

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

Criminal
Case No. 20/1069 SC/CRML

PUBLIC PROSECUTOR

v

PETER JIMMY

Date of Trial: 22 June 2020
Before: Justice V.M. Trief
In Attendance: Public Prosecutor – Ms G. Kanegai & Mr K. Massing
Defendant – Mrs C.T. Gesa
Date of Decision: 26 August 2020

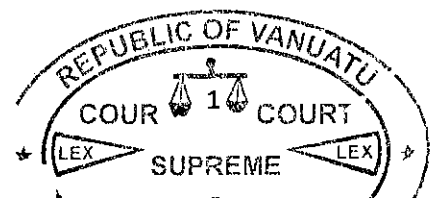
VERDICT

A. Introduction

1. Mr Jimmy is charged with:
 - a. Three counts of threats to kill contrary to s. 115 of the *Penal Code* [CAP. 135];
 - b. One count of domestic violence contrary to s. 10 of the *Family Protection Act* 2008; and
 - c. One count of intentional assault contrary to s. 107(a) of the *Penal Code*.
2. Mr Jimmy previously pleaded to one charge of possession of firearm without a licence.
3. The charges are set out in the Amended Information filed on 15 June 2020:

Count 1 Statement of Wrong
Threats to kill - pursuant to section 115 of the Penal Code [CAP. 135]

Particulars of Wrong
Peter Jimmy, sometimes between January 2019 to November 2019 you intentionally threatened Melissa Jimmy who is your wife over the phone by throwing words of threats such as, "I will kill you dead and bury you in an old toilet and I will dig another new toilet".



Count 2 Statement of Wrong
Threats to kill - pursuant to section 115 of the Penal Code [CAP. 135]

Particulars of Wrong

Peter Jimmy, sometimes between January 2013 and November 2019 at Mele Village you intentionally threatened to kill Melissa Jimmy who is your wife by throwing words of threats such as, "One day I will kill you dead and I will hide your body on a place where no one will see the place where I will hide your body".

Count 3 Statement of Wrong
Threats to kill - pursuant to section 115 of the Penal Code [CAP. 135]

Particulars of Wrong

Peter Jimmy, on 21st December 2019 at Mele Village you indirectly threatened to kill Melissa Jimmy who is your wife by pulling out a rifle HJE no. 3111561, .22 Rifle model 802, made in Brazil, from under your bed on her.

Count 5 Statement of Wrong
Domestic violence contrary to section 10 of the Family Protection Act of 2008

Particulars of Wrong

Peter Jimmy, sometimes between January 2008 and November 2019 at Mele Village you committed numerous domestic violence against Melissa Jimmy who is your wife by assaulting her throughout your marriage life with her.

Count 6 Statement of Wrong
Intentional assault contrary to section 107(a) of the Penal Code [CAP. 135]

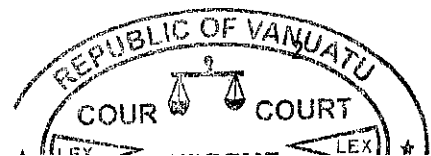
Particulars of Wrong

Peter Jimmy, on 21st December 2019 you intentionally assaulted Melissa Jimmy who is your wife by using your hands to assault her body many times and as a result she sustained pain on her body.

4. The Prosecution bears the burden of proving the essential elements of the charges against Mr Jimmy beyond reasonable doubt. If the Prosecution fails to establish Mr Jimmy's guilt to the required standard he shall be deemed to be innocent and shall be acquitted.
5. I reminded myself that if I were to draw inferences, they could not be guesses or speculation, but had to be logical conclusions drawn from other properly established facts. Further, if more than one inference was available, the inference most favourable to the defence must be drawn.
6. Witnesses' demeanour was a small part of my assessment of the witnesses. I also looked for consistency within that witness' account; consistency with other witnesses' accounts; compared their account with exhibits such as documentary evidence; and considered the inherent likelihood, or not, of the witness' account.

B. Defence

7. The Defence relies on s. 27 of the *Penal Code* which provides that criminal responsibility shall be diminished where the offending is immediately provoked by the unlawful act of another, provided that the reaction constituting the offence is not disproportionate to the degree of provocation.



C. Counts 1, 2 and 3 – Threats to kill

8. The offence of threats to kill is prescribed in s. 115 of the *Penal Code* as follows:

115. *No person shall, knowing the contents thereof, directly or indirectly, cause any person to receive any oral or written threats to kill any person.*

Penalty: Imprisonment for 15 years.

9. The Prosecution must prove the following elements of threats to kill beyond a reasonable doubt:

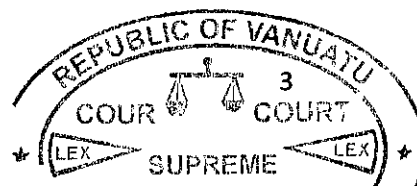
- a. That Mr Jimmy caused Melissa Jimmy to receive oral threats to kill her;
- b. Knowing the contents thereof directly or indirectly.

10. The issue is: Did Mr Jimmy cause Ms Jimmy to receive oral threats to kill her, knowing the contents of those threats?

11. Ms Jimmy, also known as Melissa Narvot, related that Mr Jimmy called her when she was in Australia in 2019. He told her over the phone that he would kill her dead and bury her body in the old bush toilet near their house. Then he would dig a new bush toilet. She said that Mr Jimmy used the following words to her often in jest ('Hemi stap givim toktok lo mi oltaem olsem funny') – "I will kill you dead" ('Bae mi kilim yu ded.') and "I will do so and hide your body" ('Bae mi mekem yu olsem, mi haedem yu.'). Ms Jimmy said she was not frightened by the words as he said them to her all the time. She would respond, "Why you use such words to me?" ('Why yu usum toktok olsem?')

12. Ms Jimmy said that on 21 December 2019, which was a Sabbath, Mr Jimmy and her mother went to church. She did not feel well so she stayed home. Not long after, Mr Jimmy returned home and began hitting her at the front door, into the sitting room and into their bedroom. He spoke harshly including words to the effect did she go to Tanna for work or to have sex? Inside the house, he hit her more strongly than at the front door. He also smashed a big mirror and broke the masonite wall of the sitting room. Then he pulled out a gun from under their bed. It was covered by a blue and white swimming pool towel. Ms Jimmy said when he pulled the gun out, she thought he would finally carry out the words he had previously said to her of killing her and hiding her body.

13. Ms Jimmy did not say that he used any similar words to her on 21 December 2019, but she recalled the words he had previously said to her in jest. She was clear in both examination-in-chief and cross-examination that Mr Jimmy did not point the gun at her, but she was scared as she recalled what he had said in the past. She said, "If you want to shoot me, just do it" ('Wandem shutum mi, [yu] mekem nomo'). She said that on hearing that, Mr Jimmy put the gun down and began hitting her to the bed. He punched her backside repeatedly. She said she lost all strength and urinated on herself on the bed. After that she got up and he no longer blocked her, she went outside, spoke with her father and then went to the Police Station.



14. Ms Jimmy denied that she knew the gun was there. Mr Jimmy said in cross-examination that Ms Jimmy returned from Tanna on 19 December 2019. He said that the gun had been under their bed for 3 weeks and that Ms Jimmy knew it was there. He said he pulled out the gun because he was scared that Ms Jimmy would use it on him. I do not find this a plausible explanation as there is no evidence that Ms Jimmy even knew how to use a gun. Moreover there was an almost comical sequence of questions from Ms Kanegai and answers from Mr Jimmy in which he first said that Ms Jimmy went to Tanna in September, then asked what month came before December and when told it was November, he said maybe she went to Tanna in November. To my question, he said Ms Jimmy was only away for 3 weeks. I concluded that Mr Jimmy was not being truthful in his evidence.
15. I believe Ms Jimmy that she did not know the gun was there because of her fear at seeing the gun and immediately assuming that Mr Jimmy intended to kill her with it as he had threatened to do in the past. She thought that even though she was clear that Mr Jimmy did not point the gun at her. With all the prevarications in his answers, I conclude that Mr Jimmy was trying to hide the truth which was that he knew the effect that he would have on Ms Jimmy by pulling the gun out when he did.
16. In cross-examination, Ms Jimmy said that she married Mr Jimmy when he was already married to someone else. She said that throughout their marriage, Mr Jimmy supported two women (she and the first wife). She was always heart-sore from this so she did things to make him feel the pain that she felt. She agreed that because of the pain that she felt, she caused him to feel pain too. She agreed too that she caused him to say the words that he said to her. Ms Jimmy agreed she had had affairs with other men, and had brought another man to live with her in their house.
17. Ms Jimmy's affairs with other men is not an unlawful act for the purpose of the defence of provocation. That defence is not made out.
18. In the circumstances, I find that the Prosecution has proved beyond a reasonable doubt that Mr Jimmy intended to indirectly threaten to kill Ms Jimmy by pulling out a gun on her from under their bed. I find that Count 3 has been proved beyond a reasonable doubt.
19. In cross-examination, Mr Jimmy confirmed that he called Ms Jimmy when she was in Australia but said that he never said the words that she related to the Court. He said he never said such words, that while she was in Australia he did not say any harsh words to her. Mr Jimmy was not cross-examined as to the words he had said in jest to Ms Jimmy.
20. I conclude from Mr and Mrs Jimmy's evidence that they have a troubled relationship. Ms Jimmy is deeply hurt by the knowledge that Mr Jimmy married her when he was already married to another woman. She believes that he has supported both her and the other woman throughout their marriage. Mr Jimmy said that he only came to know through this case that his first marriage continues as it has not been dissolved. Ms Jimmy readily stated that she does things to cause Mr Jimmy to feel the pain that she feels from his keeping two women. I could not help thinking this includes this criminal case to punish Mr Jimmy. Overall however I am satisfied that Ms Jimmy endeavoured to tell the Court the truth, including as to her motivations for her actions. My impression

of Mr Jimmy is that he wanted to minimise the events that Ms Jimmy gave evidence of, and was not entirely truthful.

21. I accept Ms Jimmy's account of what Mr Jimmy said over the phone to her in Australia in 2019. I also accept her evidence that he had previously made oral threats to kill her, and that these were said in jest. It is unfortunate that the Prosecution did not cross-examine Mr Jimmy as to the words that Ms Jimmy said that he had said to her in jest. It only cross-examined Mr Jimmy as to the words said over the phone in 2019; he denied saying such words. I do not accept his denial against the backdrop of him saying such words to her without compunction in the past. However, due to the limited cross-examination conducted, there is no evidence before me that Mr Jimmy knew the contents of the threats made. Accordingly, I find that Counts 1 and 2 are not proved.

D. Count 5 – Domestic violence and Count 6 – Intentional assault

22. Subsections 4(1) and 10(1)-(3) of the *Family Protection Act* provide:

4. (1) *A person commits an act of domestic violence if he or she intentionally does any of the following acts against a member of his or her family:*
- (a) *assaults the family member (whether or not there is evidence of a physical injury);*
- ...
10. (1) *A person who commits an act of domestic violence is guilty of an offence punishable on conviction by a term of imprisonment not exceeding 5 years or a fine not exceeding 100,000Vatu, or both.*
- (2) *It is not a defence to an offence under subsection (1) that the defendant has paid an amount of money or given other valuable consideration in relation to his or her custom marriage to the complainant.*
- (3) *An offence under subsection (1) is in addition to and not in substitution for any other offence constituted by an act of domestic violence.*

23. Count 5 is a representative charge of domestic violence. The essential element that the Prosecution must prove beyond a reasonable doubt is:

- a. That Mr Jimmy assaulted a family member, namely Melissa Jimmy his wife.

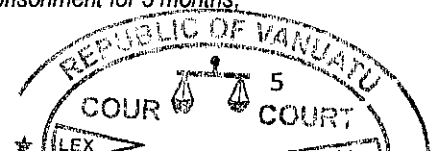
24. It is undisputed that Ms Jimmy is Mr Jimmy's spouse. Mr and Mrs Jimmy's marriage certificate ("**Exhibit P5**") and certificate of registration of marriage ("**Exhibit P6**") were tendered into evidence. At all material times, they resided together.

25. Therefore the only issue is: Did Mr Jimmy assault Ms Jimmy? The same issue arises in relation to the charge of intentional assault.

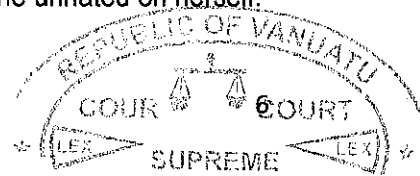
26. Section 107(a) of the *Penal Code* provides as follows: :

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

Penalty: (a) if no physical damage is caused, imprisonment for 3 months;



27. It is accepted that no physical damage was caused by the assault. Therefore the essential elements that the Prosecution must prove beyond a reasonable doubt are that:
- a. Mr Jimmy assaulted Melissa Jimmy on her body; and
 - b. Mr Jimmy did so intentionally.
28. Ms Jimmy stated that Mr Jimmy assaulted her three times in which she felt pain.
29. First, Ms Jimmy related that in 2008 when they were renting at Mele Village, Mr Jimmy came home late after driving a red bus. He received a phone call that Ms Jimmy questioned him about. He hit her many times on her side, and she escaped from him by crawling on her hands and knees to the neighbours. She had to be massaged to be able to straighten up again.
30. Mr Jimmy said that in 2008 he and Ms Jimmy lived at Fresh Wota area. He said he never assaulted Ms Jimmy then. After Fresh Wota, they lived at Prima then Bladiniere and only moved to Mele Village in 2011. Ms Jimmy was not asked in re-examination to clarify where they lived at in 2008.
31. Secondly, Ms Jimmy related that in 2011 she had some wine after work. On her return home, Mr Jimmy hit her. She thought that Mr Jimmy thought he would attack her with a small mirror in front of them so he used a cup to hit her head. She fell down resulting in a cut to her head. Mr Jimmy then took her to the hospital and they only finished and returned home in the morning. Ms Jimmy's mother found Ms Jimmy in the morning with blood all over her top from the assault.
32. This was corroborated by Elty Narvot, Ms Jimmy's mother. She said that sometime in 2011 she did not see Ms Jimmy come out from the house for breakfast so she called to her. When Ms Jimmy came out, her face looked different. She asked what had happened and Ms Jimmy said Mr Jimmy had slapped her. Ms Jimmy had such pain to her face and jaw that Mrs Narvot had to mash up her food for her so that she could eat.
33. Mr Jimmy said that in 2011, Ms Jimmy drank alcohol and returned home at 4 am. She began slapping him. He does not know why she was slapping him but he slapped her. He said he did not hit her with a cup, he only slapped her. He knew that Ms Jimmy had a problem with her tooth so they went to hospital. That Ms Jimmy had bad toothache was not put to Ms Jimmy in cross-examination. In any event, I do not believe the excuse by Mr Jimmy that Ms Jimmy had bad toothache.
34. It was also not put to Ms Jimmy in cross-examination that she had first slapped Mr Jimmy. Accordingly, any defence of provocation is not made out.
35. Mr Jimmy by his own admission stated that he slapped Ms Jimmy in 2011. I find that the Prosecution have proved beyond a reasonable doubt that in 2011, Mr Jimmy intentionally assaulted Ms Jimmy on her body.
36. Thirdly, Ms Jimmy related that on 21 December 2019, Mr Jimmy assaulted her several times. She said that he punched her backside repeatedly until she urinated on herself.



37. In evidence-in-chief, Mr Jimmy accepted that he had assaulted Ms Jimmy on 21 December 2019 by slapping her a single time. When challenged in cross-examination that he had assaulted her several times, he said no. He was asked how a single slap could cause her to wet herself. He said he had not known that she went to the toilet at that time. I do not believe that statement by Mr Jimmy because Ms Jimmy was clear that it was after she urinated on herself on their bed that Mr Jimmy no longer blocked her and she was able to go outside and away from the house. I conclude that Mr Jimmy must have known which is why he let Ms Jimmy leave the house. I accept Ms Jimmy's evidence that Mr Jimmy hit her body numerous times inside their house causing her to lose strength to the point that she urinated on herself.
38. Police Officer Ronnie Hinge confirmed that on attendance at the Jimmy residence at Mele Village, he saw broken pieces of glass inside the living room area and the broken walls separating the living room from the bedroom. I accept Mr Hinge was a witness of truth. His evidence corroborates Ms Jimmy's evidence that Mr Jimmy assaulted her and broke property within their house.
39. The evidence of James Narvot, Mr Jimmy's father read into evidence was that on 21 December 2020, he heard Mr and Ms Jimmy arguing and then she ran out to him. He saw that Ms Jimmy had urinated on herself. I accept Mr Narvot's evidence.
40. Ms Jimmy's affairs with other men is not an unlawful act for the purpose of the defence of provocation. That defence is not made out.
41. In the circumstances, I find that the Prosecution has proved Mr Jimmy's guilt beyond a reasonable doubt on Counts 5 and 6 that Mr Jimmy committed domestic violence and intentionally assaulted his spouse Ms Jimmy by slapping her in 2011 and hitting her body numerous times on 21 December 2019. He is convicted on those charges.

E. Verdicts

42. I find Mr Jimmy not guilty of Counts 1 and 2, the allegations of threats to kill. He is acquitted of those.
43. I find Mr Jimmy guilty of Count 3 alleging another threat to kill, and convict him of that charge.
44. I find Mr Jimmy guilty of the charges of domestic violence and intentional assault (Counts 5 and 6). He is convicted of those charges.
45. Mr Jimmy has 14 days to appeal this decision if he disagrees with it.

**DATED at Port Vila this 26th day of August 2020
BY THE COURT**

VM Trief
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Viran Molisa Trief
Judge

