

IN THE MAGISTRATES' COURT
AT BA
CRIMINAL JURISDICTION

Criminal Case No. 285/2022

BETWEEN: **STATE**

PROSECUTION

AND: **VINOD KUMAR**

ACCUSED

Counsel: WCPL 4897 Venu Singh for Police Prosecution
 Accused unrepresented and in person.

Date of Trial: 1 July 2025
Date of Judgment: 22 August 2025

JUDGMENT

Introduction

1. Mr. Vinod Kumar ("the Accused") was charged and produced in Court on 15 June 2022 for 3 counts of Indecent Assault contrary to section 212(1) of the Crimes Act 2009 and 1 count of Breach of Bail contrary to section 25(1)(b) and 26(1) of the Bail Act 2002 and Bail Amendment Act 2012. The particulars of the offences are:

Count 1
Statement of Offence

Indecent Assault: *Contrary to Section 212(1) of the Crimes Act 2009.*

Particulars of Offence

Vinod Kumar on the 13th day of June, 2022 at Namada, Ba in the Western Division unlawfully and indecently assaulted ***Dipshika Gosai*** by kissing her cheek.

Count 2
Statement of Offence

Indecent Assault: *Contrary to Section 212(1) of the Crimes Act 2009.*

Particulars of Offence

Vinod Kumar on the 13th day of June, 2022 at Namada, Ba in the Western Division unlawfully and indecently assaulted ***Dipshika Gosai*** by kissing her lips.

Count 3
Statement of Offence

Indecent Assault: *Contrary to Section 212(1) of the Crimes Act 2009.*

Particulars of Offence

Vinod Kumar on the 13th day of June, 2022 at Namada, Ba in the Western Division unlawfully and indecently assaulted ***Dipshika Gosai*** by touching her buttocks.

Count 4
Statement of Offence

Breach of Bail Condition: *Contrary to Section 25(1)(b) and 26(1) of the Bail Act 2002 and Bail Amendment Act 2012.*

Particulars of Offence

Vinod Kumar on the 13th day of June, 2022 at Ba in the Western Division being bailed by Ba Magistrates Court vide CF 526/21 with the condition not to re-offend breached the said bail condition by re-offending.

2. On 22 March 2023, the Accused pleaded Not Guilty to the above charges. After subsequent adjournments, the matter was set for Trial.
3. On 1 July 2025, the date of Trial, Prosecution called 4 witnesses and thereafter closed its case. The Court found that there was a case made out against the Accused sufficiently requiring him to make a defence. The procedure under section 179 of the Criminal Procedure Act was explained to the Accused. It was also explained to the Accused that he had a right to remain silent. The Accused chose to remain silent and not call any witnesses as he did not have any witnesses.
4. Having considered the evidence of Prosecution, I now pronounce my Judgment.

Burden of Proof

5. It is imperative to highlight that as a matter of law, the onus or burden of proof rests on the prosecution throughout the trial and it never shifts to the accused. There is no burden on an accused to prove his or her innocence as an accused is presumed to be innocent until proven guilty.
6. It is for the prosecution to prove the accused's guilt beyond a reasonable doubt. If there is doubt, so that the court is not sure of the accused's guilt, or if there be any hesitation in the court's mind on any of the ingredients or on the evidence led by prosecution, the accused must be found not guilty of the charges and accordingly acquitted.

Summary of Evidence

7. On 13 June 2022 at about 2:15pm, the Complainant was at home with the Accused and Salim. The Accused and Salim had been repairing the stove exhaust whilst the Complainant was in her room. Salim then called the Complainant requesting her to shine the torch where the exhaust was whilst the Accused held the exhaust. Salim was unable to unscrew one of the screws as such he left to go outside.
8. Whilst in the kitchen with the Accused, the Accused stopped holding the exhaust and went near the Complainant and kissed her on the left cheek and then he kissed her on her lips. The Complainant then pushed the Accused away and told him not to do this.
9. Afterwards the Accused approached the Complainant again despite the Complainant telling him not to and touched her back and her bum over her clothes whilst saying that she had a nice figure. The Complainant was embarrassed, surprised, shocked and panicking. It was then that Salim came in and noticed the Accused was no longer holding onto the rangehood. He stated that he had seen the Complainant standing and shaking and that he had asked her what had happened and that he had questioned the Accused why he wasn't holding onto the rangehood.

10. The Complainant stated that she went into her room, locked the door and called her dad, telling him that the Accused was not a good man and that he had tried to abuse her. She then requested her dad to come home as soon as possible. Virendra who is the Complainant's father confirmed that the Complainant had called and told him that the Accused was not a good man. Virendra stated that he questioned the Complainant about what happened when she informed him that the Accused had held and kissed her. Virendra testified that he told his wife and they went home.
11. Upon Virendra and his wife reaching home, the Complainant told them everything that the Accused had done. Virendra testified that he asked the Accused what he had done but the Accused had denied doing anything. The Accused had been trying to leave but Virendra told him not to go anywhere but to stay as he was calling the Police. This was also confirmed by Salim who testified that the Accused was denying having done anything and that he started to go away but that the Complainant's father told him to wait given that the Police was coming and they would sort everything out.
12. DC Tevita was the Investigating Officer in the matter, and he explained that he uplifted the Bail Conditions Form from the Court Registry as the Accused had been previously charged and under his bail conditions, the Accused was not allowed to re-offend. DC Tevita explained that this Bail condition was for a case of Act with Intent to Cause Grievous Bodily Harm in CF 526/21 and that he had been granted bail on 10 November 2021. The Bail Undertaking Form and the Accused Bail Condition Form was tendered as 'PEX1'.

Evaluation of Evidence

13. It is important to note that the Accused chose to remain silent and not call any witnesses, the Court is mindful that no adverse inference can be made against the Accused in this regard.
14. The Court will now need to evaluate the evidence by Prosecution. The evidence presented will be evaluated to determine the testimonial trustworthiness of the evidence which will be done by evaluating the credibility – the correctness or veracity of the evidence and the reliability of evidence – the accuracy of the evidence - vide State v Prasad Criminal Case No. HAC 72 of 2021 (20 June 2024). In doing this, the Court should consider the promptness/spontaneity, probability/improbability, consistency/inconsistency, contradictions/omissions, interestedness/disinterestedness/bias, the demeanour and deportment in Court and the evidence of corroboration where it is relevant. (vide State v Moroci Criminal Case No. HAC 161 of 2023 (26 April 2024)).
15. For a proper analysis of the evidence for the offence of Indecent Assault, it is imperative for the Court to turn its mind to the elements of the offending, which are:
 - i. the accused
 - ii. unlawfully and indecently
 - iii. assaulted the Complainant by kissing her cheek, kissing her lips and touching her buttocks.
16. From the outset there is no issue with the identification of the Accused as the Accused agrees that he was at the Complainant's home on 13 June 2022.

17. The Accused also admits that he kissed the Complainant's cheek in a playful manner and that when he was going to kiss her again, she turned her head which caused him to accidentally kiss her on her lips. He maintains that he had no intention of doing this.
18. The Court will need to ascertain whether the Accused had unlawfully and indecently assaulted the Complainant by kissing her cheek, kissing her lips and touching her buttock on 13 June 2022.
19. Considering the evidence of Prosecution, the Complainant testified that on 13 June 2022 at around 2:15pm, she had been at home as it was semester break and with her were the 2 carpenters. This was the Accused whom the Complainant called 'aja' meaning 'grandfather' and the other whom she called Uncle Salim. The Complainant stated that she knew the Accused and Salim from when she was a child.
20. The Accused and Salim had been repairing the stove exhaust whilst the Complainant was in her room when Salim called the Complainant requesting her to shine the torch where the exhaust was. Salim told the Accused to hold the exhaust as it was heavy. Salim was unable to unscrew one of the screws as such he went outside to get something. This was also confirmed by Salim who had also testified that when he left the kitchen, the Accused was holding the rangehood with both his hands and the Complainant was shining the torch.
21. Upon Salim leaving the kitchen, the Complainant stated that the Accused was no longer holding the exhaust but was looking at her funny and smiling at her. It was then that the Accused went near the Complainant and kissed her on the left cheek and then he kissed her on her lips. The Complainant stated that she was shocked and felt disgusted when the Accused kissed her on her lips. The Complainant then pushed the Accused away and told him not to do this.
22. The Complainant stated that when she pushed the Accused, he stood a little bit further away and started asking if there were cameras inside the house and then said to her not to say anything about the incident. Afterwards the Accused approached the Complainant again despite the Complainant telling him not to and touched her back and her bum over her clothes whilst saying that she had a nice figure.
23. Whilst the Accused did all this to her, the Complainant testified that she was embarrassed, surprised, shocked and panicked. It was then that Salim came in. Salim in his evidence testified that after 2-3 minutes he returned to the kitchen and saw the Accused standing there but he was no longer holding onto the rangehood. He stated that he had seen the Complainant standing and shaking and that he had asked her what had happened and that he had questioned the Accused why he wasn't holding onto the rangehood.
24. The Complainant then went into her room, locked the door and called her dad. The Complainant testified that she told her dad that the Accused was not a good man and that he had tried to abuse her. She then requested her dad to come home as soon as possible.
25. Virendra, the Complainant's father in his evidence confirmed that the Complainant had called and told him that the Accused was not a good man. He stated that when he questioned her about what happened, she informed him that the Accused had held and kissed her. Virendra testified that he told his wife and they went home.


26. Upon reaching home, Virendra stated that he called his daughter asking her what had happened. The Complainant unlocked her door and went to him crying and shivering. The Complainant stated that she told her mother in the presence of everyone, everything that the Accused had done to her. The Complainant stated that her father questioned the Accused regarding what he had done and why he had done it but the Accused denied doing anything and then the Accused tried to leave but had been stopped by her father. This was also confirmed by Virendra in his evidence. The Complainant's parents then took her to the Police Station.
27. Even in his evidence, Salim stated that when the Complainant's father arrived, he called the Complainant to come outside and then asked her what had happened. Salim testified then that the Complainant came out and she was crying and she had informed that the Accused had kissed her on the cheeks, lips, touched her chest and her bum. Salim testified that the Accused was denying having done anything and that he started to go away but that the Complainant's father told him to wait given that the Police was coming and they would sort everything out.
28. The evidence of Salim and Virendra is consistent with respect to the Complainant's evidence when she had informed them that the Accused had kissed her cheek and lips and touched her body and her bum.
29. Further, the evidence of Salim and Virendra was also consistent with respect to the Accused trying to leave the scene after the Complainant had informed them what the Accused had done to her even though the Accused had denied doing anything to the Complainant. This brings into question why the Accused had tried to leave the scene especially when he had denied doing anything wrong.
30. Additionally, Salim's evidence with respect to returning to the kitchen and finding the Accused no longer holding the rangehood/exhaust and just standing there whilst the Complainant was standing and shaking when considered in conjunction with the evidence of the Complainant that upon the Accused kissing her cheek and lips and touching her body and bum made her embarrassed, surprised, shocked and panicked causing her to go to her room and cry is consistent as to something taking place in the kitchen in his absence.
31. Furthermore, the evidence of the Salim and Virendra highlights that the Accused had denied doing anything to the Complainant. However, the Accused in his cross examination suggested that he kissed the Complainant in a playful manner which was once on her cheek and the next time when he was going to kiss her, she turned her head and he accidentally kissed her lips which he stated was not intentional. The Complainant, in responding to this suggestion stated that it was not playful given the way the Accused had been looking at her and that if she had not stopped him from assaulting her, he could have done so much more.
32. Moreover, the Court notes that in re-examination, when questioned if her relationship with the Accused was a playful one, the Complainant replied, no – never.
33. The Court is unable to accept the Accused's suggestion that his actions were playful given that after he had kissed the Complainant on her cheek and lips and after the Complainant pushed him away, the Accused started to survey the kitchen to ascertain whether there were any cameras. After doing this, it is evident that the Accused became emboldened in his actions which led him to approach the Complainant again and touch her body and bum and comment that she had a nice body. Such actions are not playful but are rather calculated and ill-intentioned.

34. Considering the above, the Court finds that the Complainant's evidence as well as Salim and Virendra's evidence is credible and reliable and therefore truthful. Thus, Prosecution has proven beyond a reasonable doubt that upon Salim leaving the kitchen, the Accused approached the Complainant and kissed her cheek as well as her lips. Prosecution also proved that the Accused approached the Complainant again after she had pushed him away and touched her buttocks which caused her to become distress and call her father – Virendra to come home and inform him in the presence of Salim what the Accused had done to her.
35. Now, turning to the fourth count of Breach of Bail Condition, the elements for this offence are:
- i. the accused
 - ii. who has been released on bail
 - iii. and who fails without reasonable cause
 - iv. breaches any condition of bail imposed by court commits an offence.
36. Prosecution led the evidence of DC 7497 Tevita ('DC Tevita') who was the Investigating Officer in this matter. DC Tevita testified that he uplifted the Bail Conditions Form from the Court Registry. He explained that he did this as the Accused had been previously charged and under his bail conditions, he was not allowed to re-offend.
37. DC Tevita further explained that this Bail condition was for a case of Act with Intent to Cause Grievous Bodily Harm in CF 526/21 and that he had been granted bail on 10 November 2021. The Bail Undertaking Form and the Accused Bail Condition Form was tendered as 'PEX1'. DC Tevita then identified the Accused.
38. The Court needs to ascertain whether the Accused had breached this condition by committing another offence
39. The Court finds that the evidence led by Prosecution is that when the Accused was charged for the matter herein, he was already on bail in CF 526/21 where he had been granted bail on 10 November 2021. Further, the Court finds that as part of his bail, the Accused was not allowed to re-offend and that the Accused had re-offended when he committed the offences of Indecent Assault herein.
40. Consequently, this Court is satisfied that the Prosecution has presented evidence to prove the elements of Breach of Bail Condition beyond a reasonable doubt.

Determination

41. I find that Prosecution has discharged its burden in proving all the elements of Indecent Assault for Counts 1, 2 and 3 beyond reasonable doubt.
42. I also find that Prosecution has discharged its burden in proving all the elements of Breach of Bail Condition for Count 4 beyond reasonable doubt.
43. I, therefore, find the Accused, Vinod Kumar, guilty as charged for 3 Counts of Indecent Assault and 1 count of Breach of Bail Condition and accordingly convict him for all charges.




N. Mishra
Resident Magistrate