

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Traffic Case No. 14 of 2019

STATE

v

JAGDISH NARAYAN SHARMA

Appearance : **PC Abinesh** for the prosecution
Accused in person

Judgment : **24 January 2020**

JUDGMENT

1. The accused, Jagdish Narayan Sharma was issued with a Traffic Infringement Notice (TIN) under *section 65(2)(a) and (4) of the Land Transport Act for Operating a Public Service Vehicle Contrary to the Conditions of the Public Service Vehicle Permit.*
2. The particulars of the offence are that Jagdish Narayan Sharma on the 9th day of May 2019, at Labasa in the Northern Division operated a taxi registration number LT 3775 at Nukusima lane, contrary to the permit conditions attached to taxi permit number T 3775 issued in respect of the said

taxi by operating for hire at the Market Taxi stand by operating for hire and not from approved base at Siberia.

3. The accused pleaded not guilty to the charge on 4 June 2019.
4. The case proceeded to trial on 10 December 2019. The Prosecutor called one witness and the accused is the only witness for the defence case.

Law

5. *Section 65(2) (a) and (4) of the Land Transport Act state;-*
 - (2) *A person may apply to the Authority for a public service permit of the following types-*
 - (a) *A taxi permit which authorises the use of a motor vehicle licensed as a taxi, subject to this Act and licence and permit conditions, to ply or stand for hire in a base for which it is issued, or from an approved stand outside that base, for the carriage of passengers within, from or to that base:*
 - (4) *A person who operates or permits to be operated a public service vehicle without or contrary to the conditions of a public service permit issued under this section commits an offence and is liable on conviction to the prescribed penalty.*
6. The elements of the offence are ;-
 - a. *the accused,*
 - b. *operate a public service vehicle,*
 - c. *contrary to the conditions of the permit.*
7. The burden of proof is on the prosecution.

Analysis and determination

8. The evidence adduced for the prosecution case and for the defence case has established that the accused operates a public service vehicle (taxi LT 3775) on 9 May 2019. The evidence adduced are in agreement that the accused pick a passenger at Nukusima lane near the market taxi stand on 9 May 2019.
9. PC 3450 Ilaisa (PC Ilaisa) the only witness for the prosecution stated that on 9 May 2019, he saw the accused pick a passenger at Nukusima lane near the market taxi stand. The accused was parking on the side of the road when he pick that passenger. He approached the accused and asked the accused for his driving licence. Jagdish is the driver and he identified the accused in court as Jagdish. He book the accused and issued the accused with a TIN and warned the accused for prosecution. He stated that he booked the accused for illegal operation from the Labasa Town stand when the accused place of operation is from his base at Siberia. It was the accused who informed him that his base is from Siberia and the taxi base was also written on the front screen. PC Ilaisa confirmed that he did not check the accused taxi permit.
10. The accused confirmed that his base is from Siberia. He said on that day he picked his passengers (Meleki and Ema) from Siberia and brought them to town. They went to the market and it was traffic jam. His vehicle was moving slowly, and when his vehicle stop, Meliki got off and went. After a while when he moved in front, Meleki came back with

a carton. He could not stop on the road, so he moved to the side of the road for Meleki to get into the taxi.

11. The evidence of the accused had created doubt on the case of the prosecution as the Prosecutor was not able to give evidence to rebut the evidence of the accused that the passenger he picked was the same passenger that went out of his taxi.
12. In assessing the credibility of the accused and PC Ilaisa, I accept the evidence of the accused that the passenger he picked was his passenger he pick from Siberia and get off at the market and return with the carton.
13. There was no public service permit tendered as evidence to show the permit condition and to prove what condition has been breached by the accused. PC Ilaisa stated that he did not demand and did not check the taxi permit of the accused vehicle. With that, then how did PC Ilaisa know that the accused breach his taxi permit condition. PC Ilaisa was not able to inform the court of the permit condition and what part or section of the condition has been contravened by the accused.
14. There is no doubt that the accused taxi base is at Siberia. The accused was charge for operating a taxi in contravention of his taxi permit condition. The contravention can only be verified and confirmed by looking at the permit condition and to be considered together with allegation and evidence to confirm if there was a breach. The oral evidence of PC Ilaisa is not sufficient to establish the said element.

15. Since no permit condition was tendered as evidence, no determination can be made on whether the accused had breached his taxi permit conditions or otherwise. In absence of such evidence, the prosecution failed to discharge the burden of proof on the element of contrary to the conditions of the permit.
16. The prosecution case failed on their failure to adduce statement evidence to prove the element of breaching of permit condition and failure to rebut the accused evidence that the passenger he pick is the same passenger that get off from the taxi and was returning back to the taxi.
17. In assessing the evidence, I find that the prosecution was not able to discharge the burden on reasons discussed above.
18. In this judgment, I find the accused not guilty as charged and I acquitted the accused accordingly.

28 days to appeal



C. M. Tuberi
Resident Magistrate