

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 10 of 2016

STATE

v

KRISHNEEL DEO

Appearance : **PC Lal** for the Prosecution
Mr Sen. A for the Accused

Judgment : **9 July 2019**

RULING

NO CASE TO ANSWER

1. The Accused, *Krishneel Deo* was charged for *Criminal Intimidation*, under section 375(1)(b)(i) of the *Crimes Decree*.
2. The particulars of the offence are;-
"Krishneel Deo on the 10th day of January 2016, at Labasa, in the Northern Division, without lawful excuse, threatened Kolinio Curuivalu with injury to his person, with intent to cause alarm to Kolinio Curuivalu."

3. The Accused pleaded not guilty to the charge on 1 February 2016. On 5 April 2016, the Prosecutor informed the court that there is no admission. The case proceeded to trial on 25 June 2018.
4. The Prosecutor called Kolinio Curuivalu (the complainant) as the first witness, and CPL 3504 Ashwin (the charging officer) as the second and final witness. At the close of the prosecution case, the Counsel for the defence makes an application of no case to answer. The submission was filed on 5 July 2018.

Application

5. The Defence submitted that the identity of the Accused was not proven and as such all other elements of the offence are not proven.

Law

6. Section 375 (1) (a) (i) (iv) of the Crimes Decree, state;-

"(1) A person commits a summary offence if he or she, without lawful excuse-

b) directly or indirectly, knowingly causes a threat to be made to another person or other persons (whether individually or collectively) of any injury to-

(i) their person or persons"

7. In **State v Nagalu** (2010) FJHC 122.2008S (20April2010) Justice Temo state that for the Accused to be found guilty of criminal intimidation the prosecution must prove beyond reasonable doubt the following elements;-

- a) *the accused,*
- b) *without lawful excuse,*
- c) *threaten another person,*

- d) *with an injury,*
- e) *with intent to cause alarm to that person.*

8. The burden of prove is on the Prosecution.

Analysis and determination

9. Kolinio stated in his evidence that on the evening of 10 January 2016, they were on operation with the Police. At that time, he was working at the Land Transport Authority. They went to Siberia to see Ashneel the owner of the vehicle DP 809 but he was not there. The Accused who is the brother of Ashneel came out of the house and chased them. He identified the Accused in court as the person who tried to hit him with a piece of timber. The Accused told them, who are they to come and asked about the vehicle and threatened him with a piece of timber. It was dark and he did not see where the Accused pulled the timber from. He thought the Accused might injured him.
10. In cross-examination, he stated that it was a dark night and he saw the Accused on that night. He cannot recall the colour of the clothes the Accused wore on that night. He only saw the Accused on that night and again in court. He did not see the Accused again after that night.
11. The caution interview was not tendered, so there is no admission before the court. It was not clear from the evidence on how Kolinio saw the Accused. What was the source of light that he was able to see the Accused on and how bright was the light as it was a dark night. In absence of these evidence to clarify the doubt on the identity of the Accused, I find that the evidence adduced is not sufficient to establish and prove the element on the identity of the Accused. There was no Turnbull test

conducted. There are some doubts on the identity of the Accused.

12. The evidence of PC Ashwin cannot clear the doubt on the identity of the Accused as he was not offering any material evidence to support the evidence of Kolinio.
13. In assessing the evidence, I find that no court can enter convict on the evidence that are before the court. I find the Prosecution was not able to discharge the burden. The Defence application has merit.
14. I ruled that there is no case to answer. Pursuant to *section 178 of the Criminal Procedure Act*, I dismiss the case and acquit the Accused.

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