

**IN THE MAGISTRATE'S COURT AT LABASA**

**CRIMINAL JURISDICTION**

*Traffic Case No. 747 of 2016*

**STATE**

v

**SUSHIL CHAND**

Appearance : **WSGT Mere** for the prosecution  
**Ms Devi. S** for the accused

Ruling : **26 July 2019**

**RULING**

**NO CASE TO ANSWER**

1. The Accused, Sushil Chand is charge for *Dangerous Driving Causing Grievous Harm*, contrary to *section 97(c)* and *114*, of the *Land Transport Act*.
2. The particulars of the offence are that on 26 February 2016, at Seaqqa, in the Northern Division, you drove a motor vehicle registration number HG 864 along Batirilagi in a manner which is dangerous to the public, having regards to all the circumstances of the case thereby caused bodily harm to Yen Chen Wing and Wai Ling Li.

3. The Accused pleaded not guilty to the charge on 17 March 2017. The Counsel for the Accused informed the court on 28 March 2017, that they are not challenging the caution interview. The case proceeded to trial on 2 October 2018.
4. The Prosecutor called Sharif Ahmad (Sharif) as the only witness. The Counsel for the Accused makes an application of no case to answer. The submission was filed on 16 January 2019.

**Application**

5. The defence submitted that the prosecution has failed to adduce sufficient evidence to prove the essential elements of the charge. With the prosecution evidence, no tribunal can convict on it.

**Law**

6. The charge says section 97(c). The defence submitted in their submission that the correct section is 97(4)(c) and the Accused is aware that he is charged under section 97(4)(c) of the *Land Transport Act*, which state;-

*"(4)A person commits the offence of dangerous driving occasioning grievous bodily harm if the vehicle driven by the person is involved in an impact occasioning grievous bodily harm to another person and the driver was, at the time of the impact, driving the vehicle-*

*(c) in a manner dangerous to another person or persons"*

7. The elements of the offence are;-
  - a. *the accused,*
  - b. *drove a vehicle,*
  - c. *in a dangerous manner,*
  - d. *resulted in an impact,*
  - e. *causing grievous bodily harm to a person.*

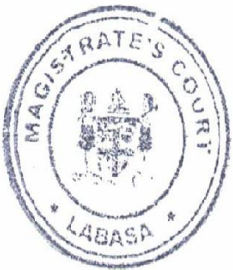
8. The test for no case to answer in the Magistrate Court was set in the case of **Abdul Gani Sahib v the State** (unreported) Criminal Appeal No. HAA 0022 of 2005 (28 April 2005). The test are;-
- i. Whether there is relevant and admissible evidence in respect of each element of the offence.*
  - ii. If there is evidence, whether it is so discredited that no reasonable tribunal could convict on it.*
9. The burden of proof is on the prosecution.

**Analysis and determination**

10. Sharif had witness the accident on 26 February 2016, on the road pass Batiri School on the way to Nabouwalu. The accident involved a silver van and white van. He stop his vehicle on the side of the road pass Batiri school to answer his phone. He saw the silver van HG driven by Sushil by pointing to the Accused in court. In the silver van was a Chinese guy sitting in the front seat and two Chinese ladies at the back seats. They were driving towards Nabouwalu. There was a white van in front and the Accused wanted to take pass that white van. As the Accused tried to overtake the white van in front move to the right to the white lane in the middle of the road. The Accused vehicle were passing more to the right and he saw the brake light of the Accused vehicle, and the vehicle driven by the Accused slipped and hit the FEA post. He went to the scene and saw the two ladies at the back, their faces were covered with blood. The driver of the white van caused the accident.
11. The evidence has identified the Accused as the driver of a vehicle HG that was involved in an accident of 26 February pass the Batiri school on the way to Nabouwalu.

12. There is no evidence before the court to say that the Accused was driving the vehicle HG 846 on 26 February 2016, that involved in an accident and caused grievous bodily harm to Yen Chen Wing and Wai Ling Li. There is no evidence before the court to show grievous bodily harm on Yen Chen Wing and Wai Ling Li. With that doubt on the identity of the Accused, the other elements of the offence were on doubts that it was the Accused who did it.
13. The evidence adduced by the Prosecutor is not sufficient to convict the Accused on.
14. In this ruling, I find that there are insufficient evidence adduced by the prosecution for the Accused to put his defence. I find that there is no case to answer and I allow the application. Pursuant to *section 178* of the *Criminal Procedure Act*, I dismiss the proceeding and I acquit the Accused accordingly.

**28 days to appeal**



A handwritten signature in blue ink, appearing to read "C. M. Tuberi", enclosed within a blue oval scribble.

C. M. Tuberi  
**RESIDENT MAGISTRATE**