

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Traffic Case No. 13 of 2019

STATE

v

JAGDISH NARAYAN SHARMA

Appearance : **PC Abinesh** for the prosecution
Accused in person

Judgment : **24 January 2020**

JUDGMENT

1. The accused, Jagdish Narayan Sharma was issued with a Traffic Infringement Notice (TIN) under *section 65(2)(a) and (4) of the Land Transport Act for Operating a Public Service Vehicle Contrary to the Conditions of the Public Service Vehicle Permit.*
2. The particulars of the offence are that Jagdish Narayan Sharma on the 8th day of May 2019, at Labasa in the Northern Division operated a taxi registration number LT 3775 at Dakua Street, Labasa town contrary to the permit conditions attached to taxi permit number T 3775 issued in respect of

the said taxi by operating for hire at the Mobil Service Station, Labasa town and not from the approved base at Chandar's shop, Siberia.

3. The accused pleaded not guilty to the charge on 4 June 2019.
4. The case proceeded to trial on 10 December 2019. The Prosecutor called one witness and the accused is the only witness for the defence case.

Law

5. *Section 65(2) (a) and (4) of the Land Transport Act state;-*

(2) A person may apply to the Authority for a public service permit of the following types-

(a) A taxi permit which authorises the use of a motor vehicle licensed as a taxi, subject to this Act and licence and permit conditions, to ply or stand for hire in a base for which it is issued, or from an approved stand outside that base, for the carriage of passengers within, from or to that base:

(4) A person who operates or permits to be operated a public service vehicle without or contrary to the conditions of a public service permit issued under this section commits an offence and is liable on conviction to the prescribed penalty.

6. The elements of the offence are ;-
 - a. the accused,*
 - b. operate a public service vehicle,*
 - c. contrary to the conditions of the permit.*
7. The burden of proof is on the prosecution.

Analysis and determination

8. The evidence adduced for the prosecution case and for the defence case has established that the accused operates a public service vehicle (taxi LT 3775) on 8 May 2019. The evidence adduced are in agreement that the accused pick a passenger at Dakua Street, Labasa on his taxi on 8 May 2019.
9. PC 5344 Monal (PC Monal) the only witness for the prosecution stated that on 8 May 2019, he saw the accused pick a passenger at Dakua Street in front of the Pacific Energy Service Station. He approached the accused and asked him of his base. The accused informed him that his base is at Siberia. PC Monal said, that the accused cannot pick passengers outside of his base. As such, he booked the accused for operating a public service vehicle contrary to the licence conditions.
10. The accused said that the person he picked in front of the service station was his passenger. He drop of that passenger at the ANZ ATM because it is a no parking zone. He went and park at the train line. When he saw his passenger has come out of the ANZ ATM machine and cross the road to the service station, he drove forward to pick his passenger. He picked his passenger and when he was on the road, PC Monal came, stop him and demanded for his driving licence and booked him by issuing him with the TIN.
11. The evidence of the accused had created doubt on the case of the prosecution as the Prosecutor was not able to give

evidence to rebut the evidence of the accused that the passenger he picked was the same passenger he dropped at the ANZ ATM machine.

12. In assessing the credibility of the accused and PC Monal, I accept the evidence of the accused that the passenger he picked was his passenger whom he dropped off at the ANZ ATM machine and he picked the same passenger from the service station.
13. There was no public service permit tendered as evidence to show the permit condition and to prove what condition has been breached by the accused. PC Monal stated that he did not demand and did not check the taxi permit of the accused vehicle as the accused had informed him of his base at Siberia. The taxi base was written on the wind screen. There is no doubt that the accused taxi base is at Siberia. The accused was charge for operating a taxi in contravention of his taxi permit condition. The contravention can only be verified and confirmed by looking at the permit and the condition and to be considered together with the evidence to confirm if there is a breach. The oral evidence of PC Monal is not sufficient to establish the said element.
14. Since no permit condition was tendered as evidence, no determination can be made on whether the accused had breached his taxi permit conditions or otherwise. In absence of such evidence, the prosecution failed to discharge the burden of proof on the element of contrary to the conditions of the permit.

15. The prosecution case failed on their failure to adduce sufficient evidence to prove the element of breaching of permit condition and failure to rebut the accused evidence that the passenger he pick is the same passenger he drop on the other side of the road.
16. In assessing the evidence, I find that the prosecution was not able to discharge the burden of proof on reasons discussed above.
17. In this judgment, I find the accused not guilty as charged and I acquitted the accused accordingly.

28 days to appeal



C. M. Tuberi
Resident Magistrate