IN THE SUPREME COURT OF SEYCHELLES

Republic

Vs

Francis Hoareau **Defendant**

Criminal Case No: 1 of 2003

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Miss. F. Laporte for the Republic
Mrs. Antao for the defendant

RULING

D.KARUNAKARAN J

The defendant above-named stands charged before the court with the offence of "sexual assault" contrary to and punishable under Section 130 (1) as amended by Act 15 of 1996, read with Section 130(2)(d) and 130(3)(b) of the Penal Code.

The particulars of the offence allege that the defendant on a date unknown between March and May 2001, sexually assaulted Fabrina Brutus of Bel Ombre, Mahé, by inserting his penis into her vagina for a sexual purpose.

The defendant denied the charge. The case proceeded for trial. The defendant was duly defended by an able and efficient defence counsel Mrs. Antao. The prosecution adduced evidence in support of their case. In fact, the prosecution called only one witness namely, Fabrina Brutus, a girl aged

16, who is none else than the complainant in this mater. After the close of the case for the prosecution, Learned Defence Counsel submitted on no case to answer and hence is this ruling.

The complainant in this mater is now 16. At the age of 11, she was attending Primary School and was in class 6. Admittedly, that was the time, though it is a sad fact to hear, she first started having sexual intercourse with men. During her days of tender age as from 11 to 13, she had sexual intercourse at least with four different men. In fact, when she testified in Court in this case, she couldn't even remember the name of the first man, whom she had sexual intercourse with. However, she could recall the names of two other men, with whom she used to have sexual intercourse, prior to her involvement with the defendant, who now stands charged before the Court for the offence first above mentioned. Be that as it may. In 2001, the complainant was 13. On 18th of March 2001, at around 4.30 p. m the complainant went to Belombre in order to visit a friend, her schoolmate, who was then staying in the house of one Mr. Gabriel Hoareau. The complainant first met the defendant in that house. In no time, they developed conversation, communicated and expressed themselves. Both planned to meet again at around 7. 30 p. m the same evening. The secret venue was the backyard of the said house. They executed the plan and embraced the moments of their exclusive company. The complainant removed her clothes on her own and so did the defendant. After a fair amount of foreplay, both had sexual intercourse on a bed of coconut leaves, specially designed for that purpose. It was a protected one. The defendant was using a condom. After the first episode, they parted but not in thought. In fact, after four days, the thought resurrected. They again hatched a plan for a second one. It was executed at the same venue in the same style. However, according to the complainant, the condom (Durex) used by the defendant during the second episode was broken. After the said two incidents, the parties never met again. However, according to the complainant, consequent upon the said

episodes she got pregnant and gave birth to a child. The complainant testified that the defendant despite request, did not provide any maintenance for the child stating that he did not father the child. Hence, she filed a complaint before the Family Tribunal against the defendant seeking maintenance from him. The defendant again denied paternity for the child. Therefore, the complaint admittedly lodged a complaint to the police against the defendant for what he had done to her in the past. Hence, the defendant is now facing the charge of "sexual assault" in this matter. In the circumstances, Learned Counsel for the defendant submitted that the evidence before the Court in this matter is neither sufficient nor strong enough to base a conviction against the defendant for the offence charged. No prima facie case has been made out. Therefore, according to the defence counsel the defendant had no case to answer and is entitled to an acquittal.

As regards the submission of no case to answer, it is a trite saying nevertheless should be restated that the prosecution at this stage of the trial only need to show that there is a prima facie case before the court, made out against the defendant. This has to be determined by the court on a balance of probabilities. Indeed, the relevant question for determination now is this:

> *"Is there evidence before the court on which a reasonable tribunal may - not would - convict the defendant?"*

If the answer to this question is in the negative, then the defendant should not be required to give any further explanation. He should be acquitted forthwith and set free. If the answer to the question is in the affirmative, then the defendant should be called upon to present his defence.

As rightly submitted by the Learned State Counsel Ms. Laporte that in order for a submission of no case to answer to succeed, the defence must satisfy the court that there has been no evidence to prove an essential element of the offence charged. On the other hand, where evidence has been adduced,

the defence must show that such evidence has been so discredited and become manifestly unreliable that no reasonable court could safely rely and act on it. Obviously, the court in this respect has only to determine whether there is a prima case made out against the defendant and should not consider whether the burden of proof required has been met by the prosecution. See, ***Republic Vs. Jean Mellie Cr. Case No: 11 of 1997.***

Bearing the above principles in mind, I carefully perused the entire evidence on record. I gave meticulous thought to the submissions made by both counsel in this regard. Firstly, on a cursory look at the evidence it appears to me that the prosecution has not made out a prima facie case against the defendant in this matter, since the evidence on record is not sufficient enough to cover all the essential elements and the material facts necessary to constitute the offence charged. Secondly, I note that the evidence adduced herein, is not strong and credible enough for this Court even to consider a conviction. Indeed, the evidence, as I see it, is too weak to be relied and acted upon by any reasonable tribunal to base a conviction. In the circumstances, I conclude that the evidence adduced thus far, reveal no prima facie case against the defendant and no reasonable tribunal properly constituted may rely and act upon it to base a conviction in this matter. Therefore, I find that the answer to the above question is in the negative. Accordingly, I rule that the defendant has no case to answer for the offence charged. Hence, the motion of no case to answer is allowed. The case is dismissed and the defendant is acquitted. He is set free.

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D. Karunakaran

Judge

Dated this 29 day of July 2005