

**IN THE RESIDENT MAGISTRATES COURT**  
**AT LABASA - CRIMINAL DIVISION**

**Criminal Case No. 369 of 2017**

**BETWEEN :** State

**Prosecution**

**AND :** Henry Authur Robinson

**Accused**

**Appearances**

**For the State :** PC Abinash

**For the Accused :** Mr. A. Kohli (**Messrs. Kohli & Singh**)

**Date of Trial :** 19<sup>th</sup> March 2018

**Date of Ruling :** 23<sup>rd</sup> May 2018 at Labasa

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**RULING ON NO CASE TO ANSWER**

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1. The Accused had first appeared on 4<sup>th</sup> August 2017 charged with the following offence:

*"Statement of Offence (a)*

**CRIMINAL INTIMIDATION:-** Contrary to Section 375 (1)(a)(i)(ii)(iv) and 2(a)(b) of the Crime Act of 2009.

*Particulars of the Offences (b)*

**HENRY ARTHUR ROBINSON**, on the 2<sup>nd</sup> day of August, 2017 at Labasa in the Northern Division, without lawful excuse threatened **DOREEN GWENDOLYN** with injury to the person, with intent to cause alarm to the said **DOREEN GWENDOLYN.**"

2. The accused pled not guilty to the charge on 21<sup>st</sup> August 2017 and thereafter the matter was fixed for trial.
3. During the trial, Prosecution called two witnesses (that is the complainant (Doreen Gwendolyn and Sergeant 3138 Gyan Singh) in



support of their case and also relied upon the caution interview<sup>1</sup> of the accused which was tendered by consent.

4. Upon close of Prosecution case learned counsel for the accused made an application pursuant to Section 178 of the **Criminal Procedure Act 2009** submitting that there was '**No Case To Answer**' on the basis that there was no evidence led by Prosecution to establish the element of the offence, that is, **threaten**.

#### **THE LAW**

5. Section 178 of the **Criminal Procedure Act 2009** is the prevailing section for the purposes of a *no case to answer* application. It is set out herein as follows:

*"Acquittal of accused person where no case to answer"*

*178. If at the close of the evidence in support of the charge it appears to the court that a case is not made out against the accused person sufficiently to require him or her to make a defence, the court shall dismiss the case and shall acquit the accused."*

6. In **State-v-Ganesh** [2009] FJHC 207; HAM030.2008 (17 September 2009) Goundar J had adjudged that the test for *no case to answer* in the Magistrates court had two limbs, that is:
  - (i) Whether there is relevant and admissible evidence implicating the accused in respect of each element of the charged offence;
  - (ii) Whether the prosecution evidence has been so discredited by cross examination that no reasonable tribunal could convict.
7. **Goundar J** in **Ganesh** (supra) also adjudged that either limb of the test can be relied upon to make an application for *no case to answer* in the Magistrates Court.

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<sup>1</sup> Prosecution Exhibit No.1 (PE#1)



8. The position undertaken by **Goundar J** in *Ganesh* (supra) had been crystalized in an earlier decision of **Shameem J**( as she then was) in ***Sahib v The State*** [2005] FJHC 95; HAA0022J.2005S (28 April 2005) as follows:

*“So the magistrate must ask himself or herself firstly whether there is relevant and admissible evidence implicating the accused in respect of each element of the offence, and second whether on the prosecution case, taken at its highest, a reasonable tribunal could convict.*

*In considering the prosecution case at its highest there can be no doubt at all that where the evidence is entirely discredited, from no matter which angle one looks at it, a court can uphold a submission of no case. However, where a possible view of the evidence might lead the court to convict, the case should proceed to the defence case.”*

### **Discussion**

9. The charging section is relisted verbatim as follows:

“

#### *Criminal intimidation*

375. — (1) A person commits a summary offence if he or she, without lawful excuse

—

(a) threatens another person or other persons (whether individually or collectively) with any injury to —

(i) their person or persons; or

(ii) their reputation or property; or

...

with intent —

(iv) to cause alarm to that person or those persons; or

...

(b) ...

...

(2) If the threat is—

(a) to cause death or grievous hurt; or

(b) to cause the destruction of any property by fire; or

...

”

10. In light of the charge the elements which arises are as follows:

- i. A person;
  - ii. Without lawful excuse;
  - iii. Threatens another person with injury to that person;
  - iv. Threatens another person with injury to the other persons reputation or property;
  - v. With intent to cause alarm to that person;
  - vi. The threat is to cause grievous harm or hurt;
  - vii. The threat is to cause the destruction of property by fire.
11. At this point of the proceedings, Prosecution need only prove that there is relevant and admissible evidence on each and every element.
12. If there is, then this court has the discretion to consider whether that evidence has been discredited to such a degree to warrant a conclusion that such evidence has been so discredited that a reasonable tribunal would not convict.

### **Evidence**

13. The evidence led by Prosecution shall not be regurgitated however only the salient points shall be highlighted.
14. This court first considers the caution interview<sup>2</sup> of the accused and highlights verbatim the following:
- “ ...  
Q.25 Do you know one Doreen Gwendolyn Miller of Lot 21 Ritova Street, Naodamu, Labasa?  
Ans: Yes, and is my wife.  
Q.26 For how long you her?  
Ans: For thirty years now  
...  
Q.44 According to the statement of your wife namely Doreen Gwendolyn Miller to Police that you yesterday dated 02/08/2017 at about 10pm at Ritova Street

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<sup>2</sup> PE#1



Naodamu, Labasa you poured the petrol in the room of Doreen Gwendolyn Miller and you also tried to burn the house with her inside. What can you say about this?

Ans: No

Q.45 Did you poured the petrol in your bedroom yesterday dated 02/08/17 at about 10pm, where your wife was inside that room?

Ans: Yes I did that

Q46. What type of petrol you put on the floor?

Ans. Premix and straight away I then put 2 bucket of the water because of the smell underneath the door.

Q.47. Where was the petrol?

Ans. It was in the verandah near my brush cutter.

Q.48 Why you want to put the premix on the floor from the underneath the door whereby your wife was inside that room?

Ans. I want to scare her as she don't want to talk to me and had locked our bedroom ...

15. The first Prosecution witness (PW1) Doreen Gwendolyn in her evidence stated that after a conversation with her husband (whom she identified as the accused) on 2<sup>nd</sup> August 2017 at about 7 to 8 pm she went to the master bedroom and locked the door.
16. Further she stated that her husband kept on asking her to come out and she only came out after smelling petrol wherein she felt scared and called the Police before she exited through a side door.
17. Defence counsel chose not to cross examine her.
18. The second prosecution witness (PW2) Sergeant 3138 Gyan Singh stated that he received information that PW1 had called stating that the accused had threatened PW1 and was going to set fire to their house.
19. PW2 went to the residence wherein he confirmed the report and noticed that PW1 was crying whilst the accused was calm and cooperative.



20. Upon questioning the accused, the accused informed him that he was only scaring PW1. PW2 stated that he knew the accused personally wherein he identified him as he sat in the accused's box.
21. When cross examined PW2 admitted that he did not record the alleged threat.
22. That was prosecution's case.
23. The court with the test of **no case to answer** in mind sets out whether there is evidence on each element of the offence as follows:
- i. **A person:** PW1 and PW2 positively identified the accused in the accused box. It was a case of recognition as such there was no need for a special direction. In addition there was no challenge to her evidence as a result of no cross examination.
  - ii. **Without lawful excuse:** PW1 in her evidence states that no consent was given to the accused. In addition there was no challenge to her evidence as a result of no cross examination.
  - iii. **Threatens another person with injury to that person:** PW1 did not state that any threat of injury was communicated to her. PW2 mentioned that he received information on the threat however it is dismissed as hearsay as a result of PW1 not making mention of the same.
  - iv. **Threatens another person with injury to the other person's reputation or property:** PW1 did not state that any threat of injury to her reputation or her property was communicated to her. PW2 mentioned that he received information on the threat however it is dismissed as hearsay as a result of PW1 not making mention of the same.
  - v. **With intent to cause alarm to that person:** PW1 stated that she was scared. In addition there was no challenge to her



evidence as a result of no cross examination. Further in question and answer 48 of the caution interview show that the Accused intended to scare PW1.

vi. **The threat is to cause grievous harm or hurt:** PW1 did not state that any threat of grievous harm or hurt was communicated to her. PW2 mentioned that he received information on the threat however it is dismissed as hearsay as a result of PW1 not making mention of the same.

vii. **The threat is to cause the destruction of property by fire:** PW1 did not state that any threat to cause destruction of property by fire was communicated to her. PW2 mentioned that he received information on the threat however it is dismissed as hearsay as a result of PW1 not making mention of the same.

24. Upon the above discussion the following elements of the offence have highlighted that there exists relevant and admissible evidence implicating the accused, that is:

- A person;
- Without lawful excuse; and
- With intent to cause alarm to that person.

25. It is on those elements where the words 'threaten' are present, where this court focuses its discussion,

26. Temo J in **State v Maharaj** [2018] FJHC 260; HAC033.2016LAB (28 March 2018)<sup>3</sup> described the element of threat in terms of the charge of criminal intimidation as follows:

"

14. The key word in the above offence is the word "threaten". "Threaten" basically means "to frighten or to try to influence a person by menaces". The threat must consist of an intention to inflict personal injury on the person or persons. The purpose of the threat is to alarm or frighten the person or persons. The physical part of the offence is to "threaten" a

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<sup>3</sup> Summing Up



person or persons. The fault element was, when doing the above act, he intended to frighten or cause alarm to the person or persons.

..."

27. The above excerpt intimates that the word 'threaten' requires an act to be performed (physical act) or in other words it requires an act to be communicated.
28. The court upon gleaning the evidence led so far by the state specifically PW1 is not satisfied that any 'threat' was communicated to PW1. Although PW2 states that he received information to the effect that there was such a threat, the absence of any evidence PW1 to confirm the same renders his evidence on the element '**threaten**' as inadmissible.
29. As such it is this court's finding that there is no relevant and admissible evidence on the element of threat which means one of the elements of the offence (considering the test at this stage) is not made out.
30. Consequently the court pursuant to Section 178 of the **Criminal Procedure Act 2009** makes a finding of no case to answer which subsequently means that the Accused is acquitted of the charge.
31. 28 days to appeal

  
**J.N.L SAVOU**  
Resident Magistrate