

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

Criminal
Case No. 18/2304 C/CRML

BETWEEN: Public Prosecutor

AND: WILLIAM ROY
Defendant

Date of Trial: 29th October 2019
Date of Verdict: 18th November 2019
Before: Justice Oliver Saksak
In Attendance: Georgina Kanegai and Josephine Tete for Public Prosecutor
Francis Tasso for the Accused

VERDICT

Introduction

1. The accused stood trial on a charge of intentional assault causing temporary injury. The charge was laid under section 107 (b) of the Penal Code Act CAP 135.
2. It was alleged that on 22 April 2018 the accused had picked up a stone and thrown it at Richie Kelep causing injury to his right head and right eye. The accused denied the charge.

Law

3. Section 107 (b) states-

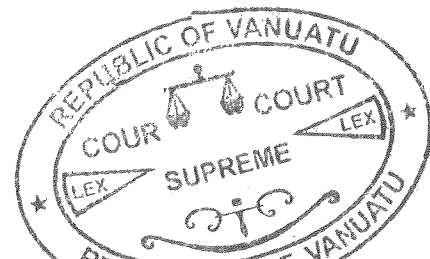
"107. Intentional assault

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

Penalty: (a).....;

(b)if damage of a temporary nature is caused, imprisonment for 5years;"

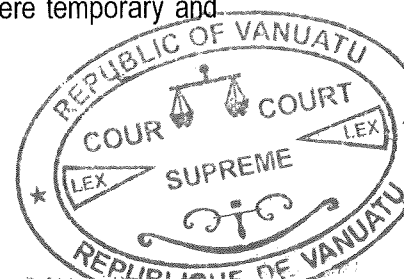
4. Pursuant to section 8 of the Act the Prosecution has the onus of proof beyond reasonable doubt that the accused had committed the offence he is charged with. The four elements the Prosecution needed to prove beyond reasonable doubt are (a) Did the accused assault Richie



Kelep? (b) Did he intent to do so? (c) Did he cause the injuries complained of ? (d) Were the injuries caused of a temporary nature?

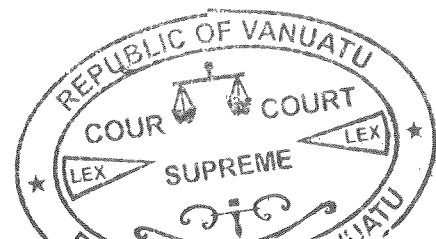
Evidence

5. The Prosecution called evidence from 9 witnesses namely Richie Kelep, Dr Rexton Rono, Kalagai Andre, Siri Kelep and Eddie Kelep who gave evidence orally. Four witnesses gave documentary evidence through their witness statements which were agreed into evidence by Counsel. These were David Kelep, Frank Kelep, Reuben Kelep and Lollyne Tete. Their witness statements were tendered and marked as exhibits P1, P2, P3 and P4 respectively.
6. The first prosecution witness, Richie Kelep (complainant) in examination-in-chief simply relied on his statements made to the police on 25 April 2018, tendered as exhibit P5. From the statement he states he complains against Willie from Tongariki who stoned him with a big stone. He had aimed at his head but he blocked it with his hand and the stone broke his right hand. The same stone hit him on the right side of the eye and cut a corner of his eye. This incident occurred in the afternoon. He and his group of men went to the school because Morris had chased three boys who had ridden past the school on their bicycles. They went down to sort some things out. When they arrived Alick approached Morris to hug him and say sorry to him for the incident that occurred in the morning of the same day. Morris however did not accept Alick pushing him to fall to the ground. This triggered another big fight. This was when Willie stoned him with a big stone breaking his hand.
7. In cross, the complainant denied they went down to say sorry to Morris. He denied the suggestion that Alick approached Morris to hug him. He said the defendant was not at the scene of the fight but was standing on the road. He said the full community were there at the scene of the fight. When asked whether there were many people there, he said only Willie was on the road. When asked whether he was already injured when they entered the school compound, he said they fought on the road.
8. Dr Rexton Rono gave evidence that he examined the complainant Richie Kelep at 11:00am on 24th April 2018. He recorded a swollen right hand and right foot and abrasion on distil right leg. There was laceration on right eye brow. On x-ray he found fracture of the right metacarpal of 5th digit (finger). He concluded there was an assault. He confirmed wounds were temporary and



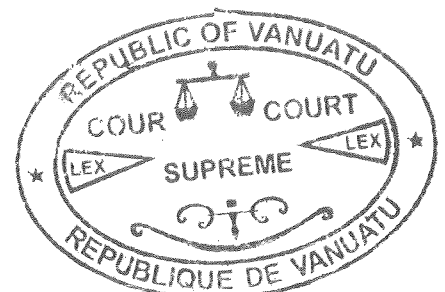
even that bone fracture could heal up. In cross, he maintained the wounds could have been caused by a blunt object which was irregular.

9. Kalangai Andre. He said Richie Kelep is his uncle. He was one of the group who went to the school at 2:00pm. He saw Morris push Alick who fell down. He saw Willie throw a stone at his uncle who blocked it with his hand and broke his hand and reached a part of his eye. He was at a distance of 3 meters away. In cross, he said he saw Willie sitting with a stone in his hand. He said the stone was a white carrier stone which was rough. When suggested the stone would have cut Richie's hand badly, the witness said "yes".
10. Sivi Kelep. He said Richie Kelep is his father. He was present when the fight broke out. He was at a distance of 5 meters away. He saw Willie throw a stone at Richie's head and saw blood from his head and face.
In cross, when asked whether he did not see who threw the stone, he said "No".
11. Eddie Kelep. He said Richie is his father. He was involved in the fight on 22nd April 2018. It was he who fought with Willie the defendant. They had gone to say sorry to Morris but when Morris pushed Alick, a fight broke out. He was at a distance of 2 meters away. He said it was Willie who threw the stone at Richie's hand which also got into his eye.
12. David Kelep. He was at the fight at 2:00pm on 22nd April 2018. His father Richie walked in front of them during the fight. He saw Willie hold a stone in his hand and threw it at Richie's hand which landed on Richie's face. He was not subject to cross-examination.
13. Frank Kelep. He too was at the fight at 2:00pm on 22nd April 2018. The fight broke out on the road. He saw Willie hold a stone with his hand and threw it at Richie, his brother who blocked his face with his hand, but the stone got his face on the right side. He was standing at a distance of 3 meters. He was not subject to cross-examination.
14. Reuben Kelep. He too was present when the fight broke out at 2:00pm on 22 April 2018. It happened on the road leading up to their house. He followed his dad (Richie) and the others who were talking among themselves along the road. He saw Willie hold a stone in his hand and threw it at Richie's hand which hit the right side of Richie's face. He too was not subject to cross-examination.



Defence Evidence

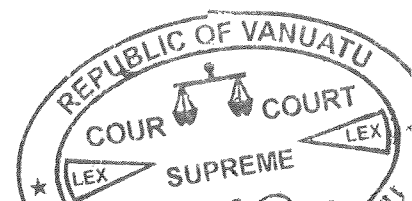
15. In support of the defendant's defence that he did not assault the complainant, the defendant himself gave evidence. He called evidence from 3 other independent witnesses in support of his defence. The following are the summary of their relevant evidence.
16. William Roy (Defendant). He was at Epule in the morning of 22 April 2018. Morris went to speak to him about being assaulted in the morning. That there was to be a reconciliation ceremony in the afternoon. That he should accompany Morris to the ceremony in the afternoon. That he should accompany him to the ceremony for safety in case something else happened. So four or five other boys went along with him to Forari. At 2:00pm 3 boys came down to the school area. Morris chased them away. They returned to tell their parents. They then waited on the road for the police to arrive. Instead the complainant and his group came down. They came to the school gate and were calling out for a challenge to fight. One of the boys tried to stop them from fighting and suggested they should await the police who had been alerted. However this did not deter them. Frank ran up to fight Morris and the defendant's brother Sansi Toara fought Frank. A fight broke out and they were over taken by the group. He got involved in the fight to protect Morris whose eyes were closed from the morning fight. He remembered fighting Eddie alone because Eddie held a knife and he was afraid of him. He fought Eddie who fell down and the knife flew out of his hand. The school chairman came to take the knife away. Frank was fighting too. The fight took place at the school area making the students afraid and were running around calling for their mothers. He himself was injured in the fight when a stone hit his head. He did not know who hit him with the stone as he was held tightly and was facing downwards. He produced the photograph of his head injury as exhibit D1.
17. It was Richie Kelep himself who held him down. He never held anything in his hand to fight with. If it was correct he threw the stone at 2 metres away, Richie Kelep would have been very seriously injured.
18. In cross, he was asked how many boys followed him, he said 5 or 6. Whether they were big men or small boys, he said they were small, he was the biggest of them all. That they all ran away when the fight broke out. When asked about he stone he said there was no stone. Whether he used a stone to fight with, he said "No".



19. Maxon Niptik. He is the school principal. He witnessed the incident before, during and after the fight. He told the Court about the first part of the fight occurring in the morning. This was the subject of a charge in the Magistrate's Court. The second part at 2:00pm he was present. The group came around asking for a challenge to fight by whoever was strong enough to fight them. He named the members of the group as Frank, Richie, Eddie, Kalangai, Sivi, Joshua, Stephen, Alick, David. Some mothers were present with them. They were calling from about 200 meters away.
20. The defendant's group had come up with Morris. He told them he had called the police who were coming around and that they should hold their peace. However Frank found Morris again so the fight started. Pressure mounted and Richie fought Morris and the fight broke out. He was close to the defendant trying to stop the fight but could not. The defendant had nothing in his hand, not even a stone. He confirmed the defendant was injured when they stoned him on the head. He confirmed the fight broke out inside the school yard.
21. Jenita Joe. She is a teacher at Rontal School. She heard the complainant's group calling out for a fight from the road. She was holding her baby. She saw the group come into the school with stones. Children were fearful and were running all over the place. She saw the defendant fight but only with his fist. She saw blood on the defendant's head from an injury. She did not see who hit him.
22. Maelyn Obed. She too is a teacher at Rontal School. At 2:00pm on 22 April 2018 she was at the school and saw the fight happening within the school area. She heard the group calling out for a fight from the road. She did not however see the fight.
23. Jimmy Pakoa. He saw what happened in the morning. He did not see what happened in the afternoon. He only heard Frank calling out for a fight from the road. He knew it was Frank because they had been school mates. He said the fight occurred in the school boundary.

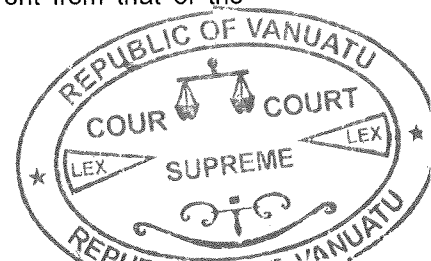
Discussion

24. The examination of the complainant was poorly done. He simply relied on his complaint statement to the police instead of being made to tell the detailed story of what occurred at 2:00pm on 22 April 2018. What happened in the morning was not relevant. It was the detail of



what occurred in the afternoon that was alleged in the charge and the complainant should have been asked questions on the details of that incident. What he said in his brief evidence is that the defendant hit him with a big stone. He aimed it at his head but he blocked it with his hand which broke his right hand. In his statement the "left" hand is crossed out and replaced with "right" and whoever changed that is not in evidence, but it casts doubt on the complainant's evidence. Alick would have been a better witness but he was not called.

25. The stone alleged to have been used was never produced in evidence. It was a relevant piece of evidence to prove a stone had in fact been used.
26. The complainant's evidence was inconsistent in most parts. In cross he was prepared to be evasive and change his story. These are stated in paragraph 7 of this judgment. Those inconsistencies render the complainant's evidence about the assault lacking in credibility and his evidence is rejected.
27. Dr Rexton's evidence show injuries beyond what was complained of. There was swelling also on the right foot and right leg. What caused these? It was not clear because the complainant was not made to give the details of the assault. The doctor was very hesitant to explain or give an exact opinion as to what could have caused the alleged injuries on the hand and the eye brow. All he said and maintained was it was an irregular blunt object.
28. Kalangai Andre's evidence is unreliable and lacks credibility. He said he was away by 3 meters when he saw the defendant throw the stone. And he was the only one who saw the defendant sitting with the stone in his hand. The others said the defendant was standing when he held the stone and threw it. He said the stone was white, large and rough. And it was he who agreed that the stone was capable of causing very serious injuries to the complainant.
29. Sivi Kelep saw the assault from 5 metres. He too was inconsistent because in cross he said he did not see who threw the stone at Richie.
30. Eddie Kelep was away by 2 metres. He was the one who was heavily involved in the fight. He had a knife on him at the time. His story about the knife is very different from that of the

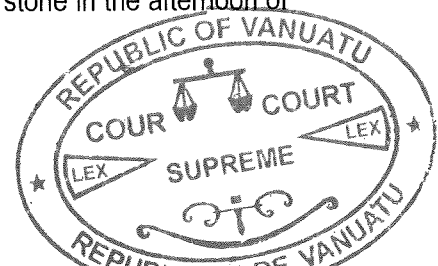


defendant's. The defendant's story about the knife is more likely to be the truth. His evidence was not tested and that was the risk the prosecution accepted to take.

31. David Kelep's evidence is unreliable and inconsistent. He said he saw the defendant hold a stone and threw it at Richie's hand landing on Richie's face. That is a confusing evidence not clarified in re-examination. This witness's evidence too was not tested.
32. Frank Kelep's evidence is also unreliable. He saw from a distance of 3 metres and gave similar evidence to that of David Kelep's. And this evidence was not tested.
33. Reuben Kelep's evidence is similar to David and Frank's evidence. These were not tested. All these witnesses were the complainant's close relatives. The caution the Court has in accepting their evidence as the truth lies in the closeness of their relationship that there is a high possibility that they all agreed to put up the same story not necessary as the truth, but to assist their father to secure a conviction against the accused. That is a dangerous thing to do as it could amount to perjury or conspiracy to defeat the course of justice.
34. The defendant on the other hand told of a more detailed story. And I was impressed with his demeanor as a witness of truth. He denied holding a stone and was not moved in cross-examination. His evidence was confirmed by the Principal, Maxon Niptick that he had nothing in his hand when fighting. He was outnumbered and overpowered by the complainant's group and was himself injured as exhibit D1 confirms.
35. The evidence from the remaining witnesses from the defendant were relevant only to (a) that it was the claimant's group who came in the afternoon of 22 April 2018 that instigated the fight instead of a reconciliation and, (b) the fight took place in the school compound rather than on the road as stated by the complainant and his witnesses.

Conclusion

36. The prosecution has not discharged its duty of proof beyond reasonable doubt that the defendant, William Roy assaulted the complainant Richie Kelep with a stone in the afternoon of 22 April 2018.



37. I find the accused not guilty of the charge and accordingly acquit him.

DATED at Port Vila this 19th day of November 2019

BY THE COURT



OLIVER.A.SAKSAK

Judge

