

IN THE MAGISTRATE'S COURT AT LABASA

CRIMINAL JURISDICTION

Criminal Case No. 609 of 2016

STATE

v

MACIU VURAI

Appearance : **PC Lal** for the prosecution
Accused no appearance

Judgment : **1 November 2019**

JUDGMENT

1. The accused, Maciu Vurai was charged for *Drunk and Disorderly*, contrary to section 4 of the *Minor Offences Act* and section 56 of the *Sentencing and Penalties Decree*.
2. The particulars of the offence are;-
"Maciu Vurai on the 29th day of October 2016, at Labasa in the Northern Division was drunk and behaved in a disorderly manner in a public place namely Labasa town."
3. On 23 June 2017, the accused pleaded not guilty to the charge.
4. The accused was present in court when the trial date was set. The accused did not appear on the trial date and no

information provided on the reason for non-appearance. As such, the Prosecutor made an application under *section 171 of Criminal Procedure Act* for trial in absence of the accused. The application was granted and the case proceeded to trial in absentia of the accused.

5. The Prosecutor called three witnesses.

Law

6. *Section 4 of the Minor Offences Act* state;-

"Any person who is drunk and disorderly in any public place or who behaves in a disorderly manner therein shall be guilty of an offence ..."

7. The elements of the offence are;-

- a. *the accused,*
- b. *was drunk,*
- c. *in a public place,*
- d. *and behaved in a disorderly manner.*

8. The burden of proof is on the prosecution to prove all the elements of the offence beyond reasonable doubt.

Analysis and determination

9. The non-appearance of the accused on the trial date is viewed that he is exercising his right to remain silent and no adverse inference will be drawn against him. He is under no obligation to prove his innocent.

10. PC 3532 Amit (PC Amit) is the first witness for the prosecution. He testified that Maciu Vurai is well known in Vanua Levu as a notorious criminal. PC 5193 Pawan (PC Pawan) is the second witness for the prosecution. He stated that Maciu Vurai is known to the police station for his

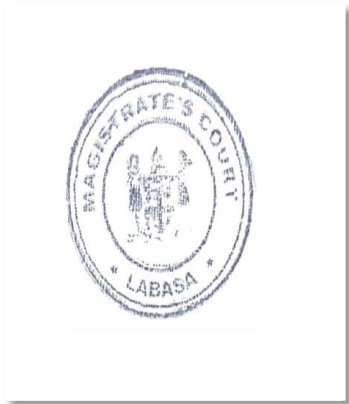
previous matters. PC 5101 Niaz is the third witness for the prosecution. He testified that Maciu Vurai is well known to the police of his history. With all those testimony I am satisfied without any doubt that all these witnesses had known Maciu Vurai who is the accused person in this case. I am satisfied that they all can identify the accused in court if he was present.

11. All the prosecution witnesses testified that on 20 October 2016, they were on morning shift and doing vehicle patrol. PC Niaz was driving. PC Niaz stated that at about 12pm at Park Street, members of the public were calling them for their assistance. They went there. PC Niaz said that people informed them that there is a drunken man on the street.
12. PC Amit said that they notice a man was walking and unable to control himself. They stop the vehicle and went to the person and it was the accused. They told the accused to control himself. The accused pushed them and shouting. They can smell the alcohol from the accused. They tried to touch the accused and he pushed them away. They arrested the accused for drunk and disorderly at the junction of Vision Motors a public access road at the main town and it was a public place. There was three of them and they were able to put the accused into the vehicle and they took the accused to the police station.
13. PC Pawan testified that they saw a itaukei man standing on the road with beer bottle covered with Fiji Times. When PC Amit approached the accused, the accused started shouting and pushed PC Amit away. He went to assist and the accused pushed him. The accused was unable to stand properly and they assisted him. The accused was warned and they arrested him around 12.30pm and the accused was taken to the police

station. He said it was a public place access by public at Labasa town.

14. PC Niaz stated that when they approached the accused he was staggering and hold a beer bottle in his hand. He was heavily smelt of liquor with red eyes. The accused challenged them for a fight when they tried to calm the accused pushed them away. They warned the accused but the accused continued to do the same and they arrested him and took him to Labasa police station. The accused was on a public place when they arrested him.
15. The evidence adduce by all prosecution witnesses shows that the accused was drunk when the accused was holding on to a beer bottle staggering and unable to control himself and heavily smelt of alcohol with red eyes. That was on the main road in Labasa town a public place as it was accessable by members of the public. The accused was staggering and unable to control himself, and when informed by the police to control himself, the accused pushed them away, challenge them for a fight and shouting. That has shown the accused behaviour in a disorderly manner.
16. In assessing the evidence, as a trier of facts, I find the Prosecutor has discharge the burden of proof and has proved all the elements of the offence beyond reasonable doubt.
17. In this judgment, I find the Accused guilty as charged and I convicted the accused accordingly.

28 days to appeal



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

C. M. Tuberi
Resident Magistrate