

IN THE MAGISTRATES COURT
AT NADI
CRIMINAL JURISDICTION

Criminal Case No.: 1853 of 2020

STATE

V

JOYTIKA DEVI

FOR THE PROSECUTION: Crpl Vishal

FOR THE ACCUSED: Ms Mario (LAC)

DATE OF HEARING: 23rd September, 2024

DATE OF RULING: 20th November, 2024

NO CASE TO ANSWER RULING

BACKGROUND

1. The accused is charged as follows:

COUNT 1

Statement of Offence

BREACH OF DOMESTIC VIOLENCE RESTRAINING ORDER:
Contrary to section 77 (1) (a) of the Domestic Violence Act 2009.

Particulars of Offence

JOYTIKA DEVI on 2nd day of September, 2020 at Nadi in the Western Division, having notice of Interim Domestic Violence Restraining order without reasonable excuse contravened such order vide Domestic Violence Restraining Order No: 342/20 by swearing and abusing the protected person namely **RATNESH NATH**.

2. On the 1st February, 2022, the accused had pleaded not guilty to the charge. Matter was then taken up for hearing where prosecution called 3 witnesses and closed its case.
3. Prosecution prior to closing its case and after the evidence was heard in court. Prosecution made an application under section 182 (1) (a) (Variance of charge and evidence) seeking to remove the name of **Ratnesh Nath** and insert the name of Chandra Wati. This then made **Chandra Wati** the complainant. The Application was allowed and the accused was given a copy to take her plea to the amended charge, she pleaded not guilty.
4. Defence then made an application for a No Case to Answer relying on section 178 of the Criminal Procedure Act. The Defence Counsel submit

that the Prosecution failed to established the essential elements of the offence and did not elaborate on what are the elements of the offence. Defence filed their submissions on 15th October, 2024.

5. This is the court's ruling.

TEST ON NO CASE TO ANSWER

6. Section 178 of the Criminal Procedure Act 2009 provides the law of No case to Answer as:

178. 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 defense, the court shall dismiss the case and shall acquit the accused.

7. The test applied at this stage of a Magistrates Court trial is clear. The test was adopted in the case of *Moiden v R* (1976) 27 FLR 206), *R v Galbraith* All ER [1981] 2 All ER 1060, *R v. Jai Chand* [1972] 18 FLR 101, *Abdul Gani Sahib v State* [2005] HAA0022/05S (28 April 2005) and *State v Aiyaz* [2009] FJHC186; HAC033.2008(31 August 2009)

8. The Court of Appeal in *Moiden v R* (1976) had said:

A submission that there is no case to answer may properly be made and upheld:

(a) when there has been no evidence to prove an essential element in the alleged offence:

(b) when the evidence adduced by the prosecution has been so discredited as a result of cross examination or is so manifestly unreliable that no reasonable tribunal could safely convict on it.

Apart from these two situations a tribunal should not in general be called on to reach a decision as to conviction or acquittal until the whole of the evidence which either side wishes to tender has been placed before it. If however, a submission is made that there is no case to answer, the decision should depend not so much on whether the adjudicating tribunal (if compelled to do so) would at that stage convict or acquit but on whether the evidence is such that a reasonable tribunal might convict. If a reasonable tribunal might convict on the evidence so far laid before it, there is a case to answer."

9. In *Abdul Gani Sahib v State* [2005] HAA0022/05S (28 April 2005), the High Court 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.

SUMMARY OF EVIDENCE

10. PW1 was Chandra Wati

She was on her way to the dalo farm on 2/9/2020 when she heard Joytika Devi started swearing at her son and daughter in law. She asked her not to swear. Joytika said she would come and break her face. Joytika Devi was her daughter in law but stayed separate. She stated Joytika was swearing at them and was 50 meters away.

11. In cross examination, she reiterated that Joytika was swearing when she walked past. She was swearing at her and her daughter in law. Defence stated that as per her statement in 2020 she didn't say who she was swearing at. PW1 stated that it was the police who wrote her statement. She agreed that Joytika uttered the word Bajarau. When her statement was shown to her she said she couldn't read as she can't see properly. She however remembers signing a document. It was suggested to her that she was lying and that she didn't see Joytika. She agreed that she wanted Joytika to leave the property peacefully. PW1 said she was telling the truth about what happened that day. Accused was positively identified.

12. PW2 was Monisha Maureen

Resides with Ratnesh Nath and his children. She was at home doing her housework on 2/9/2020. Chandra Wati is her mother in law. She heard Joytika swear at her. Joytika called her bitch and accused her of staying with another man. She then told her husband. Joytika was Ratnesh ex-wife. She didn't respond to the swearing because there was a DVRO in place. She confirmed Chandra Wati was also present with her father in law. Joytika was swearing from her house. She knows Joytika for the last 15 years. Accused was positively identified.

13. In cross examination, she was given her statement and agreed that the word Bajarau was not mentioned in the statement. But she did tell police this. She agreed to she was not a party to the DVRO application and that she was not a protected person.

14. PW3 was Ratnesh Nath. He was the ex-husband of the accused. His second wife was PW2. He was at work on 2/9/2020 at 10am. His wife called him from home and said that Joytika was swearing at her. He has three children with Joytika. When he came home from work he also heard her swearing from her place. He called the police to come and sort the problem out. Joytika was swearing at the family i.e. his mother, wife, and father. There is a DVRO in place Case No: 342/20. He applied for the DVRO. His parents and children are also protected under the DVRO. When he applied for the DVRO the accused also attended court. She was present when the orders were made. He applied for a DVRO as the accused was swearing at them before. Accused was positively identified.
15. In cross examination he agreed that he only found out Joytika was swearing when his wife called and told him. When he returned home Joytika was still swearing. That's when he called the police. He saw and heard Joytika swearing. He then agreed in cross examination when shown his statement that what he stated in evidence about calling the police wasn't in the statement. He explained that his education level was in class 7 and didn't know if the police wrote it. He didn't read his statement.
16. Prosecution then closed its case.
17. Defence submits that there is inconsistent evidence from the prosecution witnesses which therefore affects the elements of the charge, and it is because of these inconsistencies that a doubt has been created. Defence states in their submissions that "all three of the prosecution witnesses evidence was aligned in terms of the alleged accused uttering vulgar words" but only to PW2 but stated that PW2 is not a protected person.

ELEMENTS OF THE OFFENCE

18. For a proper analysis of the evidence, it is imperative for the Court to turn its mind to the elements for **Breach of Domestic Violence Restraining Order** as per section 77 (1) (a), the elements for this offence is:
- i. the accused
 - ii. having notice of a DVRO by which he/she is bound
 - iii. without reasonable excuse
 - iv. contravened the DVRO protecting the protected person.

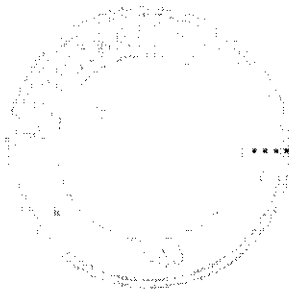
ANALYSIS

19. At a No Case to Answer stage, I bear in mind that the duty of the court is to assess the evidence using the objective as opposed to the subjective test. That means that witness credibility, reliability and weight to be placed on material evidence is not a matter to be considered at this stage.

20. The Court will only consider these matters once all the evidence, both for the prosecution and the defence are adduced before the Court.
21. The first element that the prosecution had to establish was the identity of the accused person. Both the complainant and the accused are related so the issue at trial was not the identity of the accused person.
22. The second element that the prosecution needed to prove was that the accused had notice of the DVRO she is bound by, PW3 gave evidence and said that the accused was present when the orders were made. I am satisfied that the evidence touches on the second element of the offence. The court also finds evidence that touches on the remaining elements.
23. At this stage of the proceeding, I am of the view that evidence is available on each element the accused of charged with for this court to call for defence.

ORDERS

24. I find there is relevant and admissible evidence on each element of the offence of Breach of Domestic Violence Restraining Order. I am not convinced that evidence presented by prosecution has been so discredited that no reasonable tribunal would rely on it to convict.
25. I therefore refuse defence application for a no case to answer and rule that there is a case to answer by the accused on the count of Breach of Domestic Violence Restraining Order. I call for defence.
26. Accused will be explained her rights as per section 179 of the CPA.



Handwritten signature of Talei Kean.

Talei Kean

Resident Magistrate

20th November, 2024