

IN THE SUPREME COURT OF SEYCHELLES

The Republic

vs

Ronny Lalande

Defendant

Criminal Case No: 2 of 2000

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Mr. R. Govindan for the Republic

Mr. F. Bonte for the Defendant

D. Karunakaran, J

RULING

The defendant above named stands charged before this court with the offence of “Sexual Assault” contrary to **section 130 (1) (2) (d) read with Section 130 (3) (b)** and punishable under **Section 130(1)** of the Penal Code.

As per charge the defendant on 7th day of March 1997, at Anse Boileau, Mahé committed a sexual assault by penetrating the anal orifice of C L, for a sexual purpose. The defendant denied the charge. The case proceeded for trial. The defendant was represented and duly defended by Learned Defence Counsel Mr. F. Bonte. The prosecution adduced evidence by calling six witnesses to establish

the case against the defendant. After the close of the case for the prosecution, Learned Defence Counsel chose to submit on no case to answer and contended in essence, that (i) the prosecution has failed to adduce sufficient sustainable evidence to prove all the elements of the offence and (ii) the evidence adduced by the prosecution is weak, uncorroborated and contradictory, which cannot be relied and acted upon to sustain a prima facie case against the accused. Therefore, according to Mr. Bonte, the prosecution has failed to establish a prima facie case against the defendant and hence this Court cannot safely convict the defendant in this matter for the offences charged. The defence counsel hence seeks dismissal of the charges and acquittal of his client.

On the other side, Learned State Counsel Mr. R. Govindan submitted in reply that the evidence adduced by the prosecution is strong, corroborative, cogent and reliable to prove all the elements of the offence. Hence, the Court may safely rely and act upon it to base a conviction for the offence defendant now stands charged with.

As regards the submission of no case to answer, it is a trite saying nevertheless should be restated that prosecution at this stage of the trial only need to show that it has made out a prima facie case 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 any 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.

It is pertinent to note 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*. Indeed, the proper test required to be applied here is to find out objectively, whether the evidence adduced is such that a reasonable tribunal **might** convict the defendant in the presence of such evidence but not to determine subjectively whether the trial Court **would** convict the defendant based on that evidence.

Bearing the above principles in mind, I carefully perused the entire evidence

including the medical evidence given by the doctor in this case. I gave meticulous thought to the submissions made by both counsel on the issue as to sufficiency, reliability, credibility and corroborative aspect of the evidence adduced by the prosecution in relation to the ingredients necessary to constitute the offence in question. On a cursory look at the evidence on record, it appears to me that the prosecution has made out a prima facie case covering the essential elements of the offence charged against the defendant. Secondly, I note that no part of the evidence has been discredited to such an extent that it cannot be relied and acted upon by any reasonable tribunal to base a conviction in this matter. In the circumstances, to my mind the evidence adduced thus far, reveal a prima facie case against the defendant and any reasonable tribunal properly constituted may rely and act upon it to base a conviction against the defendant. Therefore, I find the answer to the above question in the affirmative. For these reasons, this Court rules that the defendant has a case to answer for the offence charged. Hence, the motion of no case to answer is dismissed. The defendant is accordingly, called upon to present his defence, if any.

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D. KARUNAKARAN

JUDGE

Dated this 2nd Day of May 2008