



**IN THE DISTRICT COURT OF NAURU  
AT YAREN  
CRIMINAL JURISDICTION**

Criminal Case No. 42 of 2020

**BETWEEN:                    REPUBLIC OF NAURU**

**PROSECUTION**

**AND:                         SHERLOCK DENUGA**

**1<sup>st</sup> DEFENDANT**

**AND:                         LOCKLEY DENUGA**

**2<sup>nd</sup> DEFENDANT**

**BEFORE:** Resident Magistrate Mr Vinay Sharma

**DATE OF TRIAL:** 9, 11, 12, 13 December 2024, and 29 January 2025

**DATE OF JUDGMENT:** 8 October 2025

**APPEARANCE:**

**PROSECUTION:** S Shah

**DEFENDANTS:** V Clodumar

## **JUDGMENT**

### **INTRODUCTION**

1. The defendants are charged as follows:

#### **COUNT 1**

#### **Statement of offence**

**INTENTIONALLY CAUSING HARM:** *Contrary to Section 74(a)(b)(c)(ii) of the Crimes Act 2016.*

#### **Particulars of Offence**

***SHERLOCK DENUGA & LOCKLEY DENUGA on the 14<sup>th</sup> day of January 2019, at Denig District in Nauru, intentionally engaged in conduct that is punching and kicking Gaimen Denuga and that conduct caused harm to Gaimen Denuga without Gaimen Denuga's consent and Sherlock and Lockley Denuga intended to cause harm to Gaimen Denuga by that conduct.***

**COUNT 2**

**Statement of offence**

**INTENTIONALLY CAUSING HARM:** *Contrary to Section 74(a)(b)(c)(ii) of the Crimes Act 2016.*

**Particulars of Offence**

**SHERLOCK DENUGA & LOCKLEY DENUGA** on the 14<sup>th</sup> day of January 2019, at Denig District in Nauru, intentionally engaged in conduct that is punching and kicking Elsie Denuga and that conduct caused harm to Elsie Denuga without Elsie Denuga's consent and Sherlock and Lockley Denuga intended to cause harm to Elsie Denuga by that conduct.

**COUNT 3**

**Statement of offence**

**DAMAGING PROPERTY:** *Contrary to Section 201(a)(b) of the Crimes Act 2016.*

**Particulars of Offence**

**SHERLOCK DENUGA** on the 14<sup>th</sup> day of January 2019, at Denig District in Nauru, caused damage to a mobile phone belonging to Gaimen Denuga and was reckless about causing damage to the mobile phone.

2. The Prosecution opened its case on 9 December 2024.
3. On 13 December 2024, the Prosecution closed its case. On the same date, the defendants were put on their defence. Directions were given to them in relation to their right to remain silent, give evidence under oath or make an unsworn statement in court. The 1<sup>st</sup> defendant chose to give evidence under oath, while the 2<sup>nd</sup> defendant chose to give an unsworn statement. They then proceeded to give their evidence, and thereafter, they closed their case.
4. The parties sought time to file written closing submissions. The defendants' counsel filed his closing submissions on 6 January 2025, and the counsel for the prosecution filed his closing submissions on 22 January 2025. I heard the parties' closing submissions on 29 January 2025.

5. I am to determine the following issues:
  - i. Whether the prosecution has proven beyond a reasonable doubt that the 1<sup>st</sup> defendant caused harm to Gaimen Denuga and Elsie Denuga?
  - ii. Whether the prosecution has proven beyond a reasonable doubt that the 2<sup>nd</sup> defendant caused harm to Gaimen Denuga and Elsie Denuga?
  - iii. Whether the prosecution has proven beyond a reasonable doubt that the 1<sup>st</sup> defendant caused damage to a mobile phone belonging to Gaimen Denuga?
6. The following are my reasons for this judgment.

### **PRINCIPLES RELEVANT TO THE DECISION-MAKING**

7. I will outline my role before I proceed to consider the evidence of the witnesses.
8. I am required to decide whether the prosecution has proven the essential elements of the alleged offence beyond a reasonable doubt. The prosecution has the onus to prove the elements of the charge beyond a reasonable doubt. The defendant is not required to prove or disprove anything. I cannot find the defendant guilty unless the evidence which I accept satisfies me beyond a reasonable doubt of his guilt. If there is an explanation consistent with the innocence of the defendant, or I am unsure of where the truth lies, then I must find that the charge has not been proven beyond a reasonable doubt.
9. A reasonable doubt will result if, in my mind, I am left with an honest and reasonable uncertainty about the guilt of the defendant after I have given careful and impartial consideration of the evidence.
10. While the burden of proof is on the prosecution, it does not mean that every fact in dispute is to be proved beyond a reasonable doubt; only the elements of the charge need to be proven beyond a reasonable doubt. However, evidentiary facts must be clearly established before they are considered proven.
11. I have considered all the evidence placed before me. I must determine whether each of the witnesses is an honest, reliable and credible witness, and in doing so, I can rely on the evidence that the witness has given and make a finding that the facts about which the witness has given evidence have been proven. Regarding this, I can accept part of the witness's evidence and reject part of it, or accept or reject it all. I am not required to give all evidence the same weight.
12. In assessing the credibility of a witness, I examined the veracity and/or sincerity of the witness to see whether he or she was trying to be truthful. Furthermore, to assess the

reliability of a witness, I examined the witness's ability to recall memories accurately. The following are the factors that I considered:

- i. ability and opportunity to observe events*
- ii. firmness of memory*
- iii. capacity to resist pressure to modify recollection*
- iv. factors which might have resulted in reconstruction or mistaken recollection*
- v. willingness to make concessions where recollection may be faulty, especially when favorable to the other party*
- vi. testimony that seems unreasonable, impossible or unlikely*
- vii. partiality/motive to lie*
- viii. general demeanor*
- ix. Internal consistency: does testimony change during direct or cross examination?*
- x. External consistency: does testimony harmonize with accepted, independent evidence?<sup>1</sup>*

13. I remind myself that inaccuracy about secondary, marginal or unimportant facts often arises in cases because the witnesses are focused on central facts, and may differ on what evidence they give based on what they perceive to be essential. Furthermore, witnesses also have varying abilities in observation and recollection of their memories.
14. I must deliver my judgment in accordance with the evidence, which would require me to make findings of fact upon considering the evidence before me. In this regard, I will carefully consider the evidence logically and rationally, bringing an open and unbiased mind to the evidence, while also drawing on my common sense and experience in assessing the evidence before me. I must do this dispassionately, impartially, without prejudice, and without favour or ill-will.
15. From the established facts, I may draw a reasonable inference, which must be justifiable and drawn beyond a reasonable doubt. I must not draw an inference from the direct evidence unless it is a rational inference in all the circumstances.
16. The defendant did not give evidence in his defence, and he did not have to do so. I may not draw any adverse inference against the defendant for not giving evidence, unless the law permits me to do so. I can only find the defendant guilty of the alleged offence after I have considered all the evidence, and have accepted beyond a reasonable doubt

---

<sup>1</sup> *R v Killman* [2024] BCPC 104

the prosecution's evidence in relation to the essential elements of the alleged offence.

17. I must emphasize that in reaching my decision, I am not required nor is it necessary for me to articulate findings about every part of the evidence. All I have to do is determine whether the prosecution has proven all the elements of the alleged offence beyond a reasonable doubt. With that regard, I may have to resolve some primary disputes over the facts.
18. I have considered all the evidence before me. I will summarize most of the evidence before me, and discuss the parts of the evidence which are essential to my analysis.

### **PROSECUTION'S CASE**

19. The counsel for the prosecution called 5 witnesses, namely, Gaimen Ramellis Denuga ("PW1"), Elsie Denuga ("PW2"), Dr David Bill ("PW3"), Sergeant Rory Detageouwa ("PW4"), and Inspector Kirsty Karl ("PW5").
20. I have considered all the evidence given by the prosecution witnesses. A summary of the prosecution witnesses' evidence is as follows.

#### ***Evidence of PW1***

21. PW1 gave evidence that he resides in Block 76, Rooms 3 & 7 at the Location compound. He gave evidence that the 2<sup>nd</sup> defendant is his brother and the first defendant is his nephew. He then identified both the defendants in court.
22. PW1 gave evidence that in 2019, the 1<sup>st</sup> defendant resided in Room 8, Block 76, Location compound (in the same block as him).
23. PW1 gave evidence that on 14 January 2019, at around 8 am, he heard some people shouting angrily outside. He came outside to check and saw that his wife and the 1<sup>st</sup> defendant were arguing about the wastewater from washing dishes that his wife had thrown outside. They then began to argue about the property and the eviction of PW1 from it. PW1 stated that the 1<sup>st</sup> defendant then left to get the 2<sup>nd</sup> defendant, who is the 1<sup>st</sup> defendant's father.
24. PW1 gave evidence that when the defendants returned, the 2<sup>nd</sup> defendant punched him on the face two or three times and that he fell because he was very weak at the time, as he had just come out of the hospital. He stated that while on the ground, the defendants started kicking and punching him in the face and body. He was using his arm to protect his face.

25. PW1 gave evidence that he called out to his wife to bring the phone so that he could call his brother Timothy. When she came out, he was still on the ground, and the defendants were on top of him, punching and kicking him. PW1 stated that he saw his wife trying to record the fight, and then he saw the 1<sup>st</sup> defendant take the mobile phone from his wife and smash it on the ground. He stated that the 1<sup>st</sup> defendant then grabbed his wife's hair and smashed her on the concrete, where they were punching him. PW1 stated that while the 1<sup>st</sup> defendant was fighting with his wife, the 2<sup>nd</sup> defendant was still kicking and punching him and that when he tried to get up, the 1<sup>st</sup> defendant came back to assist the 2<sup>nd</sup> defendant to beat him up.
26. PW1 gave evidence that his wife ran away inside their flat and locked the door to the flat. He stated that after that, the 1<sup>st</sup> defendant ran and kicked the door down. He said he was trying to get up but was feeling weak after being attacked by the defendants. He stood up and then followed the defendants into the house.
27. PW1 gave evidence that when he went into the flat, the 1<sup>st</sup> defendant was holding a knife and facing him. The 2<sup>nd</sup> defendant was in the room in which his wife had gone in and had locked herself in. PW1 stated that he then told the 1<sup>st</sup> defendant to stop his father because he was fighting with his wife in the room. His children were also in the room. He stated that he told the 1<sup>st</sup> defendant that he would give them his flats so that the defendants could stop fighting with them. After saying this, the 1<sup>st</sup> defendant pulled the 2<sup>nd</sup> defendant from the room to the living room. The 2<sup>nd</sup> defendant was struggling and throwing things at the wall while the 1<sup>st</sup> defendant was holding him. PW1 stated that he went outside while his wife was still in the room. The police arrived shortly.
28. During cross-examination, PW1 confirmed that since 2017, his relationship with the 2<sup>nd</sup> defendant's sons had become sour. Furthermore, a significant amount of evidence regarding the family property's history and the origins of the family feud was cross-examined.
29. PW1 confirmed that he did not see where his wife threw the wastewater after washing the dishes. PW1 also confirmed that the 1<sup>st</sup> defendant went to get the 2<sup>nd</sup> defendant because PW1 had told him that he had no right to discuss the land.
30. It was put to PW1 that the 2<sup>nd</sup> defendant approached him first. He stated that both got out of the vehicle together, but the 2<sup>nd</sup> defendant came to him first. It was also put to PW1 that the 2<sup>nd</sup> defendant argued with PW1 about what his wife did, and then he hit him. PW1, in response, stated that the 2<sup>nd</sup> defendant approached him and asked him if he was a tough guy, and he punched him.
31. It was put to PW1 that the 1<sup>st</sup> defendant ran and separated the second defendant from him. PW1 rejected this. It was also put to PW1 that the 1<sup>st</sup> defendant did not take his

mobile phone, nor did he damage it. He also rejected this.

32. It was put to PW1 that after the 1<sup>st</sup> defendant separated them, the 2<sup>nd</sup> defendant and PW1 started to fight again, and at this point, PW1's wife came and started to scratch the 2<sup>nd</sup> defendant's face and eyes from behind him. He also rejected this.
33. It was put to PW1 that it was then that the 1<sup>st</sup> defendant pulled his wife from the 2<sup>nd</sup> defendant, and after that, his wife went into the flat. He also rejected this.
34. PW1 confirmed that the 2<sup>nd</sup> defendant went into his flat first, and then the 1<sup>st</sup> defendant went after the 2<sup>nd</sup> defendant and PW1 went after the 1<sup>st</sup> defendant.
35. It was put to PW1 that when the 1<sup>st</sup> defendant entered his flat, there was a pit bull there, and he picked something to defend himself with. He stated that the pit bull incident happened another time. Not that time.
36. It was put to PW1 that the 1<sup>st</sup> defendant did not have a knife on him when he was inside his flat, nor did anyone else have a knife on them. He maintained that the 1<sup>st</sup> defendant had a knife.

#### ***Evidence of PW2***

37. PW2 gave evidence that she is PW1's wife and that she resides with him. She identified the defendants in court.
38. PW2 gave evidence that on 14 January 2019, the defendants arrived in a car. She stated that she told the 2<sup>nd</sup> defendant that there is an order against him and that he cannot come close to her. She said that after that, a fight broke out between her, PW1, and the defendants. She was trying to take a video of the fight on a phone. She stated that the 1<sup>st</sup> defendant struggled with her to take the phone from her, and she kept taking the phone away from the 1<sup>st</sup> defendant. She said that then the 1<sup>st</sup> defendant grabbed her hair and threw her to the ground.
39. PW2 then gave evidence that while she was struggling with the 1<sup>st</sup> defendant over the phone, the 2<sup>nd</sup> defendant was fighting PW1. She said that while she was on the ground, the 1<sup>st</sup> defendant came and took the phone from her, and the 2<sup>nd</sup> defendant came and started to kick her and punch her and told her that her family does not own the land. She said that the 2<sup>nd</sup> defendant was kicking and punching her head and body, while she was trying to protect her face. She could not remember how many times she was kicked and punched, but she remembered that it was a lot.
40. PW2 then gave evidence that she then heard the 1<sup>st</sup> defendant tell the 2<sup>nd</sup> defendant to let her go because she is a female and to concentrate on PW1. She said that after this,

the 2<sup>nd</sup> defendant left and went to PW1, and then she ran into her flat. She locked the door of the flat. PW2 said that the 1<sup>st</sup> defendant then slammed the door open and that he had a knife in his hand, so she ran into her room where her children were and locked the door to that room, and she told her children and granddaughter to go to the bunk bed in the corner. She said that the 2<sup>nd</sup> defendant then slammed open the door to the room and started shouting for everyone to leave the house, and that it was not their home. She said that they were grappling and wrestling in the room, and that they banged the walls; the window louvres fell.

41. PW2 then gave evidence that the 1<sup>st</sup> defendant came and pulled the 2<sup>nd</sup> defendant out of the room and told us to leave the premises or otherwise he would let go of the 2<sup>nd</sup> defendant. She then called the police.
42. PW2 gave evidence that she had bite marks on her fingers, bruises and scratches on her arm. She also said that she felt pain in her head, both back and front, and she also felt pain on both sides of her face and her arms.
43. During cross-examination, PW2 confirmed that they own a pit bull. She also confirmed that this is not the first time PW1 and the 2<sup>nd</sup> defendant have fought. She also confirmed the incident between her and the 1<sup>st</sup> defendant regarding the wastewater earlier in the morning on the same date. She also confirmed that she threw the wastewater after washing her dishes in front of the 1<sup>st</sup> defendant's home. She further stated that the 1<sup>st</sup> defendant lives upstairs and that it is normal for her to dispose of her wastewater outside because she does not have drainage in her kitchen. She further stated that the 1<sup>st</sup> defendant told her not to do that because it attracted flies. She also said that after that, she went inside to get her phone to take photos of the rubbish, and that she did not see PW1 go outside, nor did she hear PW1 and the 1<sup>st</sup> defendant argue.
44. PW2 confirmed that the defendants came in a car and that it was the 2<sup>nd</sup> defendant who approached PW1 first. She also confirmed that she was outside with PW2 and that she had a phone in her hand facing towards the defendants. She stated that she was trying to take a video but couldn't turn on the camera because everything was happening so fast. She also stated that the 1<sup>st</sup> defendant came and stopped her from taking the video.
45. It was put to her that when the 2<sup>nd</sup> defendant and PW1 started fighting, the 1<sup>st</sup> defendant came to them to separate them. PW2 stated that she didn't remember it being like that. It was also put to her that the 1<sup>st</sup> defendant managed to pull the 2<sup>nd</sup> defendant away from PW1, but he then faced PW2 while she was with the phone. PW2 rejected this.
46. It was put to PW2 that it was then that the 2<sup>nd</sup> defendant struggled with her for the phone. PW2 denied this and stated that it was the 1<sup>st</sup> defendant who took the phone from her hand, broke it in half and threw it to the ground. It was also put to PW2 that when the 1<sup>st</sup> defendant pulled the 2<sup>nd</sup> defendant away from PW1, he was then facing

PW1 and talking to him. PW2 rejected this.

47. It was put to PW2 that when the 1<sup>st</sup> defendant heard PW2 and the 2<sup>nd</sup> defendant struggling, then he turned around and pulled the 2<sup>nd</sup> defendant away from PW2. PW2 stated that when she was on the ground, the 2<sup>nd</sup> defendant was kicking and punching her, and she only heard the 1<sup>st</sup> defendant tell the 2<sup>nd</sup> defendant to leave her because she was a woman and join the fight with PW1.
48. It was put to PW2 that when the 1<sup>st</sup> defendant pulled the 2<sup>nd</sup> defendant away from you, he was then facing PW1. She stated that she did not know that and repeated what she had said in [47], adding that she only remembered the 1<sup>st</sup> defendant pulling the 2<sup>nd</sup> defendant out of the room.
49. It was put to PW2 that after the 1<sup>st</sup> defendant pulled the 2<sup>nd</sup> defendant from PW2, then PW2 stood up and started to grab and scratch the 2<sup>nd</sup> defendant's face and pulled his hair and then the 1<sup>st</sup> defendant had to pull PW2 off the 2<sup>nd</sup> defendant. PW2 stated that she remembered fighting back and pulling the 2<sup>nd</sup> defendant's hair, but did not remember scratching his face. PW2 also confirmed that after the 1<sup>st</sup> defendant freed the 2<sup>nd</sup> defendant, she then went inside her flat.
50. It was put to PW2 that the 1<sup>st</sup> defendant was not holding a knife. PW2 rejected this and stated that she saw him with a knife.
51. It was put to PW2 that the 2<sup>nd</sup> defendant did not kick and punch her and that all the injuries were caused due to the struggle between her and the 2<sup>nd</sup> defendant outside the flat. PW2 stated that she was kicked and punched by the 2<sup>nd</sup> defendant both inside and outside the flat, and that she agreed that most of the injuries were caused by the 2<sup>nd</sup> defendant.
52. It was put to PW2 that the 1<sup>st</sup> defendant did not hit or punch her, but all he did was try to separate her from the 2<sup>nd</sup> defendant inside and outside her flat. PW2 agreed that the 1<sup>st</sup> defendant did not hit or punch her. She also said that all she remembered was struggling with the 1<sup>st</sup> defendant for the phone.
53. During re-examination, PW2 explained that when the 1<sup>st</sup> defendant tried to get the phone from her, they struggled and that the 1<sup>st</sup> defendant made her fall. She could not tell how he made her fall, but then she said he grabbed her head and pushed her down.

### ***Evidence of PW3***

54. PW3 gave evidence that he graduated with an MBBS and that he is a general practitioner at the RON Hospital. He examined PW1 and PW2 after the incident that occurred on January 14, 2019, and he also prepared their medical reports, which were tendered in court as evidence.

55. PW3 gave evidence that PW1 had a swollen lip, slight redness in the lower lip, a palpable mass 2 to 3 cm on the left side of the neck, inoderate reddening of the right eye and also on the left eye, with minimal pain. PW1 also had a loose left incisor with minimal bleeding. PW3 confirmed that blunt force trauma caused the injuries, and that the blunt force could be a punch, a kick or a fall. Assault could be a likely cause of the injuries.
56. PW3 gave evidence that PW2 had injuries to the head, inner mouth, both elbows and a bite wound on the right thumb. She had pain in the head, neck, shoulders, inside her mouth and elbows. The only injuries shown in the medical report on the head were a lesion that was visible at the oral cavity on the right side of the jaw and minimal swelling in the inner anterior of the lower lip. PW2 had bruises on both her elbows. PW3 gave evidence that blunt force trauma caused the injuries, and that the blunt force could be a kick or a fall onto a hard surface.
57. During cross-examination, PW3 gave evidence that it was not conclusive whether the assault caused the palpable mass on the neck of PW1 or whether it was present before the assault as an isolated chronic matter.
58. PW3 also confirmed that pain in the head, neck and shoulders can be caused by grappling.
59. During re-examination, PW3 clarified that the redness of the eye could have been caused by blunt force trauma, an eye infection or lack of sleep.

#### ***Evidence of PW4***

60. PW4 was the arresting officer and gave evidence concerning the arrest. I do not need to provide a summary of the evidence regarding the arrest. Furthermore, PW4 testified that when he arrested the defendants and took them to the Central Police Station ("CPS"), a police officer related to PW2 attempted to fight with them due to what they had done to her.

#### ***Evidence of PW5***

61. PW5 gave evidence that he was instructed to attend to the 2<sup>nd</sup> defendant for his Record of Interview. He also stated that when he attended to the 2<sup>nd</sup> defendant regarding his Record of Interview, the 2<sup>nd</sup> defendant advised him that a considerable amount of time had passed and that he did not intend to participate in the Record of Interview. As a result, no Record of the Interview was taken for the 2<sup>nd</sup> defendant. PW5 was not aware of whether the same was done for the 1<sup>st</sup> defendant.

## DEFENCE CASE

62. The defendants gave evidence in their defence. The 1<sup>st</sup> defendant gave evidence under oath, and the 2<sup>nd</sup> defendant gave an unsworn statement. I will provide a summary of their evidence that is essential to my determination of the charges before me as follows.

### *1<sup>st</sup> Defendant's evidence*

63. The 1<sup>st</sup> defendant gave evidence that he is 35 years old and is married with five children. He lives on the top floor of Block 76, Room 8, at the Location compound, Denig District, next to PW1 and PW2.
64. The 1<sup>st</sup> defendant gave evidence about the status of the family relationship between the defendants and PW1 and PW2, which involves many conflicts between them. He also stated that PW1 had punched him many times before this incident, but he had never retaliated and that he had never punched PW1.
65. The 1<sup>st</sup> defendant gave evidence that on the day of the incident, he saw PW2 throw wastewater in front of his brother's flat, where the 1<sup>st</sup> defendant's children always play. He said that they went over to PW2 and asked her calmly not to throw wastewater there because his children play there, and that it attracts flies. He then said that PW2 went inside her flat without saying a word, and that PW1 came out later and asked him about what he had said to PW2. PW1 told him that they could do anything on the land and that the 1<sup>st</sup> defendant didn't have a say because he was a Samoan boy living on PW1's land. The 1<sup>st</sup> defendant then stated that he told PW1 that he would get the real land owner over there then. Thereafter, the 1<sup>st</sup> defendant called the 2<sup>nd</sup> defendant. The 1<sup>st</sup> defendant went to pick the 2<sup>nd</sup> defendant from his residence in Uaboe District. While returning to Denig District, other family members started calling the defendants and asking why the 1<sup>st</sup> defendant was being rude to PW1. The 1<sup>st</sup> defendant stated that when they reached the Location compound, he was still on the same phone call and was parking his vehicle, and the 2<sup>nd</sup> defendant had gotten out of the car and was walking to PW1. The 1<sup>st</sup> defendant saw the 2<sup>nd</sup> defendant have a conversation with PW1 for a few seconds, and then he saw them start fighting.
66. The 1<sup>st</sup> defendant then gave evidence that he then went to the two and pulled the 2<sup>nd</sup> defendant towards his side away from PW1, and he then faced PW1 and started to have a conversation with PW1, telling him that "this is not what we wanted as a family". While talking to PW1, the defendant could hear scuffling happening beside him. He turned around and saw that the 2<sup>nd</sup> defendant and PW3 were "struggling". The 1<sup>st</sup> defendant then stated that he pulled the 2<sup>nd</sup> defendant away. He said that while doing so, he didn't use his full strength because he didn't want to hurt anyone. While the 1<sup>st</sup> defendant was pulling, the 2<sup>nd</sup> defendant broke free from his grasp and ran to PW1,

where he started fighting with him. In that split second, the 1<sup>st</sup> defendant was looking for PW2 but could not see her. The 1<sup>st</sup> defendant stated that when he was trying to grab the 2<sup>nd</sup> defendant to get him away from PW1, he saw PW2 behind the 2<sup>nd</sup> defendant, scratching him and pulling his hair.

67. The 1<sup>st</sup> defendant then gave evidence that he tried to get in between PW2 and the 2<sup>nd</sup> defendant to stop their fight; however, he felt his father's head being yanked very hard, so he started to pull PW2 away from the 2<sup>nd</sup> defendant. Just as the 1<sup>st</sup> defendant managed to pull away PW2 from the 2<sup>nd</sup> defendant, PW2 ran into her flat. The 1<sup>st</sup> defendant stated that at that moment, he was still holding on to his father, who was now facing PW1. The 1<sup>st</sup> defendant said that he then pushed the 2<sup>nd</sup> defendant behind him and started talking to PW1. He then realized that the 2<sup>nd</sup> defendant wasn't behind. He then saw PW1 run toward his flat. He started running towards the flat, because he was worried about the 2<sup>nd</sup> defendant. He didn't know who entered the house first, PW1 or himself, but he remembered the kitchen door being wide open. When he entered the flat, he saw a pit bull run to him, so he backed up to the kitchen and grabbed the first thing he could get hold of for his safety. He grabbed a knife, and when the pit bull went outside, he threw the knife away.
68. The 1<sup>st</sup> defendant gave evidence that he heard the 2<sup>nd</sup> defendant shouting in one of the rooms, saying "get out of here". When the 1<sup>st</sup> defendant approached further in, he saw the 2<sup>nd</sup> defendant come to the door of that room. The 1<sup>st</sup> defendant went to the 2<sup>nd</sup> defendant and pulled him to the lounge. He could see PW1 and PW2 with their children. He stated that the 2<sup>nd</sup> defendant was not shouting at the children. Thereafter, the police arrived.
69. During cross-examination, the 1<sup>st</sup> defendant denied punching or kicking PW1. He also denied that he joined the 2<sup>nd</sup> defendant in fighting PW1. The 1<sup>st</sup> defendant maintained that all he tried to do was to separate the 2<sup>nd</sup> defendant and PW1 to stop them from fighting. Furthermore, he stated that when PW1 and the 2<sup>nd</sup> defendant fought, PW1 was sitting in a chair and did not fall to the ground.
70. The 1<sup>st</sup> defendant further gave evidence that in 2019, his father was 65 years old and not as short-tempered as he was when he was younger. He also gave evidence that PW1 is in his 50s.
71. The 1<sup>st</sup> defendant denied running to PW2, grabbing her by her hair and slamming her to the ground. Further, he denied grabbing the phone from PW2 and breaking it.

### ***2<sup>nd</sup> Defendant's evidence***

72. The 2<sup>nd</sup> defendant's evidence corroborates the evidence of the 1<sup>st</sup> defendant. He provided extensive evidence regarding the family issues between the defendants and

PW1 and PW2, as well as their bitter relationship with one another.

73. In his evidence, the 2<sup>nd</sup> defendant admits punching PW1 and taking the phone from PW2 and smashing it on the floor.

## **ANALYSIS**

74. I have considered all the evidence individually and also as a whole.
75. It is essential that I determine what the proven facts are in this matter before I analyze the evidence and decide the charges before me.

### ***What are the established facts?***

76. I found all the witnesses to be truthful. None of them was evasive in their examination. I accept their evidence as being established with minor adjustments as discussed below.
77. Everyone's evidence was based on what they perceived had happened on the date of the incident. I also note, in accordance with PW2's testimony, that everything happened very quickly and that initially, all those involved were in close proximity when the fight broke out or immediately after the fight broke out. Violent events are traumatic in nature and can affect how one remembers those events. Furthermore, the events occurred in 2019, and the witnesses provided evidence of them in 2024, five years later.
78. I accept the evidence of PW1 and PW2 in relation to the attack on them by the 2<sup>nd</sup> defendant. However, I do not accept PW1's evidence that the 1<sup>st</sup> defendant attacked him because the evidence of PW2 does not corroborate PW1's evidence, in which he alleges that PW1 attacked him, and PW2 also confirms that the 1<sup>st</sup> defendant did not kick or punch her. In this regard, I accept the evidence of the defendants that the 1<sup>st</sup> defendant was trying to stop the fight between the 2<sup>nd</sup> defendant, PW1 and PW2. The reason for my finding in this regard is that, apart from the evidence of PW2, which I have just mentioned, the evidence of PW1 and PW2 implied that they were attacked ferociously. This is evident from their evidence on the level of severity of the attack on them. I do not doubt that they were attacked in the manner as they described in their testimony in court.
79. However, as per my observations, PW1 and PW2 are short in stature and looked as if they were in their 50s and 40s, respectively. PW1 looked elderly. The 2<sup>nd</sup> defendant is of short stature as well and appears elderly and fragile. On the other hand, the 1<sup>st</sup> defendant is tall, broad and muscular. It seems that he does power lifting or bodybuilding training.

80. The medical report and the evidence of the doctor confirm that PW1 and PW2 sustained injuries, but they were minor cuts, scratches, a loose incisor with minor bleeding and bruises. In my assessment, if a person of the 1<sup>st</sup> defendant's stature attacked PW1 and PW2 in the manner they described in their evidence, then there would have been much more serious harm done to them; the injuries could even have been life-threatening. Therefore, I find that the 2<sup>nd</sup> defendant caused the injuries to PW1 and PW2, and he was aware or ought to have been aware that his actions would cause harm to them; therefore, he intended to cause them harm.
81. The 2<sup>nd</sup> defendant gave evidence that he is the one who took the mobile phone from PW2. It is also evident from PW2's cross-examination that she was not sure about how she fell to the ground when the phone was taken from her. Further, it must be noted that, as per PW2's evidence, her hair was grabbed, and she was pushed to the ground; therefore, she would have been facing down when this happened. She also stated that everything was happening for a fact, and the evidence is that at that point in time, everyone involved was standing in close proximity to each other. In light of this and the evidence as a whole, I find that PW2 was mistaken about who took her phone and find that it was the 2<sup>nd</sup> defendant who had grabbed PW2's hair and pushed her to the ground.
82. There were issues raised concerning police procedure, that is, arrest and interview. I am of the view that I do not have to make any determination concerning the legality of the arrest because the outcome of that determination would be of no utility in this matter. It would just become an academic exercise. I hold this view because there is no evidence before me that was obtained from the defendants as a result of an unlawful arrest. A finding of the unlawfulness of the arrest would not operate as a defence in this matter to absolve the defendants of the crime with which they have been charged. Furthermore, upon reviewing the evidence as a whole, I am of the opinion that the defendants will not face any prejudice if I do not determine the legality of the arrest.
83. Similarly, the issue concerning the Record of Interview of the defendants not being done will not result in an unfair trial or a prejudicial outcome against the defendants. Additionally, there is evidence that the 2<sup>nd</sup> defendant did not wish to participate in the Record of Interview. Furthermore, in some instances, charges can be filed in court even if the accused has not been interviewed regarding the allegations against them.
84. The defendants gave evidence concerning the family history and how that provoked the 2<sup>nd</sup> defendant to carry out the actions that he did. Provocation is not a complete defence and will not absolve the 2<sup>nd</sup> defendant's conduct. However, I find that there is a high probability of provocation in this matter because PW2 provoked the 2<sup>nd</sup> defendant in court after he had given his evidence. PW2 was sitting at the front behind the bar table and was taking his tongue out to provoke the 2<sup>nd</sup> defendant, and he did manage to do so because the 2<sup>nd</sup> defendant had become riled up. I had to send PW2 out of the courtroom

to calm the situation.

***What are the elements of the offence for “Intentionally Causing Harm”?***

85. Section 12 of the ***Crimes Act 2016*** provides the following with regard to elements of an offence:

***Elements of an offence***

*(1) An offence consists of physical elements and fault elements.*

*(2) Notwithstanding subsection (1), the written law that creates the offence may provide:*

*(a) different fault elements for different physical elements; or*

*(b) that there is no fault element for one or more physical elements.*

86. Section 22(1) & (2) of the ***Crimes Act 2016*** provides as follows:

***Offences that do not provide fault elements***

*(1) Where the written law creating an offence does not provide a fault element for a physical element that consists only of conduct, intention is the fault element for the physical element.*

*(2) Where the written law creating an offence does not provide a fault element for a physical element that consists of a circumstance or a result, recklessness is the fault element for the physical element...*

87. Section 13 of the ***Crimes Act 2016*** provides as follows:

***Establishing criminal responsibility for offences***

*A person shall not be found guilty of an offence unless the prosecution proves:*

*(a) each physical element of the offence that is specified in the written law creating the offence that is relevant to establishing guilt; and*

*(b) for each physical element for which a fault element is required, the fault element or one of the fault elements for the physical element.*

88. Further, section 14 of the ***Crimes Act 2016*** provides as follows:

***Physical elements***

*(1) A ‘physical element’ of an offence may be:*

*(a) conduct;*

*(b) a result of conduct; or*

*(c) a circumstance in which conduct, or a result of conduct, occurs.*

89. Section 74 of the ***Crimes Act 2016*** provides as follows:

***Intentionally causing harm***

*A person commits an offence, if:*

*(a) the person intentionally engages in conduct;*

*(b) the conduct causes harm to another person without the person's consent;*  
*and*

*(c) the person intends to cause harm to that or any other person by the conduct.*

90. In light of the above, I find that for an offence of intentionally causing harm, the prosecution needs to prove beyond a reasonable doubt that:
- i. The defendants;
  - ii. Intentionally engaged in a conduct;
  - iii. The conduct caused harm to the victims without the victims' consent, and the defendants were reckless of the fact that their conduct would cause the victims harm; and
  - iv. That the defendants intended to cause harm to the victims.

***Whether the prosecution has proven beyond a reasonable doubt that the 1<sup>st</sup> defendant intentionally caused harm to Gaimen Denuga and Elsie Denuga?***

91. I do not need to go through the evidence once again. Nor do I have to reevaluate the evidence again.
92. The particulars in counts 1 and 2 of the charge states that the 1<sup>st</sup> defendant kicked and punched PW1 and PW2, which caused them harm, and that they did not consent to that harm. In light of the evidence before me, I find that the 1<sup>st</sup> defendant did not kick or punch the PW1 and PW2. The only proven evidence against the 1<sup>st</sup> defendant is that he separated the 2<sup>nd</sup> defendant from PW1 and PW2 on a number of occasions, and that he also separated PW2 from the 2<sup>nd</sup> defendant when she was scratching and pulling the 2<sup>nd</sup> defendant's hair. I find that this could not have caused any of the injuries to the two defendants, as provided in the medical reports. Even if some harm was caused, I find that the 1<sup>st</sup> defendant did not intend to cause harm to the defendants through his conduct.
93. In light of this, I find that the prosecution has not proven beyond a reasonable doubt that the 1<sup>st</sup> defendant intentionally caused harm to PW1 and PW2.

***Whether the prosecution has proven beyond a reasonable doubt that the 2<sup>nd</sup> defendant intentionally caused harm to Gaimen Denuga and Elsie Denuga?***

94. Harm for the purposes of section 74 of the *Crimes Act 2016* is any hurt or injury caused to a victim which interferes with the health and comfort of that victim: see *R v Miller* [1954] 2 QB 282. Further, it has been held that scratches and bruises are examples of harm: *R v Cameron* [1983] 2 NSWLR 66, at page 67.

95. In light of the admissions of the 2<sup>nd</sup> defendant in court, and the evidence of PW1, PW2, and the 1<sup>st</sup> defendant, I find that the 2<sup>nd</sup> defendant did, in fact, kick and punch PW1 and PW2, and that the 2<sup>nd</sup> defendant's conduct of kicking and punching PW1 and PW2 caused them harm as provided for in the medical reports.
96. ACJ Issacs in *R v Clarke* (1927) 40 CLR 227; 34 ALR 97 at CLR 232 made the following observations on how the motive of a defendant can establish his or her intention:
- Motive, though not to be confused with intention, is very often strong evidence of that state of mind, both in civil and criminal matters. The evidentiary force of motive in the circumstances of [one case] is no criterion of its force in the circumstances of any other case, and it can never usurp the legal place of intention.*
97. It is very clear from the evidence before me that the 2<sup>nd</sup> defendant's motive was to confront PW1. The 2<sup>nd</sup> defendant ought to have known that, in doing so, PW2 would get involved as well. He had given evidence of his sour relationship with PW1 and PW2 in great detail. He even said in his unsworn statement that *"they had been living there harmoniously then fueled by all this I banged him with my utmost fury to let him feel the same discomfort he had inflicted with his own utmost...disregard of others feelings and ownership"*. Having considered all the evidence before me, I find that the 2<sup>nd</sup> defendant had the motive to cause discomfort to PW1 and that he ought to have known that, as a result, PW2 would get involved as well and that his conduct would also cause discomfort to her. Therefore, I find that there is overwhelming evidence that the 2<sup>nd</sup> defendant intended to cause harm to the defendants.
98. In light of the above findings in relation to the 2<sup>nd</sup> defendant, I find that the prosecution has proven beyond a reasonable doubt that the 2<sup>nd</sup> defendant intentionally caused harm to PW1 and PW2.

***Whether the prosecution has proven beyond a reasonable doubt that the 1<sup>st</sup> defendant caused damage to a mobile phone belonging to Gaimen Denuga?***

99. Count 3 of the charge avers that on 14 January 2019, the 1<sup>st</sup> defendant *"caused damage to a mobile phone belonging to [PW1] and was reckless about causing damage to the mobile phone"*.
100. Section 201(a)(b) of the *Crimes Act 2016* provides as following:

***Damaging property***

*A person (the 'defendant') commits an offence, if the person:*

*(a) causes damage to property belonging to another person, or to the defendant and another person; and*  
*(b) is reckless about causing damage to the property.*  
*Penalty: 5 years imprisonment*

101. Section 19 of the *Crimes Act 2016* provides as follows:

***Recklessness***

*(1) A person is 'reckless' about a matter if:*

*(a) the person is aware of a substantial risk that:*

*(i) in the case of a circumstance, the circumstance exists or will exist; and*

*(ii) in the case of a result, the result will occur; and*

*(b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.*

*(2) The question whether taking a risk is unjustifiable, is one of fact.*

*(3) Where recklessness is specified as the fault element required to prove an offence, proof of intention, knowledge or recklessness will satisfy that fault element for the offence.*

102. For count 3, the prosecution must prove beyond a reasonable doubt that:

- i. The 1<sup>st</sup> defendant;
- ii. Damaged a phone belonging to PW1; and
- iii. That he was reckless about causing damage to the phone.

103. There are two substantial issues in relation to count 3. The first is that the 1<sup>st</sup> defendant has denied damaging the phone, while the 2<sup>nd</sup> defendant has admitted damaging the phone. I have accepted that as the established fact. Therefore, court 3 must fail on that basis alone.

104. The second issue is an evidentiary one. The prosecution did not tender any exhibits regarding the phone or the nature of the damage to it. If there had been no admission by the 2<sup>nd</sup> defendant, the prosecution's case would still have failed because of the lack of evidence in relation to the phone and the damage caused to it. Therefore, I find the prosecution has not proven beyond a reasonable doubt that the 1<sup>st</sup> defendant caused damage to the phone belonging to PW1

## VERDICT

### Count 1

105. For the foregoing reasons, I find the 1<sup>st</sup> defendant not guilty, and the 2<sup>nd</sup> defendant guilty for count 1 of the charge.

### Count 2

106. For the foregoing reasons, I find the 1<sup>st</sup> defendant not guilty, and the 2<sup>nd</sup> defendant guilty for count 2 of the charge.

### Count 3

107. For the foregoing reasons, I find the 1<sup>st</sup> defendant not guilty for count 3 of the charge.

Dated this 8<sup>th</sup> day of October 2025.

  
\_\_\_\_\_  
Resident Magistrate  
Vinay Sharma

