

**IN THE MAGISTRATE'S COURT AT LABASA**  
**CRIMINAL JURISDICTION**

*Criminal Case No. 557 of 2013*

**STATE**

v

**JEKE BALEIVERATA**

Appearance : **PC Lal** for the Prosecution  
**Mr Koroitini. J** for the Accused

Ruling : **7 June 2019**

**RULING**

**NO CASE TO ANSWER**

1. The Accused, Jeke Baleiverata was charged for *Indecent Assault* contrary to *section 212(1)* of the *Crimes Act*.
2. The name of the victim is suppressed to protect her privacy and interest and is referred to as "the Victim" in this ruling.
3. The particulars of the offence are that between the 1<sup>st</sup> and 31<sup>st</sup> of October 2012, at Nakalou village, Macuata, in the Northern Division, you unlawfully and indecently assaulted the Victim by touching her vagina.

4. The Accused pleaded not guilty to the charge on 18 September 2017. The case proceeded to trial on 14 February 2018.
5. The Prosecutor called the Victim as the only witness in this case and closed his case. The Counsel for the Accused make a no case to answer application and directed to file submission. The submission was filed on 16 August 2018.

#### Defence application

6. The Defence submitted that the Victim failed to identify Jeke as she only heard a voice which she believed to be Jeke. There is no evidence on the identity.

#### Law

7. *Section 212(1) of the Crimes Decree state;-*  
*""A person commits a summary offence if he or she unlawfully and indecently assaults any other person.""*
8. The elements of the offence are;-
  - a. *the accused,*
  - b. *had contact with the victim,*
  - c. *the contact was unlawful and indecent.*
9. The test for no case to answer in the Magistrate Court was explained in **Abdul Gani Sahib v The State** [2005] FJHC 95; HAA 022 of 2005; 28 April 2005, as;-
  - a. *Whether there is relevant and admissible evidence implicating the accused in respect of each element of the offence.*
  - b. *If there is evidence, whether it is so discredited that no reasonable tribunal could convict on it."*
10. The burden of prove is on the Prosecution.

### **Analysis and determination**

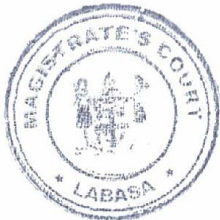
11. The Accused was identified in court by the Victim as Jeke Baleiverata.
12. The Victim stated in her evidence that between 1 to 31 October 2012, at Nakalou, the Accused came and touched her vagina and went away. She cannot recall the day but it was after 8pm. She did not have any conversation with the Accused. That happened outside of their house when she was carrying a child. She was ashamed when the Accused touched her and she went to her house.
13. In cross-examination, she said at that time, it was not really dark and she saw the Accused on the light in that area. She informed her husband on that afternoon. She said it happened in October and she reported in December. She reported because her husband keeps asking about the Accused. She wanted to withdraw her complain.
14. The Defence is challenging the element of identity. The Victim stated that it was after 8pm and it was not really dark. The Victim then said that she saw the Accused on the light in the area. These evidence shows that the place was dark and the identity of the Accused is questionable as there is no evidence on the position and the brightness of the light.
15. The evidence adduce on the identification of the Accused is not sufficient. There was no conversation between the Accused and the Victim. Where the Accused was coming from and how he touched the Victim's vagina is not clear from the evidence. Considering that the place is dark, there is no evidence that the Victim has been observing or seen the Accused coming to her and for how long. How the Accused touched her was not clear from the evidence. Where was the Accused when he touched her

was not clear from the evidence. These are relevant question and evidence that must be elicited and adduced to eliminate any possible doubt on the identity of the Accused. With all these unclarified issues, the identity of the Accused is questionable.

16. In assessing the evidence of the Prosecution, I find that no court can convict on the evidence relating to the identity of the Accused.

17. In this ruling, I find that the Accused has no case to answer. I dismiss the case under *section 178* of the *Criminal Procedure Act*, and I acquit the Accused accordingly.

**28 days to appeal**



A handwritten signature in blue ink, appearing to read "C. M. Tuberi". The signature is stylized and written over a horizontal line.

C. M. Tuberi  
**RESIDENT MAGISTRATE**