

IN THE FIRST CLASS MAGISTRATES COURT  
AT SUVA  
CRIMINAL JURISDICTION

Juvenile Case No. 07 of 2016

**The State**

**v**

**Tomasi Tudravu (The Accused) &**

**T D W (The Juvenile)**

**For the State** : WPC Eka  
**For the Accused** : Counsel Ms. David  
**Date of Punishment** : 10<sup>th</sup> May 2017

**Ruling on No Case to Answer Submissions**

1. The Accused and the Juvenile have been charged with one count of **Aggravated Robbery** contrary to section 311(1)(a) of the Crimes Decree No. 44 of 2009.
2. This is an indictable offence and the case was transferred to the High Court on 12/02/2016. Subsequently, the High Court has granted extended jurisdiction to

the Juvenile Court on 18/ 02/ 2016 in terms on Section 4(2) of the Criminal Procedure Decree 2009.

3. The Juvenile has pleaded guilty to the charge while the Accused has pleaded not guilty.
4. Punishment for the Juvenile is being prepared and pronounced separately.
5. The case against the Accused was fixed for hearing and at the conclusion of the prosecution case, the learned Counsel who appeared for the Accused made a No Case to Answer submission in terms of section 178 of the Criminal Procedure Decree 2009 and the same was filed in writing.
6. This Ruling is on the said submission of No Case to Answer.
7. Section 178 of the Criminal Procedure Decree of 2009 states that, "*If at the close of the evidence in support of the charge it appears to the court that a case is not made out against the accused person sufficiently to require him or her to make a defence, the court shall dismiss the case and shall acquit the accused.*"
8. The legal principles to be followed in deciding whether there is a case to be answered by the Accused, have been discussed in several decided cases.
9. In Sahib v State [2005] FJHC 95; HAA0022J.2005S (28 April 2005), Justice Shameem has adopted a test to be applied in Magistrate Courts, in 'No Case to Answer, situation. Justice Shameem has cited the test found in R v. Galbraith (1971) 73 Cr. App. R. 124, which is in two- pronged.
  1. *whether there is no evidence that the accused committed the offence*
  2. *if there is evidence, whether it is so discredited that no reasonable tribunal could convict on it*

Her Ladyship further said, *“In the Magistrates’ Courts, both tests apply. So the magistrate must ask himself or herself firstly whether there is relevant and admissible evidence implicating the accused in respect of each element of the offence, and second whether on the prosecution case, taken at its highest, a reasonable tribunal could convict. In considering the prosecution case at its highest, there can be no doubt at all that where the evidence is entirely discredited, from no matter which angle one looks at it, a court can uphold a submission of no case. However, where a possible view of the evidence might lead the court to convict, the case should proceed to the defence case.”*

10. In *State v Aiyaz* [2009] FJHC 186; HAC033.2008 (31 August 2009), Justice Goundar observed that;

*The test for no case to answer in the Magistrates’ Court under section 210 is adopted from the Practice Direction, issued by the Queen’s Bench Division in England and reported in [1962] 1 All E.R 448 (Moiden v R (1976) 27 FLR 206). There are two limbs to the test under section 210:*

- [i] Whether there is no evidence to prove an essential element of the charged offence;*
- [ii] Whether the prosecution evidence has been so discredited or is so manifestly unreliable that no reasonable tribunal could convict.*

*An accused can rely on either limb of the test under section 210 to make an application for no case to answer in the Magistrates’ Court.*

(Section 210 is the correspondence section of the repealed Criminal Procedure Code to the section 178 of the Criminal Procedure Decree 2009.)

11. Accordingly, this court must decide whether the facts of this case fall within either one of limbs aforementioned.

12. The Accused has been charged with one count of Aggravated Robbery contrary to the section 311(1) (a) of the Crimes Decree No. 44 of 2009.

13. The offence of Aggravated Robbery is defined in the section as "*A person commits an indictable offence if he or she commits a robbery in company with one or more other person*". The offence of Robbery is defined in section 310 as "*A person commits an indictable offence if he or she commits theft and immediately before committing theft or at the time of committing theft, uses force on another person or threatens to use force then and there on another person, with intent to commit theft or to escape from the scene.*"
14. Followings are the elements to be proved by the prosecution in order to find the Accused guilty to the charge.
- a. Identity of the Accused
  - b. The Accused has committed theft
  - c. The Accused has used force immediately before or while committing the theft, on the complainant.
  - d. The Accused has engaged in the aforesaid acts in company of another person.
15. It is the contention of the Defence Counsel that the prosecution has failed to make out of a case against the Accused to sufficiently require him to make a defence.
16. The prosecution called three (3) witnesses to prove the charge against the Accused.
17. Witness No.1, Shyna Khan, is the complainant. She stated in her evidence that on 3<sup>rd</sup> February 2016, at about 4.30pm, when she was coming back from school, two boys came after her and snatched her mobile phone and the hand bag, in Nabuwa. When she was about to climb the stairs to her house one boy has taken her bag while the other one has taken the mobile phone. As she was carrying the bag in one shoulder, when one of boys pulled the bag, she has fallen down and sustained injuries.
18. She has further said that a police officer who was at a nearby ground, at the time of the incident, chased and caught one of the boys. Later, she had been taken to

the police station and she had identified the boy who got caught and she has received her stolen items back. The witness has said that the boy who got caught was not in court.

19. When the witness was asked whether she can describe the two boys, her reply was that she cannot. Though she has further answered and said that she can recognise if she sees them again, the witnesses has not been lead to identify the Accused in court. The Defence Counsel has objected for a dock identification on the basis that an identification parade has not been done. Though the court has allowed the prosecution to ask that question subjected to objection, prosecution has not put forward the question for witnesses to answer.
20. Prosecution witness No. 2 was the police officer who had recorded the caution statement of the Accused. He has identified the caution interview in court and marked it as PEXH 1. The witness has identified the Accused in court as the person whom he interviewed.
21. In cross examination the witness has admitted that the Accused said at the caution interview that another boy named Timoci was the one who grabbed both the phone and the bag from the Indian Lady and he (the Accused) was just there but did not do anything. The witness further said that he is not aware whether anything was found from the possession of the Accused. He accepted that the incident took place on 3<sup>rd</sup> February 2016 and the Accused was arrested on 5<sup>th</sup> February 2016.
22. Prosecution witness No. 3 was the officer who has charged the Accused. Nothing revealed from his evidence pertaining to the incident.
23. On a careful consideration of the aforementioned evidence, it is very clear that the identity of the Accused has not been proved by the prosecution beyond reasonable

doubt. In other words, the prosecution has failed to prove the correlation between the offence and the Accused, which is the very essence of the charge.

24. Witness No. 1 has not identified the Accused in Court and she has specifically said that the one who was caught with her stolen items was not the Accused.

25. According to the witness No. 2, there are no admissions made by the Accused in respect of committing the offence, other than his mere presence. There was nothing revealed from the witness No. 3 against the Accused.

26. Therefore it is abundantly clear that the prosecution has failed to establish the identity of the Accused with regards to the alleged offence which is an essential element of the offence.

27. Accordingly, I conclude that there is no case made out by the prosecution against the Accused for him to put forward a defence.

28. Therefore I dismiss the charge and record an acquittal against the Accused.

29. As this Court has exercised the extended jurisdiction of the High Court, parties may appeal to this Ruling within 30 days with leave to the Court of Appeal.

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Geethani Wijesinghe  
Resident Magistrate

At Suva  
10<sup>th</sup> May 2017