

IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU
(Criminal Jurisdiction)

Criminal
Case No. 17/1961 SC/CRML

PUBLIC PROSECUTOR

VS

EPHRAIM JOHNNY,

JOHN MASMAS,

TARI PURU

Date of Trial: 22, 23, 25 and 31st July 2019
Date of Verdict: 2nd August 2019
Before: Justice Oliver Saksak
In Attendance: Damien Boe for Public Prosecutor
Tom Joe Botleng for the Accuseds

VERDICT

1. The three accuseds are charged jointly with one count of intentional assault causing permanent nature contrary to section 107(c) of the Penal Code Act [CAP. 135]. This section states:

“ Intentional Assault

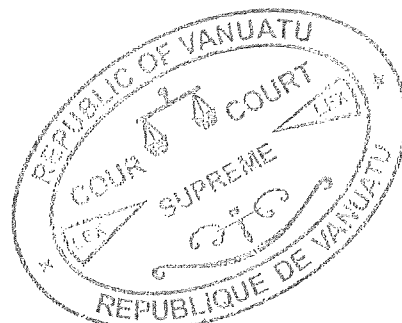
No person shall commit intentional assault on the body of another person.

Penalty: (c) if damage of a permanent nature is caused, imprisonment for 5 years....”

The Information is framed as follows-

“ Count 1 STATEMENT BLONG WRONG

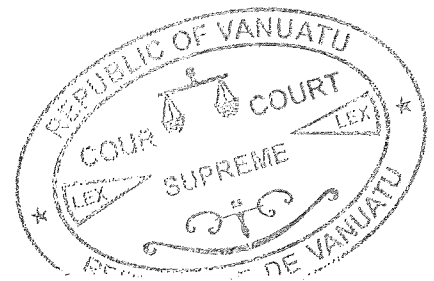
Intentional Assault Causing Permanent Injury- Contrary to section 107(c) of the Penal Code Act Cap.135.



PARTICULARS BLONG WRONG

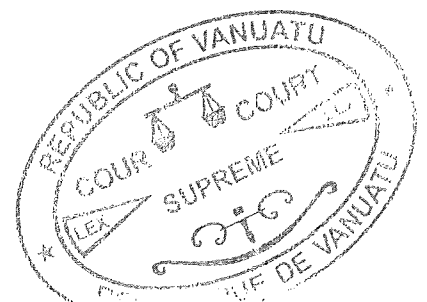
Ephraim Johnny, John Masmam mo Tari Puru, yufala blong Natawa Vili, samtaem long 01/01/2019 yufala bin intentionally assaultem man ia MORRIES SAMSON long mouth blong hem mekem se hemi kassem ol permanent injury.”

2. Pursuant to section 8 of the Penal Code Act and section 81 of the Criminal Procedure Act [CAP. 136] the Prosecution has an onerous duty to prove the guilt of the three accuseds. The standard required is proof beyond reasonable doubt. The burden is both legal and evidential.
3. The elements the Prosecution has to prove beyond reasonable doubt are-
 - a. The three accuseds assaulted Morris Samson,
 - b. They did so intentionally, and
 - c. They caused injury of a permanent nature.
4. The Prosecution case is that on 1st January 2019 at Natawa Village Tari Puru punched Morris Samson on his mouth. He fell to the ground and John Masmam came to join Tari to kick him while Morris was on the ground. When Morris was assisted to be back on his feet, Ephraim Johnny came around and punched Morris again three times on the same spot, causing his teeth to fall out of his mouth.
5. The accused's case is that Tari Puru and John Masmam assaulted Morris but that they assaulted him on his face and not on his mouth. Further it was Ephraim Johnny's case that he was not at the scene when the assault took place. Ephraim Johnny sought leave to raise an alibi defence. Leave was granted without any objection by the Prosecutor.
6. The Prosecution called evidence from Morris, Swal Mesu, Sere Samson, Stephen Thomas, and Jeremy Aru. Except for Jeremy Aru, the first 4 witnesses told the Court how they all met at Manioc Village on 1st January 2019 and travelled to buy alcoholic drinks at a Black Market, and how they got to Natawa Village to drop Philimon Loy off. The 4 witnesses testified as to how they stopped at a Benuar Tree and were dancing to music

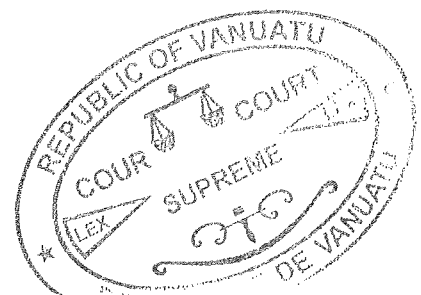


from the truck and how the fight started. They all said Tari Puru started the fight by punching Morris on the mouth causing him to fall to the ground. While on the ground John Masmass participated by kicking Morris. They were separated from Morris and it was at that point Ephraim Johnny came by and punched Morris again on the mouth three times. Morris Samson said after the assault he stood by the truck and saw blood. He pushed his hand into his mouth and removed 1 tooth which was loose and showed it to his companions.

7. Jeremy Aru said he was in Natawa village at the time with Tari Puru, John, Joe and Ephraim and that they were drinking. He said he stood around and saw Tari fight Morris. He did not see anyone else fight Morris.
8. Dr Mark Kalpukai, a qualified and experienced dentist who examined the complainant Morris Samson four days later on 4th January 2019 said he removed one loose tooth. His findings show no obvious swelling on the face. In the mouth there was no active bleeding, no up normality in biting and no boney structure. He found the complainant's oral hygiene to be poor, not clean. He found 4 teeth missing. He extracted one tooth. He found the complainant has periodental disease which he explained as the disease of the gum structure being worn out, causing the loosening of the teeth.
9. Police Officer John Berry was the investigating officer. He took cautioned statements from Tari Puru on 7/1/019 at 5:08pm who admitted assaulting Morris Samson removing his teeth, after Morris had assaulted him first. He took cautioned statement from Ephraim Johnny on 08/01/019 who denied the allegations. He obtained cautioned statement from John Masmass on 16/01/019 who admitted fighting Morris but did not know what he was doing as he was too drunk.
10. The accuseds gave evidence in their defence. Ephraim Johnny told the Court he was out in the plantation shifting his bullocks and did not see the fight. Upon returning to the village he met Tari Puru who told him there was a fight. In cross he maintained he was not at the scene of the fight and did not participate in the fight.

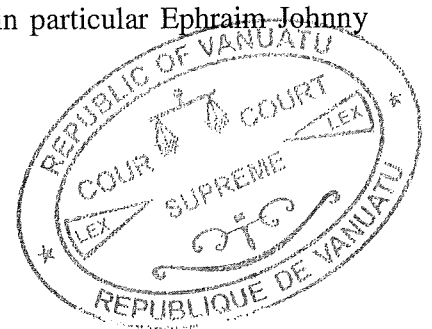


11. John Masmás told the Court he was too drunk to know what he was doing at the time.
12. Tari Puru said on 1/01/019 he and Jeremy Aru walked to the forked road. He saw Morris Samson, Sere Samson, Swal Mesu, David Mesu and Eli Samson on Sere Samson's truck. He asked them what they did to his uncle's face. He saw blood on his uncle Joe Johnny's face and plaster. Eli Samson came to say sorry but uncle Joe punched him and he fell down. Morris came to fight him but he leaned back then came forward to punch Morris on the face. Then Stephen came and punched him against the wall of the village nakamal causing his shoulders to dislocate.
13. Alfred Bong was present on 01/01/2019 when the fight took place. He was not drunk as he did not drink. He stood at a distance of 3 meters and saw Tari fight Morris on the face. He saw Jeremy kicking Morris on his mouth with safety shoes. He saw blood on the shoes. He saw one tooth shown him by Morris. He said Jonathan Joseph was also present. He said it is not true John Masmás kicked Morris. He said Morris, Swal, Sere and Stephen were all very very drunk at the time blind drunk. He said chief David from Manioc Village was there too and he swore badly at the Natawa people. And he said he did not see Ephraim Johnny at the scene of the fight.
14. Finally Johnathan Johnny. He was present at the time of the fight between Manioc men and Natawa boys. He said the Manioc men were fully blind drunk. He did not see Ephraim Johnny there and did not know where he was. He said it was not true that Tari Puru fought Morris on his mouth, rather it was a punch to the right side of the face of Morris. He was 2-3 meters away. He did not drink that day. He said it was Jeremy Aru who kicked Morris on his mouth with a safety shoes. He said Morris showed him one tooth. Alfred Bong too was there and he saw Morris's tooth. He said John Masmás did not kick Morris and said he was too drunk to throw a punch. He confirmed Chief David of Manioc was there too and he swore at the Natawa people. He said the fight started when Eli broke Joe Walter's face, also known as Joe Johnny, by head butting his face, causing injury.



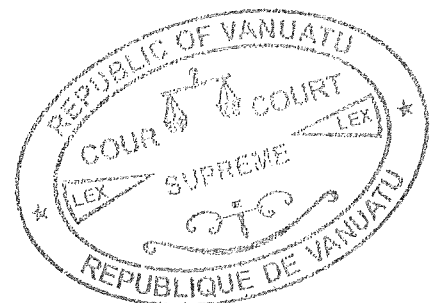
Discussion

15. There was no evidence in rebuttal from the Prosecution. This was warranted when the accused introduced new evidence from the alibi defence witnesses Alfred Bong and Jonathan Joseph, including Tari Puru that the fight started when Eli Samson had head butted Joe Johnny's head causing an injury. Further when the alibi witnesses introduced evidence showing Chief David was there and that he swore badly at the Natawa villagers. The Prosecution could have called rebuttal evidence from Eli Samson, Joe Johnny and Chief David, but did not.
16. Philimon Loy could have been an essential witness but was not called. Could it be that if called, his evidence would be inconsistent with the prosecution witnesses Morris, Swal, Sere and Stephen who said they travelled with him from manioc village, when in fact they only picked him up from the road or was offered a lift and at the Black market, he asked to be dropped off at Natawa. The absence of Philimon's evidence brings these 4 witnesses evidence into question as to their credibility.
17. Morris Samson's evidence is inconsistent as well. At one point he said he removed one tooth from his mouth after he was punched. At another time he said he picked up 2 -3 teeth after he was punched and fell down.
18. Captain Joel Thompson drove the police truck to Natawa at the time of arrest of Tari Puru. He could have made a statement but did not. There was allegation by defence of a conflict of interest because he is from Manioc village, where the complainant and his witnesses are from.
19. The statement of Morris Samson was obtained on 9/1/019 at 8:56am. Philimon Loy's statement was taken on 9/1/019 at 9:42am. Steven Thomas' statement was taken on 9/1/019 at 10:05am, Swal Mesu's on 9/1/019 at 10:25am and Sere Samson's was obtained on 9/1/019 on 10:45am. They all said exactly the same things about what the accuseds did. The inference the court draws from this is that these witnesses planned to say the same thing to implicate these three accuseds and in particular Ephraim Johnny



who denied being part of the assault during his interview and during cross –examination, when he remained firm and did not shift from his position.

20. The Court is cautious about Jeremy Aru’s evidence in his statement in the absence of Joe Johnny’s evidence confirming what he says. This witness initially resided at Natawa but after the incident he has changed his residence to Tutuba. The question is why?
21. There is something seriously flawed in the Prosecution case. It is not complete. How did the police investigating officer know about Morris Samson’s injury when he obtained Tari Puru’s admission statement on 7/1/019 and Ephraim Johnny’s on 8/1/019 but only recorded Morris Samson’s statement and the other witnesses statements on 9/1/019?
22. The alleged assault occurred on 1/1/019. Morris Samson did not attend to medical examination until 4/1/019. If his injury was so serious as he and his witnesses alleged, he could have assisted and mitigated his injury by going to the hospital on 1/1/019 or the next day. Despite it being a Public holiday, the emergency department is a 24 hour service, so that argument is not tenable.
23. Moreover the doctor’s report shows Morris Samson has poor dental hygiene with periodontal disease. And it was he himself who told the court he removed one tooth. The others it was unclear from the evidence how they fell off and what caused them to fall off. It was in the evidence that he fell down. There was no evidence how he fell down and how he landed. It can be inferred the fall may have contributed to the fallen teeth.
24. These are factors creating gaps and loopholes in the Prosecution case, making it unsafe for the Court to find guilt on the three accuseds.
25. I therefore reach the conclusion that the Prosecution has not discharged its duty of proof by beyond reasonable doubt that these three accuseds are guilty of Intentional Assault causing injury of a permanent nature. I therefore return verdicts of not guilty on you



Ephraim Johnny, Tari Puru and John Masmus. The charge against you all is dismissed and you are all acquitted.

DATED at Luganville this 2nd day of August 2019

BY THE COURT

OLIVER.A.SAKSAK

Judge

