

**IN THE MAGISTRATE'S COURT AT LABASA**

**CRIMINAL JURISDICTION**

*Criminal Case No. 321 of 2016*

**STATE**

v

**GABIRIELI BULI**

Appearance : **Mr Vavadakua. A** for the prosecution  
**Mr Radio. E** for the accused

Judgment : **27 September 2019**

**JUDGMENT**

1. Gabirieli Buli, the accused, is charge for *Attempted Rape*, contrary to *section 208 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 judgment.
3. The particulars of the offence are that on the 3<sup>rd</sup> day of June 2016, at Labasa, the accused attempted to insert his figures into the vagina of the Victim, a child under 13 years old.
4. On 23 June 2017, the accused pleaded not guilty to the charge.

5. The case proceeded to trial on 7 August 2019.
6. The Prosecutor called three witnesses. The accused is the only witness for the defence case.

**Law**

7. *Section 208 of the Crimes Act, stated;-*  
*"Any person who attempts to commit a rape commits an indictable offence.*
8. The elements of the offence are;-
  - a. *the accused,*
  - b. *attempted to commit rape.*
9. The burden of proof is on the prosecution to prove all the elements of the offence beyond reasonable doubts.

**Analysis and Determination**

10. The Accused admitted in his evidence that he was in the Victim's room on the night and time of the alleged offence.
11. The Accused testified that while in the victim's room, he tried to steal the laptop that was on the head of the girl but he cannot. So he came out of room and went out of the house. He did not meet or see the mother of the victim on that night. The mother of the victim did not punch him or pull the pocket of his shirt.
12. The Victim is the third witness for the prosecution. She testified that on early morning of 3 June 2016, when she woke up, it was dark and the door was opened. She saw her mum was punching a man and that man ran

somewhere. She cried. Her mum came back and turned the light on. She then notice that she was not wearing any pants or panty. Before she went to sleep on that night, she was wearing her panty and pants. She does not know on how her pants and panty was removed. She said, she felt someone was shaking her thighs and touching her private parts. The man touched her private part, the front part of her body where she use to pass pee. She felt it and she was not dreaming.

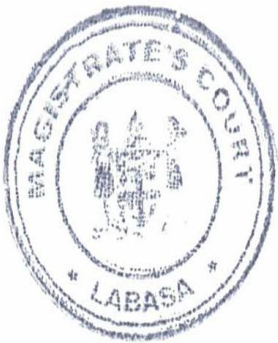
13. The mother of the victim is the first witness for the prosecution. Her name is also suppressed to protect the interest and privacy of the victim. She said, when she went to check her daughters in the early hours of 3 June 2016, she saw a man stood up, from the bed of the Victim. She shouted, confused, and scared. It was dark, and she pulled the man's shirt as he was closed to the victim. When he stood up, the victim was underneath him. She started punching and biting that man. That man tried to free himself and in the process she pulled out the pocket of his shirt. The man freed himself and ran out. She returned to her daughter's room and switched the light on, where she found the victim was crying and not wearing her pants and panty. The pants and panty were on the floor. She check the victim, and there is no sign of injury and bleeding. She reported the matter to the police about 5 to 10 minutes after the incident.

14. DCPL 3506 Kumar is the second witness for the prosecution case. He is the arresting officer.

15. The evidence of the Victim and her mother were consistent that the victim was without her pants and panty on that night when the accused left the room.

16. The Victim testified that when she woke up, her mum was punching the accused. On the other hand, she said she felt someone shaking her thighs and touched the front part of her body where she use to pass pee.
17. The evidence against the Accused was that the Victim's pants and panty was removed and was on the floor. The Accused was seen stood up from the Victim's side. The Victim felt someone was shaking her thighs and touched her private part the part of her body where she use to pass pee. All these evidence are not sufficient to establish the element of attempt to commit rape. There is no evidence adduce to show that the accused was in a position to insert his figure or penis into the victim's vagina.
18. In absence of such evidence, the prosecution case will fail. As such, I find the prosecution were not able to discharge the burden of proof.
19. In this judgment, I find the accused not guilty as charge and I acquitted the accused accordingly.

**28 days to appeal**



C. M. Tuberi  
**RESIDENT MAGISTRATE**