

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC. 54 of 2014

STATE

v.

ESAVA TUIVODO

Counsel: Ms. Kumar D. for State
Ms. Kean T. for Accused

Date of Hearing: 8th and 9th June 2015

Ruling: 12th June 2015

RULING
ON NO CASE TO ANSWER

1. At the conclusion of the prosecution case the accused makes an application for no case to answer in terms of section 231 (1) of the Criminal Procedure Decree. The section 231 (1) provides:

When the evidence of the witnesses for 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 (or any one of several accused) committed the offence. (underlining mine)

2. Referring to 'no evidence' mentioned in section 231 (1) of the Criminal Procedure Decree, in case of **State v Ratu Inoke Takiveikata**, Justice Goundar said:

"The phrase "no evidence" has been interpreted to mean that there is no evidence on an essential element of the charged offence (Sisa Kalisoqo v State Criminal Appeal No. 52 of 1984). If there is some evidence on the essential elements of the charged offence, the application for a no case to answer cannot succeed. The credibility, reliability and weight are matters for the assessors and not for the trial judge to consider at a no case to answer stage."

3. The particulars of offence as given in the information say that the accused had carnal knowledge of Vika Likutabua without her consent.
4. Therefore the elements that prosecution has to prove beyond reasonable doubt are that:
 1. The accused
 2. had carnal knowledge of the victim
 3. without her consent.
 4. He knew or believed that she was not consenting or did not care if she was not consenting.
5. Prosecution called the alleged victim to give evidence. In her evidence she clearly said that on the day of the alleged incident the accused came to her bed. The accused had touched her. She said that she was willing to have sex with the accused. Further she said she consented to have sex with the accused. She also said that she had intercourse with the accused.
6. On that evidence the State counsel moved for further time till the next day and when the case was called for further trial on the next day 12th June 2015, the victim (witness) was absent.
7. Prosecution closed its case with that evidence. The defence did not get an opportunity to cross examine the victim. However no such application was made by defence. Thereafter in terms of section 231 (1) of the Criminal

Procedure Decree the application for no case to answer was made by the defence. State counsel conceded that there is no case to answer.

8. The evidence available at this stage is the unchallenged evidence of the alleged victim that she willingly had sexual intercourse with the accused. Therefore I find there is no evidence placed by the prosecution on the element of "without her consent". The evidence available is that she consented to sexual intercourse.
9. Therefore I find that the accused has no case to answer and I find that the accused is not guilty as charged.
10. I acquit the accused accordingly.




Priyantha Fernando
Judge

At Suva

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