

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC. 33 of 2011

STATE

v.

JAGDISH PRASAD

Counsel: Ms. Latu L. for State
Mr. Reddy J. for Accused

Date of Hearing: 17th August 2015

Ruling: 18th August 2015

RULING
ON NO CASE TO ANSWER

1. The Accused is charged with one count of Rape contrary to section 207 (1) (2) (a) of the Crimes Decree No. 44 of 2009.

Statement of Offence (a)

RAPE: Contrary to section 207 (1) (2) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence (b)

JAGDISH PRASAD on the 6th day of February 2011 at Balevuto, Ba in the Western Division had unlawful carnal knowledge of **ASHA DEVI** without her consent.

2. At the conclusion of the prosecution case the accused makes an application for no case to answer in terms of section 231 (1) of the Criminal Procedure Decree. The section 231 (1) provides:

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. (underlining mine)

3. Referring to 'no evidence' mentioned in section 231 (1) of the Criminal Procedure Decree, in case of **State v Ratu Inoke Takiveikata**, Justice Goundar said:

"The phrase "no evidence" has been interpreted to mean that there is no evidence on an essential element of the charged offence (Sisa Kalisoqo v State Criminal Appeal No. 52 of 1984). If there is some evidence on the essential elements of the charged offence, the application for a no case to answer cannot succeed. The credibility, reliability and weight are matters for the assessors and not for the trial judge to consider at a no case to answer stage."

4. The particulars of offence as given in the information say that the accused had carnal knowledge of Asha Devi without her consent.
5. Therefore the elements that prosecution has to prove beyond reasonable doubt are that:
 1. The accused
 2. had carnal knowledge of the victim
 3. without her consent.
 4. He knew or believed that she was not consenting or did not care if she was not consenting.
6. Prosecution called the Complainant Asha Devi to give evidence. Her evidence was that when she was sleeping in her house the Accused entered into her house and forcefully had sex with her. She also said that the Accused brought

beer and gave her a glass of beer to drink. I found that the applicant was evasive when she gave evidence. However, in cross examination she said that everything happened on that night was consensual and that the Accused had sex with her with consent.

7. On this evidence of the Complainant, the State decided to conclude the prosecution case without calling any more witnesses. When the no case to answer submissions were made by the Defence Counsel, State Counsel agreed and associated with the submissions of the Defence Counsel that there is no case to answer.
8. In the agreed facts filed of record, parties had agreed that the Accused went to the house of the victim that day and that the issue is whether the victim consented to sexual intercourse with the Accused. Finally the Complainant clearly said that the Accused had sex with her with consent.
9. In the above premise as the Complainant testified that she consented to have sex with the Accused, I find that there is no evidence on the element of "absence of consent" and hence I find that there is no case to answer. I acquit the Accused accordingly.



Priyantha Fernando
Judge

At Lautoka

Office of the Director of Public Prosecutions for the State
Office of the Legal Aid Commission for Accused