

PUBLIC PROSECUTOR

-V-

JOHN FRED

Before: Senior Magistrate Moses Peter

*In Attendance: Lenry Young for the State, Kylie Bakeo for
the Defendant.*

Trial Date: 3rd, 4th, 27th October 2016

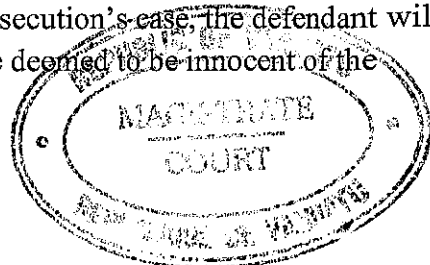
Date of Judgment: 22nd March 2017

JUDGMENT

1. The defendant is charged on 1 Count of Intentional Assault contrary to section 107 (b) of the Penal Code Act [CAP 135].
2. The particular of the offence reads:

John Fred Mael, sometime long namba 24 March 2012 long Fresh Water park opposite long Sakari Store yu bin minim blong assaulthem woman ia Mere Robert mo long time ia hemi bin kasem kill long body blong hem we bae ino save stap oltaem.

3. The State carries the burden of proving the elements of the offence and the standard of prove is "proof beyond reasonable doubt"
4. By virtue of section 8 (1) of the Penal Code Act, the determination of proof of guilt beyond reasonable doubt shall exclude consideration of any possibility which is merely fanciful or frivolous.
5. If some doubt exists at the end of the Prosecution's case, the defendant will be given full benefits thereof and will be deemed to be innocent of the charge and be acquitted.



6. The Complainant is one Mere Robert of Fijian descent married to Robert Jimmy of Vanuatu. She alleges that on 25th of March 2012 at around 22.30 hrs she had gone to Sakari Store at Fresh Water 3 Area in Port Vila to buy matches. Upon returning she met the defendant who was standing on her way out of the store. She uttered a swear word on him to effect "*tip skin yu no blokem rod blo mi*". The defendant then grabbed her and forced her out of the shop to the main road. On the main road, the defendant assaulted her on her head with a bottle of drink he had with him.
7. The essential elements of the offence of Intentional Assault that must be proved beyond reasonable doubt are:
 - A person
 - intentionally assaults
 - body of another person
 - Causing damage of temporary in nature.
8. The Prosecutor called four witnesses who corroborated Complainant's statement dated 25 March 2012. The statement was admitted in evidence by order of the court dated 12 August 2016 on grounds that the Complainant had returned to Fiji for good and is impracticable for her to return to Vanuatu to attend trial hearing.
9. Before the start of the Prosecution opening, the court read to the accused section 81 of the Criminal Procedure Code and to which he indicated his understanding of the statement read to him.
10. At close of Prosecution's case, the defence counsel submitted no case to answer on the evidence of the State. The court ruled there was case to answer and the defence proceeded to make his defence and to which he elects to remain silent. Section 88 was again read to defendant.

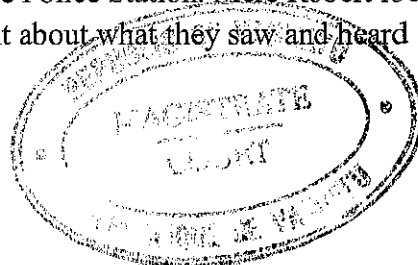
11. ISSUES

1. Was the Perpetrator for the assault on complainant identified as John Fred Mael?
2. Was the assault on the body of the complainant Mere Robert intentional?
3. Did the complainant sustained injury as a result of the assault and the injury was of temporary in nature?

12. EVIDENCE



13. The Complainant in her statement dated 25th March 2012 States the defendant grab her inside Zachary Store at Fresh Water area and pull her to the main road and assaulted her on her head.
14. First Witness for Prosecution is Joseph Robert. He is the Complainant's husband. He said he was at home at Fresh Water near Zachary Store on 24th March 2012. His wife had left the house to go and buy matches at Zachary Store. About an hour and a half later she came back home. He saw blood over her face and nose and her clothes has blood on it also. He asked her what had happened to her and she said she had been assaulted by John Fred (defendant). In cross examination, he said he knew the defendant as he had assisted them in mediating a sexual encounter his wife (the complainant) has had with another man. Subsequently, the defendant started having affair with his wife (the complainant).
15. Second Prosecution witness is Simon Kalmatak. He confirmed seeing the Defendant and the Complainant having arguments at Fresh Water Park on the night of 24 March 2012. He heard Complainant screamed as if she might have been slapped on the face by the Defendant. He said he recognises the person as the defendant. After seeing the Complainant having a heated argument with the defendant, he went to report the incident to the Complainant's husband at their home near Zachary Store at Fresh Water. When the defendant and the complainant were having the argument, the defendant had a tusker bottle on his hand. He believes the defendant was drinking beer while arguing with the Complainant.
16. Third witness for Prosecution is Rex Kalo. He said he was with Simon Kalmatak at Lui Philip's Kava Bar at Fresh Water 3 Area on night of 24th March 2012, when he heard a woman screaming as if she had been beaten up. He said the defendant and the complainant were arguing beside the Benuar Tree which is not far away from the Nakamal he was having kava. He calculated the distance would be 15 meters away.
17. He said he went out and saw the woman fell to the ground holding her face. He saw Defendant grabbing the Complainant and trying to get her to follow him across the road towards Green Light Kava Bar. He saw Defendant holding onto a Tusker bottle and he was drunk at that time. He said he and Simon Kalmatak went to Mere Robert's (Complainant) house and relate the incident to Mere Robert's husband and they all return to Fresh Water Park to get Mere Robert (Complainant) but she had gone somewhere with the Defendant. Not long, Mere Robert (Complainant) came back. She had a small injury on her left eye brow. He went with his friend Simon Kalmatak, Joseph Robert and Mere Robert to the Police Station. Mere Robert lodged a complaint and they all gave statement about what they saw and heard from the defendant and the complainant.



18. The Prosecution submitted medical report dated 25 March 2012 to be accepted as evidence. The court accepted the medical reported and labelled it as exhibit P1. The medical report in its finding states bruises on left eye brow, swelling on Right and Left hand and her fingers unable to move freely due to pain.

19. DISCUSSIONS

20. The evidences given by all witnesses of the State namely Robert Joseph, Rex Kalo, and Simon Kalmatak corroborated the Complainant's evidence that the defendant John Fred Mael is responsible for the alleged assault on the Complainant. The first issue is answered positively.

21. In ascertaining the assault by Defendant as intentional, the court relied on the statement of the Complainant who said the defendant assaulted her on her head. She had gone to the store to buy match. She was distracted when leaving the store by the defendant. She was being dragged by the defendant to the park at Fresh Water 2 and was assaulted. This was corroborated in the evidence of Rex Kalo and Simon Kalmatak. They saw and heard the Complainant cry as if she had been beaten up. Mr. Robert Joseph confirms defendant's sexual encounters with her wife Mere Robert ("the Complainant"). These ongoing affairs might be the subject of their arguments leading to the assault.

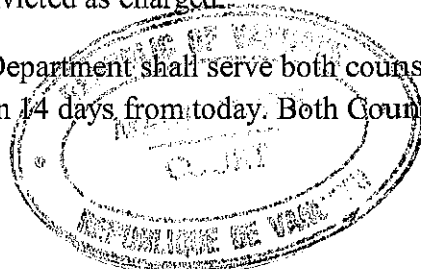
22. Rex Kalo confirmed seeing defendant assaulting the Complainant on her face in the region of her eye brow. Joseph Robert also confirmed seeing Complainant returning home with injury on her face. The medical report stated bruises on Complainant's left eye brow and swell on right and left hand and fingers unable to move freely due to pain. The medical report indicated result of findings to have derived from assault on her left eye brow with a bottle.

23. The defendant denies the assault and says the Complainant fail to describe how she sustained the injury. I disagree. The Complainant confirmed being assaulted by defendant with the bottle on her face. This was corroborated by all witnesses for the State.

24. Whilst it is observed that there are some inconsistencies in the oral evidence of Simon Kalmatak and Rex Kalo that did not affect the credibility of the witnesses as regards to what they have observed on the incident of 24 March 2012.

25. I am satisfied that the Prosecution has proven his case beyond reasonable doubt and the defendant is thereby convicted as charged.

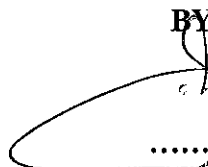
26. Probation Officer at the Correctional Department shall serve both counsels and court with a Pre-sentence Report in 14 days from today. Both Counsels



shall have 7 days each to file and serve their sentencing submission.
Sentencing Report must be filed in court by 21st April 2017.

DATED at Port Vila this 22nd March 2017

BY THE COURT


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MOSES PETER
Senior Magistrate
COURT
REPUBLIQUE DE VANUATU