

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 087/2011

BETWEEN : THE STATE

AND : JOSEVATA MASALA

COUNSEL : Mr L Fotofili and Ms A Fatiaki for the State
Mr A Vokololoma the Accused

Date of Trial: 30/06-01/07/2014

Date of Ruling: 02/07/2014

RULING

[Name of the victim is suppressed. She will be referred to as L.B.]

- [01] The prosecution closed their case on 01/07/2014. At this stage the defence counsel pursuant to Section 231(1) of Criminal Procedure Decree 2009 invited the court to consider whether the accused has a case to answer. The accused is charged by an amended information as follows:

FIRST COUNT

Statement of Offence

RAPE: Contrary to Section 150 of the Penal Code, Cap 17.

Particulars of Offence

Josevata Masala, between the 1st of February and 28th of February, 2009 at Nasinu in the Central Division, had carnal knowledge of L.B. without her consent.

SECOND COUNT

Statement of Offence

RAPE: Contrary to Section 207(1) and (2) (a) of the Crimes Decree No.44 of 2009.

Particulars of Offence

Josevata Masala, between the 1st of May and 31st of May, 2010 at Nasinu in the Central Division, had carnal knowledge of L.B. without her consent.

THIRD COUNT

Statement of Offence

ATTEMPT TO COMMIT RAPE: Contrary to Section 208 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

Josevata Masala, on 12th March 2011 at Nasinu in the Central Division, attempted to have carnal carnal knowledge of L.B. without her consent.

[02] The elements of the offence of Rape are:-

1. The accused had carnal knowledge of the complainant.
2. Without the complainant's consent.
3. He knew or believed that she was not consenting or didn't care if she was not consenting.

[03] The elements of Attempted Rape are:

1. It was the accused;
2. attempted;
3. to have sexual intercourse with the victim;
4. without her consent and the complainant would not be consenting to sex at that time.

[04] The prosecution relies on direct, circumstantial and documentary evidence to prove the charge. Further they tendered the caution interview statement of the accused as evidence.

[05] The test at this stage of trial is whether there is some evidence on each element of the offence. The evidence must be relevant and admissible. In **Kalisoqo v R** Criminal Appeal No: 52 of 1984, the Court of Appeal took the view that if there is some direct or circumstantial evidence on the charged offence, then a judge cannot say there is no evidence on the proper construction of Section 293(1) (Under Old Law). This view was later confirmed by the Court of Appeal in **State v Moses Tuisawau** Cr. App. 14/90.

[06] In **State v Woo Chin Chae** [2000] HAC 023/99S Madam Shameem J summarized test under Section 293(1):

"In order to come to the conclusion that there was evidence direct or circumstantial, and irrespective of its weight, credibility or its tenuous nature it must be shown that the evidence in question is relevant, admissible and is in totality inculpatory of the accused. That means that the evidence in its totality must at least touch on all the essential ingredients of the offence"

- [07] In **State v George Shiu Raj & Shashi Shalendra Pal** [2006] AAU0081/05 Court of Appeal recently confirmed that the correct approach under 293(1) is to ask whether there is some relevant and admissible evidence on each element of the charged offence, and not whether the evidence is inherently vague or incredible.
- [08] The prosecution led evidence that the accused had sexual intercourse forcibly with the victim when she stayed at Nadera. She did not tell anybody due to fear of her parents. Further she was ashamed of what the accused had done to her. At one occasion the accused had tried to have sexual intercourse with the victim at midnight.
- [09] The State submits that on the issue of corroboration no longer required as per Section 129 of the Criminal Procedure Decree, 2009.
- [10] Without going in detail the evidence led by prosecution in support of the charge, I am satisfied that there is some evidence of involvement of the accused in committing the offence. This matter, of course, a matter for the assessors to consider with all the evidence.
- [11] I find the accused has a case to answer and he is therefore put to his defence.



P Kumararatnam

JUDGE

At Suva

02/07/2014