

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 277 of 2014

STATE

v

PREM NAND LAL

Appearance : **PC Lal** for the prosecution.
Mrs Raj. R for the accused

Ruling : **13 September 2019**

RULING

NO CASE TO ANSWER

1. The accused, Prem Nand Lal is charge for *Resisting Arrest* contrary to *section 277(b)* of the *Crimes Decree*.
2. The particulars of the offence is that the accused on the 14th day of June 2014, at Labasa in the Northern Division, whilst being lawfully arrested by police officer Cpl 3119 Rohit resisted such arrest.
3. The accused pleaded not guilty to the charge on 16 June 2014. The case proceeded to trial on 16 January 2019.

4. The Prosecutor called Inspector Rohit Chand (Inspector Rohit) as the first witness, Mohammed Kadar Khan (Mohammed) as the second witness, John Krishna Sami (John) as the third and final witness. The Prosecutor closed his case.
5. The Counsel for the defence makes an application to file a no case to answer submission. The same was filed on 22 February 2019.

Law

6. The application was made under *section 178 of the Criminal Procedure Act*.
7. *Section 277(b) of the Crimes Decree states;-*
 "A person commits a summary offence if he or she assaults, resists or wilfully obstructs any police officer in the due execution of his or her duty, or any person acting in aid of such an officer."
8. The elements of the offence are;-
 - a. *the accused,*
 - b. *resisted arrest,*
 - c. *from a police officer,*
 - d. *in due execution of his duty.*
9. The test for no case to answer in the Magistrate Court was set in **Abdul Gani Sahib v The State** [2005] FJHC 95; which state;-
 "In the Magistrate Court, both tests apply.....
 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 proof is on the prosecution.

Application

11. The defence submitted that the prosecution failed to prove that the accused resisted the arrest. The evidence of the prosecution witnesses were contradicting to each other. It is unsafe to rely on discredited evidence. The case against the accused had not been made out.

Analysis and determination

12. In the submission, the defence submit that they are not disputing that it was the accused who was arrested in this case. The accused was also identified by all the prosecution witnesses in court.
13. Inspector Rohit stated in his evidence that he was on duty on 14 June 2014. He was in the police vehicle with WPC Ashwini when they saw the Accused with red blood shot eyes when the accused drove his vehicle out from Discount Shop. They followed the accused through Madhvan Street. On their way they tooted the syron tried to stop the accused. The accused drove and stop his vehicle in front of the Farmer's club. He followed the accused to the club and when he was talking to the accused, he smelt liquor from the accused. He asked the accused that he wanted to test him on dragger 7.
14. He asked the accused to blow in the machine but he refused. He warned the accused that he is arrested and he will take him to the police station to be further tested on the dragger machine. The accused then refused to get into the police

vehicle and got hold of the fence of the Labasa Club. With the help of the members of the public he manage to free the accused from the fence and they put him inside the police vehicle and took him to the Labasa Police station.

15. Mohammed stated in his evidence that on 14 June 2014, he was sitting at the Framers Club drinking beer when he saw the accused hold on to the fence with a police officer. He went and assist in taking out the accused hand from the fence and the police took the accused. The accused was holding onto the fence tightly. He heard the police told the accused to release the fence as he will take him. He was the only one who went to assist the police and free the accused hand's from the fence.
16. John stated in his evidence that on 14 June 2014, he was the barman at the Farmer's Club. From the bar, he can see Inspector Rohit pulling the accused. The distance was 30 feet and his view was not that good.
17. Inspector Rohit is a police officer and was a police officer at the time of the offence. It is clear from the evidence of Inspector Rohit that he was on duty at the time of the offence. He informed the accused that he is arrested for further test at the Labasa Police station.
18. The accused act of holding on to the fence and did not go to the police vehicle is an act of resisting arrest. Mohammed's evidence that he went to assist Inspector Rohit to release the accused hands from the fence support the evidence of Inspector Rohit that accused did resist arrest by holding onto the fence and did not go to the police vehicle.
19. The evidence, of the prosecution is clear and implicating the accused on all the elements of the offence. There is no material contradictory evidence from the prosecution

witnesses. The material evidence that touches on the elements of the offence are consistent on all the evidence of the witnesses.

20. In my assessment, I find that there is sufficient evidence against the accused that requires him to put his defence.
21. Accordingly, I ruled that there is a case to answer, I dismiss the application. The proceeding will proceed for the defence case.

28 days to appeal.



A handwritten signature in blue ink, appearing to read "C.M. Tuberi". The signature is stylized and written in a cursive hand.

C.M. Tuberi
RESIDENT MAGISTRATE