

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

Criminal  
Case No. 24/870 SC/CRML

PUBLIC PROSECUTOR

v

HOSEA RARUA

*Date of Trial:* 12 March 2025  
*Before:* Justice V.M. Trief  
*In Attendance:* Public Prosecutor – Mr J. Aru  
Defendant – Mrs C. Dehinavanau; Defendant present  
*Date of Decision:* 2 April 2025

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**VERDICT**

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A. Introduction

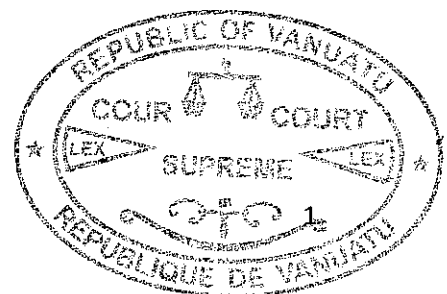
1. The accused Hosea Rarua pleaded guilty to domestic violence (Count 1) and proceeded to trial on the charge of threat to kill a person (Count 2).
2. This is the verdict of Count 2.

B. Law

3. Mr Rarua is charged with threat to kill a person contrary to s. 115 of the *Penal Code* [CAP. 13]:

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.*

4. The elements, having regard to this case, of threat to kill are as follows:



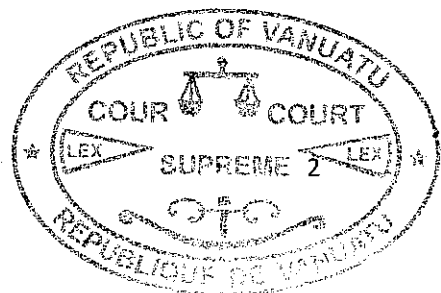
- (i) Mr Rarua directly caused the complainant to receive an oral threat to kill her;
  - (ii) Mr Rarua knew the contents of the threat; and
  - (iii) Mr Rarua intended the threat to be taken as real.
5. The Prosecution had the onus of proof and was required to establish the allegations beyond a reasonable doubt before a finding of guilt could be made in respect of the charge. Mr Rarua was not required to establish anything.
- C. The Evidence
6. The Prosecution called two witnesses – Joana Rarua and Niel Gaza Rarua.
7. Mr Rarua elected to remain silent. I did not draw an adverse inference from his election to remain silent.
8. The witnesses' demeanour was a small part of my assessment of the witness. I also looked for consistency within the witness' account; consistency when comparing the witness' account with that of the other witness; consistency when comparing the witness' account with relevant exhibits; and considered the inherent likelihood, or not, of the witness' account.
9. 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. Adverse inferences are to be drawn only if they are the only available inference to be drawn. Further, if more than one inference was available, the inference most favourable to the defence must be drawn.
10. Exhibit P1 was a Memorandum of Agreed Matters signed by both counsel:

a) Family members:

- (i) Joana Rarua is Mr Rarua's daughter;
- (ii) Niel Gaza Rarua is Mr Rarua's son;
- (iii) Joana and Niel are biological siblings;

b) Place of residence: In January 2024, both Joana and Niel usually resided with Mr Rarua in the same house at Malapoa Whitewood area in Port Vila;

c) Occupation: In 2023, Joana was a Year 12 student at Tebakor College in Port Vila; and



d) Incident: On 7 January 2024, Joana was at home with her family members including Mr Rarua.

11. Exhibit D1 was Mr Rarua's psychiatric report dated 19 April 2024 by Dr Jimmy Obed, psychiatrist at the Vila Central Hospital. It was tendered by consent. The report set out the following:

*Mr Rarua has a background diagnosis of Bipolar Disorder<sup>1</sup>. He has been accessing mental health services at the MindCare Clinic since 2015. He is on medication but is non-adherent to his medication including his clinic visit, as is the case sometimes with people who have Bipolar Disorder.*

*Our latest review of Mr Rarua, he appears well kempt, engages well and coherently throughout the interview. He has been taking his medication consistently. Mr Rarua does not have full recollection of the events that led to him being detained. He was seen by the MindCare Team at the Corrections Facility and treated for being acutely psychotic and unwell. He was acutely manic<sup>2</sup> and psychotic. He does have some understanding of his illness, but insight is fair. This means that he does not completely see the importance of taking his medication and regular clinic reviews which would significantly reduce his relapse episodes.*

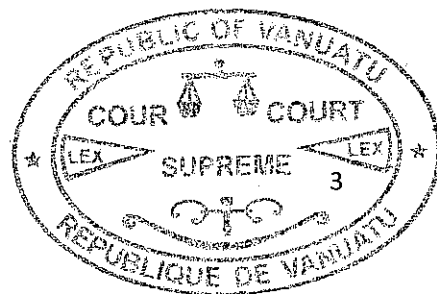
*Based on our assessment, my opinion is that Mr Rarua is fit to stand trial. However, at the time of the offense, he was psychiatrically unwell with poor judgement and to fully appreciate the consequences of his actions.*

*[emphasis added]*

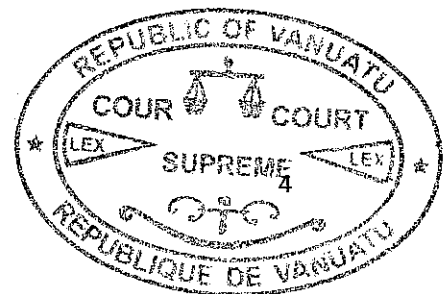
12. 19-year old Joana Rarua gave evidence (after she refreshed her memory from her Police witness statement) that after she failed her Year 12 exams, she had to repeat Year 12 and Mr Rarua told her that if she failed her Year 12 exams again, that he would kill her ("... *hemi se spos mi mekem Yia 12 and mi faillem bakegen, bae hemi kilim tet mi spos mi no passem*").
13. She said that she was sitting down on the verandah and her father was standing up in front of her when he uttered those words to her. She was frightened on hearing her father's words. There were other family members also on the verandah including her brother Niel, their mother and three in-laws. Her brother and a brother-in-law stood up, came over to her and her father, and told her father not to say harsh words to her. She felt less afraid when they said that because then her father would stop saying such harsh words to her.

<sup>1</sup> Bipolar disorders are mental health conditions characterized by periodic, intense emotional states affecting a person's mood, energy, and ability to function. These periods, lasting from days to weeks, are called mood episodes. People with bipolar disorder generally have periods of neutral mood as well. When treated, people with bipolar disorder can lead full and productive lives. -*American Psychiatric Association.*

<sup>2</sup> A manic episode is a period of at least one week when a person is extremely high-spirited or irritable most of the day for most days, possesses more energy than usual. During severe manic episodes, some people also experience disorganized thinking, false beliefs, and/or hallucinations, known as psychotic features. -*American Psychiatric Association.*



14. Joana said that her father was mentally ill at the time. He was aggressive and would speak harshly and shout at them. She said that her father was serious when he said the words to her but she knows that he did not mean it because he was not in his normal mindset at the time because he was ill. She said because of his illness, her father said harsh words to her and the family and would make problems with other people so they complained to the Police so that the Police would take him into custody and keep him until he recovered from his illness.
15. In cross-examination, Joana was asked what Mr Rarua's physical actions were at the time that he told her that he would kill her. Joana stated that Mr Rarua stood up, picked up a piece of timber next to the cement bricks that she was sitting on and stood in front of her with the timber in his hand when he said those words to her.
16. She agreed that that was not her father's usual behaviour but that he was ill at the time. She said that normally they would take her father to hospital for medication but that part of the hospital was undergoing renovation at the time and they called the Police. The Police said they could not arrest Mr Rarua because he had not committed a crime. After Mr Rarua told her that he would kill her, they went back to the Police who said they could arrest Mr Rarua so she made her statement to the Police. She agreed that they made their statements to the Police so that the Police would keep Mr Rarua in custody for their safety and also for his own safety.
17. There was no re-examination.
18. Joana's account remained unchanged in cross-examination and she added more detail which assisted the Prosecution case. I accepted Joana as a witness of truth and accepted her evidence.
19. 29-year old **Niel Gaza Rarua** gave evidence that everyone had just had breakfast and were sitting on the verandah. He saw his sister Joana sitting down, answering their father's questions. He saw their father pick up a short piece of timber (5 x 5 x 30 cm) and hold it while he was standing in front of Joana and speaking with her, then he threw the timber down on the floor and he walked out. He saw that Joana was frightened by their father's words but he knows that Joana knows that their father was ill at the time.
20. He said that when they got their father out on bail last year, that Joana moved to stay with their mum's big sister at Ohlen area then spent the school holidays with their uncle at Malekula. On her return, she could not return to the Ohlen house because that was being repaired so she came back to the family residence at Malapoa to stay with him and their father (their mother has travelled back to New

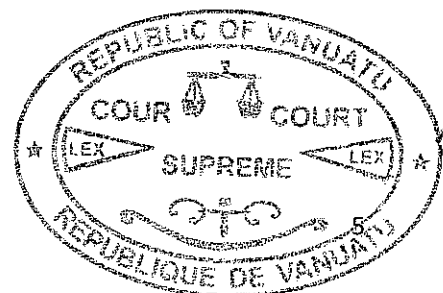


Zealand for seasonal work) and everything has been fine – their father has not said any harsh words and no one has felt bad about anything.

21. In cross-examination, Niel agreed that his father has a mental illness. He stated that when his father is ill, he is angry and does things that he would not do if he was well. He confirmed that in January 2024, his father was unwell. He said that his father first became unwell in 2010 or 2012. He said that in January 2024, they could not take his father to hospital for medication because the MindCare Ward at the hospital was under renovation, so they went to the Police. The Police said that they could not detain Mr Rarua unless he had committed a crime. But he (Niel) and the family were worried for their own safety as well as their father's safety in case he did something and people assaulted him hence they reported their father's threat to kill Joana so that the Police would keep Mr Rarua in custody until he became better. Whilst in custody, Dr Obed could also visit him regularly to give him medication.
22. In re-examination, Niel explained more why he and their family were worried for their safety in January 2024 due to their father's mental state.
23. Niel's account remained unchanged in cross-examination. His account corroborated that of his sister Joana. I accepted Niel as a witness of truth and accepted his evidence.

D. Discussion

24. I find on the evidence that in the morning of 7 January 2024, the complainant Joana Rarua and her family members including her brother Niel Gaza Rarua and their mother and father were out on the verandah of their house. Mr Rarua picked up a short piece of timber (5 x 5 x 30cm), approached Joana with it and stood in front of her holding the timber and told her that if she failed her Year 12 exams again, that he would kill her ("*... hemi se spos mi mekem Yia 12 and mi faillem bakegen, bae hemi kilim tet mi spos mi no passem*"). Joana was frightened by her father's words even though she knew he was mentally unwell at the time. Accordingly, I find that Mr Rarua directly caused the complainant to receive an oral threat to kill her.
25. It is accepted that in 2023, Joana was a Year 12 student at Tebakor College. Joana failed her Year 12 exams so had to repeat Year 12 the following year, that is, in 2024. I find that Mr Rarua's threat to kill Joana if she failed her Year 12 exams again was in direct reference to Joana having to repeat Year 12 in 2024 as she had failed her Year 12 exams in 2023. There can be no doubt that Mr Rarua knew the contents of his oral threat to Joana.



26. Before Mr Rarua made the oral threat to Joana, he stood up, picked up the short piece of timber, approached Joana, stood in front of her holding the piece of timber and told her that if she failed her Year 12 exams again, that he would kill her. The threat was to kill Joana. Mr Rarua was standing over her holding a piece of timber when he made the threat. There can be no doubt that Mr Rarua intended the threat to be taken as real.
27. I find therefore that Mr Rarua did the acts charged against him as an offence.
28. Mr Rarua's defence is that he was insane at the time.
29. Section 92 of the *Criminal Procedure Code* [CAP. 136] ('CPC') provides as follows:

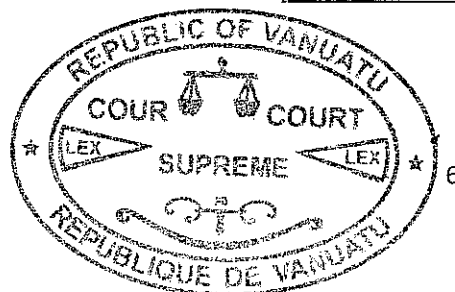
92. *Where any act or omission is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence that he was insane within the meaning of the Penal Code, then if it appears to the court before which such person is tried that he did the act or made the omission charged but was insane at the time when he did or made the same, the court shall make a special finding to the effect that the accused is not guilty of the offence charged by reason that he was insane when he did the act or made the omission. When such special finding is made the court may order that the accused be kept in custody in such place and in such manner as the court shall direct and the provisions of the Penal Code shall thereafter apply.*

*[emphasis added]*

30. Section 20 of the *Penal Code* provides as follows:

20. (1) *Every person accused of a criminal offence shall be presumed sane until the contrary is proved; the burden of such proof shall lie upon the accused on the balance of probabilities.*
- (2) *It shall be a defence to a criminal charge that the accused was at the time in question suffering from a defect of reason, due to a disease of the mind which rendered him incapable of appreciating the probable effects of his conduct. Such disease may consist of a mental disorder or deficiency which leads in relation to the criminal act to a complete deprivation of the reasoning power of the accused beyond a momentary confusion, absence of self-control or irresistible impulse. Any mental disorder which has manifested itself in violence and is prone to recur is sufficient. The disease need not be permanent or prolonged; a temporary loss of mental awareness shall constitute a sufficient defence.*
- (3) *If the accused is found insane he shall be entitled to be acquitted. Notwithstanding such acquittal, the court may make an order for his confinement in a manner to be prescribed in its order.*
- (4) *Involuntary intoxication shall for the purposes of the criminal law be deemed to be a mental disease.*

*[emphasis added]*



31. Mr Aru accepted that **Exhibit D1** proves that at the time in question, that Mr Rarua was suffering from a defect of reason due to bipolar disorder, which is a mental health condition, which condition rendered him incapable of appreciating the probable effects of his conduct.
32. Mrs Dehinavanua submitted that **Exhibit D1** proves that Mr Rarua suffers from bipolar disorder with temporal or episodic relapses. She pointed to Dr Obed's opinion in **Exhibit D1** that at the time of the offending, Mr Rarua, "was psychiatrically unwell with poor judgement and to fully appreciate the consequences of his actions".
33. I find on the evidence in **Exhibit D1** that at the time that Mr Rarua did the acts as charged, that he was "insane" within the meaning in subs. 20(2) of the *Penal Code* as he was suffering from a defect of reason due to bipolar disorder which rendered him incapable of appreciating the probable effects of his conduct.
34. I therefore make a special finding pursuant to s. 92 of the CPC that Mr Raru is not guilty of the offence by reason that he was insane when he did the act.
35. Accordingly, Mr Rarua is acquitted of Count 2 pursuant to subs. 20(3) of the *Penal Code*.

E. Result

36. Mr Rarua is acquitted of Count 2.
37. I order that Mr Rarua reside at his usual residence at Malapoa Whitewood area and that he take the medication prescribed by his doctor.
38. Separate directions to be made as to sentencing on Count 1.

DATED at Port Vila this 2<sup>nd</sup> day of April 2025  
BY THE COURT

  
Justice Viran Molisa Trief

