

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 277 of 2014

STATE

v

PREM NAND LAL

Appearance : **PC Lal** for the prosecution.
Mrs Raj. R for the accused

Ruling : **21 February 2020**

JUDGMENT

1. The accused, Prem Nand Lal is charge for *Resisting Arrest* contrary to *section 277(b)* of the *Crimes Decree*.
2. The particulars of the offence is that the accused on the 14th day of June 2014, at Labasa in the Northern Division, whilst being lawfully arrested by police officer Cpl 3119 Rohit resisted such arrest.
3. The accused pleaded not guilty to the charge on 16 June 2014. The case proceeded to trial on 16 January 2019 and continued on 24 January 2020, after the court ruled that there is a case to answer.

4. The Prosecutor called three witnesses. The accused is the only witness for the defence case.

Law

5. *Section 277(b) of the Crimes Decree states;-*

"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."

6. The elements of the offence are;-

- a. *the accused,*
- b. *resisted arrest,*
- c. *from a police officer,*
- d. *in due execution of his duty.*

7. The burden of proof is on the prosecution to prove all the above elements of the offence beyond reasonable doubt.

Analysis and determination

8. The accused was identified by all the prosecution witnesses in court. The Accused confirmed in his evidence that he was arrested by the police on 14 June 2014.

9. Inspector Rohit (Rohit) is the first witness for the prosecution case. He stated in his evidence that he was on duty on 14 June 2014. He was in the police vehicle with WPC Ashwini when they saw the accused with red blood shot eyes when the accused drove his vehicle out from Discount Shop. They followed the accused through Madhvan Street. On their way they tooted the siren trying to stop the accused. The accused drove and stop his vehicle in front of the Farmer's Club. He

followed the accused to the club and when he was talking to the accused, he smelt liquor from the accused.

10. Rohit informed the accused that he wanted to test him on dragger 7. He asked the accused to blow in the machine but the accused refused to do so. Rohit said that he warned the accused that he is arresting him and he will take him to the police station to be further tested on the dragger machine. The accused refused to go with Rohit to the police vehicle and got hold of the fence of the Labasa Club. Rohit said that with the help of the members of the public, he was able to free the accused from the fence and they put him inside the police vehicle and took him to the Labasa Police station.
11. Mohammed Khan (Mohammed) is the second witness for the prosecution case. He stated in his evidence that on 14 June 2014, he was sitting and drinking beer at the Farmers Club when he saw the accused hold on to the fence. A police officer was with the accused. Mohammed said that he heard the police told the accused to release the fence as he will take him. The accused was holding onto the fence tightly. He went and assist in taking out the accused hand from the fence and the police took the accused. Mohammed said that he was the only one who went to assist the police and free the accused hands from the fence.
12. John Sami (Sami) is the third witness for the prosecution case. He stated in his evidence that on 14 June 2014, he was the barman at the Farmer's Club. From the bar, he can see Rohit was pulling the accused to the police vehicle. The distance was 30 feet and his view was not that good. He never saw who took the accused to the police vehicle.
13. It is clear from the evidence of the prosecution that Rohit is a police officer and was a police officer at the time of the

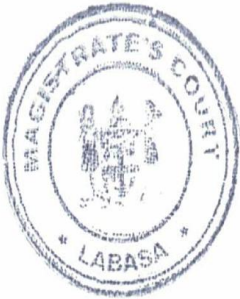
offence. It is also clear from the evidence that Rohit was on duty at the time of the offence, so he was in due execution of his duty when he informed the accused that he is arresting him for further test at the Labasa Police station.

14. The accused act of holding on to the fence tightly and did not want go to the police vehicle as directed by Rohit and after Rohit had informed him that he is under arrest is an act of resisting arrest.
15. The Accused testified that he went to the Farmer's Club to buy some beer and go home. The Accused said, when Rohit came to arrest him, he asked Rohit of what is wrong. The accused was holding onto the fence when talking to the police as he was tired. The Accused said that he informed Rohit that he wanted to go to the washroom and he will come back. The Accused said that when he holds on to the fence he did not meant to resist arrest. The Accused stated that Mohammed came and told him that he is a civil servant and he should go with the police and then he goes with the police. The Accused further stated that when they pull him then he leave the fence.
16. Though the accused said that he did not meant to resist arrest but his evidence speak for itself. The evidence of the accused supports the evidence of the prosecution that the accused was resisting arrest when he holds onto the fence tightly and did not want to go to the police vehicle. The accused only released the fence after Mohammed had talked to him and when the police pulled him to the vehicle.
17. The evidence of the accused was not able to create doubt on the evidence of the prosecution but it assist the prosecution case.

18. The evidence adduced was very clear and has clear any doubts on all the elements of the offence. As such, I find that the Prosecutor has discharge the burden of proof required.

19. In this judgment, I find that the charge is supported by the evidence adduced beyond reasonable doubt that the accused was resisting arrest. I therefore, find the accused guilty as charged and convicted the accused accordingly.

28 days to appeal.



C.M. Tuberi
RESIDENT MAGISTRATE