

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 260 of 2010

DPP

v

RANJESH LAL

Counsel : **Mrs Kumar. D** for the Prosecution
Mr Kohli. A for the Accused

Ruling : **7 June 2019**

RULING

NO CASE TO ANSWER

1. The Accused, Ranjesh Lal, has been charged for *Perjury* contrary to *section 117* of the *Penal Code*.
2. The particulars of the offence are;-
"Ranjesh Lal on the 27th day of February 2007, at Labasa, in the Northern Division, being a witness upon a trial of Family Court Labasa in which the said Ranjesh Lal was a Applicant knowingly gave a false testimony on oath before Resident Magistrate Penijimani Lomaloma, that he does not have any child from his marriage, when the said Ranjesh Lal had a daughter from his marriage namely Riyansha Prisha Lal."

3. The Accused pleaded not guilty to the charge on 6 April 2010. The case proceeded to trial in absence of the Accused on 5 June 2018.
4. The Prosecution called Inspector 2572 Satish Chand (Satish) as the first witness, and WSGT 2441 Eta as the second and final witness. The Prosecution closed her case. The Counsel for the Accused make an application of no case to answer. The submission was filed 28 March 2018.

Application

5. The Defence submitted that the Prosecutions failed to satisfy both the required test for the application. There is no evidence to prove that on 27 February 2017, the Accused knowingly made the statement in court that he did not have a child. The application was on 5 December 2016, and filed on 7 December 2016, which says that he does not have any child of the marriage. The child was born on 12 December 2006. The court record of the Family court proceeding cannot be relied upon as those who certify the record were not called to the stand.

Law

6. *Section 178 of the Criminal Procedure Act* provides for application for no case to answer to be made at this juncture of the proceeding.
7. *Section 117 of the Penal code, State;-*
"Any person lawfully sworn as a witness in a judicial proceeding who wilfully makes a statement material in that proceeding which he knows to be false or does not believe to be true is guilty of the misdemeanour termed perjury, and is liable to imprisonment for seven years.

8. The elements of the offence are;-
- a) *the accused,*
 - b) *had lawful sworn as a witness,*
 - c) *in a judicial proceeding,*
 - d) *and wilfully makes a false statement.*
9. The test for no case to answer in the Magistrate Court was set in the case of **Abdul Gani Sahib v The State [2005]**. The test are:-
- "a. *Whether there is relevant and admissible evidence implicating the accused in respect of each element of the offence.*
 - b. *If there is evidence, whether it is so discredited that no reasonable tribunal could convict on it."*
10. The burden of proof is on the Prosecution.

Analysis and determination

11. Inspector Chand stated in his evidence that he is the arresting officer in this case where he arrested the Accused Ranjesh Lal. The investigation file was given to him and he instructed Sergeant Eta to extract documents from court.
12. In cross-examination, Inspector Chand stated that he arrested the Accused for perjury for telling lies in court that he did not have any child with his married wife. The Accused was arrested after he has been cautioned interview.
13. WSGT 2441 Eta stated in her evidence that she is the interviewing officer in this case. She said the allegation was for a false affidavit made in court on the Accused for dissolution of marriage. She tenders the record of the

court proceeding as prosecution exhibit 5, the record of interview as exhibit 6.

14. The particulars of the charge is for knowingly gave a false testimony on oath before Resident Magistrate Penijimani Lomaloma. This is not supported by the evidence of WSGT Eta.
15. Neither of the witnesses stated that he or she saw and heard the Accused sworn in as a witness in the court proceeding. No evidence from the witness that they heard the Accused saying in court on 27 February 2007, that he does not have any child. Apparently, the evidence does not support the particulars of the charge on the elements of the offence.
16. The Prosecution are not able to adduce relevant and admissible evidence in relation to element (b), (c), and (d) of the offence as stated in paragraph 8 above. The Prosecution failed to discharge the burden.
17. In assessing the evidence, I find that no court can convict on the evidence of the Prosecution.
17. I find the Accused has no case to answer. Pursuant to *section 178 of the Criminal Procedure Act*, I dismiss the proceeding and acquit the Accused.

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