

**PUBLIC PROSECUTOR
VS
RONALD VUDUY AND
JACKSON WILLIE**

Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Philip Toaliu for the Public Prosecutor
John Malcolm for Defendant Ronald Vuduy
Nigel Morrison for Defendant Jackson Willie*

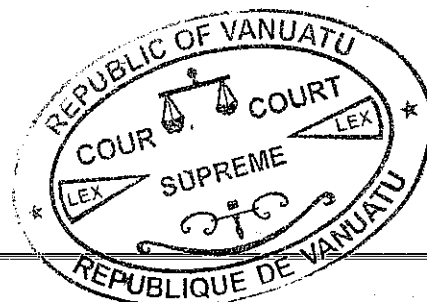
Date of Trial: *28th -31st May*

Date of Hearing of Submissions: *6th June 2018*

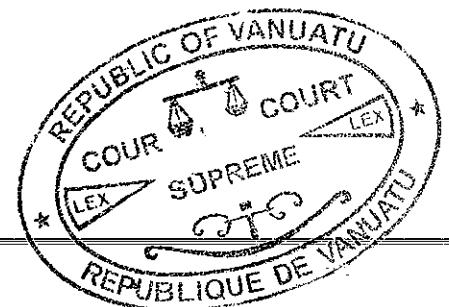
Date of Verdict: *13th day of June 2018*

VERDICT

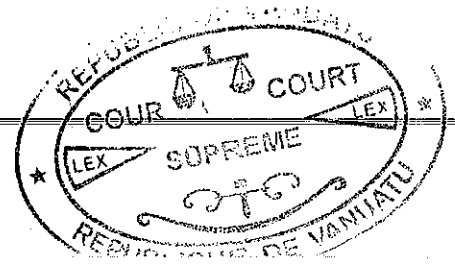
1. The defendant Ronald Vuduy was charged with one count of Intentional Homicide contrary to section 106 (1) (a) of the Penal Code Act [CAP.135] (the Act) and to an alternative charge of Intentional Assault causing death contrary o section 107 (d) of the Act. He pleaded not guilty to both charges and 4 days trials were held from 28th - 31st May 2018.
2. The defendant Jackson Willie was charged with two counts of complicity to commit intentional homicide contrary to sections 30 and 106 (1) (a) of the Act, and to an alternative charge of complicity to commit intentional assault causing death contrary to sections 30 and 107 (d) of the Act. He pleaded not guilty to both charges. He was tried together with the principal offender Ronald Vuduy for 4 days.
3. The Prosecution has the legal and evidential burden of proof to the high standard of proof beyond reasonable doubt all the elements of the charges laid against the defendants.



4. The elements required of the Prosecution to prove beyond reasonable doubt for Intentional Homicide are that-
- a) Ronald Vuduy committed unlawful acts (or omissions) on the deceased, Mariki Robson,
 - b) He committed the acts (or omissions) intentionally, and
 - c) His acts (or omissions) caused the death of the deceased, Mariki Robson.
5. For the offence of intentional assault under section 107(d) the necessary elements required of the Prosecution to prove beyond reasonable doubt are that-
- a) Ronald Vuduy assaulted the deceased on his body,
 - b) The assault was intentional,
 - c) The assault caused damage or injuries.
 - d) The damage caused resulted in death.
6. For the offence of complicity laid against Jackson Willie the element the Prosecution had to prove beyond reasonable doubt was that Jackson Willie aided, counselled or procured the commission of intentional homicide of Mariki Robson, and the commission of intentional assault on the deceased by Ronald Vuduy, causing death.
7. The Prosecution adduced oral evidence from 13 witnesses namely Emma Tekak, Jayson Vira, Maki Alfred, Johnas Mahit, Max Taleo, David Aru, Liwuslili Ismael, Christopher Bong, Fabian Maong, Bernard William, Mickey Nguyan, Dr Crystal Garae and Kevin Kerry Boe. A total of 5 witnesses did not give oral evidence but their statements were agreed and admitted into evidence. These were Robson Lui, Bwabwa Oten (deceased), Sylvie Taribiti, Atis Yosef, and Pascal Nakou.
8. Having heard and read those evidence and the submissions made by counsels, I am not satisfied the Prosecution has proved the charge of Intentional Homicide in Count 1 against Ronald Vuduy and accordingly I return a verdict of not- guilty against him on that charge. He is accordingly acquitted of that charge.



9. I however find the Prosecution has proved beyond reasonable doubt the charge of intentional assault causing death under section 107 (d) of the Act, and accordingly I return the verdict of guilty on Ronald Vuduy on this charge.
10. As for Jackson Willie, I accept Mr Morrison's submissions. The Prosecution has not proved the charges of complicity against this defendant in relation to the intentional homicide charge and the intentional assault charge. Accordingly I return verdicts of not guilty on both counts and acquit him of the two charges.
11. The evidence that Ronald Vuduy assaulted the deceased are seen from the evidence of-
- a) Mikey Ngugen- He saw Jackson go down on his knees. At that point Ronald jumped off his truck. The deceased (Mariki) walked towards him. They exchanged few punches. He could not recall how many punches but confirmed Ronald punched the deceased who fell down and got up again. He was not steady. He said the deceased's head was spinning.
 - b) Ronald Vuduy (defendant)- He said in examination –in- chief as follows:
“ I only saw Jackson going down on his knees. I yelled “ stop” and got out of the truck. Mariki came towards me. He did not say a thing to me. He was so quick. He punched me. I could not count his punches then I punched him once on his nose and he fell down. I protected myself by left, right and then right again, which hit him. He went down dizzy and tried to stand up again- that was it.”
 - c) Corporal Ismael Liwuslili- The Police officer who attended the scene at 3:30am on 24th June 2017 said they stopped right behind Ronald Vuduy's truck parked at the front of the Saloon Bar. They (workers) were cleaning up. The place was quiet. He asked Ronald *“ Where is the man?”* Ronald led him to the truck and said to the Police Officer *“ I did this to him because I had a problem with a staff earlier,”* or words to that effect. Further he said *“ we opened the cart. I saw the body. We turned him over and saw blood on his nose. He was lying face down on a garbage bag, another was on top of him.*

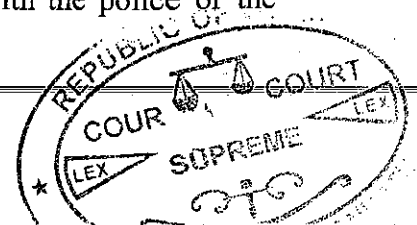


His eyes were closed and he was breathing deeply. Blood was dry, not bleeding. I saw his nose as if it was broken. His face was swollen."

- d) Constable Fabian Maoung said he accompanied Ismael Liwuslili to the Saloon Bar after receiving a call at 3:30am. He saw Ronald standing by his truck. He heard Ismael asked him "where is the man?" They were led to the back of the truck by Ronald and he saw the man lying face down on a garbage bag. As Ismael turned the man over, the witness saw blood on his face. He was breathing which sounded like there was blood inside of him. They then carried him off on to the Police truck and took him to the hospital.
- e) David Aru, the Bar tender said he saw the deceased lying down on the back of Ronald's truck. He removed a plastic bag over him. He heard him breathing badly like a pig when killed. He saw blood on his nose and that his eyes were closed but he was not dead. He faced upwards. The Police came shortly after that and carried him off onto their truck. They handled him carefully.

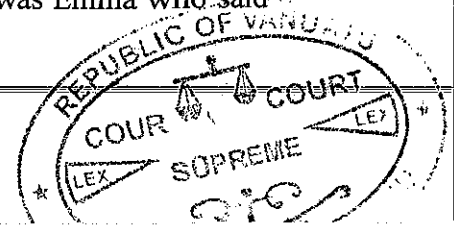
12. The evidence of intention is shown by the following evidence-

- a) Corporal Ismael Liwuslili when he asked Ronald where the man was and was told by him that he had done this to the deceased because of the earlier incident that occurred resulting in the death of a female staff.
- b) The defendant's own evidence that he got out of his truck when he saw the deceased punch Mikey who retreated. Then he saw Jackson go down on his knees. When he got out of his truck and yelled at the deceased "loudly" in his words and without the deceased not heeding his command to stop, his intention to assault became visible at that point.
13. He was asked by his own Counsel what would he have done had the deceased resisted going back to the Saloon with them and he said they would have backed off. It was very clear that the deceased was resisting their demand by being violent and abusive to Mickey and Jackson. That was enough for the defendant to call the boys back onto the truck and for them to return, leaving the matter entirely with the police or the



complainant Emma. But it did not happen that way. What happened is exactly the opposite of what the defendant said.

14. The defendant said he threw only one punch. That is not consistent with what Mickey saw that they exchanged few punches. His own evidence was that he threw a left jab, followed by a right and then a final right jab. That is a total of three punches. Those punches caused the deceased to fall down. Mickey saw him fall. And he was dizzy and lost balance. He had to be assisted onto the truck. And he did not sit upright on the truck. He leaned on the garbage bags. The blood seen on the deceased's nose and mouth by the police officers is consistent with the punches admitted by the defendant.
15. The defendant's description of the 3 jabs thrown by him are consistent with the three points of impact seen on the head of the deceased by Dr Crystal Garae. That there was swelling on the nose and mouth is consistent with the punch the defendant admitted he threw at the deceased.
16. The evidence of the defendant lacks credibility. Mickey did not throw any punches. He retreated. Jackson did not throw any punches. Bernard William was not involved. That leaves the only assailant to be Ronald Vuduy. Mickey saw him exchanged a few punches. That is sufficient to establish that defendant Ronald Vuduy assaulted the deceased. And as a result of the assault, he inflicted the injuries that caused the death of the deceased. It is immaterial that he intended to cause the death of the deceased.
17. A defence of self-defence was raised but this is rejected. There were 4 men against one man, the deceased who was drunk. It was impossible to bring him back to apologise to Emma in that state of drunkenness. Even if that was the intention of going after him, having taken him back on his truck to the Saloon, the apology was not made. The only possible inference the Court can reach from that omission is that Mariki Robson could no longer move or talk. His eyes were closed, he had a bloody nose and mouth. He was breathing badly. The police had not arrived immediately as he claimed they did. They received a telephone call at 3:30am. That is in direct contradiction to his evidence that he instructed his cashier to call the police before they left on the truck with the three men Mickey, Jackson and Bernard. The cashier was not called as a defence witness to confirm that assertion. It was Emma who said



she asked the cashier to call the police. The timing recorded by the police in the Entry Book is consistent with 3:30am given by the Police Officers. The Court prefers the evidence of the Police Officers as the truth. The assertion that the police men threw the body of the deceased into their truck is not credible. Corporal Ismael Liwuslili was very firm in his evidence and did not change his evidence under cross. That leaves the only cause of death was the direct result of the deceased being punched by the defendant to the head and nose. And it was not caused by one punch as asserted by the defendant, but three or more punches.

18. The defendant's admission to Corporal Liwuslili on his inquiry upon arrival at the Saloon Bar that he assaulted the deceased leaving him in the state he was seen by the officers on the defendant's truck on their arrival, is consistent with the defendant's admission he made in his Record of Interview at paragraph 29. The admission was made to Police Constable Kevin Kerryboe. The Record of Interview was accepted and tendered into evidence as Exhibit PP9.
19. From the evidence, clearly the Prosecution has proved beyond reasonable doubt that the defendant Ronald Vuduy intentionally assaulted the deceased Mariki Robson causing him injuries that resulted in his death on the morning of 24th June 2017.
20. Ronald Vuduy is therefore guilty of one count intentional assault causing death laid under section 107 (d) of the Penal Code Act [CAP. 135].
21. I accordingly convict the defendant Ronald Vuduy of the charge as laid.

DATED at Port Vila this 13th day of June 2018

BY THE COURT

Oliver.A.Saksak

Judge

