

IN THE HIGH COURT OF FIJI
AT LABASA
[APPELLATE JURISDICTION]

CRIMINAL APPEAL CASE NO. HAA 15 OF 2020

(Magistrates' Court Case No. 579 of 2018)

BETWEEN: **THE STATE**

APPELLANT

AND: **INIA VETAUKULA**

RESPONDENT

Counsel: **Ms A Vavadakua for the Appellant**
 Ms R Raj for the Respondent

Date of Hearing: **22 July 2020**

Date of Judgment: **24 July 2020**

JUDGMENT

1. On 29 October 2018, the respondent was charged with defilement of a 14 year old girl. He was released on bail by the court on the same day.
2. After two adjournments, on 25 May 2019, the respondent entered a plea of not guilty to the charge. The prosecution was conducted by police.
3. On 9 December 2019, the case was fixed for trial on 21 January 2020. On 21 January 2020, the prosecution applied for an adjournment of the trial on the ground that the complainant and her mother could not be located. The learned magistrate refused the prosecutor's application and directed the prosecution to call evidence. The prosecution did not call any evidence. The learned magistrate acquitted the respondent

pursuant to section 178 of the Criminal Procedure Act. This is an appeal against that acquittal by the State on the ground that the learned magistrate erred when he failed to exercise his discretion judiciously in refusing the prosecutor's application for adjournment.

4. The principles concerning adjournment of trials are settled. In *State v Agape Fishing Enterprises (2008)* FJHC19; HAA 011.2008 (15 February 2008) the court said:


The granting of an adjournment is a matter of discretion. The discretion must be exercised judicially so that the rights of the parties are not defeated and that no injustice are done to one or other of the parties (see, **McCahill v State**, Criminal Appeal No. 43 of 1980; **Chand v State**, Criminal Appeal No. AAU0056 of 1999S).

5. In his ruling the learned magistrate took into account that the prosecution could not serve the summons on the witnesses because they could not be located. He was not satisfied that the witnesses will be located if the trial was adjourned. He considered the respondent's constitutional right to be tried without unreasonable delay and concluded that there was no good cause for an adjournment of the trial.
6. In my judgment the learned magistrate exercised his discretion judiciously in refusing the prosecution's application for adjournment of the trial. The prosecution was given ample opportunity to secure attendance of their witnesses when the case was fixed for trial on 9 December 2019. The prosecutor gave two reasons for not serving the summons on the witnesses. He informed the court that the complainant was residing somewhere in Qamea and her mother was residing somewhere in Vatuwaqa. The second reason was that the summons could not be served due to bad weather.
7. It is clear that the prosecution is the author of their predicament. They did not act diligently to secure the attendance of their witnesses for the trial. They did not act diligently to issue summons immediately after the case was set for trial. They waited until two week before the commencement of the trial to issue witnesses' summons. When they tried to serve the summons they could not locate their witnesses. The bad

weather was never an impediment. The impediment was that they did not know the exact locations of their witnesses to effect service of the summons. The reason they could not locate their witnesses was because they were late in issuing summons after learning the case had been set for trial.

8. For these reasons, the learned magistrate is not at fault in refusing adjournment of the trial. The prosecution failed to convince the learned magistrate that the witnesses can be located for sure if adjournment was granted. The case was hanging over the respondent for 14 months. He had been appearing in court to answer the charge. The learned magistrate took into account the respondent's right to be tried within reasonable time and refused the application for adjournment. He did not defeat the rights of the parties by his decision refusing an adjournment. The prosecution was given sufficient notice of the trial but they failed in their responsibility to secure their witnesses for the trial.
9. The State's appeal is dismissed.




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Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for Appellant
Office of the Director of Legal Aid Commission for Respondent