

IN THE MAGISTRATES' COURT
AT BA
CRIMINAL JURISDICTION

Criminal Case No. 118/2020

BETWEEN: **STATE**

PROSECUTION

AND: **BABU RAM**

ACCUSED

Counsel: WCPL 4897 Venu Singh for Police Prosecution
 Mr. M. Anthony & Mr. R. Bancod for the Accused

Date of Hearing: 16 December 2024
Date of Ruling: 16 December 2024

RULING
[NO CASE TO ANSWER]

Introduction

1. Mr. Babu Ram ("the Accused") was initially charged with and produced in Court for 1 count of Abduction of Young Person under 18 years of age with Intent to have Carnal Knowledge contrary to section 211 of the Crimes Act 2009.
2. The Accused pleaded Not Guilty to the above charge on 1 September 2020.
3. However, on 31 January 2022, Prosecution amended the charge to 1 count of Abduction of Person contrary to section 285 of the Crimes Act 2009. The particulars of the offences are:

Count 1
Statement of Offence

Abduction of Young Person: *Contrary to Section 285 of the Crimes Act 2009.*

Particulars of Offence

Babu Ram on the 31st day of March, 2020 at Ba Town in the Western Division unlawfully took ***Achal Arishma Prasad*** being under the age of 18 years, out of the possession and against the will of her father ***Vivek Prasad*** having the lawful care of ***Achal Arishma Prasad***.

4. On 11 September 2024, the Accused pleaded Not Guilty to the above Amended Charge. This matter proceeded to Trial on 16 December 2024 wherein Prosecution called 3 witnesses and thereafter closed its case.
5. The Learned Counsel for the Accused then made an application pursuant to section 178 of the Criminal Procedure Act stating that a case was not sufficiently made out against the Accused to require him to make a defence. Verbal submissions were then made by the Learned Counsel on the same date which pertained to there being no evidence led by Prosecution that the Accused had unlawfully taken the victim out of the possession and

against the will of her father, namely Vivek Prasad. Prosecution chose not to respond to submissions made by the Learned Counsel but chose to rely on the Court Record.

6. Having considered the submissions and the evidence presented by Prosecution, I now pronounce my Ruling.

Law on No Case to Answer

7. Section 178 of the Criminal Procedure Act states:

Acquittal of accused person where no case to answer

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 defence, the court shall dismiss the case and shall acquit the accused.

8. In the recent case of ***Dirabici v State***; Criminal Appeal Case No. HAA 023 of 2023 (15 February 2024) His Lordship Justice Rajasinghe succinctly discussed the test for no case to answer in the Magistrates' Court where he referred to the case of ***R v Galbraith*** [1981] 2 All ER 1060 which stipulated the two-fold test that should be adopted in respect to a no case to answer submission which also discussed in the case of ***Sahib v State*** [2005] FJHC 95; HAA0022J.2005S (28 April 2005) where Her Ladyship Justice Shameem adopted and applied the test in the Magistrates' Court of Fiji. In doing so Her Ladyship held:

*"The test at no case stage in the Magistrates' Courts, is different from the test at no case stage in the High Court. The test in ***R v. Galbraith*** (1971) 73 Cr. App. R. 124 is two-pronged, first whether there is no evidence that the accused committed the offence, and second if there is evidence, whether it is so discredited that no reasonable tribunal could convict on it. In the High Court, only the first test applies because of the specific wording of section 293 of the Criminal Procedure Code (***Sisa Kalisogo v. R*** Crim. App. 52 of 1984; ***State v. Mosese Tuisawau*** Cr. App. 14 of 1990). In the latter case, the Court of Appeal said that in assessing whether there was "no evidence", the court was entitled to ask whether the evidence was relevant, admissible and inculpatory of the accused.*

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."

9. Thus, the Magistrates' Court ought to apply both limbs with respect to an application for no case to answer under section 178 of the Criminal Procedure Act:
 - i. whether there is relevant and admissible evidence implicating the accused in respect of each element of the offence; and
 - ii. whether the evidence is so discredited that no reasonable tribunal could convict on it.
10. Moreover, the aforementioned limbs of the no case to answer test need to be tested objectively by the Court by analysing the evidence as a whole and not subjectively

evaluating the testimonial trustworthiness of the witnesses based on credibility and reliability at this stage (vide *Dirabici* [supra]).

Analysis of Evidence

11. For a proper analysis of the evidence, it is imperative for the Court to turn its mind to the elements for Abduction of Young Person, which are:
 - i. the accused
 - ii. unlawfully takes or causes to be taken the young person
 - iii. being under the age of 18 years
 - iv. out of the possession and against the will or his or her father or mother or of any other person having the lawful care or charge of the young person
12. Regarding the first limb of whether there is relevant and admissible evidence implicating the accused in respect of each element of the offence, the court is only required to determine whether the prosecution has presented evidence to prove the elements of the offence and not that the evidence presented have proved the essential elements of the offence at this stage.
13. At the outset, there is no dispute as to the identity of the Accused and that the victim, who was 17 years of age at the time, with her sister had got into the car with the Accused. The victim's Certificate of Birth was tendered by consent and marked as 'PEX1'.
14. Archal Arishma Prasad ('the victim') gave evidence that on 31 March 2020, she and her sister Eitshni had gone to town make repayments at Subrails and buy 'prasad' or prayer offerings. After making the payment and buying the prayer offerings, the victim and her sister were at Max Value when the Accused call. The victim stated that she as wanted to get vegetables from the Accused's place so she and her sister went with him. The victim stated that this matter only arose when the Traffic Police had stopped the Accused and it was only when the Police asked for the victim's age and was informed of the same that they arrested the Accused for this matter.
15. The victim's father, Vivek Prasad gave evidence that on 31 March 2020, he had sent the victim and Eitshni to town to make repayments and to buy prayer offerings. He had also agreed in cross-examination that the victim and Eitshni went to buy vegetables as well. He then testified that he had received a call from Police that there was a man taking his children.
16. The victim's mother, Ashwini Devi gave evidence and stated that on 31 March 2020, she had been working at Meeno's and that she received a call from the Police that the Accused had caught the Accused taking her daughters but that she did not know anything as she was at work. Ms. Devi agreed in cross examination that she and her daughters had previously bought vegetables from the Accused.
17. Although there is evidence that the victim was living with her parents namely Vivek Prasad and Ashwini Devi on 31 March 2020, Prosecution failed to elicit evidence through its witnesses especially through Vivek Prasad that the Accused had taken the victim unlawfully out of his possession and against his will.
18. Vivek Prasad never stated in his evidence that the Accused had taken the victim with some interference or substantial interference in his – Vivek Prasad's, possessory relationship with the victim (vide *Ali v State* (2003) FLR 86 HAA 8/02L (14 March 2003)).

19. Consequently, this Court is satisfied that the Prosecution has failed to present relevant and admissible evidence to prove the elements of Abduction of Young Person.

Determination

20. I am satisfied that Prosecution has failed to present evidence to prove the elements of the offence embodied in the charge of Abduction of Young Person.

21. I, therefore, allow the application for no case to answer and hold that at the conclusion of Prosecution case, it appears to the court that a case has not been made out against the Accused to sufficiently require him to make a defence in respect of the above charge.

22. The Accused, Babu Ram is therefore found not guilty for Abduction of Young Person and is acquitted forthwith.

23. Any parties aggrieved with this decision has 28 days to appeal to the High Court.



A handwritten signature in black ink, appearing to be "N. Mishra". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

N. Mishra
Resident Magistrate