

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LAUTOKA

CRIMINAL CASE: HAC 91 OF 2016

BETWEEN : STATE

AND : SAMISONI MOLILEVU

Counsel : Ms. S. Naibe for State
Accused in person.

Date of Hearing : 25th of September. 2019

Date of Ruling : 25th of September, 2019

RULING ON NO CASE TO ANSWER

1. The accused is being charged with three counts of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act, three counts of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes Act, two counts of Assault Occasioning Actual Bodily Harm, contrary to Section 275 of the Crimes Act, one count of Indecently Annoying a Person, contrary to Section 213 (1) (b) of the Crimes Act and one count of Criminal Intimidation, contrary to Section 375 (1) (b) (i) (iv) and 2 (i) of the Crimes Act. The particulars of the offences are that;

Count 1
Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (a) of the Crimes Act 2009

SAMISONI MOLILEVU on the 17th day of April, 2016 at Nadi in the Western Division penetrated the vagina of **VASEMACA MAUTA** with his penis without her consent.

Count 2
Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (b) of the Crimes Act 2009

SAMISONI MOLILEVU on the 17th day of April, 2016 at Nadi in the Western Division penetrated the vagina of **VASEMACA MAUTA** with his fingers without her consent.

Count 3
Statement of Offence

ASSAULT OCCASIONING ACTUAL BODILY HARM: Contrary to section 275 of the Crimes Act 2009

SAMISONI MOLILEVU on the 17th day of April, 2016 at Nadi in the Western Division assaulted **VASEMACA MAUTA** thereby occasioning her actual bodily harm.

Count 4
Statement of Offence

INDECENTLY ANNOYING A PERSON: Contrary to section 207 (1) and (2) of the Crimes Act 2009

SAMISONI MOLILEVU on the 17th day of April, 2016 at Nadi in the Western Division with intent to annoy **VASEMACA MAUTA** did spit on her face and

urinated on the said VASEMACA MAUTA intending that such action will offend her modesty.

Count 5

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (b) of the Crimes Act 2009

SAMISONI MOLILEVU on the 18th day of April, 2016 at Nadi in the Western Division penetrated the vagina of **VASEMACA MAUTA** with his penis without her consent.

Count 6

Statement of Offence

ASSAULT OCCASIONING ACTUAL BODILY HARM: Contrary to section 275 of the Crimes Act 2009

SAMISONI MOLILEVU on the 18th day of April, 2016 at Nadi in the Western Division assaulted **VASEMACA MAUTA** thereby occasioning her actual bodily harm.

Count 7

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (a) of the Crimes Act 2009

SAMISONI MOLILEVU on the 19th day of April, 2016 at Nadi in the Western Division penetrated the vagina of **VASEMACA MAUTA** with his penis without her consent.

Count 8

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (b) of the Crimes Act 2009

SAMISONI MOLILEVU on the 19th day of April, 2016 at Nadi in the Western Division penetrated the vagina of **VASEMACA MAUTA** with his fingers without her consent.

Count 9
Statement of Offence

ASSAULT OCCASIONING ACTUAL BODILY HARM: Contrary to section 275 of the Crimes Act 2009

SAMISONI MOLILEVU on the 19th day of April, 2016 at Nadi in the Western Division assaulted **VASEMACA MAUTA** thereby occasioning her actual bodily harm.

Count 10
Statement of Offence

CRIMINAL INTIMIDATION: Contrary to section 375 (1) (b) (i), (iv) and (2) (i) of the Crimes Act 2009

SAMISONI MOLILEVU on the 19th day of April, 2016 at Nadi in the Western Division without lawful excuse threatened to kill **VASEMACA MAUTA** with intent to cause alarm to the said **VASEMACA MAUTA**.

2. The hearing commenced on the 25th of September 2019. The prosecution presented the evidence of the complainant and closed the case of the prosecution. Having heard the evidence presented by the prosecution, I now proceed to pronounce my ruling pursuant to Section 231 (1) of the Criminal Procedure Act.

The Law on No Case to Answer

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

“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.

4. Accordingly, the trial judge is required to find the accused not guilty at the conclusion of the case of the prosecution, if the court considers that there is no evidence to establish that the accused person committed the offence.
5. The Fiji Court of Appeal in **Talala v State [2019] FJCA 50; AAU155.2015 (7 March 2019)** held that the test under Section 231 (1) of the Criminal Procedure Act is to determine whether there is some relevant and admissible evidence, direct or circumstantial, touching on all elements of the charge. It is not a duty of the court to take into consideration the credibility, reliability and the weight of the evidence at that state. The Fiji Court of Appeal in **Talala v State (supra)** held that;

“It is well settled that, the test at this stage of the trial is whether there is some relevant and admissible evidence, direct or circumstantial, touching on all elements of the charge and not an assessment of the weight and credibility of such evidence, unless the evidence is inherently vague or improbable”

6. The High Court of Fiji in **State v Nikolic [2019] FJHC 91; HAC115.2018 (18 February 2019)** held that;

“The test for a no case to answer application in the High Court is settled. The test is whether there is some incriminating evidence, direct or circumstantial, on all the essential ingredients of the charged offence or offences (Sisa Kalisoqo v R Criminal

Appeal No. 52 of 1984, State v Mosese Tuisawau Cr. App. 14/90, State v Woo Chin Chae [2000] HAC 023/99S).

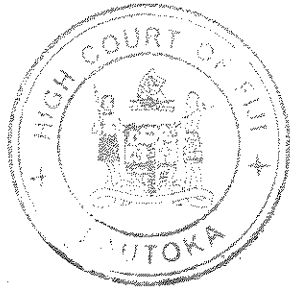
7. Accordingly, the court is required to determine whether the prosecution presented some relevant and admissible incriminating evidence, direct or circumstantial, on all the essential elements of the offence as charged.

Analysis

8. The complainant said that she had consensual sexual intercourse with her husband, in this case the accused, on the 17th, 18th and 19th of April 2016. Apart from the continuous complain made by the accused asking whether the complainant was having another affair, the days went on without any incidents. The complainant further said that the accused had been possessed with some demon spirit over the years. According to the complainant, the accused encountered with these demon spirits after they had sexual intercourse on the night of the 19th of April 2016. Once such demon spirits got into his body, the accused changed into another person. She knows that it was not her own husband, but some demon spirits. Therefore, she got up and ran out of the house with her kids as she did not want to give herself to a demon spirit.
9. Moreover the complainant said that her husband had been a loving and caring husband. She had sexual intercourse with him on the 17th, 18th and 19th of April 2016 with her consent.
10. In view of these findings, I am satisfied that there is no evidence to establish the main elements of any of the ten offences as charged in the information. Hence, I

find the accused not guilty of all of the ten counts as charged in the information and acquit him from the same accordingly.

11. Thirty (30) days to appeal to the Fiji Court of Appeal.




R. D. R. Thushara Rajasinghe
Judge

At Lautoka

25th September, 2019

Solicitors : Office of the Director of Public Prosecutions