

IN THE RESIDENT MAGISTRATE'S COURT OF FIJI
AT NAVUA

Criminal Case : 25/2012

STATE
VS
MOHIT KUMAR

For Prosecution : Sgt. Lenitasi
For Accused : In person

Date of Hearing : 09 May 2013
Date of Judgment : 09 May 2013

Judgment

- [1] The accused was charged with the offence of Annoying Person contrary to section 213 (1) (a) of the Crimes Decree No. 44 of 2009.
- [2] It was alleged that on 01 Dec 2011 at Naitata, Navua the accused held the complainant's hand and uttered words such as I like you, I will give you money to accompany me thereby committing this offence.
- [3] The accused pleaded not guilty for the offence and after numerous adjournments the hearing was conducted on 09 May 2013.
- [4] The prosecution called 02 witnesses (the complainant and the IO) and for the defence accused opted to remain silent.

Summary of Evidence

- [5] PW1 was Payal Nand the complainant in this case. She said on 01 Dec 2011 after selling sweets she was coming back home with her sister. Suddenly the accused held her from back and offered her money to go with him. At that time the accused was drunk. The accused also asked her about her number and when she rejected his advances he shouted that he liked her. The accused was given the chance to cross

examine PW1 and in cross examination the witness stated again that the accused said the above things and she did not know any Sanjay Ram.

- [6] DC Basilio was the IO in this case and he recorded the caution statement of the accused. The statement was marked as EX-01 and charge statement was marked as EX-02. In cross examination the IO said he recorded all the things the accused said to him. Answering to a question raised by the Court the IO said the complaint was made to the police on 02 Dec early morning.
- [7] The prosecution did not want to call any other witnesses and closed their case. The Court being satisfied with evidence of the prosecution's witnesses explained to the accused about his rights and he opted to remain silent.

The Law

- [8] The accused was charged with the offence of Annoying Person contrary to section 213 (1) (a) of the Crimes Decree. Section 213 (1) (a) states :-

A person commits a summary offence if he or she, intending to insult the modesty of any person —

(a) utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by the other person

- [9] Section 57 of the Crimes Decree has imposed the prosecution with burden of proving every element of the offence.
- [10] Based on the facts in this case the elements the prosecution needs to prove are:-
- [a] the accused**
 - [b] intending to insult to modesty of PW1**
 - [c] uttered words intending that such word shall be heard by PW1**
- [11] Section 58 (2) of the Crimes Decree states that this burden must be proved beyond reasonable doubt by the prosecution.

Analysis of Evidence

- [12] The complainant in the Court stated that on that day the accused held her and asked her to go with him. She also said the accused offered her money. The accused failed to raise doubt about her evidence in cross examination.

- [13] I am satisfied with her evidence and believe that she was telling truth about the incident. The police complaint was made promptly raising her credibility further. I am also satisfied at the way the witness gave her evidence in the witness box.
- [14] The accused did not give evidence, but in his statement to the police he said because of the allegation there was to be a settlement between the parties and later they complained to the police. It is difficult to understand why the accused was trying to reach a settlement if he did not commit this offence.
- [15] For the above mentioned reasons I decide that the prosecution has proved this offence beyond reasonable doubt.
- [16] Therefore I find the accused guilty for the offence of Annoying Person contrary to section 213 (1) (a) of the Crimes Decree No. 44 of 2009 and convict him accordingly.
- [17] 28 days to appeal.

09 May 2013

H.S.P.Somararatne
Resident Magistrate