

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

**CRIMINAL JURISDICTION**

*Criminal Case No. 137 of 2017*

**STATE**

v

**ASHWIN ALESHHNI SHARMA**

Appearance : **WSGT Lani** for the prosecution  
**Mr Sen. A** for the accused

Ruling : **12 June 2020**

**RULING**

**NO CASE TO ANSWER**

1. The accused, Ashwin Aleshni Sharma is charge for *Common Assault* under *section 274* of the *Crimes Act*.
2. The particulars of the offence are that, the accused on the 28<sup>th</sup> day of February 2017, at Labasa, in the Northern Division, unlawfully assaulted Jarmaiya Finau.
3. The accused pleaded not guilty to the charge on 14 December 2017.

4. The case proceeded to trial on 4 May 2020.
5. The Prosecutor called one witness to the stand and closed the prosecution case. The defence make an application for no case to answer and seek time to file submission. The submission was filed on 7 May 2020.

#### **Application**

6. The defence submitted that the accused was not identified in court. All the elements of the offence were not proven by the prosecution and no conviction can be made.

#### **Law**

7. *Section 178 of the Criminal Procedure Act* provides for such application to be made.
8. *Section 274(1) of the Crimes Act, state;-*  
    *"A person commits a summary offence if he or she unlawfully assaults another person."*
9. The elements of the offence are;-
  - (a) *the accused,*
  - (b) *unlawfully assaulted,*
  - (c) *the victim.*
10. The test for no case to answer in the Magistrate Court was stated in ***Shabib v The State*** [2005] FJHC 95; HAA0022J.2005S (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.*

11. The burden of proof is on the prosecution to establish the above test.

**Analysis and determination**

12. Manasa Bete (Bete) is the only witness for the prosecution case. He stated that he can recalled 28 February 2017. On that day, he was in year 4 at Navualevu Primary School and Mrs Sharma was discussing the English notes in class. He do not know the full name of Mrs Sharma. He said while they were in class, Mrs Sharma slap Finau's back and Finau was crying. He said, Finau is one of the student in his class. Those are the material evidence of Bete relating to the offence.

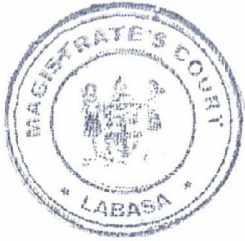
13. Bete did not identify the accused in court. He never showed to the court the person he referred to as Mrs Sharma. The person referred to in the charge as Ashwin Aleshni Sharma was not shown or identified to the court.

14. Apparently, there is no evidence on the identity of the accused. As such all other elements of the offence cannot be connected, linked, or related to the accused. As such, there are doubts on the evidence of the prosecution.

15. In assessing the evidence adduced by the prosecution, I find that Prosecutor was not able to discharge the burden of proof required as the evidence adduced does not support the charge.

16. Pursuant to *section 178* of the *Criminal Procedure Act*, I dismiss the case and I acquitted the accused accordingly.

**28 days to appeal**



A handwritten signature in blue ink, appearing to read "Kulom", written over a horizontal line.

C. M. Tuberi  
**RESIDENT MAGISTRATE**