

**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

Judgment : **31 January 2020**

**JUDGMENT**

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 judgment.
3. The particulars of the offence are that on the 13<sup>th</sup> 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. The Prosecutor called two witnesses and closed his case. The

defence make an application of no case to answer. The court ruled on 20 September 2019, that the accused has a case to answer. The trial continued on 13 January 2020, for the defence case. The accused is the only witness for the defence case.

### **Law**

5. 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."*

6. The elements of the offence are;-

- a. *the accused,*
- b. *had contact with the victim,*
- c. *the contact was unlawful and indecent.*

7. The burden of prove is on the prosecution to prove all the elements of the offence beyond reasonable doubt.

### **Analysis and determination**

8. The identity of the accused was not contested. The victim who is the first witness for the prosecution and Sachin Naidu (Naidu) the second witness for the prosecution both identified the accused in court. The accused confirmed in his evidence that the victim was working under him on 13 August 2014, at the bulk of Shop n Save Supermarket.

9. The Victim stated in her evidence that on 13 August 2014, after lunch, she was in the bulk of Shop n save supermarket when the accused came in to the bulk. The accused call her to count the Dalsey toilet paper. She went while the accused and Naidu (the manager for Shop n Save) were still talking. She was taking 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 the manager.

10. In cross-examination, the Victim said that she did not shout because she was shock and she did not cry because she was frightened. She felt safe by informing her husband of the incident. She reported to police on the next day. She said the allegation is true.
11. 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.
12. The accused admitted in his evidence that he was in the Shop n Save bulk store with the victim on 13 August 2014. He deny the allegation and said that he never did that to the Victim. It is a false allegation.
13. Naidu never saw the incidence. The victim said it happened. The accused said it a false allegation. The issue is on credibility.
14. The Victim is clear on her evidence that the accused grabbed her, kissed her and touched her breast and thighs. That is an indecent contact. She pushed the accused and walk out of the bulk because she did not like what the accused did to her. That shows that the contact was unlawful.
15. The victim reported the matter to the police on the next day. That is a recent complaint as the victim provide a reasonable

explanation that she want to first inform her husband. Immediately after the incident, the victim was calling her husband but her husband did not pick his phone. She informed her husband on that afternoon and she reported to police on the next day.

16. The accused denied the allegation and said that it not happened as victim never shouted or yelled. That does not mean it does not happened. The victim provided a reasonable explanation that she did not cry because she was frightened and did not cry because she was shocked. The fact that the victim walk out of the bulk after the alleged incident carries weight that the victim was not happy with what the accused did to her
17. In assessing the evidence and the demeanour of the accused and the victim, I find the victim to be more credible and I accept her evidence. This is a sexual offence that requires no corroboration. The evidence of the victim was not discredited. I am convinced by the evidence of the victim that the accused indecently assaulted her.
18. I therefore, find that the Prosecutor has discharge the burden of prove in this case.
19. In this judgment, I find the accused guilty as charged and convicted the accused accordingly.

**28 days to appeal.**



C. M. Tuberi  
**RESIDENT MAGISTRATE**