

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 380 of 2016

STATE

v

SHIVA NAND MURTHI

Appearance : **PC Lal** for the prosecution
Mr Korotini. J for the accused

Ruling : **9 August 2019**

RULING

NO CASE TO ANSWER

1. The accused, Shiva Nand Murthi is charge for *Assault Causing Actual Bodily Harm*, contrary to section 275 of the *Crimes Decree*.
2. The particulars of the offence are;-
"Shiva Nand Murthi on the 5th day of May 2016, at Labasa in the Northern Division, assaulted Dharam Raj thereby causing him actual bodily harm."
3. The Accused pleaded not guilty to the charge on 28 November 2016. On 6 January 2017, Counsel for the Accused informed the court that they are not challenging the caution interview. The case proceeded to trial on 26 November 2018.

4. The Prosecutor called the victim, Dharam Raj (Raj) as the only witness for the prosecution case. At the close of the prosecution case, the Counsel for the Accused seeks time to file no case to answer submission. The same was filed on 26 March 2019.

Application

5. The defence submitted that the prosecution had not adduce sufficient evidence for the court to convict on it. There was no confirmation on the identity of the person who had committed the act. There was inconsistency on the evidence of injury. The medical report showed the injuries are on the left side of the victim's forehead. The victim state the injuries were on the right side of his forehead.

Law

6. Section 178 of the Criminal Procedure Act pursuant such application to be made at this stage of the proceeding.
7. Section 275 of the Crimes Decree, states;-
"A person commits a summary offence if he or she commits an assault occasioning actual bodily harm.
8. The elements of the offence are;-
(a) the accused,
(b) assaulted the victim,
(c) thereby causing actual bodily harm to the victim,
9. The test of no case to answer in the Magistrate Court was explained in **Abdul Gani Sahib v The State** [2005] FJHC 95; HAA 022 of 2005; 28 April 2005, as;-
"Firstly whether there is relevant and admissible evidence implicating the accused in respect of each element of the offence,
Second, whether the Prosecution evidence, taken at its highest, a reasonable tribunal could convict."

10. The burden of prove vested with the prosecution.

Analysis and determination

11. Raj identified the Accused person in court as the person who punched him.

12. Raj stated in his evidence that on the 5 May 2016, he opened his cows and they went to other farms. On the next day, he met the Accused, and the Accused asked him what is this. His cows went into the Accused farm once. The Accused asked him what is this and started punching him. The Accused punched him on his head. The Accused punched him on the right side of his forehead. When the Accused punched him he fell down and the blood was coming out. He was taken to the hospital and interviewed by the police. He tendered his medical report as prosecution exhibit 1.

13. In cross-examination, he was given the medical report but he said that his right forehead was injured. Yet he confirmed that the medical report state that the injury was on the left forehead.

14. In re-examination, he stated that the medical report was wrong as the day he went to the hospital, he got hurt on his right side.

15. It is apparent that the evidence of injury as stated by Raj and the injury in the medical report are contradicting each other. Raj says that his medical report is wrong. If that is the case, there is no evidence before the court to prove the injury.

16. With that contradicting evidence of the prosecution no convict can be made as the contradiction touches on the essential elements of the offence.
17. I take this opportunity to refer to the date of the offence. The charge says 5 May 2016. The evidence of Raj say it happened on the next day after 5 May 2016 which logically it will be the 6 May.
18. In assessing the evidence, I find that the prosecution fail to discharge the burden.
19. I find that there are insufficient evidence to require the Accused to put his defence.
20. I find there is a merit on the application and I allow the application. There is no case to answer.
21. Pursuant to *section 178* of the *Criminal Procedure Act*, I dismiss the case and acquitted the Accused.

28 days to appeal



A handwritten signature in blue ink, appearing to be "K. S. S.", written over a horizontal line.

RESIDENT MAGISTRATE