

SUPREME COURT OF SEYCHELLES

Reportable

[] SCSC

CR 20/2022

In the matter between

THE REPUBLIC

(rep. by Mrs Leste)

and

T L Accused

(rep. by Mr J Camille)

Neutral Citation: *The Republic v T Lawen (CR 20/2022) [] SCSC*

Summary: No Case to Answer Submission ; Virtual Complainant not manifestly unreliable .

Heard: 6 November 2023

Delivered: 1 December 2023

ORDER

[1] This court is satisfied that a prima facie case in respect of the offences with which the accused is charged exists against the accused and the No Case to Answer submission is dismissed.

GOVINDEN CJ

[2] I have considered the submissions made by learned counsel for the accused at the close of the prosecution case, in regard to his contention that the accused has no case to answer and learned counsel for the prosecution's reply in respect of same.

[3] The accused had been charged for committing Sexual Assault on a minor under section 130 (1) read with Section 130 (2) (d) and punishable under Section 130 (1) of the Penal

Code in count 1 and sexual assault contrary to Section 130 (1) read with Section 130 (2) (d) and punishable under Section 130 (1) of the Penal Code, respectively..

[4] The Particulars of Offence are as follows;

[5] Count 1.

[6] TL, a 33 years old Police Officer of [REDACTED], Mahe, while he was living at [REDACTED], Mahe, on a date unknown to the Republic in 2019, at his residence at [REDACTED], Mahe, sexually assaulted his step-daughter namely [REDACTED], a student of P2 at the time, by penetrating the body orifice namely vagina and anus of the said [REDACTED] with his finger and his penis for sexual purpose.

[7] Count 2

[8] TL, a 33 years old Police Officer of [REDACTED], Mahe, while he was living at [REDACTED], Mahe, on date unknown to the Republic in 2019, inside a car at [REDACTED] Mahe, sexually assaulted his step-daughter namely [REDACTED], a student of P2 at the time by penetrating the body orifice, namely the vagina of the said [REDACTED] with his finger for sexual purpose.

[9] In the case of ***R vs. Stiven 1971 SLR 137***, it was held what court has to consider at this stage is whether:

- a) there is no evidence to prove the essential elements of the offence charged.
- b) whether the evidence for the prosecution has been so discredited or is so manifestly unreliable that no reasonable tribunal could safely convict on it.

[10] ***Archbold in Criminal Pleadings Evidence and Practice 2012 Edition 4-363*** sets out the principle in a no case to answer application.

“A submission of no case should be allowed where there is no evidence upon which, if the evidence adduced were accepted, a reasonable jury, properly directed, could convict”

- [11] The main contention of learned counsel on behalf of the accused is that the evidence adduced by the Virtual Complainant and sole eyewitness has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict on it. In respect of count 1, the Learned Defence Counsel made specific references to several instances in her testimony where he said shows submitted shows inconsistencies; confusions and contradictions. According to him this affects her overall credibility in relation to all charges, including count 2.
- [12] Learned Counsel also refers to what he considered a vital omission in one prosecution piece of evidence, namely the Medical Report in which he submitted that no reference is made to injuries to the anus of the Virtual Complainant , hence raising a doubt with this aspect of her evidence is true.
- [13] He also submitted that another Medical Report, tendered by the defence with respect of a previous abused by an unknown person on the Virtual Complainant should create a doubt as to whether the evidence of the complainant can be taken as being truthful against the accused, in the face of previous findings of abuse on her.
- [14] When one considers the evidence of the victim, she refers in her evidence to several acts of sexual assault committed on her by the accused on different dates. The victim, described in detail the acts of sexual assault committed on her by the accused and identified the accused in open court as the person who committed such acts on him.
- [15] Though the Virtual Complainant was subject to lengthy cross examination, it cannot be said at this stage that her evidence has been totally discredited by cross examination nor could it be said that the prosecution has failed to prove an essential element of the said

offence. I do not find there there are notable inconsistencies and glaring discrepancies in her evidence that would discredit it or make it so unreliable so that no reasonable Tribunal of fact could rely on it.

[16] The issue of reasonable doubt can only be decided upon by this court after considering the totality of the evidence at the end of the case. Accordingly, I find that the submission with respect to the doubts created by the two medical reports to be misplaced. At any rate I find that at this juncture they do not discredit the Virtual Complainant's evidence so as to render it so manifestly unreliable that no reasonable tribunal could safely convict upon it.

[17] For the aforementioned reasons, this court is satisfied that a prima facie case in respect of the offences with which the accused is charged exists against the accused and there is no merit in the contention of learned defence counsel that the accused has no case to answer.

[18] This court therefore proceeds to call for a defence from the accused in respect of the charge framed against him.

Signed, dated and delivered at Ile du Port on December 2023

Govinden CJ

Signed, dated and delivered at Ile du Port on May 2021

Govinden CJ