

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 140 OF 2022

STATE

-v-

VINOD KUMAR

Counsel : **Ms S. Shameem / Ms P. Mishra for State**
: **Mr. S Kumar for Accused**

Date of trial : **3rd April 2024 – 4th April 2024**

Date of Submission : **5th April 2024 and 8th April 2024**

Date of Ruling : **12th April 2024**

RULING ON NO CASE TO ANSWER

1. The above accused was charged with one count of “Rape” contrary to section 207(1) and (2)(a) and (3) of the Crimes Act, 2009, one count of “Rape” contrary to section 207(1) and (2)(b) and (3) of the above Act, one count of Sexual Assault contrary to section 210 (1)(a) of the said Act and one count of Criminal Intimidation contrary to section 375(1)(a)(i)(iv) of the same Act as stated above.
2. The Prosecution had concluded their case after calling two (2) witnesses. The defence counsel then made a submission of No Case to Answer and filed their written submission on 5th April, 2024. The State has filed their reply on 8th April, 2024.
3. I have carefully listened to and considered both parties submissions.
4. The authority at this stage of the proceedings is section 231(1) and (2) of the Criminal Procedure Decree 2009. Section 231(1) and (2) reads as follows:

"...231.— (1) 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.

(2) When the evidence of the witnesses for the prosecution has been concluded, the court shall, if it considers that there is evidence that the accused person (or any one or more of several accused persons) committed the offence, inform each such accused person of their right—

- (i) to address the court, either personally or by his or her lawyer (if any); and
- (ii) to give evidence on his or her own behalf; and
- (iii) to call witnesses in his or her defence..."

5. It is well settled that, the test at this stage of the trial is whether or not there is some relevant and admissible evidence, direct or circumstantial, touching on all elements of the charge, the weight and credibility of such evidence not being matters for assessment: *The State v George Shiu Raj & Another*, Criminal Appeal No. AAU 0081 of 2005, *Fiji Court of Appeal*; *The State v Brian Singh*, Criminal Appeal No. AAU 0097 of 2005, *Fiji Court of appeal*, *Sisa Kalisogo v Reginam*, Criminal Appeal No. 52 of 1984, *Fiji Court of Appeal* and *State v Anesh Ram*, Criminal Case No. HAC 124 of 2008S, *High Court, Suva*.
6. In this case, after listening to the evidence of the Prosecution's two witnesses, and bearing in mind section 231(1) and (2) of the Criminal Procedure Act, 2009, the authorities cited in paragraph 5 above and the parties' submissions, I am of the view that a prima facie case exist against the accused, requiring him to be called upon to make his defence. There is a case to answer.
7. The accused is entitled to:
- (i) to address the court, through his lawyer or himself;
 - (ii) to give sworn evidence, and
 - (iii) to call witnesses in his defence.




Waleen M George
Acting Puisne Judge
HIGH COURT OF FIJI

Dated at Suva this 12th day of April, 2024.

Solicitors for the State

*Office of Director of Public
Prosecution, Suva.*

Solicitors for Accused

*Mr. S Kumar, Sunil Kumar Esquire
Barrister & Solicitor, Nausori*

