

SUPREMECOURT OF SEYCHELLES

Reportable

[2022] SCSC 1066

CO 95/2021

In the matter between

THE REPUBLIC

(rep. by Mrs Leste)

and

HD

(rep. Mr Brian Julie)

ACCUSED

Neutral Citation: *R v HD* (CO 95/2021) [2022] SCSC 1066 (5 December 2022).

Before: Govinden CJ

Heard: 5th December 2022

Delivered: 5th December 2022

RULING

GOVINDEN CJ

[1] In the case of *R v Stiven*, 1971, SLR No9 at page 137 the Court held that what this Court has to consider at the stage of a no case to answer submission being made is:-

(1) When there is no evidence to prove an essential element of the offence.

(2) Whether the evidence for the Prosecution has been so discredited or so manifestly unreliable that no reasonable tribunal could safely convict.

[2] The standard of proof in making those assessment is whether the evidence is such that a reasonable Court might convict the accused and not whether the Court is compelled to do so, would at this stage convict or acquit the accused.

[3] The Defence has made such a submission in this case and this is resisted by the Prosecution. The Defence submissions are to the effect that the Prosecution has failed to prove both the mens rea and the actus reas of the offence charged under Count (1) and (2) and that in respect of Count (3) and Count (4) there is no evidence of identification to link the accused with the offences.

[4] I have thoroughly read the written submission of no case to answer of the Defence and the Reply of the Republic. Having done so it is abundantly clear to this Court that the accused has no case to answer on all of the Counts charged.

[5] Court (1) is one of Indecent Assault. The essential element of the offence are that:-

(1) The accused assaulted the virtual complainant. The force used need not be violent and can be as slight as a mere touch, Colin V Wilcock [1984] 1 WLR 1172

(2) The assault was intentional and without lawful justification.

(3) The accused did so in indecent circumstances.

(4) The accused was aware that the person indecently assaulted was not consenting/

[6] In this case the evidence led by the Prosecution shows that the accused placed his hand on the leg of the virtual Complainant he touched and scratched the right side of her leg and she pushed his hand away. The indecent circumstances is clearly lacking her there is no evidence that prove that his scratched was made with indecent intent. At the material the virtual Complainant had willingly taken a ride with the accused in his car with one of her friend and they were partaking some beers together. The act of pushing the accused hand away does not show that the virtual Complainant did not approve his action does show that the virtual Complainant did not approve his action but it does not establish the specific mens rea of indecency.

COUNT (2)

[7] This count is also a count of indecent assault.

[8] The Prosecution case is simply that whilst she was in the car with the accused, the latter scratched her hands and she thought he was playing at that time and therefore not scared. It was later that she got scared when the accused left her at her place and informed her to go and washed her vagina for him to suck it. On the basis of this the Prosecution avers that both the mens rea and actus reus of indecent assault is proven. I am not satisfied. Though an intent of indecency appears to have existed at the time of the accused leaving the virtual Complainant at her place, that was clearly not present at the time of the accused committing the actus reus. At that material time it was an innocent playful act. There has to be concomitance in time between the indecent act and the physical act. In this case that was not the case. Accordingly the no case to answer submission here is upheld with respect to Count (1) and (2).

COUNT (3) and COUNT (4)

[9] Count (3) is a Count of breaking and entering a dwelling house. Count (4) is one of burglary.

[10] In Count (3) the Prosecution has averred that the accused was found armed with a knife and being so armed intended to break into the house of HJ. Count (4) is particularised to the effect that he broke and entered into the dwelling house of HJ.

[11] There is no evidence identifying the accused being in the vicinity of HJ's house at the time that an identified man was found in her house. The only evidence is that the virtual Complainant had gotten a ride with the accused and he left her at her house some time before. The no case to answer submission of the Defence with respect to Count (3) and (4) are upheld as there is no evidence at all identifying the accused as the person who broke into HJ's house.

[12] This being the case the accused is accordingly discharged from these proceedings and all Court Orders imposed upon him in this case accordingly lapses.

Signed, dated and delivered at Ile du Port 5th December 2022

Govinden C J