

**IN THE MAGISTRATE'S COURT AT LABASA**  
**CRIMINAL JURISDICTION**

*Traffic Case No. 743 of 2016*

**STATE**

v

**MOHAMMED ABRAR KHAN**

Appearance : **PC Lal** for the Prosecution  
**Mr Raramasi.S** for the Accused

Ruling : **8 July 2019**

**RULING**

NO CASE TO ANSWER

1. The Accused, *Mohammed Abrar Khan*, was charged for *Careless Driving*, contrary to section 99(1) and 114 of the *Land Transport Act*.
2. The particulars of the offence are;-  
*"Mohammed Abrar Khan on the 7<sup>th</sup> day of April 2016, at Labasa, in the Northern Division, drove a motor vehicle registration number DA 250 at Shop & Save supermarket car park without due care and attention."*

3. The Accused pleaded not guilty to the charge on 9 August 2016. The Counsel for the Accused informed the court that there is no voir dire. The case proceeded to trial on 11 June 2018.
4. The Prosecution called Khadil Hussein (Khadil) as the first witness, Rajnil Prasad (Rajnil) the second witness, PC 3031 Prasad the third and final witness. The Counsel for the Accused make an application for no case to answer. The submission was filed on 3 October 2018.

**Law**

5. Section 178 of the Criminal Procedure Act provides for no case to answer application to be made.
6. Section 99(1) of the Land Transport Act 1998, state;-  
*"A person who drives a motor vehicle on a public street without due care and attention commits an offence and is liable on conviction to the prescribed penalty"*
7. The elements of the offence are;-
  - a) the accused,
  - b) drives a motor vehicle,
  - c) on a public street,
  - d) without due care and attention.
8. 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;-  
*"Firstly whether there is relevant and admissible evidence implicating the accused in respect of each element of the offence,  
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”.*

9. The burden of proof is on the Prosecution.

**Defence application**

10. In the submission, the Defence submitted that the identity of the Accused was unknown at the scene of the accident. The Prosecution not able to prove that the accident happened on a public street. The manner of driving of the Accused was not established. The Prosecution evidence is so discredited and no reasonable tribunal can convict on it.

**Analysis and determination**

11. Khadil stated in his evidence that on 7 April 2016, the vehicle DA 250 bumped him on his leg at the drive way to the Shop & Save car park. He said, Araf's son from Vunimoli was driving the vehicle DA 250. In cross-examination, he stated that where he was hit by the vehicle DA 250 is a private drive way and he was not aware of who was driving the vehicle that bumped him. He said it was a brown vehicle. It is clear from this evidence that Khadil was not sure on the identity of the driver of the vehicle DA 250 at the time of the accident.
12. Rajnil stated in his evidence that on 7 April 2016, a white vehicle registration number DA 250 hit Khadil at the Shop & Save drive way. He did not see the driver of the said vehicle. Khadil said that he was hit by a brown vehicle. Rajnil said Khadil was hit by a white vehicle. There is inconsistency on the colour of the vehicle. These are immaterial as they both agreed on the registration of the vehicle which is DA 250.

13. PC Prasad stated in his evidence that on 7 April 2016, he attend an accident at Shop & Save car park. He conducted the investigating record, witness statement, and prepare the sketch plan. He tendered the sketch plan as prosecution exhibit 1. He said the accident was at a public place as members of the public are using that drive way. Khadil informed him that the Accused is the person who was driving the vehicle DA 250 at the time of the accident. In cross-examination, he stated that he cannot recall if the road where the accident happened has been gazetted. He said, it is not a private place, as fees are not paid.
14. The Accused was identified by PC Prasad. PC Prasad was not present at the time of the accident. When he came to the scene the vehicle DA 250 was not at the scene of the accident. PC Prasad stated that Khadil informed him that the Accused was driving the vehicle DA 250 at the time of the accident. Khadil in his evidence stated that he did not know who was driving the vehicle DA 250 at the time of the accident. With these evidence, there are doubts on the identity of the person who was driving the vehicle DA 250 at the time of the accident. The Accused has admitted in his caution interview that he was driving the vehicle DA 250 on 7 April 2016, and he drove through the Shop & Save supermarket. That resolves the issue of the identity. The caution interview was tendered as prosecution exhibit 2.
15. There is doubt on place where the accident happened if that was a public street. PC Prasad said it is a public street but not sure if that was gazetted or not. In other words he is not sure. There should be evidence adduced to prove that the drive way is a public street.

16. In assessing the evidence, I find that the evidence on the public street is not sufficient and not safe for the court to convict on it. There are some doubts.
17. I find the Defence application has merit.
18. In this ruling, I find the Accused has no case to answer. Pursuant to *section 178* of the *Criminal Procedure Act*, I dismiss the proceeding and acquitted the Accused accordingly.

**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**