IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 325 of 2015

[CRIMINAL JURISDICTION]

STATE

V

1. MATIA TUIBUA TUBUMASI QAQANIKOROVOU
2. JIMILAI TAWAKEDRAU DROSE

Counsel	:	Mr. R. Kumar with Mr. E. Samisoni for State
		Mr. A. Chand for 1st Accused
		Mr. R. Vananalagi for 2nd Accused
Dates of Hearing	:	07th – 14th February 2017
Date of Ruling	:	15th February 2017

RULING ON NO CASE TO ANSWER

1. After the conclusion of the prosecution case, counsel for the 1st accused submitted that there is no case to answer for the 1st accused. Counsel for the 2nd accused informed court that he is not making any application at this stage. Counsel for the 1st accused pointed out that there is no evidence with regard to the identity of the 1st accused in relation to the three counts.

2. In response, the prosecution submitted that, in order to prove the identity of the first accused, they are relying on the evidence that the jacket tendered as PE 4 and the pinch bar tendered as PE 5 were found inside the 1st accused's house and on the fact that the first prosecution witness (PW 01) and the third prosecution witness (PW 03) identified the said exhibits as the jacket and the pinch bar they saw on 07th October 2015.

3. The test for no case to answer in the High Court is to consider whether there is some relevant and admissible evidence on each element of the offence charged. The counsel for the 1st accused only challenged the evidence on the elements based on the identity of the offender in respect of the three counts.

4. It is pertinent to note that there is a difference between, evidence to suggest that an accused may have committed an offence and the evidence that an accused committed an offence. In order to make a finding that there is a case to answer before the High Court, there should be some relevant and admissible evidence that the accused had committed the offence(s) charged. Evidence that merely suggests that the accused may have committed the offence is not sufficient.

5. In terms of section 231(1) of the Criminal Procedure Decree 2009, this court should record a finding of not guilty if it considers that there is no evidence that the accused person committed the offence.

6. In this case the only evidence on the identity of the 1st accused was ;
   a) PE 4 (jacket) and PE 5 (pinch bar) were found in the 1st accused's house about two days after the incident; and
   b) PW 01 and PW 03 identified the above exhibits as the jacket and the pinch bar they saw during the incidents they witnessed.

7. It should be noted that PW 01 and PW 03 clearly testified that they cannot exactly say that PE 4 and PE 5 were the same jacket and the same pinch bar they saw on 07th October 2015. Even if PE 4 and PE 5 were the same the jacket and the same pinch bar that the two witnesses saw during the relevant incidents, that evidence would not be sufficient to establish that the 1st accused committed the three offences he is charged with as PE 4 and PE 5 were simply found inside the 1st accused's house about 2 days after the incident.

8. In the circumstances, I find that the prosecution has failed to adduce evidence on the identity of the 1st accused in relation to each count. There is no evidence in respect of each count that the 1st accused committed the offences.

9. Accordingly, I find the 1st accused not guilty of the three offences he is charged with.

10. Considering the evidence led by the prosecution, I am satisfied that there is some relevant and admissible evidence that the 2nd accused committed the three offences he is charged with. Therefore I find that the 2nd accused has a case to answer in respect of the three offences.

Vinsent S. Perera
JUDGE

Solicitors for the State : Office of the Director of Public Prosecution, Suva.
Solicitor for the 1st Accused : Legal Aid Commission, Suva.
Solicitor for the 2nd Accused : R. Vananalagi & Associates