

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 336 of 2012

STATE

v

SARLA DEVI

For the Prosecution : **CPL Monish**

For the Accused : **Mr Sen. A**

Ruling : **28 July 2017**

RULING

NO CASE TO ANSWER

1. The accused, Sarla Devi is charge for *Assault Causing Actual Bodily Harm*, contrary to *section 275* of the *Crimes Decree 2009*.
2. The particulars of the offence are;-
"Sarla Devi on the 1st day of February 2012, at Labasa in the Northern Division, assaulted Yamna Wati and caused her actual bodily harm."
3. The Accused pleaded not guilty to the charge on 1 October 2012. The trial proceeded on 11 July 2016.
4. At the trial, the Prosecution called three witnesses including the victim. At the closed of the Prosecution case, the Counsel for the Defence seek time to file no case to answer submission. The same was filed on 22 July 2016.

In the submission, the Defence submit that the entire evidence of the prosecution is contradictory and worthless in view of the exhibits tendered by the Defence. That the Prosecution and their witnesses has not been able to challenge and rebut the defence exhibit. The witnesses of the Prosecution are not trustworthy and their evidence were discredited beyond doubt. The application is on *section 178 of the Criminal Procedure Decree 2009* for the accused to be acquitted.

Section 275 of the Crimes Decree 2009, states;-

"A person commits a summary offence if he or she commits an assault occasioning actual bodily harm.

The elements of the offence that the Prosecution must prove in this case are;-

- (a) the accused,*
- (b) assaulted the victim,*
- (c) causing actual bodily harm to the victim,*

The test of no case to answer in the Magistrate Court was explained in ***Abdul Gani Sahib v The State*** [2005] FJHC 95; HAA 022 of 2005; 28 April 2005, as;-

"In the Magistrate's Court, both tests apply. So the Magistrate must ask himself firstly whether there is relevant and admissible evidence implicating the accused in respect of each element of the offence, and second whether the Prosecution evidence, taken at its highest, a reasonable tribunal could convict. In considering the prosecution at its highest, a reasonable tribunal could convict. In considering the prosecution case, taken at its highest, there can be no doubt at all that where the evidence is entirely discredited, from no matter which angle one looks at it, a Court can uphold a submission on no case. However, where a possible view of the evidence might lead the court to convict, the case should proceed to the defence case".

PW1 – Yamla Wati (the victim) she stated in her evidence that she cannot recall the date of the incident. It was in February 2012, where the accused threw a safety boot at her and hit her head and she felt dizzy. She then lean on a post where the accused hit her right shoulder with a hoe. She received injuries and was medically examined. The medical report was tendered (Prosecution Exhibit 1) which proves the injuries on the head.

0. The Defence in their submission cited State v Tuisawau Criminal Appeal No. 14 of 1990, where the Court of Appeal said;-

"In order to come to conclusion that there was some evidence direct or circumstantial, and irrespective of its weight, credibility or its tenuous nature it must be shown that the evidence in question is relevant, admissible and is in totality inculpatory of the accused. This means that the evidence in its totality must at least touch on all the essential ingredients of the offence"

1. The medical report of the victim (Prosecution Exhibit 1) provides the date of offence as 1 February 2012. The Defence Counsel was relying on this documentary evidence and in his questioning refer to the date of offence as 1 February 2012. With all that, I accept that the incident was on 1 February 2012.
2. The evidence of the Prosecution that are material to this case are referred to in paragraph 9 above. The date of the offence was confirmed as 1 February 2012 as discussed in paragraph 11 above.
3. On the sequence of the events of the incident, there were some inconsistency on the evidence of the prosecution. However, the evidence of the Prosecution has touch on all the elements of the offence. The accused was identified in court by the victim. The evidence referred to above are relevant and admissible evidence which inculpatory of the accused.
4. The consideration on the weight of the evidence and the credibility of the witness is not material at this stage. Also the requirements of prove beyond reasonable doubt is immaterial at this stage.
5. In assessing the evidence of the Prosecution, there are evidence that touches on all the elements of the offence. The incident was on 1 February 2012. The victim was medically examined on 2 February 2012. The medical report confirms injury on the victim. The victim's in her evidence stated that the injuries were the result of the safety boots thrown on her by the accused and when the accused struck her with the hoe.

16. In my assessment, I find that the Defence application of no case to answer has fall short of the requirements or test required for such application. I find that there are evidence that requires the accused to put his defence.
17. In my ruling, I find the accused has a case to answer and should put her defence to the charge.

28 days to appeal



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

C. M. Tuberi
RESIDENT MAGISTRATE