

IN THE HIGH COURT OF FIJI

CRIMINAL JURISDICTION

AT LAUTOKA

CRIMINAL CASE: HAC 112 OF 2013

BETWEEN : STATE

AND : PECELI TABULA SENIBUA

Counsel : Ms. J. Fatiaki for State
Ms. Ratu for the Accused

Date of Hearing : 31st of May 2016

Date of Ruling : 31st of May 2016

RULING ON NO CASE TO ANSWER

1. The accused person is charged with two counts of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Decree. The particulars of the offence are that;

First Count

“ Peceli Tabula Senibua on the 15th day of May 2013 at Sigatoka in the Western Division inserted his penis into the vagina of Merelita Seniuci without her consent”

Second Count,

“ Peceli Tabula Senibua on the 15th day of May 2013 at Sigatoka in the Western Division inserted his penis into the vagina of Merelita Seniuci without her consent”

2. The Accused person pleaded not guilty for these two counts, hence the matter was proceeded to hearing. The hearing commenced on 31st of May 2016. The Prosecution called three witnesses in order to prove the charges against the accused person. At the conclusion of the prosecution’s case the learned counsel for the accused person made submissions pursuant to Section 231 (1) of the Criminal Procedure Decree, that there is no evidence presented by the prosecution to prove that the accused person has committed the second count as charged in the information.

3. Section 231 (1) of the Criminal Procedure Decree states that;

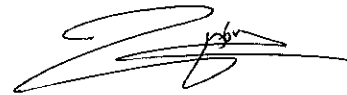
“ When the evidence of the witnesses of the prosecution has been concluded and after hearing (if necessary) any arguments which the prosecution or the defence may desire to submit, the court shall record a finding of not guilty if it considers that there is no evidence that the accused person committed the offence”

4. In pursuant of Section 231 (1) of the Criminal Procedure Decree, the court is required to satisfy whether there is some relevant and admissible evidence on each element of the offence as charged in the information and not whether the evidence is credible and acceptable.

5. The victim in her evidence did not state anything about the second count as charged. She stated that the accused inserted his penis into her vagina and had sexual intercourse at the cassava plantation on the 15th of May 2013. It lasted for

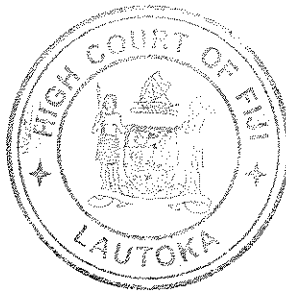
about two to three minutes. He then got up and walked away. Hence, I find there is no evidence presented by the prosecution in respect of the second count.

6. Accordingly, it is my opinion that there is no evidence touching the main elements of the second count as charged in the information. I accordingly hold that the accused is not guilty for the second count pursuant to Section 231 (1) of the Criminal Procedure Decree.



R. D. R. Thushara Rajasinghe
Judge

At Lautoka
31st of May 2016



Solicitors : Office of the Director of Public Prosecutions
Office of Legal Aid Commission