

IN THE MAGISTRATE'S COURT AT LABASA

CRIMINAL JURISDICTION

Criminal Case No. 217 of 2017

STATE

v

SUKENDRA PRASAD

Appearance : **WSGT Lani** for the prosecution
Ms Bosetimoala. M for the accused

Judgment : **15 May 2020**

JUDGMENT

1. The accused, Sukendra Prasad was charged for *Common Assault* under *section 274* of the *Crimes Act*.
2. The particulars of the offence are that, the accused on the 14th day of February 2017, at Labasa, unlawfully assaulted Jotishma Devi Prasad.
3. The accused pleaded not guilty to the charge on 24 July 2017.
4. The case proceeded to trial on 11 May 2020.

5. The victim is the only witness for the prosecution case. The accused exercised his rights to remain silent and call no witness.

Law

6. Section 274(1) of the Crimes Act, state;-
 "A person commits a summary offence if he or she unlawfully assaults another person."
7. The elements of the offence are;-
 - (a) *the accused,*
 - (b) *unlawfully assaulted,*
 - (c) *the victim.*
8. The burden of proof is on the prosecution to prove all the elements of the offence beyond reasonable doubt.

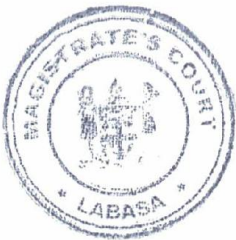
Analysis and Determination

9. Jotishma Devi Prasad is the victim in this case. She stated in her evidence that her husband Sukendra Prasad slapped her on 14 February 2017. She wanted to withdraw her complaint as she is moving on with her life and she want to enjoy her life and also his husband to enjoy his life. The evidence of the victim was not challenged or discredited.
10. When the victim gave her evidence, she did not identify the person sitting in the accused dock as the person she referred as her husband and the person she referred to as Sukendra Prasad in her evidence as the person who slapped her. As such, there is no evidence adduced to identify the accused in this case. When there is no evidence on the identity of the accused, the evidence of

the victim that she was slapped by her husband Sukendra Prasad cannot be linked or connected to the accused person.

11. The accused exercise his rights to remain silent and no adverse interference will be drawn against him. He is under no obligation to prove his innocent.
12. In assessing the evidence adduced by the prosecution, there are doubt on the identity of the accused. As such the prosecution case failed as Prosecutor was not able to discharge the burden of proof required.
13. In this judgment, I find the accused not guilty as charge and I acquitted the accused accordingly.

28 days to appeal



C. M. Tuberi

RESIDENT MAGISTRATE