

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 330 of 2014

STATE

v

MAHENDRA DEEPAK

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

Ruling : **4 March 2020**

JUDGMENT

1. The accused, Mahendra Deepak is charge for *Resisting Arrest* contrary to *section 277(b)* of the *Crimes Decree*.
2. The particulars of the offence are that Mahendra Deepak on the 12th day of July 2014, at Labasa in the Northern Division, resisted arrest of Cpl 3119 Rohit Shakeel Chand whilst effecting arrest in the due execution of his duty.
3. The accused pleaded not guilty to the charge on 14 July 2014. The case proceeded to trial on 31 January 2020.

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. Inspector Rohit (Insp Rohit) the first witness for the prosecution case, CPL Karan (Cpl Karan) the second witness for the prosecution case, and WSGT 3106 Mereani (Wsgt Mereani) the third witness for the prosecution case, all identified the accused in court. Apparently, all these witnesses are police officers.

9. All the prosecution witnesses confirmed in their respective testimony that they were all on duty at the time of the alleged offence when they arrested the accused.

10. Insp Rohit testified that they were on vehicle patrol when they received information from PC Ganesh that the vehicle DE

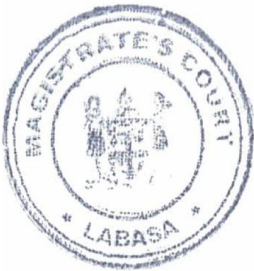
103 was driving in a zigzag manner in town and heading towards Namara. They followed the vehicle to Namara where they stop the vehicle at the gate of the accused home at Namara before the Riverview Apartment.

11. Insp Rohit went to the accused and he could smell liquor from the accused breath and the accused had red blood short eyes. Insp Rohit warned the accused that he will arrest him to undergo breath test. The accused refused to blow on the machine. Insp Rohit warned the accused that he will arrest him to go to the police station to be tested on the dragger machine.
12. Insp Rohit said that the accused kept refusing and said that they cannot arrest him. The accused tried to go into the gate of his house. He holds the accused hand to escort the accused to the police vehicle. However, the accused free himself and with the help of the other police officers, they were able to arrest the accused and put the accused in the police vehicle.
13. Cpl Karan testified that he was sitting in the police vehicle and could clearly see what happened. He saw the accused refusing to blow on the machine. Insp Rohit tried to arrest the accused to be taken to the Labasa Police Station. The accused free himself from the police. The police officers were able to arrest the accused and brought the accused to the police vehicle.
14. Wsgt Mereani testified that Insp Rohit had asked the accused to blow on the alcotest machine but the accused refused. The accused was very aggressive and grumpy. The accused was throwing his hands away from the police when they tried to arrest the accused. The police was able to get hold of the accused and put the accused into the police vehicle.

15. The Accused confirmed in his testimony that he refused to blow into the machine and the police told him that they are arresting him. The Accused confirmed in his evidence that the police held his hand and he told the police to wait for the police to let him go to inform his wife that he is going to the police station and he will go with the police to the station. The Accused said that he did not resist arrest. Insp Rohit holds his hand and takes him to the police vehicle. The Accused said that the police did not drag him as he was willingly going to the police vehicle. The Accused said that Sakiusa was at his back and Mereani was also there.
16. Insp Rohit said that the accused never ask him to go and inform his wife. Insp Rohit said that if the accused asked him, he will allow the accused to do so or he himself (Insp Rohit) will go and inform the accused wife.
17. The denial by the accused cannot stand the evidence of the three witnesses from the prosecution. All the prosecution witnesses were present with the accused at the time of the offence and their evidence were consistent and not discredited.
18. In assessing the credibility of the witnesses, I find that the evidence of the three police officers for the prosecution were credible and I accepted their evidence. I rejected the denial of the accused as it is apparent from the evidence that the accused was resisting arrest.
19. In assessing the evidence, I find that the evidence adduce by the prosecution has proven all the elements of the offence beyond reasonable doubt. I find the prosecution has discharge the burden of proof required.

20. 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



A handwritten signature in blue ink, appearing to read "C.M. Tuberi". The signature is stylized and written over a horizontal line.

C.M. Tuberi
RESIDENT MAGISTRATE