

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LAUTOKA

CRIMINAL CASE: HAC 006 OF 2013

BETWEEN : STATE

AND : SALMENDRA RATNESH CHAND

Counsel : Mr. A. Singh for State
Ms. P. Chand for the Accused

Date of Hearing : 8th - 10th of August 2016

Date of Ruling : 10th of August 2016

RULING ON NO CASE TO ANSWER

1. The accused is charged with one count of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Decree, one count of Criminal Intimidation contrary to Section 375 (1) (a) (i) of the Crimes Decree and one count of Theft contrary to Section 291 (1) of the Crimes Decree. The particulars of the offences are that;

The First Count,

"Salmendra Ratnesh Chand on the 8th of December 2012, at Nadi in the Western Division, had carnal knowledge of Taziana Hanif without her consent"

The Second Count

“Salmendra Ratnesh Chand on the 8th of December 2012, at Nadi in the Western Division, without lawful excuse threatened to injure Taziana Hanif with a kitchen knife”

The Third Count

“Salmendra Ratnesh Chand on the 8th of December 2012, at Nadi in the Western Division, dishonestly appropriated an Acer brand Laptop valued at \$ 3,000, a mobile phone valued at \$ 300, a hand bag valued at \$ 150, a diamond ring valued at \$ 800, a makeup kit valued at \$ 400 and a wallet valued at \$ 750 all to the total value of \$ 4,725 the property of Taziana Hanif, with the intention of permanently deprive Taziana Hanif of the said property”

2. The accused pleaded not guilty for these three counts. Hence, the matter proceeded to hearing. The hearing commenced on 8th of August 2016. The prosecution adduced the evidence of four witnesses including the victim. At the conclusion of the prosecution's case, the learned counsel for the defence made submissions of no case to answer pursuant to Section 231 (1) of the Criminal Procedure Decree.
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. Section 291 (1) of the Crimes Decree defines the offence of theft as;

"A person commits a summary offence if he or she dishonestly appropriates property belonging to another with the intention of permanently depriving the other of the property".

6. Accordingly, the main elements of the offence of Theft as charged in the information are that;

i) The accused,


ii) with intention to permanently deprive the victim,

iii) dishonestly appropriated the items described in the particulars of offence under the third count,

7. The victim in her evidence specifically stated that she did not see what happened to her items after she left the room 411. The accused and Avnil Deo, were still in the room when she left it. Avnil Deo in his evidence stated that he left the room when the accused went out looking for the victim. He did not see whether the accused came back to the room after he left. Avnil saw the items were inside the room when he left. He further stated that he did not see whether the accused took those items. The Receptionist in her evidence stated that she saw the

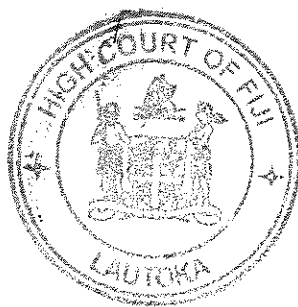
accused was carrying a bag when he was checking out of the Resort. It was the same bag he had when he checked into the Resort.

8. In view of the evidence adduced by the prosecution, I find that there is no evidence that the accused dishonestly appropriated the items described in the particulars of the offence with the intention of permanently deprive the victim of them. Hence, I find there is no evidence presented by the prosecution in respect of the third count.
9. Accordingly, it is my opinion that there is no evidence touching the main elements of the third count of theft as charged in the information. I accordingly hold that the accused is not guilty for the third count pursuant to Section 231 (1) of the Criminal Procedure Decree and acquit him accordingly.



R. D. R. Thushara Rajasinghe
↓
Judge

At Lautoka
10th of August 2016



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