

**PUBLIC PROSECUTOR -v- MARCEL MANITOK
JEFFREY IAUTU**

*Ms Kayleen Tavoia, the Public Prosecutor
Mr Peter Bartels for Defendants*

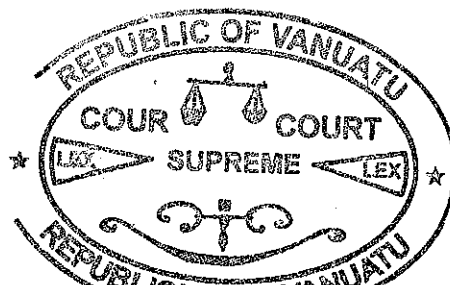
REASONS FOR ORAL VERDICTS

The Defendants: Marcel Manitok and Jeffrey Iautu are both charged with the offence of Intentional Assault, causing damage on the body of another person, resulting in the death of that person, contrary to Section 107(d) of the Penal Code Act [CAP.135].

Both Defendants pleaded not guilty to the charge and the trial proceeded on that basis. Before the trial began, the prosecution and the defence agreed that an incident of assault occurred on 4 August 2007 at about 4.00AM o'clock in the early part of the morning of that day. The assault took place outside the area belonging to Club Vanuatu and a person died (Paul Sikoiasi, a student of Solomon Islands) from injuries he sustained in the incident.

On the 27th day of May 2008, after considering and assessing the facts and submissions of the Prosecution and the Defence, the court entered the following Oral Verdicts:

1. That Defendant Marcel Manitok is guilty of the offence of intentional assault causing damage to the body of another person which resulted in the death of that person, contrary to section 107 (d) Penal Code Act [Cap135].
2. That Defendant Jeffrey Iautu is not guilty to the offence of intentional assault, causing damage to the body of another person which resulted in the death of



that person, contrary to section 107 (d) of Penal Code and Jeffery Iautu is discharged of that offence, accordingly.

The reasons for such Oral Verdicts are provided hereafter.

The prosecution case is that both defendants assaulted the deceased victim and as a result of such assault, the victim sustained injuries which resulted in his death.

The law is that the prosecution must prove each and all the essential elements of the offence beyond reasonable doubt. If a doubt exists as to the guilt of one or both of the defendants, I must acquit that defendant or both of them.

In this case, the defendants elect to give evidence, I must assess their evidence on equal basis as the evidence given by the prosecution witnesses.

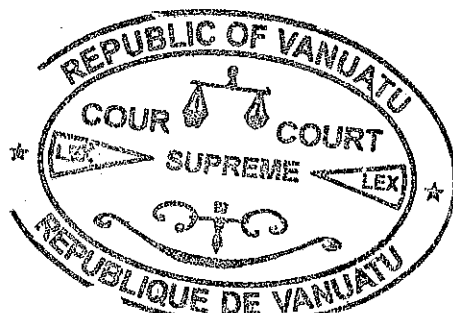
The prosecution must prove beyond reasonable doubt each of the following elements:

1. A person assaults the body of another person;
2. The assault is an intentional one;
3. The assault caused damage on the body of another person;
4. The damage caused result in the death of that person

The defence case is that this case is a self defence type case. The defence has raised the defence of self defence under Section 23 of Penal Code Act. The defence has also raised provocation under section 27 of Penal Code. The law is that the onus is upon the prosecution to disprove beyond reasonable doubt the pleas of self-defence and provocation (see section 9 Penal Code Act [Cap 135]).

SUMMARY OF EVIDENCE

The prosecution called 10 witnesses (7 civilians, 2 police officers and a Doctor). The defence called the two accused persons as they elect to give evidence themselves on their behalf.



The following is the prosecution's summary of evidence:

Chris Rarumae

He was with the deceased Paul S. at Maximillion night club. They were consuming alcohol drinks. They were drunk. He did not see the assault incident. He went back to his rented place. He was informed that Paul Sikoiasi was taken to hospital and he died as result of the injuries he sustained on his body.

Emily Kalo

She saw two guys like not touching each other but shaping ready to fight. One was very fair. She believed is a samoan student. Two minutes after she saw a group of 4- 6 men surrounding accused Marcel and fighting him. She saw the men kicked Marcel on the road near Uncle bills. There was mixture of dark light shape at that time. Five minutes after she saw a boy from Solomon was on the ground between the front of club Vanuatu and Center-Point Car Part steps. She walked across the road to try to help him. She went with another man (Johnny Kanegai) and tried to turn him around. The Solomon boy was on his back. They tried to put him on his side. There was a lot of blood on his face and head.

Angela Greg

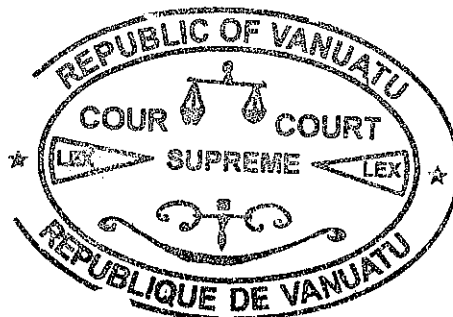
She was aware on the nights, there were problems with Solomon boys. There were no lights on the streets but there was light on Uncle bills. The sky was dark. There was a darkness and a combination of light. She did not see the fight. Police took the deceased to the hospital.

Johnny Kanegai

He saw some arguments went on. The deceased was standing and came towards the road. He came behind Marcel and kicked Marcel on the face. He saw USP students at the nightclub. The deceased lifted the armchair he was sitting on and he felt on the floor with a friend. The security officers came over to them and asked if there were all right. The boy came over and said he is from Solomon Island. He told him he is from Vanuatu. He must keep quiet. He saw the deceased boy was drunk.

Sam Matal

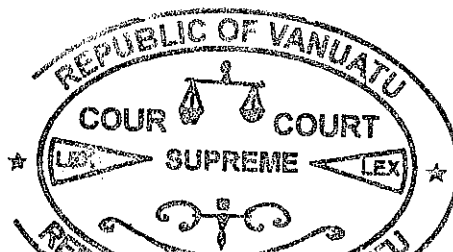
Jefferey is a security officer. He finished his security duties before the incident on 4 August 2007. He saw lots of USP students. They were drunk. He saw 6 men from Solomon Islands fighting Marcel Manitok. He saw accused Jefferey Iautu pulling



away accused Marcel Manitok towards Uncle Bills (Drug Store). In his statement to police, he said he did not really see the fighting.

Johnathan Wako

A security guard at night club Vanuatu. He saw an event occurred on 4 August 2007. He knew a Law student from Solomon Islands was involved in an incident which ended up to his death. The club closed at 4.00AM. He met with USP students asking for a cap. He saw the fighting was not at the club premises but outside on the road. Marcel punched a student of Samoa and the Solomon students punched Marcel but he did not know that the other was a student of Solomon as it was dark but then, the two moved towards the light. They fight each other like a coq fighting to put the other on the ground. He saw Marcel pulled the T-Shirt of the Solomon boy and put him down. The T-Shirt covered his face. Then he saw one of the security guard kicked the law student on his rip and the student felt on the ground. The security guard is Jeffery lautu. They called Jefferey to go away. Jefferey came and stayed with them. He saw Marcel Manitok threw punches on the body of the student when he was already laying on the ground. He saw Marcel punched the head of the student who was laying on the ground. He saw Marcel bent himself towards the head of the student boy and punched his head with his closed fist while the student was laying on the ground. Marcel gave five punches on the head of the student boy. Then he and another approached Marcel and took him away from the student. The law student felt down on the tar road at the back of the drug store close to the dispensary. He found out that the student who laid on the tar road is a Solomon Islander. He was small built, slim, short and dark skin. He saw his head was down; his eyes were up. He saw he was unconscious. He was breathing like he was going to die because he was breathing blood. He called a man there to call the police truck to take the boy to the hospital. Blood covered his face. The closing time for club Vanuatu is 3.30PM. It was still dark. There were plenty of USP student at the club. They were drunk. They were outside at the closing of the club. There was one kick on the deceased's body when the other tried to stop the deceased boy fighting Marcel. The deceased held on Marcel and when they both felt the deceased's head hit the tar road. At the time, there was not so many blood. Blood circled around the area of his head. Police arrived when he lifted the boy and put him in the police truck and police took him to hospital. He knew of a fight between some boys of Vanuatu and Solomon Islands.



Philip Thompson

After the closing of the night club, a Samoan student and his girl friend were looking for a cap. The accused Marcel came and told them to leave the premises. They asked Marcel if he was working there when he said no they told him off. He asked Marcel to leave. He came out with the students to find a bus or taxi. However, when they come out Marcel was standing there ready for them. He was soon surrounded by the students. He asked him to leave the students alone but Marcel would not listen. He asked the Samoan boy to stop the fight. He knew he would not control them as they had moved out from the club premises, so he has to go to the police station. The police failed to come immediately, he waited for some time and walked towards National Bank of Vanuatu when he heard a loud cry. When he came he saw accused Jeffrey lautu crossed the other side of the road.

Dr Fred Merchant

The patient had suffered a trauma to the mid-facial area. He tried to resuscitate the patient artificially. On his observation of the patient, he had a fractured nose, a cut near the right eye, the face was puffed up. He had taken in some blood and mucus as the patient was in a state of unconsciousness and so could not speak or respond. There was pressure in the patient's pupil as he had a sluggish reactive pupil, and inability to breathe without assistance. He had to drill three holes into the skull to release the pressure. The history related was that the patient was an assault victim. At the time the patient had a survival rate of less than 5%.

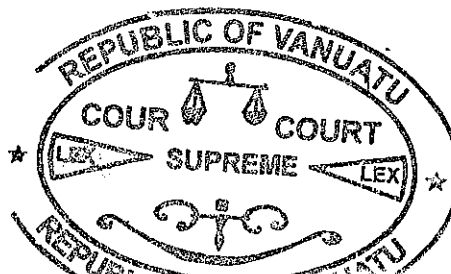
David Takiau

He is the interviewing police officer in this case. The is matter was reported to the police by Chris Rarumae. The police then cautioned both accused and kept them in custody. Accused Jeffrey made a statement and stated that he should not have been involved in the fight and that he had kicked the victim but did not know where he kicked him.

The following is the summary of the Defence evidence.

Accused Marcel

Evidence given by this accused was that he became involved in an argument in the Foyer of Club Vanuatu on his way home at about 4am. He had been drinking alcohol and he stated he was drunk. As a result of the argument he was punched heavily to

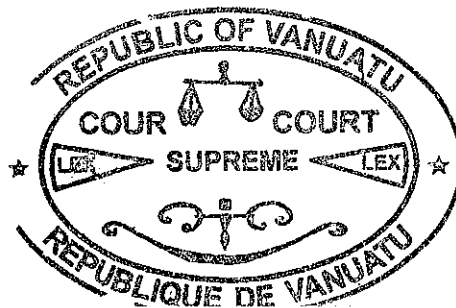


his face by a Samoan boy, causing a cut above his eyes, and he suffered a heaviness to his head and he was bleeding from the cut. He further gives evidence that he was then surrounded by a number of Solomon Islander men who proceeded to kick him to both his legs causing pain and causing him to call out for help.

He further gives evidence that help in the form of accused Jeffrey arrived and Jeffrey escorted him by holding him and walking away from the group of Solomon Islander boys. As they were walking away and near the shop, Uncle Bills, someone (the deceased) jumped on his back and got a hold around his head. He struggled a short time with the deceased and eventually both fell to the ground. Upon falling to the ground they both tried to regain their feet, the accused regained his feet first and punched the deceased three times to the head and then stopped fighting. The accused gave evidence that he wanted to go home and that he was feeling very sore to his legs as he could not walk properly and that his head was hurting. The accused also gave evidence as to him being taken by the Police to the Hospital for medical treatment for the injury to his face.

Accused Jeffrey

The accused Jeffrey states that on his way home from security work at Club Vanuatu he saw Marcel surrounded by some six Solomon Islander men who were kicking Marcel to both his legs. He also gave evidence he heard Marcel call out for help. He in evidence stated that he walked towards the group and three men from the group ran away and three stood back and watched him. He gave evidence that he took hold of Marcel and walked him back away from the group towards Uncle Bills. Almost at Uncle Bills the accused gave evidence that he heard someone from behind shout "Fucking Vanuatu" and then felt someone (the deceased) jump on the back of Marcel and put his arm around Marcel's neck. This witness gives evidence that for three to four minutes he tried to separate them but without success. He then gave one kick to the side of the deceased (the accused gave evidence he was wearing rubber thongs). The accused then described how Marcel and the deceased fell to the ground and both trying to stand. He stated in evidence that Marcel got to his feet first and punched the deceased three times to the face and then stopped. In his evidence he stated that he wanted just to go home and stop the fighting between Marcel and the deceased. The accused also gave evidence of the injuries he observed to



Marcel's face and legs and in fact Marcel could not walk for about one week after the incident.

DISCUSSION ON EVIDENCE

It is agreed that an incident of assault occurred on 4 August 2007 at about 4.00am o'clock in the early part of the morning of that day. The assault took place outside the area belonging to club Vanuatu and a person died from injuries he sustained in the incident.

I find that Prosecution witnesses each saw only part of the total incident during the early hours of the 4th August 2007. It was 4.00am – 5.00am in the morning. It was dark at that time of the morning with some lights from the Uncle Bills side.

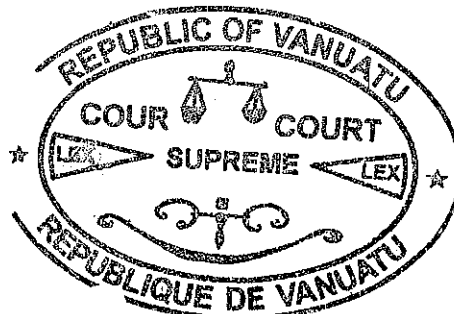
I find that many of the witnesses including the accused and the deceased were intoxicated. There are discrepancies in the Prosecution witnesses and they are apparent from the evidence.

The court has observed the demeanour of all the witnesses for the Prosecution and the Defence. Some part of prosecution witnesses evidence were truthful and other parts of prosecution evidence were too general and evasive.

Both the Accused gave honest and forthright evidence as to what really happened on the night and were not shaken in any material aspect of their evidence. On the facts both Defendants separately and at different instances assaulted the victim deceased as contained in their evidence.

The accused Marcel was subjected to six or seven assaults prior to being assaulted by the deceased person. These assaults being: The first assault by the Samoan; five or six assaults by the group of Solomon Islanders and lastly the assault by the deceased.

It is accepted that there were three separate assaults that occurred that night which involved the Defendant, Marcel. It is accepted that the court has heard varying accounts in evidence from the prosecution witnesses as to separate assaults but no one Prosecution witness gave evidence of having seen the three assaults as such.



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APPLICATION OF THE LAW TO THE FACTS

The two Defendants are charged with the offence of intentional assault on the body of another person under paragraph (d) of Section 107 Penal Code, which provides:

"INTENTIONAL ASSAULT

107. No person shall commit intentional assault on the body of another person;

Penalty:

(d) If the damage caused results in death, although the offender did not cause such death, imprisonment for 10 year".

The Defence from the outset raised the issues of self-defence and provocation. The burden of proof in disproving beyond reasonable doubt such pleas rests upon the Prosecution.

SELF-DEFENCE NECESSITY, PREVENTION OF OFFENCES ETC.

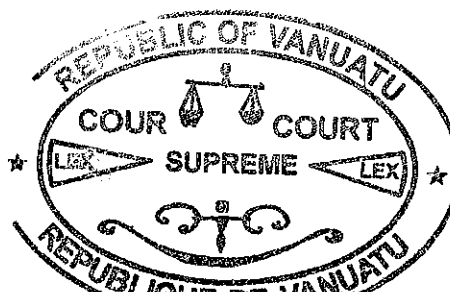
23. (1) No criminal responsibility shall attach to an act dictated by the immediate necessity of defence of the person acting or of another, or of any right of himself or another, against an unlawful action, provided that the means of defence be not disproportionate to the seriousness of the unlawful action threatened.

(2) Without prejudice to the generality thereof, subsection (1) shall apply to the intentional killing of another in defence of an attack causing a reasonable apprehension of death, grievous harm, rape or sodomy.

(3) No criminal responsibility shall attach to an act, not being an act to which subsection (1) applies, done in necessary protection of any right of property, in order to protect the person acting or another, or any property from a grave and imminent danger, provided that the means of protection used be not disproportionate to the severity of the harm threatened.

(4) No criminal responsibility shall attach to the use of such force as is reasonable in the circumstances for the purpose of-

(a) preventing the commission of an offence (not being an offence against the person acting); or



(b) effecting or assisting the lawful arrest of any offender or suspected offender or any person unlawfully at large.

PROVOCATION

27. (1) Criminal responsibility shall be diminished in the case of an offence immediately provoked by the unlawful act of another against the offender or, in his presence, his spouse, descendant, ascendant, brother, sister, master or servant, or any minor or incapable person in his charge, provided that the reaction constituting the offence be not disproportionate to the degree of provocation.

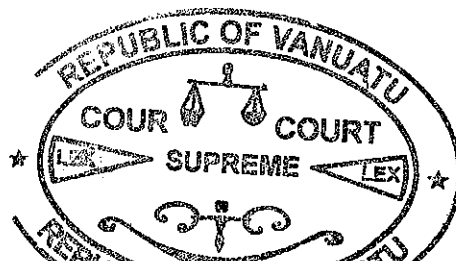
(2) Without prejudice to the generality of subsection (1), the intentional killing or wounding of another shall be deemed to be not disproportionate to provocation cause by violent blows or injuries.

(3) In order that criminal responsibility be diminished, provocation must be of such degree as to deprive a normal person of his self-control.

I find the combination of the assaults and the fact the victim felt on the tar road resulted in his death.

I consider the Public Prosecutor's submissions on the law in respect to the plea of self defence and the case of PP v Boe [2006] VUSC 41, criminal case no. 46 of 2004 (4 April 2006) referred to and relied upon by the Public Prosecutor and I am of the view that they would not assist the court in this case as the law on the plea of self defence is misapprehended and thus misapplied.

I, however, consider the Judgment of the English Court of Appeal in Palmer v [1971] AC 814 which was referred to the court by the Defence Counsel in his submissions and I accept and rely on it. I note that the Australian High Court decision in Zecevic v DPP (1987) 61 ALJR375 is also in line with Palmer decision. The appeal court in Palmer said that the simple question was whether the Defendant was acting in self-defence? If the prosecution satisfies the jury (here the Judge of fact) that the defendant was not, then any other issues of justification or excuse remain but not



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self-defence. An assertion that the use of force was considered subjectively necessary or reasonable would await issues in mitigation. The relevant part of the judgment is this:

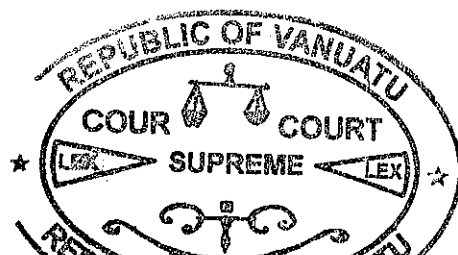
“It is both good law and good sense that the (accused) may do, but may only do what is reasonably necessary. But everything will depend on the particular facts and circumstances (of the case) ... the defence of self defence, where the evidence makes its raising possible, will only fail if the prosecution shows beyond reasonable doubt that what the accused did was not by way of self defence. (If this is shown by the prosecution) then the issue is eliminated from the case... The defence of self defence is either succeeds so as to result in an acquittal or is disproved in which case the defence is rejected.”

I now apply Palmer case in respect to each defendant. First, in respect to defendant Jeffrey: Was the kicking on the body of the victim deceased to separate and release Accused Marcel from the victim deceased within the conception of necessary self defence judged by the standards of common sence, bearing in mind the position of the Defendant Jeffrey lautu at the moment of the kicking, or was it the case of an angry retaliation or pure aggression on Defendant Jeffrey's part?

I find the Defendant Jeffrey lautu was acting in self defence of Defendant Marcel Manitok when Jeffrey kicked the deceased victim on his rip once. The kicking, on the facts and circumstances of this case, was a necessary self defence of Defendant Marcel who called for help, bearing in mind the position of Defendant Jeffrey lautu at the time of the kicking. I am satisfied that the Prosecution has failed to disprove the onus of the plea of self defence beyond reasonable doubt in respect to Defendant Jeffrey lautu.

Second, I ask the same question in respect to Defendant Marcel Manitok: were the repeated assaults (punches) on the head of the victim deceased when the victim deceased was laying on the tar road within the conception of necessary self defence judged by the standards of common sense bearing in mind the position of the Defendant Marcel Manitok at the moment of these assaults (punches), or were they angry retaliations or pure aggressions on Defendant Marcel's part?

After Marcel managed to release himself from the deceased and got himself up, the deceased victim was laying on the concrete tar road, Marcel bent himself over the



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head of the deceased victim, closed his fist firmly and repeatedly punched the head of the deceased with his hands. On the facts and circumstances of this case, the assaults (punches) on the head of the victim deceased were angry retaliations on Defendant Marcel's part. I find that the Defendant Marcel Manitok was not acting in self defence when he assaulted the victim at least three times on his head while the victim was laying on the tar road. I am satisfied that the prosecution has disproved beyond reasonable doubt that Defendant Marcel was not acting in self defence.

I, also find there is provocation by the victim deceased on the Defendant Marcel Manitok. However, I find the assaults (punches) by Marcel on the head of the victim while the deceased was laying on the tar road are disproportionate to the degree of provocation.

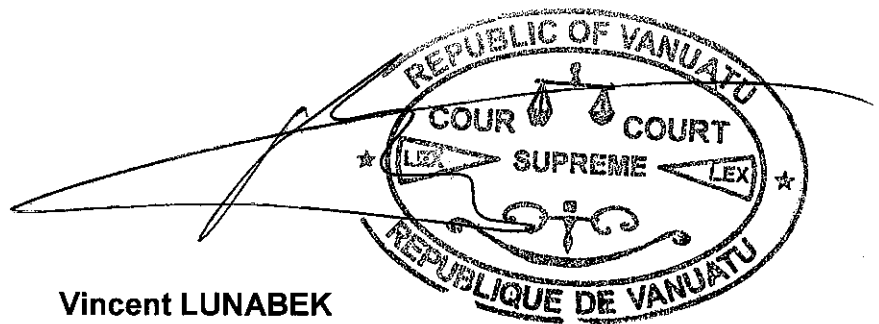
VERDICTS

I find the Defendant Marcel Manitok guilty of the offence of Intentional Assault causing death, contrary to Section 107(d) of the Penal Code Act [CAP.135].

I find the Defendant Jeffrey lautu not guilty of the offence of Intentional Assault, contrary to Section 107(d) of the Penal Code Act [CAP.135].

DATED at Port-Vila this 27th day of May 2008

BY THE COURT



**Vincent LUNABEK
Chief Justice**