

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 109 of 2015

STATE

vs.

NEMANI MOCEISAVU

Counsel:

Ms. S. Serukai for State
Ms. M. Tarai for Accused

Dates of Hearing:

17th and 18th October 2016

Date of Ruling:

18th October 2016

RULING

[ON CASE TO ANSWER]

[Name of the victim is suppressed. The victim will be referred to as [J.R.]

1. The accused is charged with the following offences:

FIRST COUNT
(Representative)
Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (b) and (3) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

NEMANI MOCEISAVU, between the 1st day of September 2014 and the 31st day of October 2014, at Verata, Tailevu, in the Central Division, penetrated the anus of 'J.R.', a child under the age of 13 years, with his finger.

SECOND COUNT

(Representative)

Statement of Offence

SEXUAL ASSAULT: Contrary to section 210 (1) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

NEMANI MOCEISAVU, between the 1st day of September 2014 and the 31st day of October 2014, at Verata, Tailevu, in the Central Division, unlawfully and indecently assaulted 'J.R.', by kissing her lips.

THIRD COUNT

(Representative)

Statement of Offence

SEXUAL ASSAULT: Contrary to section 210 (1) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

NEMANI MOCEISAVU, between the 1st day of September 2014 and the 31st day of October 2014, at Verata, Tailevu, in the Central Division, unlawfully and indecently assaulted 'J.R.', by kissing her breasts.

FOURTH COUNT

(Representative)

Statement of Offence

SEXUAL ASSAULT: Contrary to section 210 (1) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

NEMANI MOCEISAVU, between the 1st day of September 2014 and the 31st day of October 2014, at Verata, Tailevu, in the Central Division, unlawfully and indecently assaulted 'J.R.', by kissing her vagina.

**FIFTH COUNT
(Representative)**

Statement of Offence

SEXUAL ASSAULT: Contrary to section 210 (1) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

NEMANI MOCEISAVU, between the 1st day of September 2014 and the 31st day of October 2014, at Verata, Tailevu, in the Central Division, unlawfully and indecently assaulted 'J.R.', by fondling her vagina.

**SIXTH COUNT
(Representative)**

Statement of Offence

SEXUAL ASSAULT: Contrary to section 210 (1) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

NEMANI MOCEISAVU, between the 1st day of September 2014 and the 31st day of October 2014, at Verata, Tailevu, in the Central Division, unlawfully and indecently assaulted 'J.R.', by rubbing his penis on her anus.

2. At the end of the prosecution case the defence made an application for No Case to Answer on Counts 4, 5 and 6 above, pursuant to section 231 (1) of the Criminal Procedure Decree 2009.

3. Section 231 (1) of the Criminal Procedure Decree 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)

4. Referring to ‘no evidence’ mentioned in section 231 (1) of the Criminal Procedure Decree, in the 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.”*

5. In offences of Sexual Assault in counts No. 4, 5 and 6 no evidence was led by the prosecution on the alleged sexual acts.
6. In count No.4 it is alleged that the accused kissed the complainant’s vagina. In count No. 5 it is alleged that the accused fondled the

complainant's vagina. In count No. 6 it is alleged that the accused rubbed his penis on the complainant's anus.

7. No evidence at all was led by the prosecution on the above sexual acts in counts 4, 5 and 6.
8. State Counsel also conceded that no evidence at all was led on counts 4, 5 and 6.
9. Therefore I find that the accused has no case to answer on counts 4, 5 and 6. I acquit the accused on counts 4, 5 and 6 accordingly.




Priyantha Fernando
Judge

At Suva

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