

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 292 of 2019

STATE

v

MOHAMMED IHTISHAMULHAQQ KHAN

Appearance : **PC Lal** for the prosecution
Ms Devi. S for the accused

Judgment : **3 July 2020**

JUDGMENT

1. The accused, Mohammed Ihtishamulhaqq Khan was charged for *Assault Causing Actual Bodily Harm*, contrary to *section 275* of the *Crimes Act*.
2. The particulars of the offence are that on the 17th day of May 2019, at Seqaqa in the Northern Division, assaulted Sheik Mohammed Mufeem, thereby causing him actual bodily harm.

3. The accused pleaded not guilty to the charge on 24 June 2019.
4. The case proceeded to trial on 28 May 2020.
5. The Prosecutor called three witnesses to the stand. The accused exercise his right to remain silent and call one witness to the stand.

Law

6. *Section 275 of the Crimes Act state that ;-*
"A person commits a summary offence if he or she commits an assault occasioning actual bodily harm."
7. The elements of the offence are ;-
 - a. *the accused,*
 - b. *assaulted the victim,*
 - c. *causing actual bodily harm to the victim.*
8. The onus is on the prosecution to prove all the elements of the offence beyond reasonable doubt.

Analysis and determination

9. The accused was identified in court by the victim and the second witness for the prosecution case.
10. The victim Sheik Mohammed Mufeem (Sheik) is the first witness for the prosecution case. He stated that on 17 May 2019, he went to the mosque for prayer. While in the car at the car park, the accused and wanted to fight with him. A man came and asked them what happened and he informed the

man of what happened. That man then took the accused away. Sheik stated that after his father came and asked him and he informed his father of what happened. He went with his father to pray.

11. Sheik said, after the prayer, they were having dinner at the mosque. He was sitting opposite the accused and the accused was making faces and sign to him. He informed his father and his father told him that he will go and talk to the accused brother. Mohammed Ishamal Haq Khan (Mohammed) is the elder brother of the accused confirmed in his evidence that Sheik's father came to him and told him to control his brother.
12. Sheik said while having dinner, the accused came from his back, hold his hand and pulled him. The accused hold his collar and pushed him towards the railing and hang him on the wall. The rod on the wall hit the back of his neck and it was paining. He stated that in the process he had scratches on his hands from the accused fingers. After the incident, he went and report to the police. He went for medical examination on the next morning.
13. Anwar Ali is the second witness for the prosecution case. He stated that on 17 May 2019, while they were organising the dinner at the mosque, there was a fighting erupted and scattered the dinner. He said, the fight was started by the accused and there were injuries on the other boy's hands and back.
14. The evidence of Sheik and Anwar has confirmed the element of assault.

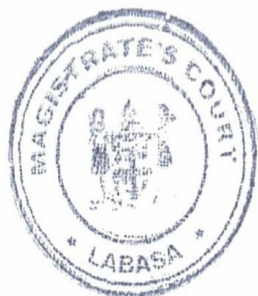
15. Dr Ashna Ashmita is the third witness for the prosecution case. He stated that on 18 May 2019, he medically examined Sheik and found some injuries, scratches, and abrasion on the victim's body. She tendered the medical report as prosecution exhibit 1 which shows the injuries on the victim.
16. The medical report stated that there are bleeding nail marks and abrasion on the hands and tenderness at the back of the neck.
17. The evidence of Sheik, Anwar, and Dr Ashna has confirmed the injuries received by Sheik from the assault.
18. Mohammed is the only witness for the defence case. He stated that Sheik's father started the fight when he came and grabbed the accused collar. In self-defence, the accused stood up and grabbed the collar of Sheik's father. Sheik came and grabbed the collar of the accused. The accused then grabbed both the collar of the Sheik and his father. He said it was only a grabbing of collar and the people have separated them.
19. The evidence of Mohammed state that there was only grabbing of collar.
20. Mohammed stated that Anwar was not serving the dinner and he was outside in the kitchen. He said that he did not see where the victim was sitting as the accused was sitting beside him.
21. Mohammed is the elder brother of the accused. His evidence is protecting the accused from the offence. Anwar is an

independent witness with no relation to Sheik as per the evidence adduced. He said he saw the fight started by the accused and the injuries received by Sheik. His evidence is consistent to the evidence of Sheik in relation to the assault and injuries. I cautioned myself on the evidence of Mohammed and I find that his evidence is overcome by the consistency on the evidence of Sheik and Anwar.

22. There were some inconsistency on the day of reporting and the victim has stated that it was a mistake. I accept that explanation. These are immaterial as it did not touch on the elements of the offence. Anwar stated that the injuries were from the incident at the mosque car park between the accused and the victim. But the victim has confirmed that the injuries were from the incident inside the mosque. I accept the evidence of the victim as he is in better position to tell when did he received the injuries.
23. The accused did not give any evidence and wish to remain silent. No adverse inference will be drawn against the accused in that regard as he is exercising his constitutional rights to remain silent.
24. The evidence of Mohammed has not create doubt on the evidence of the prosecution. The evidence of the prosecution are relevant and credible evidence that established all the elements of the offence.
25. In assessing the evidence adduced, I find that the Prosecutor has established all the elements of the offence beyond reasonable doubt. The Prosecutor has discharge the burden of proof required.

26. 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