IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

VERSUS

JACQUES MATOMBE

Criminal Side No. 7 of 2005

Mr. Hoareau for the Republic

Mr. Bonte for the Accused

RULING

The accused is charged with Sexual Assault contrary to section 130(1) of the Penal Code read with section 130(2) of the same code and punishable under the said section 130(1) on Count one. It is alleged that Jacques Matombe, on the 8th of August, assaulted Nicole Roberts, a girl under the age of 15 years. In the alternative to Count 1 he is charged with committing an act of indecency towards Nicole Roberts, a person under the age of 15 years contrary to section 135(1) of the Penal Code and punishable under the said section 135(1).

At the close of the prosecution case, Mr. Bonte for the accused submitted that the prosecution had not made out a prima facie case that required his client to be put on defence. Section 183 of the Criminal Procedure Code requires a court to stop the hearing of a case, and therefore acquit the accused, if there was no evidence to sustain the charges preferred.

Earlier on Mr. Hoareau for the prosecution had led evidence to the effect that the victim's father found the accused committing an act of indecency towards her, that the accused had pinned the victim against the wall near the toilets of a hotel at Anse Forban and thereby, not only impeded her movement but also physically prevented her from leaving the place. Further, that the accused tried kissing the victim several times but was not successful as she kept dodging him. Although defence counsel severely cross-examined

the prosecution witnesses, the prosecution asked the court to put the accused on his defence submitting that the evidence on record warranted so.

"The submission of no case to answer may properly be upheld –

(a) Where there has been no evidence to prove an essential element of the offence charged or;

(b) *Where the evidence for the prosecution has been so discredited or is so manifestly unreliable that no reasonable tribunal would safely convict on it. (Steven 1979 SLR No. 9-)*

The proper basis to decide whether there is a case to answer is not whether the trial court does not think that in presence of the evidence adduced any court would convict the accused, but whether the evidence was such that a reasonable tribunal might convict. (R vs. Olsen 1973 No. 5)"

In the case of Yeo Tee Soon and Another vs. Public Transport 1994 2, the Commonwealth Law Reports, page 6111, it was held as follows:

"It was fundamental to adversarial procedure that issues of fact are not to be decided, even provisionally, until the whole evidence had been heard. The trial Judge is only entitled to accede to an application of no case to answer at the conclusion of the prosecution's case and stop the case if he is satisfied that some essential elements in the charge had not been covered by evidence or if the prosecution evidence was so inherently incredible that no reasonable person could accept it as true. Once the prosecution had adduced evidence which revealed all the elements of the offence, and which was not so completely discredited that no

reasonable tribunal of fact could believe it, a prima facie case has been made out, which if unrebutted, would warrant a conviction."

In the instant case it cannot be said that an essential element of offence of committing an act of indecency towards another person under the age of 15 contrary to section 135(1) of the Penal Code and punishable under the said section has not been proved or is the evidence of the witnesses so inherently incredible so that no reasonable person or tribunal could accept it as true. In short, the evidence on record requires that the accused person offers an explanation in rebuttal, failing whereof, a conviction may be entered.

Accordingly, there being no merits in the submission of no case to be answered, I order the accused person to be put on his defence in respect of the alternative count (Count 2) under section 184 of the Criminal Procedure Code.

D. GASWAGA

JUDGE

Dated this 24th day of May, 2006.