

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION
CRIMINAL CASE NO: HAC 060 OF 2014LAB

STATE

V

VUADRITI KOLI

Counsels : Ms. A. Vavadakua for State
Ms. S. Dunn for Accused

Hearings : 18 and 19 November, 2015

Summing Up : 20 November, 2015

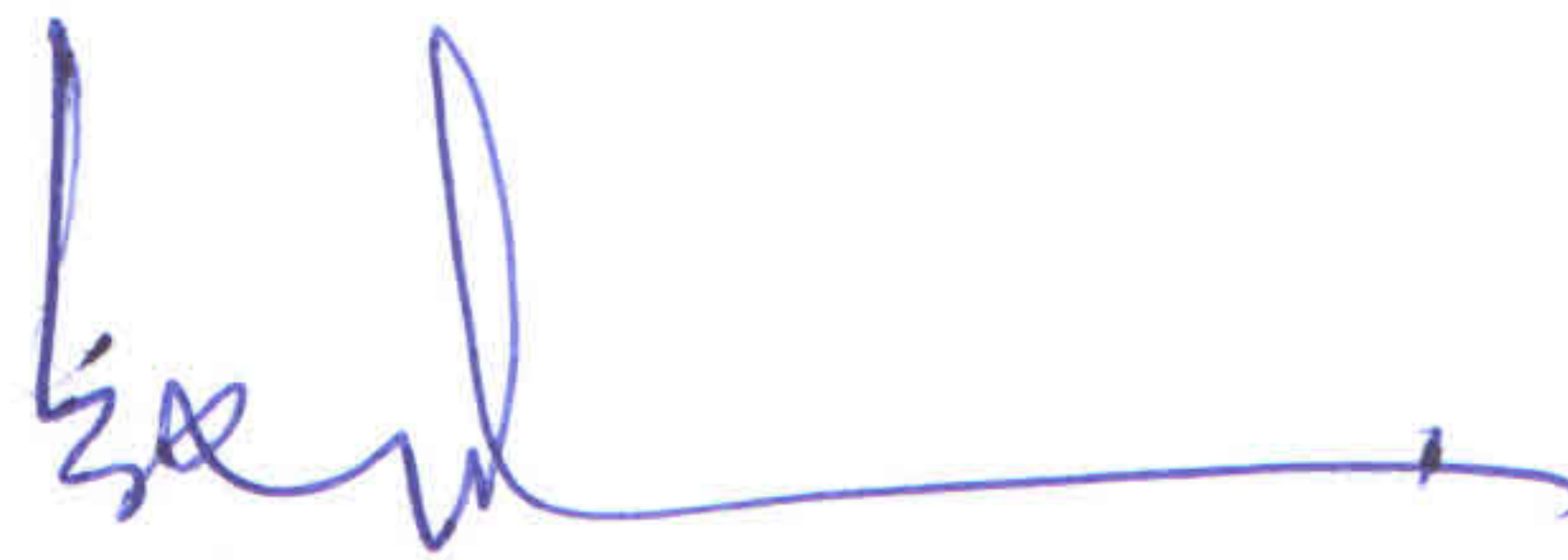
Judgment : 23 November, 2015

JUDGMENT

- [1] The Accused, Vuadrity Koli is charged for Incest by any relative, contrary to Section 223 (1) of the Crimes Decree No. 44 of 2009, of his daughter.

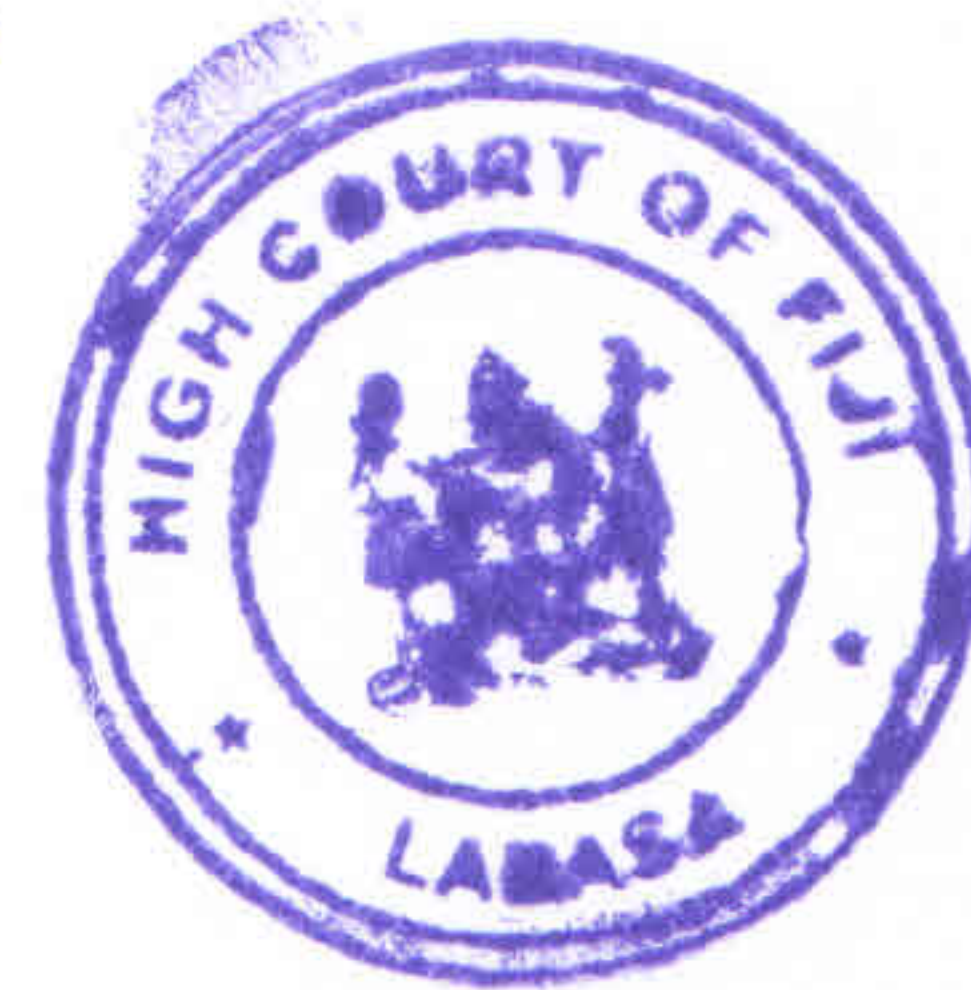
- [2] He pleaded not guilty to the charge and the ensuing trial lasted for 3 days. The complainant, her sister and another was called to give evidence by the prosecution while the accused offered evidence in support of his case.
- [3] At the conclusion of the evidence and after the summing up, the three assessors unanimously found the accused not guilty of the count of Incest by any relative.
- [4] I direct myself in accordance with the law and the evidence which I discussed in my summing up to the assessors.
- [5] Prosecution case was based primarily but on the evidence of the complainant. According to her the accused is her father, who brought her up since childhood. At the time of the incident she was living with her mother in a house belonged to her married sister, Ana.
- [6] In relation to the incident, she stated on that day the accused had called out to her to come to his house in order to make tea for her nephew. She went to the accused's house to make tea. The accused then wanted her to go to a room. She refused. Then the accused had carried her into a room and had penile penetration of her vagina. She had thereafter complained to her sister of the incident. Later the matter was reported to police.
- [7] In cross examination of the complainant, she denied when it was suggested to her that the accused did not call her. However, when it was suggested to her that the accused did not call her as she was already in his house, she said yes. She agreed that the accused wanted her to make tea but denied when suggested that she had gone out and played with other children, instead of making tea. She then said yes to when she was questioned as she failed to make tea, the accused called her and started growling at her. She admitted her father then had felt sorry and told her to go. She also admitted that thereafter she left his house.
- [8] The accused, said in his evidence that the complainant had played with other children, ignoring his direction to make tea for the small child. He got angry with the complainant and had growled at her for her disobedience. She then started to cry. The accused, being mindful of her "bit slow mental" condition and also out of pity, had let her go. According to the accused, the allegation is all a lie.
- [9] The assessors have found her evidence is not truthful and or at least, unreliable, since they unanimously found the accused not guilty to the charge of Incest by any relative. They were directed in the summing up how to evaluate the evidence of the complainant on her demeanour as she said to be a "bit mentally slow" person by both sides.

- [10] They were also directed as to the considerations involving evaluation of the truthfulness and reliability of evidence of the complainant during her cross examination, in view of her seemingly inconsistent answers and admitting some of the suggestions made by the accused. They obviously opted not to act on her evidence and preferred to accept the position advanced by the accused that this allegation is a lie.
- [11] In my view, the assessor's opinion was not perverse. It was open for them to reach such a conclusion; since the inconsistencies of the evidence of the complainant, made it unreliable to act upon. I concur with the opinion of the assessors.
- [12] Considering the nature of all the evidence before the Court, it is my considered opinion that the prosecution has failed to prove it's case beyond reasonable doubt by adducing truthful and reliable evidence; satisfying all elements of the offence with which the accused is charged.
- [13] In the circumstances, I acquit the accused, Vuadriti Koli, from the charge of Incest by any relative.
- [14] This is the Judgment of the Court.



ACHALA WENGAPPULI

JUDGE



At Labasa

23 November, 2015

Solicitor for the State : Office of the Director of Public Prosecution, Labasa
Solicitor for the Accused : Office of the Legal Aid Commission, Labasa