

PUBLIC PROSECUTOR

v

TARI MALON HORY
Defendant

Date of Hearing: 30th June 2021
Date of Oral Verdict: 2nd July 2021
Date of Reasons: 7th July 2021
Before: Justice Oliver.A.Saksak
Counsel: Ms Micheline Tasso for the Public Prosecutor
Mr Andrew Bal for Defendant

REASONS FOR VERDICT

A. Introduction

1. The Court returned verdicts of not guilty on the defendant in respect of one charge of intentional assault and one charge of threats to kill on 2nd July 2021.
2. The charges were laid under section 107 (b) and section 115 of the Penal Code Act [CAP 135].
3. The Court now provides reasons for the verdicts.

B. The Law

4. Section 107 Intentional Assault

"107. Intentional assault

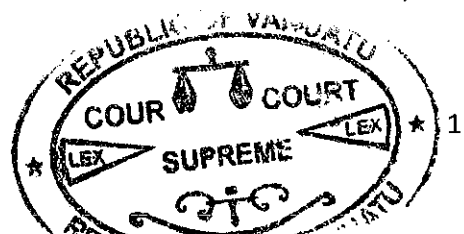
No person shall commit intentional assault on the body of another person.

Penalty : (a) if no physical damage is caused, imprisonment for 3 months;

(b) if damage of a temporary nature is caused, imprisonment for 1 year;

(c) if damage of a permanent nature is caused, imprisonment for 5 years;

(d) if the damage caused results in death, although the offender did not intend to cause such death, imprisonment for 10 years."



5. Section 115 threats to kill

"115. Threats to kill person

No person shall, knowing the contents thereof, directly or indirectly, cause any person to receive any oral or written threats to kill any person.

Penalty: Imprisonment for 15 years."

C. The Elements

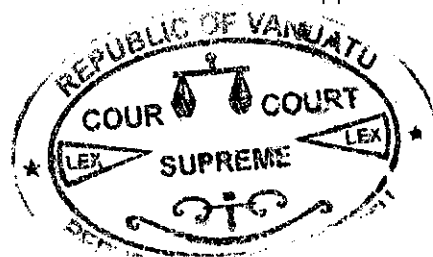
6. The elements to be proven by Prosecution under section 107 (b) of the Act were-
- (a) The defendant assaulted the complainant
 - (b) The assault was an intended act.
 - (c) The complainant sustained injuries on her body as a result of the assault.
 - (d) The injuries were of a temporary nature.
7. The elements for an offence of threats to kill to be proven by the Prosecutions were-
- (a) The defendant caused threats to the complainant.
 - (b) The threats were direct and verbal
 - (c) The defendant knew the contents of the threats.

D. Burden of Proof

8. By section 8 of the Act Prosecutions had the general burden of proof of the defendant's guilt on a high standard of proof beyond reasonable doubt.

E. The Evidence

9. Prosecutions relied on the evidence of Janet Matai, the complainant. In her evidence in chief she said on 1/1/21 she was at the Hibiscus Motel with the defendant to celebrate the New Year. She was in the room. She discovered the defendant was not in the room. She went out to find him. That was when he started to abuse her and assaulted her. Subsequently they left and went to Bladiniere Estates.
10. At the Bladiniere Estates the defendant's wife came out and started arguing with her. The complainant told her she did not go to argue with her but to see the defendant's parents and show them what the defendant had done to her at the Motel and how he was threatening her for the last 4 years of their relationship together.
11. She said the defendant was standing around. The defendant's wife took a stone and threw it at her. She threw a stone back at her. It was at this time she said the defendant assaulted her on her right rib and on her head. She fell down and the defendant threatened to kill her dead there. She felt really bad. Luckily the defendant's brother came and pushed her away and separated them. She then stopped a bus and went to the hospital.



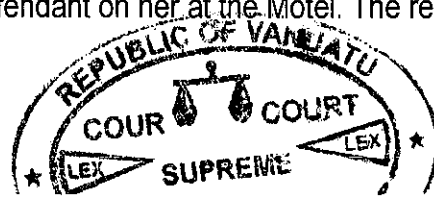
12. Prosecutions relied also on the admission statement of the defendant tendered by consent into evidence as Exhibit P2 and the Medical Report, Exhibit P1.

F. Defence Evidence

13. The defendant gave evidence on oath in his defence. He said on 31/01/21 he had planned with Janet Matai to spent the night at a motel next to the Hibiscus Motel, not the Hibiscus Motel. The plan was that they would meet at a kava nakamal by the Malasitapu church before going out for dinner. He went that evening to await Janet at the Nakamal at around 7:00pm. Janet did not arrive until after 9:00pm. When she arrived she carried a red hand bag with 2 bottles of wine in it. As their plan for dinner could not happen they went to a Chinese Store close by and he bought 7 bottles of Tusker Beer and some snacks. They then stopped a bus and asked to be dropped at Stade. They got off at the Round About. An argument started there subsequently ending with an assault which he admitted. He told her to go to hospital, Janet refused. She wanted to go and tell her parents at Bladiniere Estates what he'd done to her.
14. The defendant said Janet drank only wine and not beer. This made her drunk. She went to dance with the women of the motel. He went to drag her away. That was when arguments arose and assaults occurred.
15. At Bladiniere Estates upon arrival he went to tell his mistress he had come over with Janet who was outside. She went out and greeted Janet with "Good Morning". Janet did not respond so arguments flared up and they abused each other. He held his little boy in his hand. He threw a plastic of water at Janet but missed her. Then his brother Willie Hory came and intervned in the argument and took Janet to the road. He denied squeezing Janet's neck and kicking her on the ribs. He denied threatening to kill her dead.
16. Willie Hory, the defendant's brother gave evidence in support of the defendant. He said he was asleep in the early hours of the morning when the defendant and Janet arrived. He did not hear arguments. He was awakened by his ex-wife. He got up and approached Janet and the defendant's wife who were arguing. They were throwing objects at each other and being abusive. He separated the two and pushed Janet out of the yard telling her she had to leave. Janet was insistent on staying as she was drunk. He did not see any assault done by the defendant and did not hear any threats made by the defendant to Janet.

G. Discussion

17. First on the admission made by the defendant. That admission was in relation to the assaults at the motel next to the Hibiscus Motel. The admission did not relate to the threats and assault alleged against him at Bladiniere Estates.
18. Second, the medical report. The medical report is consistent and corresponds perfectly well with the assaults inflicted by the defendant on her at the Motel. The report



does not show or correspond to any alleged assault on her ribs or head inflicted on her at Bladiniere Estates.

19. The evidence of Willie Hory confirms the defendant's denial that no assaults or threats were made to the complainant by the defendant at Bladiniere Estates.

H. Credibility and Inconsistencies

20. On credibility, the Court believes the evidence of the defendant to be the truth. He gave a more complete and detailed story or account of how and where it all started. The complainant started her story at the Hibiscus Motel but she got it wrong. The defendant corrected that by saying it was the motel next to the Hibiscus Motel that they had stayed the night. The complainant said it was 1/1/21. The defendant started in the evening of 31/1/2021 and it started with a plan to meet at a kava nakamal next to the Malasitapu church. Janet said it was the defendant who bought the 2 bottles of wine. That was incorrect. She had bought the wine at the defendant's request. She said she had drank 2 cups of wine and 1 bottle of tusker beer. The defendant said she had drank only wine and beer that made her drunk and she went out to dance with the people. Only 2 bottles of beer were left over.
21. The only explanation for the complainant not telling the complete and detailed story of what occurred on 31/1/21 was that she was too drunk to remember it all.
22. I found her evidence to be inconsistent, not credible and therefore unreliable. I believed the evidence of the defendant instead as supported by the evidence of Willie Hory.
23. I therefore found no evidence of intentional assault and threats to kill. I was satisfied Prosecutions had not discharged its onus of proof of the defendant's guilt to the required standard.
24. For these reasons I returned verdicts of not guilty and dismissed the charges of intentional assault and threats to kill against the defendant

**DATED at Port Vila this 7th day of July 2021
BY THE COURT**

Oliver.A.Saksak
Judge

