

BETWEEN: LAWRENCE HINGE LEO, JOHNNY
KASTO RAU, MARK MOTASI
Appellants

AND: PUBLIC PROSECUTOR
Respondent

Date of Hearing 5 August, 2024

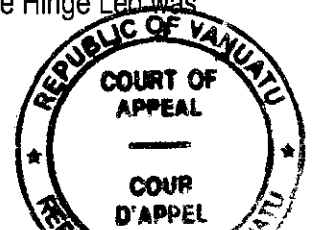
Coram: Hon. Chief Justice V. Lunabek
Hon. Justice J. Mansfield
Hon. Justice R. Young
Hon. Justice D. Aru
Hon. Justice V. M. Trief
Hon. Justice E. Goldsbrough

In Attendance: K. B. Karu for the Appellants
T. Karae for the Respondent

Date of Decision: 16 August, 2024

JUDGMENT OF THE COURT

1. On 26th May 2023, Yosino Tariuvi was seriously injured and left with a fracture to his left arm. He required surgery and was left with a permanent injury. Lawrence Hinge Leo, Johnny Kasto Rau and Mark Motasi, the present Appellants, were all charged with assault as a result. In the Supreme Court, they were convicted, and this appeal is against that conviction.
2. The appellants and the injured man all know each other. They were effectively neighbours, and a dispute had arisen over the manner in which the injured man had spoken to another woman, the wife of one of the Appellants, who lived in the same yard. The appellants decided that he should be spoken to about this, and the discussion led to the assault charges.
3. By information filed on 6 November 2023, all three of the Appellants were charged that they jointly intentionally assaulted Yosino Tariuvi, kicking him to the ribs, head, back and left hand and using a piece of timber to strike him on the left hand, causing a permanent injury. Lawrence Hinge Leo was

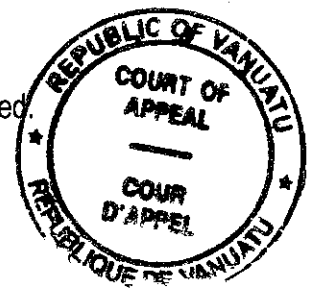


additionally charged with an assault, causing the same man to fall down, and Mark Motasi with punching him about the head.

4. The trial began on June 12, 2024, and a written verdict decision was delivered on June 27, 2024. Several witness statements and documents, including medical reports outlining the injury and photographs, were admitted by consent, and four people gave evidence before the Supreme Court judge. Each of those four people was cross-examined. The judges' trial notes are exhibited as part of the appeal record.
5. Two grounds of appeal are outlined in the amended Memorandum of Appeal filed on 8 July 2024. During this appeal hearing, counsel for the Appellants sought to amend those two grounds into a single ground that the trial judge erred in law and fact by not properly considering important and relevant inconsistencies in cross-examination of the prosecution witnesses and wrongly found that evidence from a defence witness was inadmissible as hearsay. That amendment was accepted.

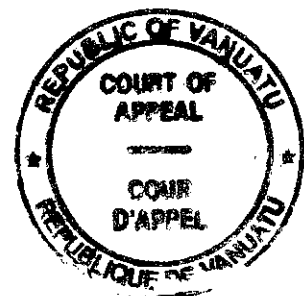
Proceedings in the Supreme Court

6. None of the Appellants gave evidence at their trial. One witness was called in their defence, Marie Melnamu. Of the four prosecution witnesses, all were cross-examined. It is submitted on this appeal that during cross-examination, several answers provided were inconsistent with either statements made to the police or in answer to earlier evidence in chief. One example given by counsel was that the victim had not made mention of the use of a piece of timber to cause his injury when he first reported this matter to the police. The first report given to the police by the victim was his own written statement. He made subsequent statements to the police that were taken down by the police. When questioned about not having mentioned the use of timber during the assault in the first report, the victim explained that the police had advised him that they could not respond to such a report without first hearing from the Appellants. Because of that advice, he said, he did not mention the timber in his first account.
7. A further inconsistency was said to be a varying account of how the assault took place. There was an answer in which the victim said he had stood up to defend himself, whereas later, he agreed that he stood up to light a cigarette. His evidence that other females around were crying and shouting was said to be inconsistent. Finally, his evidence as to whether it was Mark or Johnny who broke his hand with timber was said to be inconsistent with his police statement.
8. The witness, Rossen Damassing, was said to have given inconsistent evidence when he said in evidence that he did not see any of the defendants holding a piece of timber.
9. Marie Melnamu gave evidence that she saw the victim when his right hand was injured.



Discussion

10. Whilst counsel referred only to inconsistency, some of the evidence complained of was not directly inconsistent but at variance with other evidence. Inconsistency is perhaps best confined to different versions within the evidence of the same witness. That can then be addressed simply by considering the evidence with previous out-of-court statements or other evidence, such as evidence in chief.
11. The victim gave his explanation as to why he made no reference to the use of a piece of wood to assault him. It was a matter, then, for the trial judge to accept that explanation or not. It could not be said that there was nothing on which the trial judge might base that decision.
12. The victim was not asked about the females crying and shouting, so he gave no evidence that was inconsistent with that other evidence.
13. The evidence of Rossen Damassing that he did not see any of the Appellants holding a piece of timber was not inconsistent with them holding a piece of timber. His evidence was not that they did not hold a piece of timber but that he did not see that. There is a difference, not an inconsistency.
14. Another instance of inconsistency is said to be the variation between the explanation of the victim hitting his fist on a timber beam when attempting to throw a punch at one of the Appellants and other evidence about the assault. Again, that is not an inconsistency but a variation in the evidence. Given that the injury was not to his fist but to his forearm, the alternative suggested that the victim caused the injury to himself lacks credibility.
15. Counsel is asking this Court to adopt a perfection of human observation that, quite simply, does not exist. The examples put forward on this appeal are not persuasive of an error by the trial judge. The examples were either discredited where an explanation was offered, such as the explanation as to why the victim did not mention the use of wood as a weapon, or related to matters which had so little effect on the facts in issue as to make them irrelevant to the question of guilt.
16. The trial judge recorded the witnesses' questions and answers. He then assessed the evidence and its variations. We can find no error in that assessment. As to his remark made in the judgment when discussing the evidence of Maria Malnamu, of it being "purely hearsay", which evidence was not excluded during the trial, that remark does not affect his finding that her evidence was not credible. She alone suggested an assault affecting the victim's right hand and not his left. That itself was a good reason to doubt her evidence.
17. The amended single ground of appeal, therefore, fails.

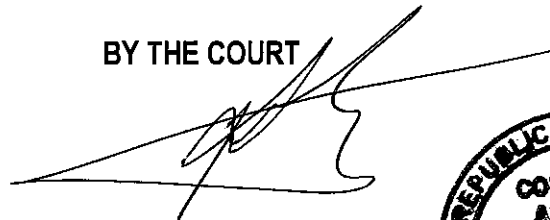


Decision

18. The appeals against conviction are dismissed. The convictions recorded in the Supreme Court are upheld.

DATED at Port Vila, this 16th day of August, 2024.

BY THE COURT



Hon. Chief Justice Vincent Lunabek

