

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No.383 of 2012

STATE

v

LATCHMAN

Appearance : **WCPL Musuqawa** for the prosecution
Accused in person

Judgment : **21 January 2019**

JUDGMENT

1. The accused, Latchman was charged for *Indecent Assault* contrary to section 212 of the *Crimes Decree, 2009*.
2. The name of the victim is suppressed to protect her interest and privacy and will be referred to as "*the victim*" in this judgment.
3. The particulars of the offence are ;-
"Latchman on the 4th day of July 2012, at Labasa, in the Northern Division, unlawfully and indecently assaulted the victim".

4. On 23 October 2013, the accused waived his right to counsel and pleaded not guilty to the charge. The case proceeded to trial on 7 July 2017. The Prosecution called the victim and her elder sister to the stand. The accused exercise his right to remain silent.

Prosecution Evidence

5. The victim stated that on 4 July 2012, the accused came to their home requesting if she can work in his company. She agreed and on next day she went to work. On 5 July 2012, the accused told her for them to go and for her to cook food for their workmates. They went to buy chicken and on their way home the accused turn the vehicle into a driveway far from her home. There is no house on that driveway. She asked the accused on why they are stopping there. The accused told her that he wanted to have sex with her. She told him that she cannot. The accused started touching her right breast and her thighs. She was angry and she told him that she did not like what he did to her and she will inform the people at their home. The accused sit in the driver's seat and she was sitting in the front passenger seat. She did not know the accused well as she only works for him for 3 weeks. She identify the accused in court.
6. In cross-examination, she stated that the drive way the accused took them to is a long drive way and they stop in the middle. When the accused did that act to her, she got of the vehicle and the accused told her to get into the vehicle and he will drop her. She get into the vehicle and sit at the back seat. She did not mention that to the police as she only mention what the accused did to her. After the incident, she did not go back to work with the accused. On that day she informed her workmates on what the accused did to her. He did not inform her husband as she was afraid. When they went to Saqani, the accused did the same thing again and that why they went to report to Savusavu police station.
7. The second witness stated that she heard the accused told the victim to go and wash her properly because he wanted to lick her and touch her. After lunch, they

asked the victim and the victim told them the story. She identify the accused in court. They were in the vehicle, they sit at the back and the victim was sitting in the front seat. They got off and the accused told them that they are going to buy lunch for the victim to cook. The victim is her elder sister.

Analysis and determination

8. There will be no adverse inference drawn against the accused for exercising his right to remain silent as he is under no obligation to prove his innocent. It is for the prosecution to prove all the elements of the offence.
9. Section 212(1) of the *Crime Decree, 2009*, provides :-
"A person commits a summary offence if he or she unlawfully and indecently assaults any other person."
10. The elements of the offence that the prosecution must prove beyond reasonable doubts are;-
 - a. *the accused,*
 - b. *has indecent contact with the victim;*
 - c. *without the victim's consent;*
 - d. *by force.*
11. The victim has stated that the accused touched her right breast and her thighs. She did not like it. That is following the accused request to the victim that he wanted to have sex with the victim. The victim maintain her evidence on the account of what the accused did to her. Her evidence was not challenged or discredited. The evidence of the second witness confirms that the accused was with the victim at the time of the alleged offence. The accused was positively identified by the prosecution witnesses.
12. In assessing the credibility of the witness, I find no reason on why I should not believe the victim. Accordingly, I find the prosecution witnesses to be credible.

The evidence adduced by the prosecution has established all the elements of the offence in this case. The Prosecution has discharged the burden of proof required of her in this case.

13. In this judgment, I find that the Accused committed the offence alleged against him in this case. Accordingly, I find the accused guilty as charge. The accused is convicted as charged.

28 days to appeal.



C. M. Tuberi
RESIDENT MAGISTRATE