

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

Criminal
Case No. 19/585 SC/CRML

PUBLIC PROSECUTOR

v

- 1. ANDREW CHARLEY**
- 2. JEFFREY IARUWEL**
- 3. IATIKA MALILANG**

Before: Justice Fatiaki

Appearance: L. Young for the State
H. Rantes for the Defendant

Date of Sentence: 14 June 2019

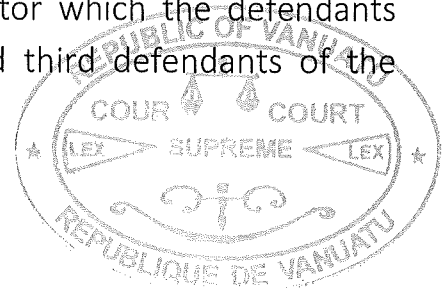
SENTENCE

1. The defendants were charged separately in the same Information dated 4 June 2019 as follows:

Count 1: - charged the first named defendant (Andrew Charley) with Intentional Assault Causing Permanent Damage to Sumak Saute's right eye contrary to Section 107(a) of the Penal Code; and

Counts 2 & 3 - separately charged the above-named second and third defendants with Intentional Assault Causing Temporary Damage to the body of Sumak Saute contrary to Section 107(b) of the Penal Code.

2. At their arraignment on 10 June 2019 only the second and third defendant appeared with their counsel. The first defendant did not appear. The second and third defendants pleaded guilty ("*i tru*") to their charges and, after brief facts were outlined by the prosecutor which the defendants admitted, the court convicted the second and third defendants of the



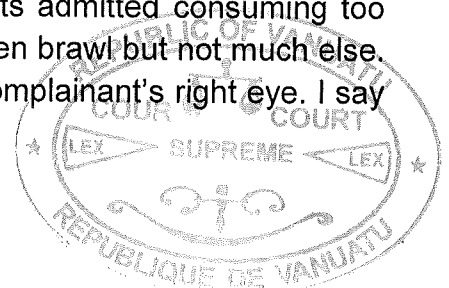
3. As for the first defendant despite his non-appearance, defence counsel asserted without opposition or demurrer, that the first defendant after his initial charge by the police was released on police bail and absconded soon after and has never appeared in the Magistrate's Court even during the Preliminary Inquiry that committed him for trial to the Supreme Court on 01 March 2019. Significantly, the first defendant's absence from Tanna is also noted in Bail "condition 5(d)" imposed by the committing magistrate. Plainly the first defendant was committed to the Supreme Court for trial in his absence.
4. Both counsel who appeared at the arraignment conceded that the first defendant's committal in the circumstances, was defective and a nullity and the charge against him in the Information was similarly affected and should be quashed and the matter returned to the Magistrate's Court for a fresh committal with the defendant present (see: Public Prosecutor v Tsiabong and 3 others [2012] VUSC 136 esp. paras. 11 to 20). So much then for introductory matters and the first defendant's case.
5. The brief facts admitted by the second and third defendants was that the complainant was with some others at Lounia Village nakamal when the three defendants arrived drunk and began abusing them. The defendants assaulted one of the group and as the complainant went to his assistance, the first defendant assaulted him in the right eye. The complainant immediately felt pain in his eye and had to travel to Santo Hospital for medical treatment.
6. The complainant's medical report from the Eye Department doctor confirmed the following findings and treatment:

"(the complainant's) vision was light perception examination revealed corneal laceration from 11 o'clock limbal margin to 7 o'clock limbal area and extending down toward the sclera, there was total hyphaema in the anterior chamber.

The laceration was repaired on 03 January 2018 and started on qutte aprofloxacin 2 hrly to qid, (the complainant) is recovering well.

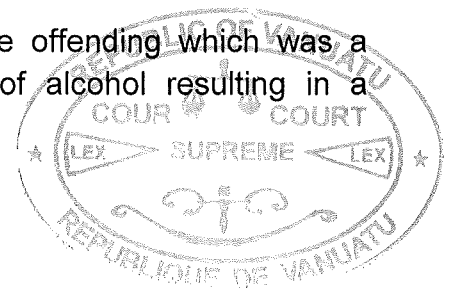
(The complainant's) visual prognosis is poor".

Unfortunately there was no visual representation or drawing of the injury but in layman's terms, the complainant sustained a deep cut on the cornea of his right eye with heavy bleeding into the front of the eye. The complainant has effectively lost sight in his right eye for the future.
7. Under caution both the second and third defendants admitted consuming too much alcoholic drinks and being involved in a drunken brawl but not much else. Both were unsure of who caused the injury to the complainant's right eye. I say



at once that voluntary intoxication is not a defence unless the intoxication is so gross as to deprive the defendant of the capacity to form the necessary criminal intention which is clearly not the situation of the defendants. I also accept that the prosecution has not charged either defendant with causing the permanent damage to the complainant's right eye. They will therefore be sentenced according to the lesser charge with which they are each convicted, namely, Intentional Assault Causing No Damage which carries a maximum penalty of imprisonment for 1 year.

8. The defendants' pre-sentence reports are similar in numerous respects. They are related as cousin brothers and both originate from Lounia Village in Middle Bush Area, Tanna. Both are in their early twenties, married with two children one attending kindergarten and the other staying at home. Both come from big families and both are sole providers and subsistence farmers. Both maintain good relations with their chief and community.
9. Specifically, **Jerry Iaruwel** never attended school and cannot read or write. He has skills in farming and earns cash from selling his produce at the market. **Latika Malilang** is more fortunate in having completed primary school up to Grade 5 English language and both have ambitions of improving their family's livelihood. Both are custom persons without any Christian religious affiliation.
10. Both told the probation officer that they were consuming alcohol when an argument erupted and a drunken brawl ensued involving the complainant. Both performed a substantial joint custom reconciliation ceremony to the complainant and his family who accepted their presentations which included the following items:
 - 8 stampa kava;
 - Some banana;
 - 4 pigs;
 - Blankets and calico material;
 - 1 cow;
 - 8 local fowl;
 - Woven traditional baskets.
11. Both defendants admitted their offending to the police and pleaded guilty at the earliest opportunity. Jeffrey Iaruwel is not a first offender having been convicted in 2015 for a dissimilar offence and received non-custodial community based sentences. Latika Malilang has never been in court before. Both are remorseful for their actions.
12. Having considered the narrow circumstances of the offending which was a drunken brawl fuelled by excessive consumption of alcohol resulting in a

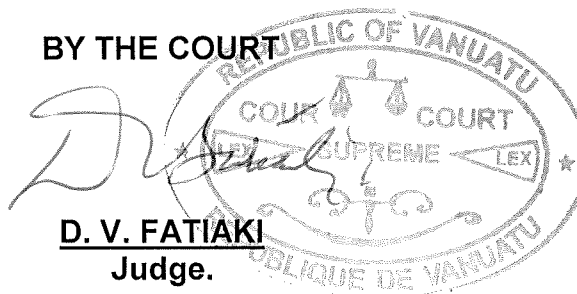


lowered ability to control themselves, I am satisfied that this is not an appropriate case for differentiating between the defendants or imposing a sentence of imprisonment on either defendant.

13. Accordingly, the sentence of the Court is that each defendant is ordered to serve a sentence of Supervision for 12 months with a special condition that they each refrain from the consumption of alcohol and undergo anger management counselling. Each defendant is further sentenced to perform 100 hours of Community Work. Both sentences are to be carried out under the direction and supervision of a probation officer.
14. Both defendants are warned that breach of a Supervision sentence or a Community Work order is itself an offence punishable by imprisonment not exceeding 3 months or a fine not exceeding VT10,000.
15. The defendants are advised that they can appeal this sentence if they disagree with it.

DATED at Isangel, Tanna, this 14th day of June, 2019.

BY THE COURT



D. V. FATIAKI
Judge.