

IN THE MAGISTRATE'S COURT AT LABASA

CRIMINAL JURISDICTION

Criminal Case No. 548 of 2017

STATE

v

SURENDRA PRASAD

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

Judgment : **18 October 2019**

JUDGMENT

1. The accused, Surendra Prasad was charged for *Common Assault* under *section 274(1) and (2) of the Crimes Decree*.
2. The particulars of the offence are that, the accused on the 5th day of June 2017, at Labasa, unlawfully assaulted Kusum Kumari by pulling her hand.
3. The Accused pleaded not guilty to the charge on 23 April 2018.
4. The case proceeded to trial on 13 September 2019.

5. The victim is the only witness for the prosecution case. The accused gave evidence and call another witness.

Law

6. Section 274(1) of the Crimes Decree, 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. The accused was identified by Kusum Kumari, the victim, in court. They are neighbours for a long time. The identity of the accused was not disputed by the defence, and as such, I am satisfied with the identification of the accused.
10. The Victim stated in her testimony, that on 5 June 2017, she was at her home when the accused informed her that her rooster was in his kitchen and for her to come and get it. She went and when she reached the door of the accused verandah, the accused came and hold her hand tightly, looked into her eyes, and told her that his wife is not at home and he is alone. The accused then told her to go with him into the house and dragged her for about 4 meters. She was scared and shivering so she

called Ashneel the son of her neighbour. While calling and shouting for Ashneel, she was able to free herself from the accused. She ran outside and stand from the accused compound and shouted to the accused saying "you bastard why did you hold my hand like that." The accused told her that he will not give her rooster. She told the accused that he can eat 10 roosters and she will inform her husband of what he did to her. When she ran out, she said, one lady her neighbour was watching. That lady had took her sick son to Suva. She said, that the incident happened around 7am.

11. In cross-examination, she said that she went for medical report and the police knew about her medical report. She said, the accused lied that he was in the bus, as the accused was at his house at that time.
12. The Accused in his testimony, denied the allegation of assault as his gate was locked. He said, that he catches the bus at quarter to 7, and at 7am he was in the bus. But he admitted that he had a conversation with Kusum at around 6.15am regarding Kusum's rooster. He said, that Kusum came to his gate and asked him about her rooster. He told Kusum to stand there and he will get her rooster that was sitting on top of his kitchen shed. When he went to catch the rooster and the rooster flew outside the gate. Kusum ran away crying. Ram Chandra, his neighbour was watching and he asked Kusum on why she was crying. Kusum told him that we could not catch her rooster.
13. Ram Chandra testified and said that his house was on top of the accused house. The accused and Kusum are his neighbour. On the morning of 5 June 2017, he was hanging the clothes on the line when Kusum came to catch her

rooster in his compound. They tried to catch the rooster and it jump over the fence and went to the other compound. Kusum went to collect her rooster. He saw Kusum outside the accused gate for about 5 to 10 minutes. He did not see Kusum go inside the gate. Kusum was outside the gate and crying. He asked Kusum why she was crying, she said "that dogla hold my hand."

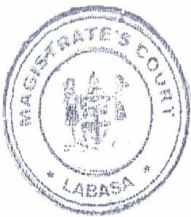
14. The issue is on credibility.
15. Kusum said that the accused hold her hand in his verandah and dragged her into the house. The accused said that the gate was locked and he denied the allegation because Kusum did not come into his compound. The evidence of the accused creates doubt on case of the prosecution. The onus is on prosecution to clear that doubt.
16. Kusum stated that one lady her neighbour was watching when she ran out from the accused house. There is no explanation from the prosecution on why he did not call that lady to the stand. Kusum said, that lady took her sick son to Suva. Prosecution must remember that the onus is on them and the evidence of that lady is material for the prosecution case. When the defence creates doubt.
17. The accused denial to the allegation was supported by the evidence of Ram Chandra. Ram Chandra supported the accused evidence that Kusum was outside the gate of the accused and he never saw her went inside the accused compound. This evidence was not discredited.
18. If Kusum was outside the accused gate, surely, there would not be any assault as alleged. As the accused was in his compound and Kusum was outside the gate.

19. In assessing the credibility of Kusum and the defence witnesses, I find the defence witnesses were credible. Their evidence were consistent that Kusum was outside the gate and she did not enter the accused compound. Accordingly, I accept the evidence of the defence.

20. As such, there is doubt on the evidence of the prosecution. Consequently, the prosecution failed to discharge the burden.

21. In this judgment, I find the accused not guilty as charged and I acquitted the accused accordingly.

28 days to appeal



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

C. M. Tuberi

RESIDENT MAGISTRATE