

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO. HAC 177 OF 2021**

**BETWEEN** : **STATE**

**AND** : **SAIMONI DRUGU**

**Counsel** : Ms U Tamanikaiyaroi for the State  
Ms R Nabainivalu for the Accused

**Date of Hearing** : **9 – 10 August 2023**

**Date of Ruling** : **10 August 2023**

**RULING**

(No Case To Answer)

[1] The trial commenced after the accused pleaded not to the following charges:

**Count 1 Sexual Assault**

Particulars – 2016, Lami, Kissed and Sucked Complainant's lips and tongue

**Count 2 Rape**

Particulars – 2016, Lami, Penetrated Complainant's vagina with finger

**Count 3 Rape**

Particulars – 2016, Lami, Penetrated Complainant's anus with penis

**Count 4 Criminal Intimidation**

Particulars – 2016, Lami, Threatened to kill Complainant

**Count 5 Sexual Assault**

Particulars – 2017, Lami, Kissed and Sucked Complainant's tongue

**Count 6 Rape**

Particulars – 2017, Lami, Penetrated Complainant's mouth with penis

**Count 7 Sexual Assault**

Particulars – 2017, Lami, Grabbed Complainant's thighs and kissed lips

**Count 8 Rape**

Particulars – 2017, Lami, Penetrated Complainant's vagina with tongue

**Count 9 Rape**

Particulars – 2017, Lami, Penetrated Complainant's vagina with finger

**Count 10 Sexual Assault**

Particulars – 2018, Nadi, Kissed Complainant's lips and touched her buttocks

**Count 11 Rape**

Particulars – 2018, Nadi, Penetrated Complainant's vagina with finger

**Count 12 Sexual Assault**

Particulars – 2019, Nadi, Kissed Complainant's lips and tongue

**Count 13 Rape**

Particulars – 2019, Nadi, Penetrated Complainant's vagina with finger

**Count 14 Rape**

Particulars – 2019, Nadi, Penetrated Complainant's vulva with penis

**Count 15 Sexual Assault**

Particulars – 2018, Nadi, Kissed Complainant's lips and tongue

**Count 16 Rape**

Particulars – 2020, Lami, Penetrated Complainant's vulva with penis

[2] The prosecution concluded its case after leading evidence from the complainant. I invited submissions from both parties on whether the accused has a case to answer in respect to all the charges against him.

[3] Section 231 of the Criminal Procedure Act states:

(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 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.

(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) to call witnesses in his or her defence.

- [4] The test for no case to answer under section 231 of the Criminal Procedure Act is narrow. The test is that there must be some relevant and admissible evidence, direct or circumstantial, touching on all the elements of the offence (*FICAC v Kumar* [2010] FJHC 56; HAC001.2009 (11 February 2010)). The credibility, reliability and weight of the evidence are matters not to be considered at this stage (*Sisa Kalisoqo v. State Criminal Appeal No. 52 of 1984, State v. Mosese Tuisawau Criminal Appeal No. 14 of 1990*).
- [5] The prosecution concedes that there is no evidence on counts 2, 8, 9, 13, 14, 15 and 16. The prosecution submits that there is some evidence on counts 1, 3, 4, 5, 6, 7, 10, 11, and 12.
- [6] I considered the admitted facts and the evidence of the complainant on each charge. I accept the prosecution's concession that there is no case to answer on counts 2, 8, 9, 13, 14, 15 and 16. In addition I find there is no case to answer on count 7.
- [7] On count 3 I find the accused could be convicted of a lesser offence of sexual assault. On counts 10 and 12 there is some evidence of at least one alleged conduct of kissing to amount to sexual assault.

[8] I acquit the accused on counts 2, 7, 8, 9, 13, 14, 15 and 16. I put the accused to his defence on counts 1, 3, 4, 5, 6, 10, 11, and 12.

[9] I will now explain the accused his options.



A handwritten signature in black ink, appearing to read "Daniel Goundar", written over a dotted line.

**Hon. Mr Justice Daniel Goundar**

**Solicitors:**

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