

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 339 of 2009

STATE

v

NAZIM BUKSH

For the Prosecution : **CPL Monish**

For the Accused : **Mr Prasad. S**

Judgment : **10 November 2017**

JUDGMENT

1. The accused, Nazim Buksh is charge for *Kidnapping With Intent To Confine Person*, contrary to *section 251 of the Penal Code, Cap 17*.
2. The particulars of the offences are;-
" Nazim Buksh on the 18th day of May 2009, at Labasa in the Northern Division kidnapped Shereen Shabnam Buksh with intent to cause the said Shereen Shabnam Buksh to be secretly and wrongly confined."
3. The court record shows that the charge has not been put to the accused for plea. The fact that trial has been concluded where the accused is represented by counsel and denying the allegation, I will draw an inference that the Accused pleaded not guilty to the charge.

4. On 25 June 2015, the Prosecution confirmed that there is no admission in the caution interview. The case proceeded to trial on 16 February 2017.

5. On the trial date, the Prosecution called two witnesses. The Accused is the only witness for the defence.

6. *Section 251 of the Penal Code state;-*

“Any person who kidnaps or abducts any person with intent to cause that person to be secretly and wrongly confined, is guilty of a felony, and is liable to imprisonment for seven years.”

7. *Section 248 of the Penal Code provides;-*

“For the purpose of this chapter-

- a. any person who conveys any person beyond the limits of Fiji without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person; and*
- b. any person who by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.*

8. The elements of the offence are;-

- a. the accused,*
- b. kidnap the victim,*
- c. with intent,*
- d. to secretly and wrongly confine the victim.*

9. I now look into the Prosecution evidence. The victim, Shereen Shabnam Buksh is the first witness. She identified the accused in court as they were married and had one daughter. They are currently separated.

10. On 18 May 2009, after 1 o'clock in the afternoon the victim was at her boyfriend's house when the accused and another boy came in a taxi. She was outside when the accused asked her to go with him and she said no. The accused hold her hand forcefully and forcefully took her to the taxi. The other boy came and assists the accused in taking her to the taxi and makes

her sit in the taxi. She was sitting in the middle, the accused on one of her side and the other boy on her other side. When the taxi stop at the accused house, she requested the accused if he can drop her back as she did not want to go with him. The accused slapped her, hold her hand and pulled her to his house and make her sit on a chair in a room. The accused family members were in the house. The room was open and everyone come and goes to check on her. She informed the accused that she wanted to go to the washroom and the accused told her to go with Appu a small girl. She wanted to run away and the accused saw her, brought her back, make her sit on a wooden chair and tied her hands with a rope. She heard the accused informed his family members if anyone come and asking for her they have to say that she is not there. The accused then took her to the bush beside his house. She told the accused that she did not want to go with him and the accused slapped her face and tied her hands to a balabala tree with a rope and the accused went back to his house. After a while the accused returned and told her that if the police come she has to inform them that she came on her own. They went down to the accused house when the police came. She ran to the police vehicle. She said the accused took her on daylight and she return in the afternoon. Again she said the accused took her on 18 and the whole night the accused kept her and on the next day the police took her. The police then took her to his grandfather's place where her father and grandparents were there. The police took her statement there.

11. In cross-examination she said she was kidnapped by the accused. On that day only her father in law was at home sleeping. She gave her statement to police on 19 and 20 of May 2009. She did inform the police of the other boy that came with the accused and she gave the name of that boy to the police. She did not write or read her statement and not sure if the police write it down or otherwise. All the neighbours went to work and that why she did not make any noise. The taxi stop in a neighbour's driveway. When she went into the house the accused told her to go with her. She called her father in law but he did not hear her. She did not report to Hassad the taxi driver. She did not want to get off and she requested the driver to drop her back. She was shouting but no house was there. She spent one night with the accused

fighting over their daughter. She was referred to her first statement line 19 where she said that she did not want any action to be taken against the accused and also line 21 where she requested the police not to take any action against the accused. She denied giving any statement on 20 May 2009. When her statement of 20 May 2009 given to her she confirmed her signature. She said she gave her statement all in one day that is on 19 May and not on 20 May and the police must be mistaken on the date.

12. The victim's father is the second prosecution witness. He said that on 18 May 2009, the accused called him that his daughter, the victim is with him. He came to Labasa on the next day. He arrived at Labasa at 5pm and went to his in laws place at Korotari and when he arrived there the police already took her daughter, the victim. The police took his statement at 7pm.
13. The accused in his evidence stated that the victim called him on 18 May 2009, informing him that she wanted to come back to him. He went to the police station and he went with the police to the victim. The victim did not want to go into the police vehicle and he went back to town to bring Hassad Ali's taxi. When the taxi slowed down in their driveway the father in law of the victim was sitting in the front veranda and the victim signal to them to park on the neighbour's driveway on top. When they reach the neighbour's driveway the victim was there. It was only him and the driver in the taxi. The accused deny the allegation of kidnapping, force, and assault as the victim wanted to go with him and she came freely into the taxi. They slept together on that night and everything was fine.
14. The onus is on the Prosecution to prove his case beyond reasonable doubt.
15. The Prosecution through the victim's evidence has established the elements of the offence required for this case. The issue now is on credibility considering the denial of the accused. In considering the credibility I will look into the demeanour of the witnesses and the evidence if there is any inconsistency and contradiction.

16. In consideration of the evidence in totality, I noted the victim stated that she was forcefully taken from her boyfriend's place at Lajonia. That happened in front of a boy and the taxi driver. The victim stated that she gave the name of that boy and the taxi driver to the Prosecution. The driver and that boy were never called to the stand by the Prosecution for unknown reasons. This evidence is crucial to the Prosecution case on the element of kidnapping by forceful means considering the inconsistency in the victim's evidence referred to hereinafter.
17. The victim was not consistent in her evidence and provided contradictory stories. First, when the accused forcefully took her, she did not shout because all the neighbours went to work and another version she said she did call her father-in-law who was sleeping but he did not respond. Second, she said she was outside when the accused held her by force and another version she went into the house when the accused got hold of her. Third, when the taxi stopped at the accused's house, in evidence in chief, she told the accused to drop her back and in cross-examination she said she told the taxi driver to drop her back. Fourth, she said she came back with the police on the same day the accused took her. The other version she said that she spent one night at the accused's place where they argued and fought over their daughter. Fifth, earlier in cross-examination she confirmed she gave a statement to the police on 19 and 20 May 2009. Later in the cross-examination she denied giving a statement on 20 May 2009. Her statement on 20 May was given to her where she confirmed her name and signature in that statement and said the police may have entered the wrong date by mistake as she gave all the statements in one. Sixth, she said when the police took her to her grandparents' place her father was there. Her father in his evidence stated that when he reached his in-laws' place the victim was not there as the police had taken her. There was no clarification from the Prosecution as to which version is correct.
18. In assessing the credibility of the victim and the accused, I will accept the evidence of the accused as it is consistent and not discredited. I reject the evidence of the victim due to contradiction and inconsistency referred to in paragraph 17 above.

19. In my assessment of the evidence and as a trier of facts, I find that the victim was not kidnapped or forced by the accused and she went with the accused on her own free will. I therefore, find that the Prosecution failed to prove his case beyond reasonable doubt.
20. In my judgment, I find the Accused not guilty as charged and I acquit the Accused accordingly.

28 days to appeal.




C. M. Tuberi
RESIDENT MAGISTRATE