

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

*Criminal Case No. 211 of 2017*

**STATE**

v

**HARI DUTT SHARMA**

Appearance : **WSGT Lani** and **CPL Lal** for the prosecution  
**Mr Dayal. R** for the accused

Judgment : **7 August 2020**

**JUDGMENT**

1. The accused, Hari Dutt Sharma is charge for *Giving False Information to a Public Officer* under section 201 of the *Crimes Act*.
2. The particulars of the offence are that, the accused on the 7<sup>th</sup> day of May 2017, at Labasa, in the Northern Division, gave false information to a police officer Sgt Vidya Pillay that he was driving the vehicle registration number ER 290 which he knows to be false.
3. The accused pleaded not guilty to the charge on 29 2017.

4. The case proceeded to trial on 1 June 2020 and continued on 27 July 2020.
5. The Prosecutor called two witnesses. The court ruled that there is a case to answer. The accused is the only witness for the defence case.

**Law**

6. Section 201 of the Crimes Act, state;-

*"If a person (the first person) gives to any person employed in the public service any information which he or she knows or believes to be false, and intending to cause, or knowing it to be likely that the first person will cause the person employed in the public service-*

- (a) *to do or omit anything which such person employed in the public service ought not to do or omit if the true state of facts respecting which such information is given were known to him; or*
- (b) *to use the lawful power of such person employed in the public to the injury or annoyance of any person- the first person commits a summary offence.*

7. The elements of the offence are;-

- (a) *the accused,*
- (b) *gives false information,*
- (c) *to a person employed in the public service,*
- (d) *with intent to cause the officer to act on the false information.*

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 in court by the prosecution witnesses.

10. Inspector Vidya (Vidya) is the first witness for the prosecution. He stated that on 7 May 2017, he was on vehicle patrol with PC Waisele when they arrested Elvin Singh from vehicle ER 290 at Grand Eastern hotel for drunk and drive.
11. Vidya stated that while they were at the police station with Elvin Singh, the accused came and informed them that he was driving the vehicle ER 290 on that night and Elvin Singh was not driving the said vehicle.
12. Vidya stated that he saw Elvin Singh was driving the vehicle ER 290 along Gibson Street. They suspect Elvin Singh was drunk when driving so they followed the vehicle ER 290 towards Grand Eastern hotel. They parked at the back of the vehicle ER 290 when the said vehicle stop at Grand Eastern hotel. They saw the accused came out of the vehicle ER 290 from the front passenger seat. He told PC Waisele to go and check the driver of ER 290.
13. CPL 4408 Waisale (Waisale) is the second witness for the prosecution case. He confirmed that he was with Vidya on 7 May 2017. At Gibson Street, they followed vehicle ER 290 to the Grand Eastern hotel. He went to the vehicle ER 290, he saw Elvin Singh was sitting on the driver's seat with ignition on. He said Elvin Singh was heavily smelt of liquor. He said, that Elvin Singh was driving the vehicle ER 290 as he was sitting on the driver's seat. They arrested Elvin Singh and took him to the police station.
14. Vidya and Waisale said that the accused was giving them false information as they saw him coming out of the front passenger seat of the vehicle ER 290 and he was not driving the said vehicle.

15. Though there were some inconsistency on the evidence of prosecution when Vidya said that he stop the vehicle ER 290 at Gibson Street and he was talking to Elvin Singh. Waisele said that they did not stop the vehicle at Gibson Street and the vehicle ER 290 did not stop at Gibson Street. This inconsistency are immaterial as it did not touch on any elements of the offence. That may affect the credibility of Vidya. However, the material evidence that they saw the accused came out on the passenger seat was consistent.
16. The accused stated that on the night of 7 May 2017, he was driving the vehicle ER 290 and picked Elvin Singh from RC Manubhai building. Elvin Singh sat on the passenger's front seat and they drove to Grand Eastern hotel. He parked the vehicle and he got off on the passenger's front door on top of Elvin because the door on the driver's side cannot be opened from inside. He cannot open the door from outside because the door glass was up. He went to the hotel to check his friend but his friend was already left. When he returned to the vehicle, Elvin was sitting on the driver's seat and the police were talking to Elvin. He informed the police that he was driving the vehicle and Elvin did not drive the said vehicle, but police did not listen to him.
17. The accused provide a reasonable explanation. The explanation creates doubt on the evidence of the prosecution.
18. The prosecution evidence stated that Elvin Singh was charge for drunk and drive from the same incident where he was sentence. There was no documentary evidence adduced to prove the same, so I give no weight to that evidence.
19. There is no doubt that Elvin Singh was seating at the driver's seat when Waisale went to check the vehicle ER

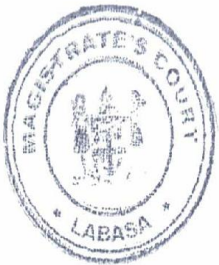
290. The vehicle was not moving it was parked. The accused said, he was driving and provide reasonable explanation on why he was to get off from the passenger's door as part of the reason on why prosecution witnesses are saying that he was not driving the said vehicle.

20. In assessing the credibility of witness, I believe the reasonable explanation of the accused and I accept his evidence.

21. From the evidence adduced, I find that there are some doubts on the case of the prosecution. The Prosecutor was not able to discharge the required burden of proof.

22. In this judgment, I find the accused not guilty as charge and I acquitted the accused accordingly.

**28 days to appeal**



A handwritten signature in blue ink, appearing to read "C. M. Tuberi".

C. M. Tuberi  
**RESIDENT MAGISTRATE**