

# **IN THE SUPREME COURT OF SEYCHELLES**

**THE REPUBLIC**

**VERSUS**

JERRY BACCO

**ACCUSED**

Criminal Side

No 5 of 2003

Mr. R. Govinden Counsel for the Republic

Mr. W. Herminie Counsel for the Accused

## **RULING**

### **B. Renaud**

The accused stands charged with seven counts of offences, namely two counts of sexual assault; two counts of displaying indecent material; and, three counts of insulting the modesty of a person.

In support of his case, Learned Counsel for the Prosecution has adduced evidence from eight witnesses including the four complainants.

At the close of the case for the prosecution, Learned Counsel for the accused, Mr. W. Herminie submitted that the accused has no case to answer.

When the Court is called upon to rule on a submission of no case to answer in a criminal trial it will uphold the submission if there has been no evidence to prove the essential elements of the offences charged, or, if the evidence of the Prosecution is so discredited or is

manifestly unreliable that no reasonable Tribunal could safely convict on it.

In making this ruling, I have carefully and meticulously reviewed all the evidence adduced by the prosecution and very carefully treated the submissions of Learned Counsel for the accused with the highest respect it deserves. At this stage it is for the Court to decide whether the Prosecution has established a prima facie case against the accused, that is, whether the evidence thus far adduce is such that a reasonable Court **may**, not would, convict the accused. It is only at a close of the case that this Court shall weigh all the evidence as a whole and will decide whether the Prosecution has established the guilt of the accused beyond reasonable doubt.

Count 2 of the charge and the particulars of offence thereunder, are as follows:

#### **Statement of Offence**

*“Display of indecent material contrary to Section 152(1) (f) and punishable under Section 152(1) of the Penal Code.”*

#### **Particulars of Offence**

*Jerry Bacco of Cote D’Or, Praslin, on a day unknown to the Prosecution in the year 2002, at the Baie Ste Anne Praslin unlawfully touched the Sexual Organ of Conray Joubert, whilst the latter was under 15 years of age”.*

It is obvious that the particulars of the offence have no relationship to the charge. Further, it is in evidence that Conray Joubert when testifying stated that the accused did not touch his sexual organ.

For the reason stated above, I find that the accused has no case to answer with respect to Count 2 of the charge.

I find that of the seven counts with which the accused is charged,

the Prosecution has adduced evidence that if are to be believed, will suffice for this Court to find that the accused has a case to answer on Counts 1, 3, 4, 5, 6 and 7 and I hereby rule accordingly.

The case shall proceed against the accused in respect of the other charges other than Count 2.

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B.RENAUD

**JUDGE**

Dated this 4<sup>th</sup> day of June 2004