

IN THE SUPREME COURT  
OF THE REPUBLIC OF VANUATU

Criminal  
Case No. 18/966 SC/CRML

**BETWEEN:** Public Prosecutor

**AND:** Emil Iaruel  
Defendant

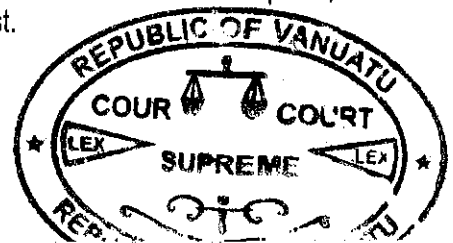
*Date:* 20 September 2018  
*By:* Justice G.A. Andrée Wiltens  
*Counsel:* Ms L Lunabek for the Public Prosecutor  
Mr E Molbaleh for the Defendant

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**VERDICT**

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1. Mr Iaruel pleaded not guilty to both charges – (i) unintentional harm, contrary to section 108(c) of the Penal Code; and (ii) driving under the influence of alcohol, contrary to section 16 of the Road Traffic (Control) Act.
2. Two prosecution witnesses gave evidence about seeing the deceased jumping from/falling out of a yellow bus driven by the defendant at the relevant time. The first told me the bus had driven over the deceased's head; the second told me that the deceased's head had been hit by the bottom of the bus before the rear wheel ran over her head. A third eye-witness was too far away from the actual event to be able to clearly see what had occurred.
3. Contrary to that, and completely undermining that evidence, was the medical evidence, tendered by consent, which revealed that the deceased's head, ears, eyes, mouth and neck were "...clear of any mark of external injury".
4. The medical evidence completely excluded the possibility of the deceased having been run over by the bus. I accept that the two witnesses believed they saw the deceased being run over, but the medical evidence compels me to the view that they must be mistaken – the driver, as he should have been concentrating on the road; and the passenger standing in the back, due to the difficulty of maintaining his balance. Further, any observation was made at speed, with the back of the bus impeding their view to some degree at least.



5. I determined, after affording Ms Lunabek the opportunity of submitting to the contrary, that there was insufficient evidence before me for a case to answer to be made out. In the event, Ms Lunabek agreed with my analysis. I therefore dismissed the first charge.
6. The second charge related to drinking under the influence of alcohol. The evidence in relation to this charge came from the first witness who spoke to the defendant immediately after the accident, and who smelt alcohol; from the third witness who was an innocent by-stander who knew the defendant and asked if he was alright and who opined she thought he was drunk; a statement given by the defendant to the police 3 days after the event during which he admitted that he had consumed a few drinks; and finally the evidence of the first, second and third witnesses that after the accident the defendant had removed bottles/cans of Tusker and VB from his bus prior to taking the deceased to hospital.
7. There was clear evidence that the deceased had purchased some alcohol from ABM earlier that morning. There was no evidence the defendant had consumed any of her alcohol or anyone else's while driving; or that he had his own alcohol on board.
8. The admission to the police officer is insufficient to establish this offence. Equally the opinions of the other witnesses as to whether the defendant was drunk or smelt of alcohol did not carry much weight.
9. There was also clear evidence that the defendant had been driving at 20-30 kph for some time, without any alarms being raised about the manner of his driving. And it was apparently busy on the roads at that time.
10. Significantly, I asked Ms Lunabek what evidence there was to show that the defendant was incapable of properly controlling his vehicle. She agreed there was none. The particulars of the charge went further than that, and alleged such incapacity "...when you ran on top of the victim..." I did not accept the bus had run over the deceased.
11. In the circumstances, I was not satisfied the prosecution had established a prima facie case in relation to the second charge either, and I therefore dismissed that charge as well.
12. Mr Iaruel was acquitted on both charges in the information.

Dated at Port Vila this 21st day of September 2018  
BY THE COURT

*G.A. Andree Wiltens*  
Justice G.A. Andree Wiltens

