

**THE MAGISTRATE'S COURT AT LABASA**

**CRIMINAL JURISDICTION**

*Criminal Case No. 604 of 2013*

**STATE**

v

**JONE VERO**

For the Prosecution : **PC Monish**  
For the Accused : **Mr Lomaloma. P**  
Judgment : **8 August 2017**

**JUDGMENT**

The accused, *Jone Vero* is charge for *Sexual Assault*, contrary to *section 210(1)(a)* of the *Crimes Decree 2009*.

The name of the victim is suppressed to protect her interest and privacy and referred to as "CT" in this judgment.

The particulars of the offence are ; -

*"Jone Vero between the 13<sup>th</sup> day of May to the 16<sup>th</sup> day of August 2013 at Cavayalewa settlement, Korosomo, Seaqaqa in the Northern Division, unlawfully and indecently assaulted CT"*

The Accused pleaded not guilty to the charge on 21 January 2014. The case proceeded to trial on 30 March 2016.

At the trial, the Prosecution called two witnesses. The defence called two witnesses. At the end of the trial, the Counsel for the Defence make his oral closing submission and ask for time to file his closing submission. No submission filed. This judgment is issued without any written submission filed by the defence.

*Section 210(1)(a) of the Crimes Decree 2009, provides;-*

*“(1) An person commits an indictable offence (which is triable summarily) if he or she -*

*(a) unlawfully and indecently assaults another person.”*

The elements of the offence that the Prosecution must prove beyond reasonable doubts are;-

- a. the accused,*
- b. indecently assault the victim,*
- c. without the consent of the victim.*

*PW1- CT (the victim) in her evidence stated that between 13 May 2013 to 16 August 2013, she was staying with her mother and step father at Cavayalewa, Korosomo. She identified the accused in court as her step father. She came to court because the accused poked her with a cane knife. She came back from bath wearing a towel. When she bend down to wipe her leg she felt something poking her bum from the back. She said, she saw the accused poking her. The accused was standing outside at the door step laughing. She gave her angry face to the accused. She never informed anyone as she is frightened to tell anybody. She did not report to the Police. The Police came to her grandparents place and asked her why she did not want to go to their house. Only then, she informed the Police about the incident.*

When CT was asked by the Prosecution was the accused holding anything in his hand, she said “No”.

*PW2- WPC 3567 Sisilia. She is the investigating officer and the interviewing officer. She caution interviewed Jone Vero who she identified in court as the accused. In her evidence in chief, she cannot recall who lodge the complain. In*

re-examination she confirmed that Iliesa Bula is the person who make the complaint.

The Accused in his evidence stated that in May to August 2013, he was at Korowiri, Covata. He deny the allegation. He never went to Cavayalewa in May to August 2013.

CT's evidence that she was poked by a cane knife which is the act of sexual assault in this case is not supported by her evidence that when she looked at the accused who was standing at the door step outside he was not holding anything. If the accused was standing outside holding on to nothing, then it is impossible for the accused to poke CT with the cane knife. There is doubt on the offended act in this case.

In examining and assessing the evidence as a trier of facts, I find that it is unsafe to accept the evidence of CT as there are inconsistency on her evidence and it create doubt on her evidence on the offending act. With the existence of that doubt, the Prosecution has failed to prove his case beyond reasonable doubt.

In my judgment, I find the Accused not guilty as charge and I acquit the Accused accordingly.

**28 days to appeal.**



C. M. Tuberi

RESIDENT MAGISTRATE