

IN THE MAGISTRATE'S COURT AT LABASA

CRIMINAL JURISDICTION

Criminal Case No. 388 of 2014

STATE

v

SANJEEV KUMAR

Appearance : **PC Lal** for the prosecution
Mr Raramasi. S for the accused

Ruling : **20 September 2019**

RULING

NO CASE TO ANSWER

1. The accused, Sanjeev Kumar is charge for *Indecent Assault* contrary to *section 212* of the *Crimes Decree*.
2. The name of the victim is suppressed to protect her privacy and interest and is referred to as "the Victim" in this ruling.
3. The particulars of the offence are that on the 13th day of August 2014, at Labasa, in the Northern Division, you indecently assaulted the Victim by touching her breast and thighs.

4. The Accused pleaded not guilty to the charge on 18 August 2014. The case proceeded to trial on 23 January 2019.
5. The Prosecutor called the Victim as the first witness and Sachin K Naidu (Naidu) as the second and final witness. The Counsel for the accused make a no case to answer application and filed the submission on 31 January 2019.

Defence application

6. The defence submitted that the Victim's evidence had been so discredited as a result of cross-examination and is unreliable and no conviction can be safely made on it. The prosecution had not met the requirement to require the accused to put his defence. The essential elements of the offence was never established.

Law

7. Section 212(1) of the Crimes Decree state;-
"A person commits a summary offence if he or she unlawfully and indecently assaults any other person."
8. The elements of the offence are;-
 - a. *the accused,*
 - b. *had contact with the victim,*
 - c. *the contact was unlawful and indecent.*
9. The test for no case to answer in the Magistrate Court was explained in **Abdul Gani Sahib v The State** [2005] FJHC 95; HAA 022 of 2005; 28 April 2005, as;-
 - a. *Whether there is relevant and admissible evidence implicating the accused in respect of each element of the offence.*
 - b. *If there is evidence, whether it is so discredited that no reasonable tribunal could convict on it."*

10. The burden of prove is on the prosecution.

Analysis and determination

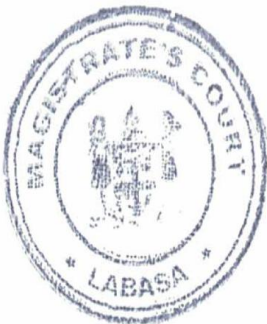
11. The identity of the accused was not contested as he was identified in court by both the prosecution witnesses as they are well known to each other.

12. The Victim stated in her evidence that on 13 August 2014, she was at the bulk of Shop n Save supermarket. It was after lunch when she was in the bulk when the accused came in to the bulk. The accused call her to count the Dalsey toilet papers. She went while the accused and Mr Sachin, the manager for Shop n Save were talking. She was doing the stock when the accused came from her back, grabbed her shoulder and made her lean on the other side of the stock of toilet papers. The accused told her that he always admire her since she was a cashier at R.B Patel but he cannot express his feeling. The accused kissed her lips twice and started touching her breast with his hand and touching her thighs. She pushed the accused and left the bulk as she did not like what the accused did to her. At that time it was only her and the accused were in the bulk. She called her husband but he was not picking up his phone. In the afternoon, she went home and informed her husband. Her husband informed her to report it to their manager.

13. In cross-examination, she said that she did not shout because she was shock and she did not cry because she was frightened. She said, she felt safe by informing the incident to her husband. She report it to the police on the next day. She said the allegation is true and it is not a lie.

14. Naidu stated in his evidence that he did not see the incident but both the victim and the accused were in the bulk when he went to have his lunch.
15. The Victim is clear on her evidence that the accused grabbed her, kissed her, and touched her breast and thighs. She pushed the accused and walked out of the bulk because she did not like what the accused did to her. These evidence has implicated the accused on all elements of the offence. The evidence was not discredited as submitted by the defence.
16. In this ruling, I find that there are sufficient evidence that requires the accused to put his defence. The application is dismiss and the proceeding to proceed for the defence case.

28 days to appeal



A handwritten signature in blue ink, appearing to read "C.M. Tuberi". The signature is stylized and somewhat cursive, with a large loop at the top and a horizontal line at the bottom.

C.M.Tuberi
Resident Magistrate