

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LAUTOKA

CRIMINAL CASE: HAC 121 OF 2013

BETWEEN : STATE

AND : AMRIT LAL

Counsel : Mr. S. Nath for State
Mr. J. Singh with Ms. Singh for the Accused

Date of Hearing : 24th - 25th of August 2016

Date of Ruling : 25th of August 2016

RULING ON NO CASE TO ANSWER

1. The name of the victim is suppressed. The victim will be referred as AA.
2. The accused is being charged with two counts of Rape contrary to Section 207 (1) and (2) (b) of the Crimes Decree and one count of Indecent Assault contrary to Section 212 (1) of the Crimes Decree. The particulars of the offences are that;

First Count

Amrit Lal, between the 1st January 2013 and 28th of April 2013, at Nadi in the Western Division, inserted his finger into the vagina of AA, without her consent,

Second Count,

Amrit Lal, between the 29th of April 2013 and 12th of May 2013, at Nadi in the Western Division, inserted his finger into the vagina of AA, without her consent,

Third Count,

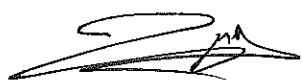
Amrit Lal, between the 1st January 2013 and 12th of May 2013, at Nadi in the Western Division, unlawfully and indecently touched the breast and body of AA without consent,

3. The accused pleaded not guilty for these three counts. The matter then proceeded to hearing. The hearing commenced on the 24th of August 2016. The prosecution presented evidence of four witnesses including the victim. At the conclusion of the prosecution case, the learned counsel for the defence made a submission of no case to answer pursuant to Section 231 (1) of the Criminal Procedure Decree.
4. Section 231 (1) of the Criminal Procedure Decree states that;

“ When the evidence of the witnesses of the prosecution has been concluded and after hearing (if necessary) any arguments which the prosecution or the defence may desire to submit, the court shall record a finding of not guilty if it considers that there is no evidence that the accused person committed the offence”
5. In pursuant of Section 231 (1) of the Criminal Procedure Decree, the court is required to satisfy whether there is some relevant and admissible evidence on

each element of the offence as charged in the information and not whether the evidence is credible and acceptable.

6. The learned counsel for the defence submitted that the victim failed to adduce evidence of identification of the accused as the perpetrator who committed these crimes on her as charged in the information.
7. The prosecution and the defence have agreed that the accused is the biological father of the victim. The victim in her evidence stated that her father used to commit these alleged crimes on her while she was sleeping in the night.
8. In view of the evidence adduced by the prosecution, I find that there is evidence that the accused committed these three offences as charged in the information. Accordingly, it is my opinion that there is evidence touching the main elements of the three counts as charged in the information. I accordingly hold that there is evidence that the accused committed this offence pursuant to Section 231 (1) of the Criminal Procedure Decree.


R. D. R. Thushara Rajasinghe
Judge

At Lautoka
25th of August 2016



Solicitors : Office of Director of Public Prosecution
Samusamuvodre Sharma Law