

IN THE RESIDENT MAGISTRATE COURT OF FIJI
AT SUVA - CRIMINAL JURISDICTION

CRIMINAL CASE NO. 1174/16

BETWEEN : State
Prosecution

AND : Sanjeshwar Prasad
Accused

Appearance

Prosecution : Ms. Sharma (ODPP)
Accused : Mr. Walli (MA Khan Lawyers)

RULING

1. This matter has been pending since 2016.
2. By way of chronology the court notes that the accused was first produced on 15th July 2016. The accused was represented on 19th October 2016 and had taken his plea wherein he had pled not guilty.
3. A trial date was fixed thereafter to be conducted on the 6th of March 2017 but this was vacated as a result of the accused not being present due to sickness.
4. Thereinafter any attempts to re-fix a date for trial were derailed as a result of the accused requiring medical attention and a psychiatric evaluation.
5. This has been conducted not once but twice and both reports form part of the court record.
6. Doctor Elizabeth Koroivuki's report dated 22nd February 2018 has alluded to the fact that the accused suffers from the medical condition namely 'Organic Brain Syndrome' which has affected his ability to concentrate, remember events and things from time to time. This status occurred following a motor vehicle accident in January 2017.

7. Doctor Koroivuki concluded that the accused was not fit to participate in the court proceedings and be capable of giving reasonable answers in Court due to his mental state. She stated that the accused was unaware of his actions during the alleged incident.
8. The second medical report was prepared by Doctor Kiran Gaikward and is dated 12th February 2020.
9. His report in terms of the medical condition mirrors Doctor Koroivuki's in the sense that the accused is diagnosed with the medical condition namely "Organic Brain Syndrome" which has affected his ability to concentrate, remember events and things from time to time. This status occurred following a motor vehicle accident in January 2017.
10. Doctor Gaikward concluded that the accused would not be able to meaningfully participate in the court proceedings due to his mental state. He however stated that the accused was aware of his actions during the alleged incident.
11. He explained this in court (after he was summoned to give an explanation), that during the alleged incident the accused was fully aware of the same. However, due to his head injury as a result of the motor vehicle accident which occurred post-charge the accused now suffers from a mental impairment which limits meaningful participation in court proceedings.
12. In *State v Semesa Roko* Criminal Case No. HAC 009 of 2001 at paragraph 9 *Goundar J* stated :

"...the seriousness of the charges cannot in any way diminish the accused's right to a fair trial. The right to a fair trial incorporates the right to understand the proceedings and to put up a defence, regardless of the seriousness of the charges. In that regard section 104 of the Criminal Procedure Decree and the application of the Mental Health Decree to criminal proceedings is clear...what could be more unfair than to try the accused suffering from paranoid hallucinations and does not understand the proceedings due to his mental illness? There is a real risk that the trial will miscarry if continued."
13. Given that the two reports confirm that the accused is suffering from a mental illness, which in the court's view shall limit his court participation. This is stated considering that the offence charged (*Abduction of Person under 18 years of Age with Intent to Have Carnal Knowledge*: Contrary to Section 211(1) of the **Crimes Act 2009**) has a statutory defence which can only be activated upon the close of prosecution case and after a finding of there being a Case to Answer.

14. However, the above being stated does not limit what appears to be a difficult situation thrust upon the counsel of the accused in trying to effectively obtain instructions for the purposes of the trial given the unchallenged fact of the accused's sickness.
15. This is stated even though a plea of not guilty was entered however as this court is now made aware, the plea was taken prior to the onset of his mental impairment.
16. In the circumstances this court considers and echoes the sentiments by *Goundar J* in *Semesa Roko's* case (supra) that '*There is a real risk that the trial will miscarry if continued*'.
17. As such pursuant to section 104(2)(b) of the *Criminal Procedure Act, 2009* the court orders that Prosecution needs to consider the status of the charge given the observations of the court as above stated.
18. The court so orders.

5.

JEREMIA A. N. L. SAVOU
Resident Magistrate
18/ November 2021

