

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

CRIMINAL APPEAL NO. HAA 025 of 2016
[Magistrates' Court Case No.1790 of 2012]

BETWEEN : **THE STATE**
Appellant

AND : **RAHMIT LAKHAN**
Respondent

Coram : Hon. Mr Justice Daniel Goundar

Counsel : Mr M Vosawale for the Appellant
Ms S Ratu for the Respondent

Date of Hearing : 18 April 2017

Date of Judgment : 25 April 2017

JUDGMENT

[1] This is a timely appeal by the State against an order of acquittal of the respondent at the no case to answer stage by the Magistrates' Court. The sole ground of appeal is:

THAT the learned Trial Magistrate erred in law and in fact when acquitting the respondent at the No Case to Answer stage when the evidence was reliable that a reasonable tribunal could convict in that the victims and the Doctors evidence did not contradict each other.

[2] The respondent was charged with an offence of assault causing actual bodily harm contrary to section 275 of the Crimes Decree 2009. The particulars of the offence alleged that the respondent on 14 November 2012 at Howell Road assaulted Akelina Raitaukekula, thereby occasioning her actual bodily harm.

- [3] The respondent pleaded not guilty to the charge. The trial commenced in the Magistrates' Court on 8 February 2013. The first witness who gave evidence for the prosecution was the complainant, Acelina Raitaukekula. The complainant's evidence was that on 14 November 2012, she went to a shop at Howell Road and took her dog with her. Upon seeing the dog, the respondent had an argument with the complainant for bringing her dog to the shop. During the argument, the respondent kicked the complainant in the face. She said he was wearing a safety boot when he kicked her. She immediately returned home and informed her husband. They reported the assault to police. On the same evening, she was medically examined. Medical examination revealed swelling and tenderness on the left side of the face and the examining doctor's evidence was that the injuries were consistent with a blunt force trauma.
- [4] After close of the evidence for the prosecution, counsel for the respondent applied for a no case to answer pursuant to section 178 of the Criminal Procedure Decree 2009. Section 178 gives the Magistrates' Court power to acquit the accused if it appears to the trial magistrate that a case is not made out against the accused after the close of the evidence for the prosecution. The test for the no case to answer under section 178 has two limbs ((*Moiden v R* (1976) 27 FLR 206; *State v Aiyaz* [2009] FJHC 186; HAC033.2008 (31 August 2009)). A no case to answer application can be upheld on either limb. The first limb of the test is whether there is no evidence on an essential element of the charged offence. The second limb of the test is whether the evidence adduced by the prosecution has been so discredited as a result of cross examination or is manifestly unreliable that no reliable tribunal could safely convict on it.
- [5] In the present case, the trial magistrate relied upon the second limb of the test to find the respondent had no case to answer. The reasons for the decision are summed up in paragraphs 15 and 16 of the ruling:

The prosecution called two witnesses to prove the elements of the offence of Assault Occasioning Actual Bodily Harm. After analyzing the evidence presented by the prosecution, this court finds that the prosecution has proved all the essential elements of the offence of Assault Occasioning Actual Bodily Harm. However, this court finds that the evidence adduced by the prosecution

is manifestly unreliable that no reasonable tribunal could safely convict on it. The complainant's evidence to that of the doctor's evidence with regards to injuries sustained by the complainant is quite contradictory. She stated that she suffered from High Blood Pressure. He stated she was calm and not distressed. She stated that her face turned blue after the accused kicked her. He stated that there was no bleeding or laceration or bruising. He stated that there are many possibilities of how the injuries noted on her could have been sustained.

Accordingly, I find that that there is no case to answer for the accused.

- [6] Counsel for the State's main complaint is that the trial magistrate had made a complete wrong assessment of the evidence in finding the evidence was so unreliable that no reasonable tribunal could convict. Counsel submits that the contradictions in evidence between the complainant and the doctor, if any, were on peripheral matters, and did not go to root of the issue whether the alleged assault took place. I accept these submissions. I think the evidence when taken at its highest was not so discredited or was so manifestly unreliable that no reasonable tribunal could convict (see, *Sahib v The State* [2005] FJHC 95; HAA0022J.2005S (28 April 2005)).
- [7] The trial magistrate's conclusion that the complainant's evidence regarding the injuries contradicted the doctor's evidence is not borne out of the evidence led by the prosecution. The complainant's evidence was that after she was kicked in the face she noticed that her "left face was started to turn blue". When she was medically examined a few hours later on the same day, she was calm and not distressed and the doctor did not see any discolouration of the skin but found swelling and tenderness on the left side of the face. Neither the prosecution nor the defence asked the doctor whether discolouration of skin could have been subsided by the time the complainant was medically examined and whether it was normal for a person who suffers from a high blood pressure to be calm and not distressed. The trial magistrate assumed that discolouration of skin could not have subsided and the doctor would have noted if any discolouration of skin had occurred as a result of the assault and that the complainant should have been distressed at the time of the medical examination because she suffered from a high blood pressure. The doctor's evidence was that the swelling and

tenderness could have been caused by any blunt force trauma, including being kicked by someone wearing a safety boot depending on the force used. That was the crux of the doctor's evidence, which was not inconsistent with the complainant's evidence.

[8] For these reasons, I am satisfied that the trial magistrate made an error of law in acquitting the respondent at the close of the evidence for the prosecution. The acquittal is set aside and the case is remitted to the same magistrate to continue with the defence's case after advising the respondent of his options. The respondent is ordered to appear in the Magistrates' Court at Nasinu on 2 May 2017, 9.30 am for mention.

Result

[9] The State's appeal is allowed.



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Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State
Office of the Legal Aid Commission for the Respondent