

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 428 OF 2018S

STATE
vs
MATAI CATI SAULEKALEKA

Counsels : **Ms. S. Sharma for State**
Ms. T. Kean for Accused
Hearing : **20 July, 2020.**
Ruling : **20 July, 2020.**

RULING ON NO CASE TO ANSWER SUBMISSION

1. On 20 July 2020, the first day of the trial, the following information was put to the accused, in the presence of his counsel:

“Statement of Offence

ACTS INTENDED TO CAUSE GRIEVOUS HARM: *Contrary to Section 255 (b) of Crimes Act 2009.*

Particulars of Offence

MATAI CATI SAULEKALEKA on the 7th day of November 2018, at Nasinu in the Central Division, with intent to do grievous harm to VINAYA NASILASILA, unlawfully attempted to strike the said VINAYA NASILASILA with a dangerous weapon.”

2. The accused said he understood the charge, and pleaded not guilty to the same. The matter then proceeded to trial before myself and three assessors. The complainant (PW1), then gave evidence. At the end of her evidence, the prosecution closed its case. The three assessors were then excused from the courtroom, while I heard the parties' submission on the issue of whether or not there was a case to answer.
3. Defence counsel submitted there was no case to answer against the accused on the ground that there was no evidence that the accused attempted to strike the complainant (PW1) with a spear. They said, the complainant's evidence was that the spear was thrown by the accused, not at the complainant, but at the ceiling of their flat at Nadera. She said, the above evidence does show that the accused had no intention of causing grievous harm to the complainant; otherwise, he would have aimed the spear at her. It also followed, argued the defence, that the accused did not attempt to strike the complainant with the spear. Consequently, the defence argued, the prosecution had failed to prove two essential elements of the charge; first, an intention to do grievous harm to the complainant; and second, unlawfully attempting to strike the complainant with a spear. The defence, as a result, asks the court to find a no case to answer against the accused, and find the accused not guilty as charged.
4. At first, the prosecution argued that the accused had a case to answer, but after carefully analyzing the case, the prosecution conceded there was no case to answer against the accused.
5. The law at this stage of the proceeding was section 231 (1) and (2) of the Criminal Procedure Act 2009, which reads as follows:

“(1) When the evidence of the witnesses for the prosecution has been concluded, and after hearing (if necessary) any arguments which the prosecution or the defense 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.

(2) When the evidence of the witnesses for the prosecution has been concluded, the court shall, if it considers that there is evidence that the accused person (or any one or more of several accused persons) committed the offence inform each such accused person of their right-

(a) To address the court, either personally or by his or her lawyer (if any); and

(b) To give evidence on his or her own behalf; or

(c) [Repealed]

(d) To call witnesses in his or her defence..."

6. The accused was charged under section 255 (b) of the Crimes Act 2009, which reads as follows:

"A person commits an indictable offence if he or she, with intent to main, disfigure or disable any person, or to do some grievous harm to any person, or to resist or prevent the lawful arrest or detention of any person-

(b) unlawfully attempts in any manner to strike any person with any kind of projectile or with a spear, sword, knife, or other dangerous or offensive weapon..."

- (c) For a prima facie case to be made against the accused on the above charge, the prosecution must prove the following facts on the balance of probabilities:

(i) The accused;

(ii) with intent to cause grievous harm to the complainant (PW1);

(iii) unlawfully attempts to strike the complainant with a spear.

- (d) One of the difficulties in assessing the complainant's evidence in this proceeding was that she spoke in a low voice. It was hard to understand what she was saying, when she was giving evidence. As a result, most of what she was saying when she was giving evidence

was not properly heard, as she was speaking in a low voice. It may be recorded by the recording machine, but what is required by the law, was that it **must** be heard by the trial judge, who was obliged by law to rule on a no case to answer submission.

- (e) After listening to the complainant's total evidence, there was a lot of gaps in her evidence. There was no sketch plan or photograph of the crime scene to understand the circumstances surrounding the crime scene. There was no clear measurements of where she was when the spear was thrown by the accused at the flat's ceiling. There was no details of what was uttered between the parties while they were arguing with each other, to show an intention to cause grievous harm on the complainant. There was no clear evidence to show that the accused unlawfully attempted to strike the complainant with a spear. On the whole, the complainant's evidence was not enough to make a prima facie case against the accused.
- (f) As a result of the above, I find the prosecution had not made out a prima facie case against the accused, requiring me to call upon him to make a defence. Even both prosecution and defence concede there was no case to answer against the accused. On the evidence, I find the accused does not have a case to answer. I find him not guilty as charged, and I acquit him accordingly.



Solicitor for the State

Solicitor for the Accused

: Office of the Director of Public Prosecution, Suva.

: Legal Aid Commission, Suva.



Salesi Temo
JUDGE