SUPREME COURT OF SEYCHELLES

Reportable/Redact
(CR 13/2023)

In the matter between:

THE REPUBLIC **Republic**
(rep. by Mrs. Leste)

and

T S **Accused**
(rep. by Mr. Rajasundaram)

Neutral Citation: *R v T S* (CR13/2023)

Before: Esparon J

Summary: Sexual Assault – Submission of no case to answer

Heard: By way of written submissions

Delivered: 26th June 2026

ORDER

Submissions of no case to answer- Submissions of no case to answer is accordingly dismissed – The Court holds that the prosecution has established a prima facie case against the accused as regards to count 1 in order for the accused to answer the charge against him in the present matter since the witnesses who testified for the prosecution especially the evidence of the virtual complainant has not been so discredited nor have they been seen by this Court to be so unreliable that no reasonable tribunal might convict and that the prosecution evidence, taken at its highest, is such that a reasonable Court could safely convict upon it. Hence this is not a case whereby there is no evidence to prove an essential element of the offence in view of the evidence of the virtual complainant as narrated at paragraphs 15 and 16 of this ruling.

RULING

ESPARON J

Introduction

[1] The accused TS has been charged with the offence of Sexual Assault contrary to section 130(1) as read with section 130(2)(d) & section 130(3)(b) of the Penal Code. The particulars of offence reads as follows;

'Mr TS of Baie Lazare, Mahe, on Saturday 18th June 2022, at Grand Anse, Mahe, sexually assaulted another namely Ms AYB, aged 12 years old at the time, by inserting his penis into the vagina of the victim'.

[2] After the close of the prosecution case, counsel for the accused made a submission of no case to answer.

Submissions of counsels

[3] Counsel for the accused relied on the law namely section 183 of the **Criminal Procedure Code** and cited the case of Green v R (1972) SLR 54, R v Galbraith (1981) 73 Cr. App. Re. 124 which was relied upon in the case of R v Marengo and Ors (2004) SLR 116, R v Matombe (No 1) (2006) SLR 32 and R v Hoareau SC Cr 79/2014.

[4] Counsel for the accused submitted that it is only the testimony of the alleged victim that is available before this Court as to the alleged commission of the offence against the accused while no single corroborative testimony is available before the Court and that all the other witnesses are merely highly circumstantial in nature. Hence it is highly unsafe for the Court to rely on circumstantial evidence to convict the accused purely based on circumstantial evidence.

[5] According to counsel, the character of the alleged victim namely often escaping from her home from the custody of her mother and coming back the next day is sufficient for the Court not to rely on her testimony. Furthermore, there is evidence that she has even been on remand for failure to attend tribunal matters. Her evidence is also unreliable in view that she was found in the company of various other boys in the afternoon of the 18th June 2022.

[6] Furthermore PW1 did not reveal her whereabouts when her mother questioned her, and that subsequent external pressures from her mother and other relatives that involuntarily prompted her to render a statement against the accused and hence it is not at all a genuine and voluntary statement that the Virtual Complainant has stated in her statement.

[7] As such, counsel submitted that her testimony is not truthful and is unbelievable. That it is purely circumstantial that the accused was seen in the company of the Virtual Complainant on the 18th June 2022. That the statement of PW1 is just *res gesti* and that this statement is just hearsay and relied on the case on R v Callender (1998) CRLR 377. Hence, he submitted that the statement of PW1 is highly concocted and distorted caused by the external influences from her mother, the family friend pastor and his wife.

[8] Counsel for the accused submitted that the accused should be discharged on the grounds that there is no prima facie case against him.

[9] On the other hand, counsel for the Republic also cited the case of Galbraith [1981] 2 All ER 1060 which was followed in the case in the case of R v Lesperance & Ors (Cr 31/2019). Counsel further relied on the case of R v Hoareau (CO 79/2-14) [2015] SCSC which relied on the case of Green v R (1972) S.L.R where Sauzier J stated the following;

> 'The consideration which apply at that stage are purely objective and the trial Court is not asked to weigh the evidence. At that stage it is only necessary for it to find that a reasonable tribunal might convict'.

[10] Learned counsel submitted that as regard to a submission of no case to answer, the prosecution has to prove that there is a prima facie case and not evidence beyond a reasonable doubt and cited the case of Republic v Kethy Esparon (CR 108/2015) which relied on the case of R v Winsley Cedras (2015) SCSC 311. The prosecution relied on the evidence of AY, Dr Michel, Evita Nourrice, MMY, CY in order to attempt to establish a prima facie case against the accused before this Court.

[11] Counsel submitted that the accused submitted that because of the waywardness of the witness that she is not credible. However according to counsel the witness did not make any attempt to hide of having been absent from home and that during the year 2023 she

was on substance abuse. That the cross-examination did not dent her testimony and as such her answers did not render the witness unreliable.

[12] Counsel further submitted that it is trite law that there is no corroboration requirement in cases of sexual assault and cited the case of R v Lucas Criminal side No 03 of 2026 in support of her submissions. According to counsel, the present case is not a case where there is no evidence that the offence was committed by the accused. That there is direct evidence from the complainant identifying the accused and implicating him in the commission of the offence of which this is contrary to the submissions of the accused that the case rest on circumstantial evidence. Her testimony is direct evidence and primary account of the events and is in addition not hearsay.

[13] She further submitted that the contention of the witness being influenced or pressured to give evidence was never put to the witness during cross-examination and thus was an afterthought not a genuine challenge of her evidence. Furthermore according to counsel, it cannot be said that this Court could not convict on the evidence. That if the evidence of the complainant is believed, it is capable of sustaining a conviction. At the no case to answer stage, the Court is not required to determine whether the evidence is ultimately credible, but only whether it is capable of supporting a conviction if accepted. In support of her submissions, counsel cited the case of Republic v Gerve Jerome, CR 57/2014 (2016) SCSC 458.

Analysis and determination

[14] In determining the submissions of no case to answer made by Counsel for the accused, this Court will adopt the approach and principles as laid down in decided cases from this jurisdiction namely the case of R v Stiven (1971) SLR 112, R v Olsen (1973) SLR 188, R v Marengo (2004) SLR 116, R v Matombe (No1) (2006) SLR 32 namely that;

i) There is no case to answer where;

a) There is no evidence to prove an essential element of the offence; or

b) 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 safely convict upon it.

ii) 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.

iii) When the Court comes to the conclusion that the prosecution evidence, taken at its highest, is such that the 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.

iv) 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 province 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.

[15] The evidence of the Virtual Complainant AY is very pertinent in determining whether the accused has a case to answer. She gave evidence to the fact that while she was attending a prayer service at Mont Fleuri, she received a call from the accused TS. Thereafter she went to meet him at a shop at Plaisance and she walked until Stade Linite in the company of his cousin Darius where they were watching kids playing cricket. Afterwards they took the bus to Grand Anse Mahe. Upon reaching there, the accused brought her to a house made of corrugated iron.

[16] According to the witness, upon reaching the said house, the accused told her to take off her clothes. She stated that he told him that she has to go back to her mother because she could get in trouble with her. She further gave evidence that the accused took off her clothes and thereafter they had sex namely that he took his private part and he put it inside her private part and he also did not use any protection of which thereafter he made her stay the whole night. She further stated that she had told him that she was 12 years old.

[17] This Court disagrees with the submission of learned counsel for the accused who submitted that the evidence in the case is merely circumstantial evidence in view that these were facts perceived by the witness namely by the Virtual Complainant and hence being direct evidence and neither was such evidence hearsay evidence especially when it comes to the evidence of the Virtual Complainant in the matter.

[18] Counsel for the accused also submitted that the evidence of the Virtual Complainant being a sexual complainant is not corroborated by the evidence of any other witness which testified for the prosecution. In order to determine whether in this particular case there is a need for corroboration as alleged by counsel for the accused, this court shall be guided by the case of Raymond Lucas v the Republic SCA 17/09, where Justice Anthony Fernando as he was then, in following the case of R v Makanjuola (1995) 1 WLR 1348 and R v Easton (1995) 2 Cr. App R.469 CA stated the following;

> 'we therefore hold that it is not obligatory on the Courts to give a corroboration warning in cases involving sexual offences and we leave it at the discretion of judges to look for corroboration when there is an evidential basis for it as stated earlier'.

[19] Counsel for the accused person submitted to the Court that the character of the alleged victim often escaping from her home from the custody of her mother and coming back the next day is sufficient for the Court not to rely on her testimony. Furthermore there is evidence that she has been even on remand for failure to attend tribunal matters. That her evidence is also unreliable in view that she was found in the company of various other boys in the afternoon of the 18th June 2022.

[20] I have examined the evidence on record especially during cross-examination by counsel for the accused and found that the witness did not make any attempt to hide having been absent from home on numerous of occasion, that during the year 2023 she was on substance abuse and that she was in a juvenile detention centre in custody at one point in time. That she did not hide the fact that she had lost her virginity to someone else before her encounter with the accused namely VS and the fact that after the incident with TS during the year 2024 she had another relationship with another person namely J-YD. As a result of not

hiding these facts, I also find that her evidence appeared to me to be cogent, unshaken and un-contradicted during cross examination by counsel for the accused.

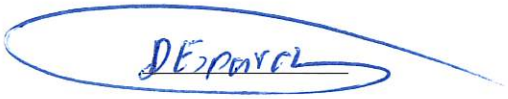
[21] As a result of the above in paragraph [20] of this ruling, I find that there is no need to look for corroboration as regards to the evidence of the Virtual Complainant in view of the evidence of the Virtual Complainant being such. Hence this Court would accordingly follow the case of Raymond Lucas v the Republic SCA 17/09.

[22] As to the submissions of counsel for the accused that subsequent external pressures from her mother and other relatives had involuntarily prompted her to render a statement against the accused and hence it is not at all a genuine and voluntary statement that the Virtual Complainant has stated in her statement. That as a result the statement of PW1 is highly concocted and distorted caused by the external influences from her mother, the family friend pastor and his wife. This Court has meticulously perused the record of proceedings in the matter and finds that such an allegation was never put to the Virtual Complainant nor to any other witnesses for the prosecution in the matter and hence remains unchallenged in order for the Court to find any support to such submissions of counsel for the accused and hence I find that there is no merit in such submissions.

[23] This Court has considered the evidence adduced by the prosecution in the matter, the submissions of Counsel for the accused and that of the prosecution, as well as the above cited case laws and holds that the prosecution has established a prima facie case against the accused as regards to Count 1 in order for the accused to answer the charge against him in the present matter, since the witnesses who testified for the prosecution especially the evidence of the Virtual Complainant has not been so discredited nor have they been seen by this Court to be so unreliable that no reasonable tribunal might convict and that the prosecution evidence, taken at its highest, is such that a reasonable Court could safely convict upon it. Hence this is not a case whereby there is no evidence to prove an essential element of the offence in view of the evidence of the Virtual Complainant as narrated at paragraphs [15] and [16] of this ruling.

[24] As a result of the above, the submission of no case to answer is accordingly dismissed.

Signed, dated and delivered at Ile du Port on the 12th June 2026.



D. Esparon J