**SUPREME COURT OF SEYCHELLES**

**Reportable**
[2019] SCSC 130
CO15/2017

In the matter between:

**THE REPUBLIC**
*(rep. by Mr David Esparon)*

and

**RAVIND SOUDHOA**
*(rep. by Mr Basil Hoareau)* **Accused**

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| **Neutral Citation:** | The Republic v Ravind Soudhoa (CR15/2017) SCCC |
| **Before:** | Govinden J |
| **Summary:** | **No case to answer – Section 183 of the Criminal Procedure Code.** |
| **Heard:** | |
| **Delivered:** | 22 February 2019 |

**ORDER**

No case to answer. At the close of the prosecution case, no case is made out against the accused person sufficient to require him to make a defence. The case is dismissed for reasons given in this Ruling. The accused is acquitted.

**RULING**

**GOVINDEN J**

**Introduction**

[1] The Accused person stands charged before this court with the offence of "Sexual Assault" contrary to section 130 (1) read with section 130 (2) (d) of the Penal Code and punishable under section 130(1) of the Penal Code.

[2] The particulars of the offence averred that,"*Ravind Soodhooa, Mauritian national, resident of Felicite island, Seychelles, on the 4th of May 2017 between 00.40 to 02.00 hours in villa no 11, six senses, zil pasyon, Felicite island, Seychelles, sexually assaulted miss Anna Karabash, a Russian national, by penetrating the body orifice of the said Miss Anna Karabash for a sexual purpose".*

[3] The Accused person denied the charge. The case proceeded to trial, with the accused person being represented by Mr Basil Houareau and the Prosecution Mr David Esparon. The prosecution adduced evidence by calling 8 witnesses in order to establish the case for the Republic.

**No case to answer submission**

[4] At the close of the prosecution case the defence chose to make a no case to answer submission in pursuant to s 183 of the Criminal Procedure Code.

[5] In effect the Learned defence Counsel contended that the evidence adduced by the prosecution has been so discredited as a result of cross examination or is so manifestly unreliable that no reasonable tribunal would convict upon it. It is the contention of the defence that the evidence of the sole eyewitness of the Republic, being that of Ms Karabash, is so inherently weak that it becomes implausible and manifestly unreliable and that no reasonable tribunal would convict on it.

[6] The defence is not contesting that sexual intercourse took place between the accused person and the virtual complainant. However, it is their submission that the relationship was

consensual and that the evidence of lack of consent, which came principally from the latter, has been so manifestly discredited that no reasonable tribunal could convict on it. As a result Mr Houareau submitted that the prosecution has failed to establish a prima facie case against the accused person and that the case should be dismissed and that he should be acquitted.

[7] On the other hand the learned Counsel for the Republic submitted in reply that the evidence adduced by the prosecution in respect of lack of consent is strong; credible and support this essential element of the offence charged and that as a result he has proved his case on a prima facie basis.

**The law**

[8] The law governing this submission can be summarized as follows;

[9] When it comes to the submissions of no case to answer the prosecution at this stage of the trial needs to show that it has made a prima facie case against the accused person and this is decided on a balance of probabilities.

[10] There is no case to answer where there is no evidence to prove an essential elements in the alleged offence; or the prosecution case is so manifestly unreliable that no reasonable tribunal could safely convict upon it.

[11] If a submission is made that there is no case to answer, the court should make a decision based on whether the evidence is such that a reasonable court might convict the accused

and not whether the court, if compelled to do so, would at that stage convict or acquit the accused person.

[12] Where a court comes to the conclusion that the prosecution evidence, taken as at its highest, is such that a jury properly directed could not properly convict upon it, it is the duty of the court, upon a submission being made, to stop the case.

[13] Where the prosecution evidence is such that its strength or weakness depends on the view to be taken on the reliability of a witness or other matters within the preserve of the Jury, and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty then the judge should allow the matter to be tried by the jury.

[14] Before making a decision on a submission of no case to answer, the judge must wait until the conclusion of the prosecution's submission. Real proposition

*[15] R vs Lepere ( 1971 ) SLR 112; R vs Stiven ( 1971 ) SLR 137;R vs Olsen (1973) SLR 188; R vs Marengo ( 2004) SLR 116; R vs Matombe (2006) SLR 32.*

**Statement of issues and analysis**

[16] In this case the defence is relying on the alleged lack of credibility of the most material prosecution witness in order to ground its no case to answer submission. It is alleging that the evidence of consent adduced by the Prosecution has been so discredited as a result of

cross examination and is so manifestly unreliable that no reasonable tribunal could safely convict upon it.

[17] Bearing the above legal principles and the law in mind, I carefully examine the entire evidence led so far by the 8 prosecution witnesses. In doing so i gave special consideration to the submissions made by both counsels on the issue of the credibility of the material prosecution witness on the issue of consent, Ms Karabash. I will consider the issue of credibility of this witness evidence in the light of the following several issues of facts that arose during the course of her testimony.

**The phone**

[18] At the time of the commission of the offence the virtual complainant said that she was in possession of her personal mobile phone. She initially testified in chief that her phone had fallen down and was broken. She said that it was on the bedside table and it fell down whilst she was struggling with the accused person, according to her therefore when she ran out of Villa 11 there was no phone in her possession. However, during the course of cross examination it was put to her that there was a video recording which showed her running away from the Villa with a phone in her hand, she then changed her testimony and said that there was indeed a phone in her hand when she fled from the scene. However, the virtual complainant could not sufficiently explain this discrepancy in her evidence; in fact no logical explanation was offered. I find that she was not speaking the truth here, the phone could either have been broken and in the bedroom and unusable or in her hand, it could not have been both.

**The knife**

[19] Ms Karabash had stated categorically ~~in~~ evidence that her bedroom was dark. No light was shining inside. Yet she was able to identify the kind of knife used by her assailant. She even stated that she would be able to identify it if shown. The knife was never brought to court. This as it may I find that the lighting conditions of the bedroom of villa 11 would not have allowed her to identify a knife, if there was any. Hence I do not believe that she had seen a knife in the possession of the accused during this incident.

[20] Further, the virtual complainant testified that when she finally made her escape she saw the knife at the door of the villa. She said she that she left that knife in situ. She made no attempt to retrieve the knife for evidential purposes or as a weapon to secure herself for any further potential attacks from the accused person. I am of the view that a rape victim would probably have picked up this knife for the reasons that I have given. However, this does not stop here, that knife was not seen at the door by Lizzy and the two security officers when they came back to the villa and neither did the police investigators saw it and it was never produced as evidence. This leaves me in further doubts as to whether Ms Karabash was speaking the truth regarding the presence and used of this knife, something which goes to the core of the issue of consent in this case.

**The bottles of water**

[21] The virtual complainant first testified that there were 2 bottles of water in the bathroom of the villa. According to her, these were used to pour herself and the accused person a drink. She poured the drinks in the bathroom. The police photographs, exhibit P(1),shows that there were no bottles of water in that bathroom. The two bottles were on the terrace outside

the villa. The Virtual complainant attempted to explain this discrepancy by saying that before the police photographer came to the villa , after she came back with Lizzy following her complaint to the latter, she mixed up the bottles and could have the put them on the terrace . I find this explanation to be implausible. Given the material importance of these bottles it makes more sense to think that they would not have been tempered by Lizzy or the Virtual complainant. Moreover, if there was to be making used of the water in the bottles by either of the two, at least one bottle would have been used. This creates doubts in the mind of the court as to whether the testimony regarding the lacing of the drink of the Accused person occurred in the way that she said it did.

**Failure to call Olga (a friend).**

[22] Ms Karabash had come to the Felicite island with a fellow Russian friend. According to her own evidence she had the time and the opportunity after she fled the villa to call her close friend, yet she failed to do so. The reason that she gave for not calling was that the latter would not take her call. I find that reason difficult to comprehend as there was no reason for her friend not to take her call. It would have been more plausible in her alleged dire circumstances for her to reach out to the most familiar and trusted person on the island and she did not and the reason she gave for not doing so is difficult to believe.

**The pill**

[23] In her initial part of her testimony, the virtual complainant testified that she wanted to render the Accused person asleep in order to get away from her ordeal. According to her she accordingly went into the bathroom and she poured 2 drinks. In the drink of the Accused person she put an aspirin in order to fizzy the drink, then she laced it with a

sleeping pill (Seroquel). It was her testimony that the Accused PERSON did not see the lacing of his drink. However, in a document, mark as D (1), being an e-mail send by the virtual complaint to Mrs Valabhji, she stated the following with regards to the pouring of the Accused person drink, *"...I started to talk to him in a warm manner and after he was a bit more relaxed I managed to give him strong sleeping pill I had with me. I told him it is good to prevent hangover as he was drunk"*. Upon being cross examined on this discrepancy, Ms Karabash explained that this was a genuine error. To my mind this contradiction cannot simply be justified as an error. The two sets of facts are too far apart. I could have understood an error based on something that she might have said to the Accused person, but to make an error and to be confused between a surreptitious lacing and a bona fide assistance to the Mr Soudhoa is unbelievable.

**Lack of injuries**

[24] The virtual complainant testified of a brutal and sadistic rape effected on her by the Accused person. He violently raped her both per anum and per vaginum. During the course of this offence she claimed that she was strangled. She fell down twice, once on her right knee and the other on her back and as a result of which she hit the back of her head on the floor. Yet there were no injuries or traumas on her body. The police photographs taken shortly after the incident shows no injuries on the body of Ms Karabash. The medical examination similarly did not reveal any injuries. The only injury shown is one on her toe, which she claimed was not suffered during the course of the assault.

[25] I noticed that the virtual complainant is a slender, very fair skin woman. The Accused person is on the other hand is a male person of medium built. To my mind if the sexual

assault had occurred over the length of time and in the circumstances described by her, there should have been visible signs of physical traumas on her body. The fact there is non create doubts in my mind as to whether such kinds of force were used by the accused person against her during the course of the sexual intercourse.

**Automatic door**

[26] Ms Karabash testified that twice she ran outside the villa, before she successfully did her ultimate escape. It is her evidence that to go outside the villa you have to exit an automatic door that close and lock itself after one exit the door. She initially testified in chief that she opened the door and ran outside the villa for 10 metres where she was caught by the Accused person and dragged inside. Then she claimed to have fled outside again and was again caught by him and brought inside. In cross examination when questioned by the defence counsel about the fact that both her and the accused person would not have been able to go back in the room after they had exited the door, her answer was that probably the Accused person used a door stopper and stop the door before running after her.

[27] I have carefully considered this part of her testimony and I find it to be totally implausible. I find that the Accused person would not have had the presence of mind to stop and find a door stopper before he ran after the virtual complainant and to do that twice to my mind would have been impossible. The Accused person was allegedly drunk and hell bent on his endeavour to assault Ms Karabash, getting a door stopper would have been the last thing on his mind.

**Escaping fully dressed**

[28] According to the Virtual complainant she had fled in a haste from the villa 11, whilst her assailant had passed out on the bed. She was fleeing from possibly the greatest ordeal of her life. To my mind she would have therefore fled with little regards to her personal modesty or comfort. However, evidence from her shows that she removed her bathrobe and she put her panty and a dress and a pair of jogging shoes and thereafter ran out of the room.

[29] I take notice that "Felicite, Zil Pasyon," is a hotel on a private island; it was in the middle of the night and outside there would have been no members of the public and almost no members of the staff or guests. Hence, I find it more plausible that she would have fled the scene in her bathrobe. Moreover, if she was in the state of mind that she said she was, I am of the view that she would not have had the presence of mind to get fully attired before running away.

**Willingness to remain in villa 11**

[30] Ms Karabash is seen on the evidence to have been willing to spend the night alone in a villa where she was sexually assaulted. She admitted under cross examination that after the incident she had called the Night Auditor and expressed her wish that she remained in villa 11 for the rest of the night. I find that this willingness to stay run counter to the action of someone who has been sexually assaulted in villa 11. Especially given that she had the option to sleep in another villa, something that she eventually did.

**The panty**

[31] The virtual complainant was wearing a panty prior to the alleged offence. According to her she had gone to bed wearing only that panty. It is her evidence that when she woke up she was no longer wearing ~~THE~~ the said SAID panty and the accused was on top of her. The panty according to her was seen on the bed cut in two. However, the prosecution forensic expert testified that the panty was not cut but was torned. This consist in a contradiction between two prosecution witness evidence.

[32] In the face of this contradiction, I choose to believe the evidence of the Forensic Expert and to disregard the evidence of Ms Karabash in that regards. Given all my above findings of facts in this case, I am of the view that she insisted on the panty having been cut in order to embellish her version of facts that the accused person was armed with a knife.

**E-mail to Mrs Valabhji**

[33] Ms Karabash send an e-mail to Mrs Valabhji on the 5th of May. In that mail she wrote that she was deeply affected by the words of Mrs Valabhji during a telephone conversation that had taken place shortly before between the two of them. She claimed in that email that she had recorded those words on her dictaphone as well as a 45 minutes conversation that she had with the hotel General Manager.

[34] Mrs Valabhji thereafter answered her e-mail by another e-mail, in there Ms Karabash was requested to send a copy of the recorded conversation. No such copy was provided by latter. Under cross examination she tried to give an explanation as to why a copy of the

recorded conversation was not provided. She said first of all that as Mrs Valabhji was not her boss and she was not bound to send it. Then she said that she did not send it because she decided not to send it and thirdly she said that she did not send it because it was lost.

[35] The several versions in the evidence of the virtual complainant regarding the existence of this recording lead me to the view that the recording never happened in the first place.

**Demeanour of the virtual complainant**

[36] The evidence of Ms Karabash took place only a couple of days after the offence of sexual assault was reported. The incident would have been fresh in her mind. The pain; psychological traumas and sufferings should have still been present. However, the court noticed that whilst she was testifying she did not appear to be in a distressed state. Whilst she was being cross examined she was laughing; smiling and on many occasion overtly sarcastic to the defence counsel. The court had to occasionally intervene in order to restraint these conducts. I find her demeanour to be one which is inconsistent with that of a victim who was recounting a recent brutal sexual whilst assault in a public forum.

**Determination**

[37] For these reasons I am of the opinion that the evidence adduced by the Prosecution has been so discredited as a result of cross examination and is so manifestly unreliable that no reasonable tribunal could safely convict on it and therefore there is no prima facie case against the accused person and he has no case to answer.

[38] I accordingly dismiss the case and acquit the Accused person forthwith as a case is not made out against him to sufficiently require him to make a defence.

[39] As a result of this acquittal I would cancel the Remand Order I made on the 6th of September 2017 in this case; the Accused person shall be set free forthwith. Any passport or travelling documents; unless ordered to be surrendered by another court, shall be returned to the Accused person.

Signed, dated and delivered at Ile du Port on 22 February 2019


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Govinden J