

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

Criminal
Case No. 21/2436 SC/CRML

BETWEEN: Public Prosecutor

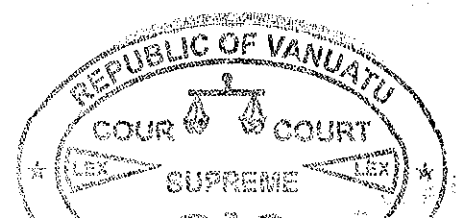
AND: Lesley Moli Valele
Tutus Gavu Valele
Defendants

Date of Hearing: 14 September 2021
By: Justice G.A. Andrée Wiltens
Counsel: Mr D. Boe for the Public Prosecutor
Mr R. Willie for the Defendant
Date of Verdict: 16 September 2021

VERDICT

A. Introduction

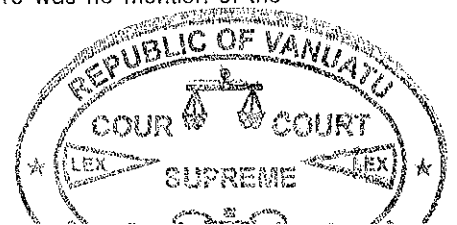
1. Mr Lelsey Valele was charged with intentional assault causing permanent damage. Mr Gavu Valele was charged with intentional assault causing no injury.
2. The allegations were that Mr Lesley Valele had struck Mr Nelson Mosese to the back of the head with a bottle, follow shortly afterwards by a second blow to Mr Mosese's left eye with a broken bottle. Following that, Mr Gavu Valele was alleged to have thrown a stone at Mr Moses at 3 occasions.
3. The medical report produced as Exhibit 1 does not mention any injury to the back of Mr Mosese's head, or indeed anywhere but at his left eye/forehead which is described as a permanent injury. In the course of evidence, it was clear that Mr Mosese was in hospital for 6 days, and that his eyesight has been damaged. Further, the stones thrown allegedly by Mr Gavu Valele were warded off by the use of Mr Mosese's arm and caused him no injury.
4. The only issue at trial was that of identification, namely whether the prosecution could prove beyond reasonable doubt that it was Mr Lesley Valele who had struck Mr Mosese with the bottle



and Mr Gavu Valele who had thrown the stones at him. Both defendants denied any involvement, although Mr Lesley Valele accepted that he was present in the vicinity at the time.

B. Evidence

5. Mr Nelson Mosese gave evidence he had been in the company of a group of males who all hailed from Tutuba Island on New Year's Eve and into the following morning. They were at/near the Coolah Kava Bar in Banban area, Luganville.
6. In the course of the evening, Mr Mosese told me, he had been annoyed by Mr Lesley Valele due to Mr Valele having accidentally knocked over a bottle of wine Mr Mosese had purchased. Quite some time after that, when he had calmed down again, a person by the name of Renjo found Mr Mosese and told him that Lesley Valele had hit Mr Mosese's uncle with a bottle.
7. Mr Mosese told me he had of course immediately gone to investigate. He went from the kava bar to where the group had formed and asked "why did you (plural) hit my uncle?" He said Mr Lesley Valele had then hit him from behind and when he had spun around to see who had done that, he saw Mr Lesley Valele hit him with a bottle to his left eye. After that he said Mr Gavu Valele had thrown 3 stones at him. After that Mr Lesley Valele had approached him and said "Do you remember how you wanted to hit us during the night?"
8. Mr Mosese collapsed, and was later taken to the hospital.
9. Mr Mosese gave evidence that this had occurred at 7am, in full daylight. He was able to see the assailants clearly from a short distance. He is related to both defendants and knew them well. Accordingly, he said he was sure of his identifications.
10. Cross-examination exposed some minor inconsistencies between Mr Mosese's evidence and his statement to the police. However, those matters did not go to the issue of identity. In that regard he was staunch and unwavering.
11. The second prosecution was Mr Ray Vishi. He was present when his uncle was hit outside the Coolah Kava Bar on the morning of 1 January 2021. He reported that Uncle Renjo then went to tell Mr Mosese about that; and he saw Mr Mosese came out of the bar and approach the group. He confirmed that Mr Mosese had asked why his uncle had been hit, and that in response Mr Lesley Valele had hit Mr Mosese with a bottle to his cheek and later struck him again with a second blow. By then the bottle was broken.
12. Mr Vishi told me he had separated Mr Mosese and Mr Lesley Valele, and Mr Valele then said to him "Do you want me to hit you with the bottle as well? Mr Vishi said he saw blood running down Mr Mosese's face, and then he saw Mr Gavu Valele pick up stones and throw them at Mr Mosese. He did so 3 times.
13. Mr Vishi identified Mr Lesley Valele as the assailant with bottle, and Mr Gavu Valele as the assailant with the stones.
14. Mr Vishi was not cross-examined on the basis of mistaken identification. That part of his evidence was unchallenged. He was cross-examined as to why there was no mention of the

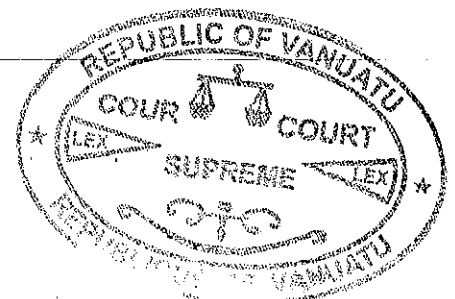


attack in his statement to the police which he conceded being absent. He did not however concede that his evidence was untrue. His explanation for the lack of detail regarding the assault and who had perpetrated them was that the police had instructed him to keep matters brief, and he was concerned that the police should know his role in the matter which was to separate Mr Lesley Valele and Mr Mosese.

15. I noted that in the course of denying the allegation that his evidence was untrue, he re-iterated that the incident took place in daylight and that he was very close to the action and therefore able to see who had done what.
16. Mr Willie conceded that there was a case to answer in respect of both charges.
17. Mr Willie called Mr Lesley Valele to give evidence. He told me that although the Tutuba Island group had been together all night, there had been no issues prior to the 7am assault on Mr Mosese. When he first saw Mr Mosese at that time, he already had blood running down his face, and kept asking who had hit him. I noted that this had not been put to Mr Mosese during cross-examination.
18. Mr Lesley Valele was adamant that he had not assaulted Mr Mosese, and he could not understand why Mr Mosese said otherwise.
19. Mr Lesley Valele agreed that he was related to Mr Mosese – as uncle and nephew. He agreed Mr Mosese respected him. He alleged that Mr Mosese was very drunk that morning.
20. Mr Lesley Valele denied there had been an earlier incident during which he had knocked over a bottle of Mr Mosese's wine. He further told me that there were a lot of drunk people around at that time who were drunk and throwing bottles around – another point out not raised in cross-examination of Mr Mosese.
21. The second defence witness, Mr Matalau Valele, had also been present during the night's festivities. However he was employed and he had to go to work early in the morning. While on the bus to work, he saw Mr Mosese collapsed on the ground, so he stopped the bus and took Mr Mosese to hospital. He did not know who had caused Mr Mosese's injury.
22. Mr Matalau Valele told me that, while Mr Mosese was being treated, he asked Mr Valele if he, Mr Matalau Valele, had seen who had hit him.
23. He was not cross-examined.

C. Discussion

24. I did not accept Mr Lesley Valele as a truthful witness. His account was too glib for a man who had been up all night drink alcohol and kava to be able to clearly recall what he had told me had occurred. His account was also inherently unlikely, in that he accepted Mr Mosese respected him as his uncle, but he was making up this story against him for an unfathomable reason.
25. Accordingly, I simply disregarded Mr Lesley Valele's evidence.

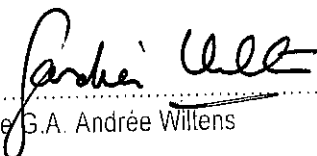


26. I then considered the evidence given by Mr Matalau Valele. I was asked by Mr Willie to look at his evidence as establishing that Mr Mosese did not know who had assaulted him. However, I regarded the evidence more as if Mr Mosese wanted re-assurance that others had also seen what had occurred and were able to corroborate his account. The evidence of what was said at the hospital accordingly did not undermine the prosecution allegations.
27. I was impressed by Mr Mosese. His evidence had a "ring of truth" about it. I could glean no motive for him to implicate Mr Lelsey Valele without good cause. I consider he had a clear view of who hit him the second time, it being daylight and him being within an arm's length of his assailant. It is inconceivable that there were two perpetrators. As the two were related and knew each other well, this was not a "fleeting moment view of a stranger." I further accepted Mr Mosese's statements that despite the excesses of the night before and in the aftermath of first blow to the back of his head, his sight was unimpaired in viewing his assailant. I consider the fact that he only collapsed some time after the second blow as confirmatory of his ability to identify the person who had hit him the second time, as well as previously seeing and warding off the stones thrown at him by Mr Gavu Valele.
28. Mr Mosese's identification of Mr Lelsey Valele was confirmed by Mr Vishi, who also had a good opportunity to view the incident. I accepted his explanation for not providing full details, similar to those given in Court, to the police and do not find he has invented his evidence.

D. Verdict

29. I am satisfied that the prosecution has established beyond reasonable doubt that Mr Lelsey Valele assaulted Mr Mosese twice – once to the back of the head with a bottle, and a second time to his left eye using a broken bottle.
30. The evidence in relation to Mr Gavu Valele was given by the same prosecution witnesses. As explained, I accept the accuracy and veracity of that evidence. There is nothing to gainsay it. Mr Lelsey Valele gave no evidence in relation to this allegation, neither did Mr Matalau.
31. Accordingly, I also find the prosecution has proved beyond reasonable doubt that Mr Gavu Valele threw stones at Mr Mosese, on 3 occasions in a short space of time
32. Both defendants are therefore found guilty as charged.

Dated at Luganville, this 16th day of September 2021
BY THE COURT


Justice G.A. Andrée Wiltens

