

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 9 of 2016

STATE

v

KRISHNEEL DEO

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

Ruling : **9 July 2019**

RULING

NO CASE TO ANSWER

1. The Accused, *Krishneel Deo*, is charge for *Resisting Arrest* contrary to *section 277* 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, whilst being lawfully arrested by police constable No. CPL 3505 Vinesh Prasad, resisted such arrest."

3. The Accused pleaded not guilty to the charge on 11 February 2016. On 10 February 2017, the Accused informed the court that he is not challenging the partial admission in his caution interview.
4. The case proceeded to trial on 25 June 2018.
5. The Prosecutor called CPL 3505 Vinesh as the only witness for the case and closed his case.
6. The Counsel for the Accused make an application of no case to answer. The submission was filed on 5 July 2018.

Application

7. The Defence submitted that there is no evidence on the identity of the Accused. There was no legal justification for the Accused to be arrested.

Law

8. *Section 178 of the Criminal Procedure Act*, provides for application like this to be made at this juncture of the proceeding.
9. *Section 277(b) of the Crimes Decree*, provides;-

"A person commits a summary offence if he or she assaults, resists or wilfully obstructs any police officer in the due execution of his or her duty, or any person acting in aid of such an officer."
10. The elements of the offence are;-
 - (a) *the accused,*
 - (b) *resisted arrest,*
 - (c) *by a police officer,*
 - (d) *in due execution of his duty.*

11. The test of no case to answer in the Magistrate Court was stated in **Shahib v The State** [2005] FJHC 95; HAA 0022J. 20055 (28 April 2005) as;-
- a. *Whether there is relevant and admissible evidence implicating the accused in respect of each element of the offence.*
 - b. *Whether on the prosecution case taken at its highest, a reasonable tribunal could convict."*
12. The burden of proof is on the Prosecution.

Analysis and determination

13. CPL Vinesh stated in his evidence that on 10 January 2016, he was on afternoon shift and on duty at the Labasa Police Station. At about 8pm, he was asked to assist in a case of hit and run and suspected drink and drive. The request was from PC Ashwin and LTA officer Kolinio. He went to the house of Ashneel and Krishneel at Siberia. He identified Krishneel in court as the Accused person. He said there was an argument between the Accused and Kolinio. The Accused got hold of a piece of timber and tried to struck Kolinio. He came in got hold of the timber and pulled it away from the Accused. He approached the Accused and warned him that he will be arrested for the offence of criminal intimidation for trying to hit Kolinio with a piece of timber. He tried to arrest the Accused, the Accused resisted the arrest and pushed him away and they fell to the hedges. The other police officers assisted him in arresting the Accused. He arrested the Accused and escorted the Accused to the Police Station.
14. The evidence of CPL Vinesh was credible and not discredited during cross-examination. The evidence adduced

by the Prosecution has touched on all the elements of the offence which implicating the Accused in this case.

15. In assessing the evidence, I find that the Prosecutor has discharge the burden required. I find the application is without any merit.

16. In this ruling, I find the Accused has a case to answer and for the Accused to put his defence.

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