the Second Juvenile in this regard.
22. For a proper analysis of the evidence for the offence of Indecent Assault, it is imperative for the Court to turn its mind to the elements of the offending, which are:
 - i. the accused and juveniles
 - ii. unlawfully and indecently
 - iii. assaulted the Complainant by touching his buttock.
23. From the outset, there was no dispute regarding the Accused and the two Juveniles identities at the time of the alleged offending. It is evident that the Accused and the First Juvenile in their evidence agreed that they were present at the time of the alleged incident. The Court also noted that the Second Juvenile never disputed his presence at the scene of the alleged incident.
24. The Accused stated in his evidence that he was about to pinch the victim's buttock but that he was doing this in a playful manner whilst the victim denies that they were playing at all. The First Juvenile maintains that he merely held onto the victim's hand for 5-7 seconds and then let it go before the Accused pulled the victim's pants and touched his buttock. The victim, however, states that the First Juvenile held his hands and managed to pull his pants halfway before the Accused pulled it down. The Second Juvenile, through questioning maintains that he did nothing to the victim, however, the victim placed the Second Juvenile at the scene and maintains that one boy at the scene held his legs while the Accused pulling his shorts and touching his buttock.
25. The Court will need to evaluate the evidence by Prosecution whilst keeping in mind the evidence presented by the Accused insofar as they relate to the issue it is considering. The evidence presented by the parties will be evaluated to determine the testimonial trustworthiness of the evidence which will be done by evaluating the credibility – the correctness or veracity of the evidence and the reliability of evidence – the accuracy of the evidence - vide **State v Prasad** Criminal Case No. HAC 72 of 2021 (20 June 2024). In doing this, the Court should consider the promptness/spontaneity, probability/improbability, consistency/inconsistency, contradictions/omissions, interestedness/disinterestedness/bias, the demeanour and deportment in Court and the evidence of corroboration where it is relevant. (vide **State v Moroci** Criminal Case No. HAC 161 of 2023 (26 April 2024)).
26. The victim testified that on 19 November 2023 at around 5:20pm, he had been looking for his father. As he was looking for his father, the Accused called him and told him – the victim that his father was there and to come.
27. The victim testified that 3 people were present and this was the Accused and the two Juveniles. The victim then testified that somebody pushed him down which caused him to fall, landing on his stomach and then one boy held both his hands and one boy was holding both his legs with the Accused then pulling his shorts, taking a video and touching his bum.

28. The victim then went on to testify that they were looking at his private part being his bum and videoing it. The victim stated that he was scared and screaming. The victim then stated that he ran to his father, his father then came, snatched the video, viewed it and then filed a complaint with the Police. He stated that he was struggling and really scared as this had been the first time anything as such had happened to him.
29. The victim stated during cross examination by the counsel for the Accused that the First Juvenile had tried to pull his pants down but was only able to pull it halfway and then the Accused pulled it down. When it was suggested that the Accused had touched the victim's bum in a playful manner, the victim denied this and stated that it was not a matter of play and that he had seen the phone in the Accused's hand, making the video. The victim stated that he did not like it when they had touched his private part.
30. Moreover, in cross-examination by the counsel for the First Juvenile, when it was suggested that the First Juvenile merely stood and watched the Accused pull the victim's shorts and touch his bum, the victim denied this and stated that the First Juvenile had held both his hands as soon as he fell down and then the Accused pulled his shorts and touched his bum. The victim further stated that the First Juvenile released his hands before the video finished and that although he held it for a short time, it was tight. The victim explained that he had been screaming to leave him and as this had happened to him for the first time, he did not know what to do.
31. The Court is mindful of the Accused's evidence in that he confirms that he and the two Juveniles were present at the time the victim came to where they were sitting. The Accused stated that they were wrestling, with the victim on the Accused's back and that the victim punched the Accused and then tried to pull the Accused's pants down. From the evidence of the Accused, it is apparent that the Accused is saying because the victim did this to him, that the Accused then turned the victim around and then the First Juvenile pulled the victim's pants down. The Accused stated that as he was about to pinch the victim, the Second Juvenile made the video.
32. However, the Court is mindful that during cross examination by the counsel of the First Juvenile, the Accused admitted that he had pinched the victim's buttocks. Given the Accused's contradictory evidence with respect to the physical act, the Court will need to look at the evidence on hand. As stated at paragraph 23, the Accused and the Juveniles were the only ones present with the victim at the time of the alleged offending.
33. When considering the video which was tendered as 'PEX2' and which was uncontested by Defence, in conjunction with the Accused's evidence, it is apparent that the person closest to the victim was the Accused given that the victim said one boy held the victim's hands whilst another held his legs. Given that the Accused was closest to the victim, an indisputable inference can be made that the hand seen touching the victim's buttock in the video is the Accused's hand.
34. Thus, the Court is satisfied that no reasonable doubt has been created by the Accused in his evidence given the contradictory evidence with respect to the physical act. Rather, the video supports the victim's evidence that it was the Accused who had touched his buttock.
35. It is apparent to the Court that the Accused's version of events does not differ from that of the victim in that he and the two Juveniles were present, the First Juvenile held the victim's hands

- and managed to pull the victim's pants halfway before the Accused pulled the victim's pants. The Accused also maintains this in his evidence even when cross-examined by the counsel for the First Juvenile because when it was suggested the First Juvenile did not pull the victim's pants but rather it was the Accused, the Accused stated no, that if the victim was asked, the First Juvenile had pulled half of the victim's pants. Further, when it was suggested that the Accused had told the First Juvenile to hold one of the victim's hands, the Accused responded no. However, the Accused maintains that all this was done in a playful manner.
36. When considering whether the Accused's actions were done in a playful manner, the Court is mindful of the cross examination of the victim by the Accused's counsel. When it was suggested that the Accused and the 2 other boys were playing with the victim when he came to where they were sitting, the victim denied this and stated that he had gone to ask them where his father was. The victim also denied that they had started playing hand wrestling, that he had hit the back of the Accused's head and climbed onto his back. When it was further suggested that the victim tried to pull the Accused's pants down, the victim responded '*no, lie*'.
 37. The Court notes from the video that you can hear the victim shouting to be released and upon being released from the Accused's grip, the victim is attempting to pull his pants back up. In the Court's opinion, the video does not show a group of friends playing in a playful manner.
 38. The Court, thus, finds that the victim was prompt in his responses in regard to what had happened to him and that he was adamant that he had merely been looking for his father and not there playing with the Accused and the two Juveniles. Moreover, had this been an act of playfulness between a group of friends, the victim's reaction to the actions perpetrated would not have been to the extent of him screaming, struggling, being scared and running off to inform his father of what had occurred to him. Further, in the Court's opinion, the video does not show a group of friends playing in a playful manner.
 39. Thus, the Court finds that the Accused's version does not create a reasonable doubt. Rather, the Court finds that as the victim was prompt with his responses and consistently maintained what had transpired against him, that the victim's evidence was accurate with respect to the version of events and is, therefore, credible and therefore reliable.
 40. Before the Court turns to analyse the evidence regarding the First and Second Juvenile, it is important to address the Accused's caution interview which was tendered into evidence. Prosecution relies on the same as they say it contains admissions by the Accused.
 41. D/Sgt Prakash testified that he had conducted the interview of the Accused on 20 November 2023 at the CID Office at Ba Police Station and that the interview was conducted in the Hindi language. After the interview, D/Sgt Prakash prepared the translated interview to the best of his knowledge. D/Sgt testified that the Accused admitted in his Caution Interview from Q&A 33-36 and that these answers were given on the Accused own free will as confirmed by the Accused from Q&A 39-43.
 42. For the purposes of discussion, Q&A33-36 is reproduced herein:

Q33: J has given statement to Police that you, S and A met him on the road and took him to Pilla's house, what can you say about this?

A: J already came in the compound of Pilla, he said he was looking for his father was having short breath so I asked him to sit.

Q34: J has made allegation against you, S and A that you all removed his pants, touched his buttocks and made a video of him, what can you say to this?

A: We were having fun, J was pulling my pants, A pulled J's pants, I pinched his buttocks and S made a video with his phone.

Q35: Why you all did this to J?

A: We were playing and S made the video that's why J went and reported.

Q36: J gave a statement that he didn't like what you all did with him, what can you say to this?

A: We made a mistake and this won't be repeated.

43. In cross-examination by the counsel for the Accused, D/Sgt Prakash agreed that the Accused had answered in his interview that he could only speak Hindi but not read it. When it was suggested that at Q&A34, the Accused had stated that he had touched the buttocks and not pinched it, D/Sgt Prakash stated that the answer in Q&A34 was the answer that the Accused had given and which he recorded.
44. Considering the evidence of D/Sgt Prakash and the evidence of the Accused in Court, wherein the Accused himself stated that he was about to pinch the victim's buttock as the video was made, the Court finds that D/Sgt Prakash had not fabricated the answers in the Accused's Caution Interview given that the Accused's evidence in Court regarding the events was not accurate. Moreover, it should be noted that the Accused never explained in his evidence that the answers in his Caution Interview were fabricated by D/Sgt Prakash at the time of his interview.
45. The Court is now required to ascertain whether the admission in the Accused's Caution Interview is credible and reliable which in turn will allow the Court to determine its truthfulness by ascertaining whether there is independent evidence to support the admission (vide ***Vodo v State*** Criminal Appeal Case No. HAA 31 of 2023 (19 April 2024)).
46. As stated in paragraphs 23, 33 and 34 herein, based on the video tendered in Court, given that it was only the Accused and the two Juveniles present with the victim and because one boy held both of the victim's hands and the other held both of his leg, the Accused was the closest to the victim and there is an indisputable inference that it was the Accused who had touched the victim's buttock. Thus, the Accused's version of events is not accurate or true based on the video.
47. Now turning to the First Juvenile's evidence, he testified that the victim had come and sat with them and that things got playful and when the victim punched the Accused, the Accused told the First Juvenile to hold the victim's hand which the First Juvenile said he did but only by holding the victim's wrist for less than 10 seconds and that he did so slowly and then he let go whilst the Accused pulled the victim's pants.
48. The First Juvenile further maintained that he had let go of the victim's hand and that he was unaware that the Accused would pull the victim's pants which he states the Accused did but in a playful manner.

49. Considering the Accused's evidence in Court regarding the First Juvenile holding the hands of the victim and the First Juvenile pulling the pants of the victim halfway before the Accused pulled it further which was consistent to the victim's version of events and as the Court has found the victim's evidence was accurate to the version of events and therefore credible and reliable, it is the opinion of the Court that the First Juvenile's version of events does not create any reasonable doubt (vide **Leonard Rudd (1948) 32 Cr App R 138; 140; Ram Asre v Reginam [1965] 11 FLR 214; 218** as cited in **Niume v State; Criminal Appeal No. AAU 106 of 2011 (2 October 2015)**).
50. With respect to the Second Juvenile, the Court is mindful of section 45 of the Crimes Act which states:

Complicity and common purpose

45(1) A person who aids, abets, counsels or procures the commission of an offence by another person is taken to have committed that offence and is punishable accordingly.

(2) For the person to be guilty –

- (a) the person's conduct must have in fact aided, abetted, counselled or procured the commission of an offence by the other person; and
- (b) the offence must have been committed by the other person.

(3) Subject to subsection (6), for the person to be guilty, the person must have intended that –

- (a) his or her conduct would aid, abet, counsel or procure the commission of any offence (including its fault elements) of the type the other person committed; or
- (b) his or her conduct would aid, abet, counsel or procure the commission of an offence and have been reckless about the commission of the offence (including its fault elements) that the other person in fact committed.

51. In the case of **Waqabaca v State; Criminal Case No. HAC 361 of 2016 (27 July 2017)** the scope of section 45 of the Crimes Act was discussed by His Lordship Justice Rajasinghe and the following was stated:

37. According to Section 45, **a certain conduct, either an act or an omission of an act, of the accused must have aided or abetted the commission of the offence and that offence must have been committed by the other person. This constitutes the physical part of aiding and abetting.**

38. **The mens rea, that is required to aid and abet under Section 45 of the Crimes Act is the intention to aid and abet the commission of the offence.**

39. Sir Robert Lowry CJ in **James Charles Maxwell v. DPP for Northern Ireland (68 Cr. App R 128)** has expounded the term of aiding and abetting, where Lowry CJ held that:

"I shall, like authors of Smith and Hogan, Criminal Law 9 3rd ed 1973), Cap, 8, use the term abettor and counsellor to cover aiding and abetting on the one hand and counseling and procuring on the other. An abettor is one who is present assisting or encouraging the principal at the time of the offence, while a counsellor is one who before the commission of the crime conspires to commit it, advises its commission or knowingly gives assistance to one or

more of the principals. It is enough to prove an accused to be an abettor or a counsellor without showing which. Abetting and counseling are by origin common law offenses and a guilty mind is necessary ingredient. The Crown must prove that an accused participated before or during the commission of the crime, assisted the principal and intended to assist him. The mens rea required goes to intent only and does not depend on desire or motive".

40. While outlining the scope of the physical and fault elements of aiding and abetting, Goundar JA in *Areibulu v. State* [2014] FJCA 144; AAU102.2013 (15 September 2014) held that:

"In order to prove an aiding and abetting, the prosecution must prove firstly an intent to encourage, and secondly an act or omission which amounted to a positive act of assistance (Reg v Coney [1882] UKLawRpKQB 30; (1882) 8 QBD 534). In order to prove both limbs, it must be shown or inferred from the circumstances that the offender knew that the offence was going to be committed, or was being committed (Iliaseri Saqasaqa v The State Criminal Appeal No. HAA098 of 2004S). Whether the appellant knew an offence was being committed was a question of fact for the trial judge. Knowledge is a matter of inference".

41. Accordingly, the particulars of the alleged conduct of aiding or abetting is essentially important in order to comprehend what the prosecution alleges against the accused.

42. As discussed above, the required mens rea is the intention to aid or abet the commission of the offence.

52. Considering *Waqabaca* [supra], to prove that an accused was aiding and abetting, it must be shown or inferred from the circumstances that the accused knew that the offence was going to be committed or was being committed. Further, the act alleged to have aided and abetted must occur prior to or contemporaneously with the commission of the offence (vide *State v Vakaturaga*; Criminal Case No. HAC 369 of 2022 (7 February 2025)).
53. As stated at paragraph 23, it was never disputed by the Second Juvenile that he was not present at the scene at the time of the offending. Rather from the questioning undertaken by the Second Juvenile's counsel during the cross examination of the Accused, it is apparent that the Second Juvenile is maintaining that although he was present at the scene, he had not taken part in the offending.
54. The victim's evidence was clear that prior to the offending, somebody had pushed him which caused him to fall and land on his stomach. It was then that the First Juvenile held both his hands while one boy was holding both his legs with the Accused then pulling his shorts, taking a video and touching his buttock. The Court notes that although the victim had not specifically stated that it was the Second Juvenile who had held both his legs, there was no evidence elicited to show that aside from the Accused and the two Juveniles that there were other people present at the time of the offending.
55. This allows the Court to draw the inference that before the Accused had touched the victim's buttock, the First Juvenile had held both the victim's hands whilst the Second Juvenile held both the victim's legs. By doing this, it is apparent that both the Juveniles responsibilities in the offending were not as the principal offender but as aiders and abettors to the Accused who was the principal offender, who then touched the victim's buttock.

56. Thus, considering the evidence in totality, the Court finds that Prosecution has satisfied beyond a reasonable doubt that the First and Second Juveniles aided and abetted the Accused when the Accused unlawfully and indecently assaulted the victim by touching his buttock.

Determination

57. I find that Prosecution has discharged its burden in proving all the elements of the offence of Indecent Assault beyond reasonable doubt.

58. I, therefore, find the Accused - S.G., the First Juvenile - A.G.G and the Second Juvenile - S.A.N. guilty of 1 count of Indecent Assault.



N. Mishra
Resident Magistrate

