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v

**JOEL RABIN ALPANOSO**

Trial: 25–27 March 2024

Appearances: D Schuster and T White for Crown  
M T Short and N George for Defendant

Verdicts and reasons: 28 March 2025

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**VERDICTS AND REASONS OF TOOGOOD J**

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[1] Joel Rabin Alpanoso is charged with:

- (a) One charge of male assaults female;<sup>1</sup> and
- (b) Three charges of indecent assault.<sup>2</sup>

[2] Mr Alpanoso pleaded not guilty to the charges and elected trial by judge sitting alone. The trial began on 25 March 2025. I heard the evidence from the Crown witnesses, the defendant, and defence witnesses. I also heard closing addresses from counsel on matters of fact and law.

**The charges for determination**

[3] The complainant, whom I shall call LM because of the name suppression order, and the defendant, Mr Alpanoso, are both employed in the food and beverage department at the

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<sup>1</sup> Crimes Act 1969, s 321(4)(b).

<sup>2</sup> Section 148(1)(a).

Pacific Resort, Muri Beach. At the time of the alleged offending in November 2023, they both worked the morning shift. They also both lived in shared accommodation provided by the Resort a short distance away in Avana, Ngatangiaa.

[4] The essential allegations made by LM are that, while she was in her staff accommodation shortly after 1.00 pm on Friday, 3 November 2025, Mr Alpanoso, without her consent:

- (a) pulled her hands and arms, and pushed her in an attempt to force her into the bathroom adjacent to her bedroom;
- (b) started sniffing and kissing her neck;
- (c) pushed his way into her bedroom after she unlocked the door and pushed her down onto her bed, on her back, and kissed her face and neck;
- (d) lay on top of her, face down, and touched and squeezed her breasts on the outside of her clothing; and
- (e) attempted to remove her panties, touching her legs and genital area on the outside of her underwear.

[5] The charges I am required to decide, sitting as a judge alone, are as follows:

<p><b>Charge 1</b> Assault on a female Section 214(b), Crimes Act 1969</p>	<p>That JOEL RABIN ALPANOSO, on 3 November 2023, at Ngatangiaa, being a male, did assault a female, namely [LM]. <i>Particulars: By grabbing and holding her by the hands/wrists</i></p>
<p><b>Charge 2</b> Indecent assault Section 148(1)(a), Crimes Act 1969</p>	<p>That JOEL RABIN ALPANOSO, on 3 November 2023, at Ngatangiaa, did indecently assault [LM]. <i>Particulars: By kissing her</i></p>
<p><b>Charge 3</b> Indecent assault Section 148(1)(a), Crimes Act 1969</p>	<p>That JOEL RABIN ALPANOSO, on 3 November 2023, at Ngatangiaa, did indecently assault [LM]. <i>Particulars: By touching her breasts</i></p>

<p><b>Charge 4</b> Indecent assault Section 148(1)(a), Crimes Act 1969</p>	<p>That JOEL RABIN ALPANOSO, on 3 November 2023, at Ngatangia, did indecently assault [LM]. <i>Particulars: By touching her vagina on the outside of her underwear.</i></p>
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*Separate verdicts*

[6] Although the four charges have been heard together, it is necessary for me to consider and decide each charge separately. I must avoid assuming that simply because I had come to a certain view as to the proof of the Crown’s case in respect of one of the charges, the same conclusion should necessarily follow in respect of any one or more of the others.

**The elements of the charges**

[7] I set out now the elements of each of the charges that the Crown was required to prove beyond reasonable doubt.

*Assault on a female – s 214(b), Crimes Act 1969*

[8] For Mr Alpanoso to be found guilty of committing an assault on a female as alleged in Charge 1, the Crown is required to prove beyond reasonable doubt that:

- (a) on 3 November 2023 at Ngatangia, Mr Alpanoso assaulted LM; and
- (b) Mr Alpanoso is a male; and
- (c) LM is a female.

[9] For the purposes of all charges, that is all four, “assault” means the act of intentionally applying force to the person of another, directly or indirectly.<sup>3</sup>

*Indecent assault – Crimes Act 1969, s 148(1)(a)*

[10] For Mr Alpanoso to be found guilty of committing indecent assault as alleged in Charges 2, 3 and 4, the Crown is required to prove beyond reasonable doubt that:

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<sup>3</sup> Crimes Act 1969, s 2(1).

- (a) Mr Alpanoso assaulted LM;
- (b) LM did not consent;
- (c) Mr Alpanoso did not honestly believe that LM consented;
- (d) in the circumstances, the assault would be regarded as indecent by right-thinking members of the community; and
- (e) Mr Alpanoso was aware of the aspects of the assault, and the surrounding circumstances, which right-thinking members of the community would consider made his behaviour indecent.

[11] At the conclusion of the hearing yesterday, I adjourned the sitting of the Court until today to deliver my verdicts and reasons.

### **The approach to setting out the reasons for the verdicts**

[12] The interests of justice require me to give reasons for the verdicts. They must include a statement of the elements of each charge and any other particularly relevant rules of law or practice; a concise account of the facts; and a plain statement of my essential reasons for finding as I have. My reasons should be enough to show that I have considered the main issues raised at the trial, and to make clear in simple terms why I have found the prosecution has proved or failed to prove the necessary ingredients beyond reasonable doubt.

### **Burden and standard of proof**

[13] The Crown carries the burden throughout of proving each element of each charge beyond reasonable doubt before I may bring in a verdict of guilty on that charge. The starting point is the presumption that the defendant is innocent of any charge until the contrary is proved beyond reasonable doubt. Proof beyond reasonable doubt is a very high standard of proof, which the Crown can meet only if I am sure that the defendant is guilty of any charge. It is not enough for the Crown to persuade me that the defendant is probably guilty or even that he is very likely guilty of any charge he faced. If I am satisfied only that he is probably guilty or very likely guilty, then I am not sure of his guilt and he must be acquitted.

[14] It is virtually impossible to prove everything to an absolute certainty when dealing with a reconstruction of past events and the Crown does not have to do so. The Crown is not

required to prove beyond reasonable doubt every fact on which it relies in support of its case on any charge. A reasonable doubt requiring me to enter a verdict of not guilty on any charge is an honest and reasonable uncertainty left in my mind about the guilt of the defendant on that charge, after I have given careful and impartial consideration to all of the relevant evidence.

[15] Mr Alpanoso gave, and called, evidence at the trial. He was not obliged to do so and the fact that he did so does not mean that the burden of proving each element of each charge beyond reasonable doubt shifts from the Crown.

### **The nature of the evidence**

[16] The Crown's case turns primarily on the evidence of LM, who gave direct evidence of the offending alleged in each charge. There were no other eyewitnesses to the alleged offending, but the Crown also relies on evidence from:

- (a) the complainant's long-term partner/fiancé, RB, with whom she lived in the staff accommodation at the Resort;
- (b) RB's sister, Elizabeth, who also lived in the accommodation with her husband; and
- (c) Police officers who obtained statements from the complainant, visited the staff accommodation to take photographs and prepare plans, and who recovered images showing text and Messenger communications.

[17] Mr Alpanoso gave evidence and called his brother and three friends, who also lived in the staff accommodation, as witnesses. They gave evidence, focused on the complainant's conduct and that of her partner on the Friday night of the alleged attack and over the following weekend, before LM gave a full statement to the Police on Monday 6 November 2023.

### **Matters proved beyond reasonable doubt**

[18] There is no dispute about the background to the alleged offending, which is that LM and her fiancé, RB, with whom she has been partnered for some nine years, arrived in the Cook Islands from the Philippines in May 2023 and began employment at the Pacific Resort on Muri Beach. LM worked in the food and beverage area in the morning shift, beginning

work around 6 or 7:00 am and finishing at about 1:00 pm. JB is employed at the Resort as a groundsman.

[19] Mr Alpanoso had returned to the Cook Islands to work in April 2023. He was also working in the food and beverage service at the Resort, working the same morning shift as LM.

[20] Staff accommodation was provided a short distance away from the Resort, in a house comprising six bedrooms. LM and RB share the bedroom nearest the back door. Mr Alpanoso and his 23 year-old daughter shared another of the bedrooms a few metres away. Immediately across a narrow hallway from the complainant's bedroom was a large communal bathroom. The accommodation also had a lounge/living area with a big screen television. In the same space behind a low partition is the communal kitchen. Around the corner from that is a dining table and another bathroom. There is also a bedroom off that living area.

[21] On Wednesday 3 November 2023, Mr Alpanoso text messages to LM at 1:09 pm, suggesting they go home together after their shift. LM was still eating her lunch so she ignored that; but when she got home around 1:15 pm and went towards her room she found Mr Alpanoso standing in the hallway immediately adjacent to both her locked bedroom door and the open door into the bathroom. She says she was immediately confronted by Mr Alpanoso, who grabbed her hands and tried to pull her forcefully into the bathroom, saying to her, "This will just be quick". He began sniffing around her neck and kissing her. She says she was trying to push him off and find the key to her room inside her bag.

[22] There is little disagreement between LM and Mr Alpanoso about what occurred after that, and Mr Alpanoso agrees that he tried to have sexual contact with LM.

[23] In the statement to the Police recorded in an evidential video on Monday, 6 November, LM alleged that after pushing Mr Alpanoso away from her, she was able to find her key and unlock the door to her bedroom. She was calling him "kuya" – brother – because that's the kind of relationship she said she had with him. She told him to stop doing this and opened her door, pushing him back so she could close and lock it; and hide there until her husband came home at around 2:30 pm. She said, however, that Mr Alpanoso pushed his way into the room, opening the door with his foot, then he then locked the door behind him. She was protesting. He pushed her back so that she was lying on the bed. He was holding her hands and kissing her neck and her lips and her face.

[24] LM says she was telling Mr Alpanoso to stop, and was worried that maybe he would get a pillow and put it on her head. She did not know what to do; she could not shout out. Then Mr Alpanoso started touching her breasts, lying on top of her, squeezing her breasts and kissing her. She said he put his hand down her legs and tried to remove her panties. He touched around her vagina over the top of the panties, but she pushed him off. She then moved to sit in a chair nearby. He knelt down in front of her pleading with her to have sex. She was saying, "What are you doing?" She explained in her interview that the group who lived in the accommodation ate and talked together, and partied together just like a family and she was not expecting Mr Alpanoso to behave like this. She told him to go out of her room. She was shaking and telling him, "Please, don't do this to me."

[25] The defendant then stood up and stepped back and she pushed him out the door, which she locked and immediately tried to contact her husband.

[26] Mr Alpanoso claims that the complainant and he had a three to four month-long secret, intimate relationship both at work and around the accommodation, involving making eye contact, whispering, laughing, touching, kissing and hugging. He says everything that happened that afternoon stemmed from that relationship and that LM consented. At the very least, he says, he honestly believed she did.

### **Ingredients of the offences**

[27] I am satisfied beyond reasonable doubt, both on the evidence of the complainant and of the defendant, that Mr Alpanoso did in fact apply deliberate force to LM in grabbing her hands and trying to get her to go into the bathroom with him; that he kissed her neck and face, both in the hallway and in the bedroom; that he touched her breasts under her clothing and at one point at least kissed that area, and that his hands made contact with her upper legs under her skirt as he tried to remove her panties. I accept LM's evidence that his hands touched her genital area.

[28] In those circumstances, the physical ingredients of male assaults female and the three indecent assaults comprising the separate allegations in the Charge Sheet, are proved beyond reasonable doubt.

[29] I am also satisfied beyond reasonable doubt, that it was not disputed by Mr Alpanoso that the acts comprising the allegations of indecent assault amounted to circumstances of

indecent in terms of the applicable test, and that Mr Alpanoso was well aware of the circumstances which made those actions indecent.

[30] LM's unwavering position, both in her interview with the Police and throughout the giving of her evidence, which included cross-examination for almost a full day, was that she did not consent to any of Mr Alpanoso actions.

[31] The question I am required to determine, therefore, is whether Mr Alpanoso's assertion that all of his actions were consented to by LM, or at least accompanied by his honest belief that his actions were consensual, raises a reasonable doubt about the element of consent. If Mr Alpanoso's account is possibly true, then the Crown will not have proved its case beyond reasonable doubt and he must be acquitted.

[32] LM gave a comprehensive video recorded statement to the Police on 6 November 2023. Although the police officer asked her a number of questions, which were answered, the narrative of events given by LM at the beginning of the interview flowed almost without interruption, so that her account gives a narrative which appears to me to have been spontaneous and delivered without hesitation or correction. Significantly, while she explained some aspects of her narrative to the police officer, filling in details or answering questions calling for an explanation, she did not depart from the essential parts of her account during the interview.

[33] Importantly, her evidence at trial, while she was being taken through some of the aspects of the narrative by Crown counsel as part of her evidence-in-chief, did not vary in any material respect; and she did not waiver from that narrative at any point during the intensive cross-examination of her by Mr Short. Counsel's interrogation was appropriate and thorough, designed to test LM's unwavering insistence that she did not consent to any of the forceful or other contact between Mr Alpanoso and her, and that she endeavoured to resist him and stop him at all times.

[34] LM said that immediately after Mr Alpanoso left her room she sent a text message to her partner (timed at 1:33 pm) with the message, "babe". There was no response so she sent a Facebook Messenger message at 1:35 pm, "babeeee". Again there was no response and she sent another message at 1:42 pm saying, "babe come home asap please". LM's partner, RB, responded to the first message at 2:54 pm, shortly before his shift finished. He said, "Yes babe" to which LM replied, "come home please." I should add that most of the text messages



to which I will refer between LM, RB, Mr Alpanoso and others, were in Filipino language. I think the Tagalog dialect. I am relying on an undisputed translation of those texts in repeating the messages in English.

[35] RM arrived shortly after he received the text asking him to come home. He found LM in a distressed condition, shaking, nervous and crying. She told him that Joel had tried to rape her, that he had pulled her into the bathroom and then pushed her into their bedroom and pushed her on to the bed. RB said he was angry and wanted to confront Mr Alpanoso, but LM said to “leave it for now because she didn’t want any trouble”. He calmed down to comfort LM, and told her she should tell him if Mr Alpanoso touched her again.

[36] RB says, in evidence, that at about 5:00 pm that evening he saw Mr Alpanoso at the back of the house but didn’t confront him, because he and his wife, LM, had agreed that they would take time to talk about things. They both said they were concerned about their future, their employment, and their immigrant status in the Cook Islands, and were worried that if they made a complaint about what had happened it would create problems for them.

[37] LM says that on the following day, Saturday, 4 November 2023, she talked to her manager at work and said that she did not want to work the same shift as Mr Alpanoso. She and Mr Alpanoso were working the same shift together that day, and he asked her whether she was angry with him. She said that Mr Alpanoso held her hands while he was talking to her. Although she was upset she did not do anything about that.

[38] The next day, however, on Sunday 5 November 2023, Mr Alpanoso talked to her again at work about what had happened in the staff house. She said there was no one around at that time and he was touching her again on her legs and her waist.

[39] RB says that at some point that day while they were at work LM said something to him that he could not hear properly, so he messaged her at 1:47 pm asking whether she was at home. She texted back saying that the other occupants of the shared accommodation were there. He then sent a message asking LM, “What did he do?” She replied, “Holding hands, ew” and said he’d been touching her again, holding hands and that she pushed his hands away. At 2:26 pm, RB sent a text message, “Where else did he touch you again?” and she said, “We talk at home.”

[40] RB finished work around 2:30 pm and went home. LM told him that she had been talking to Joel, who was holding her hands and touching her legs, and RB got really angry. He went to Joel's room to confront him. He called out to Mr Alpanoso, "Why you trying to rape my wife, we treat you like a brother. We respect you and why do you do that?" He said, "He (that is Mr Alpanoso) moved towards me saying, "Sorry" repeatedly, and also saying, "Forgive me."

[41] Others who were there in the accommodation, including RB's brother-in-law, Alan, and another occupant tried to separate them. LM also got between them to calm the situation down. RB said that Mr Alpanoso was apologising and asking for forgiveness, but he pushed him away and said, "I don't want to see your face, leave this place right now or else I report you to the Pacific Resort and the Police." LM, RB, and RB's sister, Elizabeth, then went to LM and RB's bedroom and discussed what to do. They agreed they would go to the Police.

[42] At 3:17 pm, RB received a Messenger message from Mr Alpanoso saying, in Filipino, "Sorry, give me time to find another place to live. Sorry again. Forgive me again."

[43] At the police station later that evening, at 7:23 pm, LM made a written statement saying briefly what had occurred at the staff house on 3 November. She gave a short account of Mr Alpanoso pushing her on to the bed, holding, what she called, her "private body" and kissing her, and although she kept telling him to go away he knelt down and asked her, "Please, if they could have sex?" She said she was crying and shaking. She said that after he walked out of her room Mr Alpanoso texted her in the Filipino language saying, "Gigil aq sau Ly eh". LM told the police officer that the words translated to, "I want to taste you." She said she did not reply to it but she had the evidence on her phone. She told the police that there were other messages from Mr Alpanoso and his daughter to her, saying sorry for what happened.

[44] It was agreed that she would return to the police station the following day to make a full statement, which she did.

[45] Mr Alpanoso gave evidence. His account of the sequence of events at the staff accommodation just after 1:15 pm on 3 November 2025, closely corroborates LM's evidence as to location and timing of the events she described, of the sequence of events and of what Mr Alpanoso said. Their accounts differ, however, on the crucial issue of whether or not Mr Alpanoso's touching and kissing her, touching her breasts, touching her legs under her

skirt was consensual. He said, in evidence, he wanted to have full intercourse with her, and that he repeatedly asked her to do that. He said he did not need to use force, and that she did not try to push him away. He acknowledges that he left when she told him to stop because, he said, they heard someone coughing. Up to that point, he said, everything that had happened had been with her consent.

[46] Mr Alpanoso's account began with kissing LM beside her bedroom door and wanting her to move with him into the bathroom so they could have sex. He said she kept telling him to wait, that she was looking for her keys. When she unlocked the bedroom door they went in together. He said she did not try to push him out. He said she sat on the bed and he sat on the bed too beside her and started hugging and kissing her. She said, "Wait" and then he said he moved her slowly on her bed and started to kiss her again. He was on top, she was saying "You're so heavy". He pulled her up slowly and started kissing her again and then she said, "Wait, I'm going to take off my jumper" because she was wearing a Pacific jacket.

[47] She took off her jacket and they started to hug and kiss again. He said they then suddenly heard something, Alan, coughing in another room. LM said she was scared that Alan might see them. She went and sat on the chair and he kneeled, still trying to convince her to have sex with him. She said she was scared because Kuya (brother) Alan – that is, her brother-in-law, was there. Mr Alpanoso said that he asked her for sex two or three times saying, "Please, please". He realised it was not going to happen because Alan was in his room, and he stood up saying, "Sorry, I thought you wanted it too." She said, "It's okay, I understand because your wife is not here." Then they hugged and he walked out the door calmly and peacefully.

[48] During his evidence-in-chief Mr Alpanoso was asked what his relationship with LM was in the workplace. He said that they had a close relationship at the workplace, in and out, and then said that they had, "A normal flirting to each other for about three to four months." Asked to explain that, he said that they did it in different ways, winking and pointing lips to each other.

[49] At that point in the examination, I reminded Mr Short that none of that evidence had been put to LM.

[50] I questioned Mr Alpanoso at the conclusion of his re-examination by Mr Short, and I asked him to explain what he meant by the "flirting relationship". He said they did eye-to-

eye contact – “talking into our eye” and “pointing lips at each other”. He said he normally hugged her at the back station of their Bar where no one could see “because we were protecting each other. She has a partner there, I have my daughter there so we don’t do it in public. We had to hide it.” He said this relationship had gone on for three or four months before the incident on 3 November 2023. They would hug or kiss in private while they were at work many times.

[51] After hearing from counsel I decided that although Mr Short had put to the complainant in cross-examination that she had a close relationship with Mr Alpanoso, it was never suggested to her that it had been an intimate relationship involving secretive kissing and hugging over a period of three to four months. I concluded that the allegations, if true, would give credence to Mr Alpanoso’s account of what occurred on the 3rd of November, and seriously undermine LM’s evidence that none of the contact that day was consensual.

[52] LM was re-called to the witness box and allegations about the longstanding intimate relationship were put to her in cross-examination by Mr Short. She reacted angrily and denied them emphatically, becoming quite tearful. Although she was giving evidence from a remote location and could not see him, when she was being re-examined by Ms Schuster on behalf of the Crown, LM talked directly to Mr Alpanoso. When she was asked whether Mr Alpanoso had ever hugged her before the 3<sup>rd</sup> of November she denied it. She denied she would ever hug and kiss him in private, even at home.

[53] Her response as recorded in the notes of evidence was this:

“No, ma’am. Liar, Joel – you are liar, Joel. That never. That never happened. Why will I do that? I have my husband. I stayed with my husband, why will I do that at home? Plenty of us at home. Why would I do that? I don’t need anyone to witness – why will I do that? Why will I do that? You know in yourself, Joel. You know in yourself you’re lying. Why will I do that? Why will I do that? You can’t just say that – you can’t just say that to me. He don’t have evidence, he doesn’t have evidence – you don’t have anything worse to say that’s why you said that. Why you just admit – why you just admit the truth?”

She was very tearful and distressed during much of that statement.

[54] I should observe here that I found that evidence to be spontaneous, genuine and heartfelt in reaction to an allegation that had been put to her when she was re-called to give evidence yesterday, the first time since she made her complaint to the Police,.

[55] The credibility of the complainant is the central issue for me to determine in this case. In assessing her credibility I remind myself I am entitled to accept parts of her evidence and reject other parts. I am entitled to have regard to her demeanour, both during the video interview and in Court under examination and cross-examination. I acknowledge that the demeanour of a witness in Court is not the most compelling factor for consideration because giving evidence in a courtroom is an artificial and foreign environment, particularly for someone who is speaking English as a second language.

[56] I also remind myself that consistency between statements made in the courtroom by a witness and statements made giving evidence; consistency between statements made at different times while giving evidence; and consistency between the witnesses' account and other evidence given at trial are the most useful tools in determining credibility. I also have regard to my own experience, knowledge of life, and how people interact with each other. And I remind myself not to leave commonsense behind but to apply it in my assessment of the evidence.

[57] In assessing the credibility of LM's evidence in determining whether I believed it, I took account of the following:

- (a) The natural flow of her account to the Police during the interview, without hesitation and without significant pause, gave me the impression that she was recalling events that had heightened her senses only three days earlier. I noted the consistency of her account when questioned on some of the detail by the police officer.
- (b) Her account included minor and seemingly inconsequential details which appeared to be coming from memory rather than from some contrived story, such as
  - (i) describing Mr Alpanoso sniffing her neck while he was trying to kiss her, and
  - (ii) kissing her as he was kneeling in front of her, pleading to let him have sex with her; and
  - (iii) making the comment that he was in love with her but that she was hard to love.

- (c) I noted that there did not appear to be any attempt to embellish the events or exaggerate what had occurred. LM said, for example, that she had been touched in her vaginal area over her panties when, if her account was contrived, she might easily have complained that Mr Alpanoso had placed his hand inside her panties, or taken them off altogether.
- (d) I was impressed that she did not describe a prolonged attack, and acknowledged that Mr Alpanoso stopped when she made it clear to him that she was not interested in having sex.
- (e) Despite having been upset by the attack on her, she expressed surprise at what had happened rather than antagonism. She said Mr Alpanoso was funny, that people liked him, and that he had a good heart. She described her relationship with him as being that of a brother (Kuya).
- (f) LM made appropriate concessions when cross-examined on some detail; for example, saying that she could not remember which hand Mr Alpanoso used when he was on top of her and touching her breasts, saying that it was all happening at once.
- (g) It impressed me that she did not waiver in upholding her account under close cross-examination. She appeared to me to be a strong and resilient character. That is consistent with her ability to suppress her anxiety about what had occurred when she went to work on the following two days, and appearing, as much as possible, to be normal around the shared accommodation for the few days Mr Alpanoso was still there.
- (h) I take into account the text messages and Messenger messages LM sent to her partner at 1:33 pm, 1:35 pm and 1:42 pm. They were consistent with her account that she was distressed and wanted her partner to come home immediately after Mr Alpanoso left her room.
- (i) I gave careful consideration to why, if what occurred in the bedroom on 3 November was consensual conduct interrupted only by the apparent proximity of her partner's brother-in-law, LM would feel the need to make a false complaint to her husband as quickly as possible. If, as Mr Alpanoso

claims, there had been a clandestine intimate liaison between LM and Mr Alpanoso for a period of three to four months which had remained undetected, it made no sense to me that she would bring about that incendiary conclusion by making a false complaint.

[58] In assessing LM's credibility, I took account also of the criticisms of her evidence made by Mr Short in a careful analysis. He referred first to displays of affection that had been observed by defence witnesses, Frankly Valles Factor, and Jose Malillin Tagapan, longstanding friends of Mr Alpanoso. They referred to Mr Alpanoso coming up close behind LM and whispering in her ear, and an occasion when she put her hands on his shoulder. It was said that that was inconsistent with her evidence that she did not have an intimate relationship with the defendant.

[59] Mr Short also referred to short video clips of social events at the Resort, which he said depicted the nature of the relationship, and which were produced in evidence. The first was a Halloween party for the staff, which showed LM and Mr Alpanoso together on the dancefloor, touching each other. I have re-examined the clip several times. It shows brief contact between the two appearing to greet each other on the dancefloor, with LM smiling, putting her arm out and resting it over Mr Alpanoso's shoulders. He then responds by putting his left arm over her shoulder; they pat each other and then part. The entire interaction lasts three seconds.

[60] The second video clip made at a staff event after the incident where LM is seen to be in a happy mood dancing in some kind of set routine with eight to ten other women dancers, looking happy. It was suggested that Mr Alpanoso was in attendance and this tended to undermine LM's evidence that she had been traumatised by the events of the 3rd of November.

[61] Mr Short also referred to evidence given by Jose Frankly, and by Mr Alpanoso's brother, Ferdie, about seemingly routine conduct on the evening of Friday 3 November, the following evening Saturday 4 November, when the occupants of the shared accommodation, including LM and her partner, engaging in their normal routine of cooking meals and watching TV. It was alleged by those witnesses and Mr Alpanoso that, on the Friday night after the alleged offending LM, her partner JB, his sister Elizabeth and her husband Alan, invited the others, including Mr Alpanoso, to go shell-fishing with them; apparently a common pursuit. The invitation was declined and the quartet later returned to the accommodation in a joking

mood, making fun of the fact that they had been out catching shellfish and the others had not. It was said by the defence witnesses that after dinner LM offered the use of her laptop so they could all watch a DVD – again, something that happened regularly – and it was said that LM and JB had fallen asleep on the couch while watching the movie.

[62] The allegations about going shell-fishing and watching the DVD on the Friday night were first made to the complainant, LM, when she was under cross-examination. She denied it and said that she and JB had stayed in their room, worried by and talking about the events earlier in the day. The same allegations were put to JB and Elizabeth, again for the first time under cross-examination, and they both denied having gone shell-fishing or watching DVDs that night.

[63] I doubt the evidence of the defence witnesses who seemed to me to have a carefully scripted, if not rehearsed, account of events that Friday night. There has been plenty of opportunity for collusion between Mr Alpanoso, his brother and their friends in the months since Mr Alpanoso would have received disclosure of LM's video statement to the Police and plenty of time for them to invent evidence that might cast doubt on the credibility of her allegations. I preferred her the immediate rejection of the defence propositions by the Crown witnesses who, while also have had ample opportunity to collude on their evidence since the matter was reported to the Police, had no prior knowledge at all of the allegation they had gone shell-fishing shortly after Mr Alpanoso's confrontation of LM on 3 November 2023.

[64] Mr Short also relied on the delay by LM in complaining to the Police and by her partner RB in confronting Mr Alpanoso with the allegations. He suggested to LM that she had told Frankly that she had not wanted to go to the Police. She denied it. Frankly did give evidence to that effect, but I did not consider it compelling; and having regard to my overall view of LM's evidence, I find it highly unlikely.

[65] I also find credible LM and JB's explanation that on the Friday night, and for the first couple of days after the event, they were very concerned about the implications of making a complaint for their employment and their immigration status. They wanted to be careful about the steps they took in response. I accept that it was not because LM had not told RB about the incident on Friday but because she was cautioning him against reacting badly. RB did not confront Mr Alpanoso about the attack until the Sunday, after he had learned he had been touching LM again at work.



[66] I gave the most careful consideration to Mr Alpanoso's account which, on a superficial level, appeared plausible. LM had not denied that she had a good friendship with Mr Alpanoso and they worked closely together. I could understand that Mr Alpanoso, living away from his wife, might be attracted to a woman 20 years younger with whom he spent considerable work and personal time. There were ample opportunities for them to share brief moments of intimacy in private. There is no reason why LM and he could not have spent time together in her bedroom after they had both finished work, and before his daughter and her husband had come home from work. I reminded myself that the Crown's burden of proof meant that if I accepted that there was a reasonable possibility that LM and Mr Alpanoso had an existing intimate relationship it would inevitably mean that I would have doubts about the credibility of LM's evidence, and that Mr Alpanoso would have to be acquitted.

[67] After careful consideration of the evidence, however, I reached a very firm conclusion that I simply do not believe his assertion.

[68] First, Mr Alpanoso did not make any such allegation to LM and JB when JB confronted him on Sunday afternoon. His response was to apologise and then to begin sending a series of repeated messages, the common theme being asking for forgiveness and apologising. It is unnecessary for me to repeat all of them, but the first was sent at 3:18 pm almost immediately after the confrontation on Sunday, 5 November, when he texted LM saying, "Sorry Ly ... I'm sorry ... I hope you give me time to find a house." Immediately afterwards he sent a message, "I hope you can all forgive me", and a further message saying, significantly, "I don't even know what came into my mind ... please tell [RB] I'm sorry ... hope he can give me time to find a house." That was followed by another message, "Hoping we can talk the 3 of us with [RB] .. I will apologise to you all."

[69] Further messages were sent by Mr Alpanoso to LM on 6 November and 7 November saying sorry and asking for forgiveness, and expressing the hope that she did not take the matter to Court. A message sent on 7 November had the same theme, saying, "Sorry to both of you [RB] and [LM] .. hope you not going to take this to Court ... for G-Anne's sake [LM] .. I know she's struggling but she's not saying it .. she's very angry with me ... forgive me [LM]."

[70] It is clear Mr Alpanoso spoke to his daughter about these matters. She also sent messages to LM saying that she wanted to talk because she was going to be struggling. A similar message went to RB, saying that she was having a hard time adjusting to things and wanting forgiveness. The undermining effect of those messages from the defendant to the complainant is compelling and reinforced my serious doubts about the credibility of Mr Alpanoso's account.

[71] I was also led to the conclusion that I should disbelieve his account entirely by taking into account as well, in my overall assessment, the inconsistency between his statements to the Police when he was first interviewed in January 2024 and his evidence at trial. After having been cautioned, Mr Alpanoso quite reasonably asked to speak to a lawyer and arrangements were made for him to speak privately to a lawyer over the phone. Mr Alpanoso was cautioned. In the course of a further question and answer session, which he appeared content to engage in, he suggested that because of the delay in the making of the complaint, if it had happened on a Sunday it should have been reported on a Sunday – that is, the day it happened:

“Q. So you're saying nothing happened?

A. Yeah.

Q. Nothing ever happened?

A. No.”

[72] It was put to him that the Police had a signed statement setting out LM's allegations of grabbing her, touching her private parts, her breasts and her genitals, kissing her on her lips and her face. Initially he said, “No comment”. I accept that that was a reasonable response, given that he had just been cautioned that he did not have to say anything.

[73] It was then put to him that the police officer had a signed statement saying that while he was in the corridor/the hallway of the staff accommodation he grabbed LM and did those indecent acts by touching her on the breast and kissing and trying to pull her into the bathroom. His answer was, “No.”

[74] He denied the allegation when it was put to him what she alleged had happened in the bedroom, again saying, “No”. The following exchange then occurred:

Q. No, what does that mean?

A. No, it didn't happen.

Q. It didn't happen?

A. Yeah.

[75] My view is that if Mr Alpanoso merely engaged in consensual conduct with LM on the 3rd November, as part of a longstanding intimate relationship that they had had in secret that would have been an ideal time to tell the Police about it. Of course, he was not obliged to say anything about anything.

[76] There were other inconsistencies in Mr Alpanoso's evidence:

- (a) on his account he tried to persuade LM to go into the bathroom with him for consensual sexual intercourse, when her bedroom was immediately opposite the bathroom and his bedroom only a few metres away,
- (b) he claimed not to have used any force at all in the encounter, which did not seem consistent with the fresh bruises that LM had on her arm, as shown in photographs produced in evidence; and
- (c) although allegations of his having a flirting relationship with LM were put to her in cross-examination and denied, the far more compelling allegation that they had a secret intimate relationship lasting three to four months was not put to her in cross-examination until after she was re-called at the close of the defence case.

[77] I concluded that the complainant was telling the truth when she said none of the things done to her by Mr Alpanoso in the hallway and in her bedroom were done with her consent, and that she protested throughout. His evidence to the contrary did not cast any doubt on the credibility of her testimony because I did not believe it.

[78] Accordingly, I am satisfied beyond reasonable doubt that each of the ingredients of male assaults female were proved and I find Mr Alpanoso guilty on charge 1.

[79] I am also satisfied beyond reasonable doubt that each of the ingredients of indecent assault by kissing her were proved, including that the complainant did not consent and that Mr Alpanoso knew that she was not consenting. Accordingly I find him guilty on charge 2.

[80] I am also satisfied beyond reasonable doubt that the charge of indecent assault by touching LM's breasts was proved. I believed her allegations. I believe that she did not consent and I am satisfied that Mr Alpanoso did not believe she was consenting. I find Mr Alpanoso guilty on charge 3.

[81] I am satisfied beyond reasonable doubt that Mr Alpanoso touched LM's genital area over her panties while he was trying to remove him, that she did not consent and that he knew she did not consent. I find Mr Alpanoso guilty of charge 4.

[After hearing from counsel.]

[82] Mr Alpanoso, you are convicted on all charges and remanded for sentence on a date to be fixed by the Registrar. I will hear any application for bail at 9:00 am tomorrow, Saturday 29 March 2025.

A handwritten signature in blue ink, appearing to read 'Toogood J', is written above a horizontal line.

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**Toogood J**