

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 095 OF 2010S

THE STATE

v.

- 1. SALESI BALEKIVUYA**
- 2. SAIMONI TUKANA**

Counsels : Ms. N. Wickramasekera and Ms. M. Tikoisuva for the State
Mr. T. Muloilagi for Accused No. 1
Ms. B. Malimali for Accused No. 2

Hearings : 4th to 22nd July, 2011

Ruling : 22nd July, 2011

RULING ON NO CASE TO ANSWER

1. The two accuseds were jointly charged with "murder", contrary to section 237 of the Crimes Decree 2009, and two counts of "attempted robbery", contrary to sections 44(1) and 310(1)(a)(i) of the Crimes Decree 2009. Accused No. 1 faced an additional count of "damaging property", contrary to section 369(1) of the Crimes Decree 2009.
2. The prosecution had closed their case, after calling 23 witnesses. Both defence counsels have made a submission of no case to answer. The State has made a submission in reply. I have carefully listened to and considered both parties submissions.

3. The authority at this stage of the proceedings is section 231(1) and (2) of the Criminal Procedure Decree 2009. Section 231(1) and (2) reads as follows:

“...231.—(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; and

(d) to call witnesses in his or her defence...”

4. It is well settled that, the test at this stage of the trial is whether or not there is some relevant and admissible evidence, direct or circumstantial, touching on all elements of the charge, the weight and credibility of such evidence not being matters for assessment: ***The State v George Shiu Raj & Another***, Criminal Appeal No. AAU 0081 of 2005, Fiji Court of Appeal; ***The State v Brian Singh***, Criminal Appeal No. AAU 0097 of 2005, Fiji Court of appeal, ***Sisa Kalisoqo v Reginam***, Criminal Appeal No. 52 of 1984, Fiji Court of Appeal and ***State v Anesh Ram***, Criminal Case No. HAC 124 of 2008S, High Court, Suva.
5. In this case, after listening to the prosecution’s 23 witnesses, and bearing in mind section 231(1) and (2) of the Criminal Procedure Decree 2009, the authorities cited in paragraph 4 hereof and the parties’ submissions, I am of the view that a prima facie case exist against both accuseds, requiring them be called upon to make their defence. There is a case to answer.

6. Both accuseds are entitled to:
- (i) to address the court, through their lawyers or themselves;
 - (ii) to give sworn evidence; and
 - (iii) to call witnesses in their defence.



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Salesi Temo

JUDGE

Solicitors for the State : **Office of Director of Public Prosecution, Suva.**
Solicitors for Accused No. 1 : **Mr. T. Muloilangi, Barrister & Solicitor, Suva**
Solicitors for Accused No. 2 : **Pacific Chambers, Barristers & Solicitors, Suva**