

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

Criminal
Case No. 21/2727 SC/CRML

PUBLIC PROSECUTOR

v

JOE NAES LOUGHMAN

Date of Trial: 21 October 2021
Before: Justice V.M. Trief
In Attendance: Public Prosecutor – Mr C. Shem
Defendant – Mrs K. Karu
Date of Decision: 29 October 2021

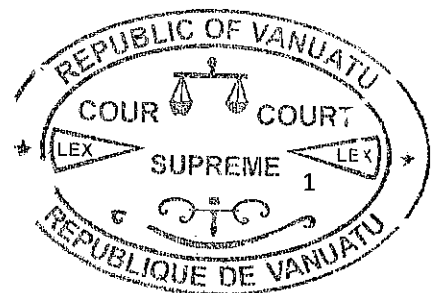
VERDICT

A. Introduction

1. The Defendant Joe Naes Loughman pleaded not guilty to one charge of threat to kill. After the trial, I retired to consider the verdict. This is the verdict.

B. Onus/Burden of Proof

2. The Prosecution had the onus of proof and was required to establish the allegations beyond reasonable doubt before a finding of guilt could be made.
3. Mr Loughman was not required to prove anything. He was entitled to not give or call evidence without any adverse inference arising.
4. Only admissible relevant evidence should be taken into account in determining the outcome of the trial. The Prosecution and defence witnesses have equal value, and each witness is to be considered on his/her own merits.
5. The Court is able to draw inferences which logically flow from other proven facts. Where there is no direct admission as to intention, the Prosecution must prove sufficient facts so that the requisite intention can be inferred.



6. I remind myself that adverse inferences are to be drawn only if they are the only available inference to be drawn. Further, if there is more than one inference available, the inference most favourable to Mr Loughman must be drawn.
7. Witnesses' demeanour was a small part of my assessment of the witnesses. I also looked for consistency within that witness' account; consistency with other witnesses' accounts; and considered the inherent likelihood, or not, of the witness' account.

C. The Charge

8. Mr Loughman is charged with threat to kill contrary to section 115 of the *Penal Code*:

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

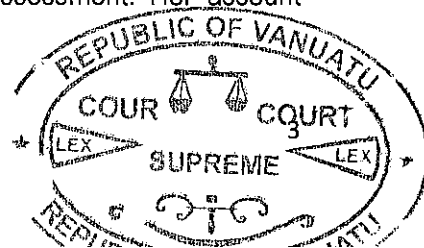
9. The elements, having regard to this case, of threat to kill are:
 - a. The defendant indirectly caused the complainant to receive an oral threat to kill her;
 - b. The defendant intended the complainant to receive the threat; and
 - c. The defendant intended that the threat would be taken seriously by the complainant.

D. Evidence

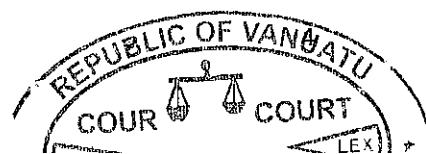
10. I heard from 3 Prosecution witnesses: Abel Riri, his wife Ruth Riri and their daughter the complainant Vanessa Riri. Mr Loughman elected to give evidence.
11. Abel Riri is 75 years old. He has a son Cedric and a daughter Vanessa.
12. On Saturday 29 June 2021 at night, around 9pm, Mr Riri, his wife Ruth Riri and some of their grandchildren were at their house at Ohlen area, Port Vila after they had returned home from a fundraising event. Mr Riri heard someone whistle and he went outside and stood in front of their door. Mr Loughman walked straight up to him and said, "I am the one, here for your daughter" ('Mi ia nao, mi kam from gel blo yu'). Then he asked where Vanessa was. Mr Riri told him he did not know where she was. Mr Loughman said to Mr Riri not to hide his daughter from him (Mr Loughman). He said that if he hid his daughter from him, that he would kill Vanessa, then kill her man from Ambae and then burn their house down.
13. Mr Riri and Mr Loughman stood very close to each other, within touching distance. Mr Riri smelt alcohol from Mr Loughman and observed him to be drunk. They spoke for about half an hour during which Mr Loughman said these things. Mrs Riri was inside the house while they were talking. Then Mr Riri told Mr Loughman that they would leave and they walked together to a kava bar ('nakamal'). Mr Riri put VT200 to buy kava for them but Mr Loughman did not want to, took VT100 and left.
14. Mr Riri went straight home and told his wife and their grandchildren that they must leave immediately to their house at Bladiniere Estate because he was scared that

Mr Loughman would do the things that he had said he would do. He wanted them to get away because their house at Ohlen is a timber house and if they did not and a fire happened, everyone would die.

15. When Vanessa came home, Mr Riri told her what Mr Loughman said. She too was immediately frightened. They left the house at Ohlen and went to their house at Bladiniere Estate.
16. Mr Riri confirmed in cross-examination that he did not know Mr Loughman before their meeting on 29 June 2021. He also learnt then that Mr Loughman was in a relationship with his daughter. It was put to Mr Riri that Mr Loughman did not make any threat that night. He denied that. He confirmed that Mr Loughman did not ask him to relay the message to Vanessa but as Vanessa's father, he had a right to tell his daughter.
17. It was put to Mr Riri that he was frightened by Mr Loughman because he was drunk and he had not known him before. Mr Riri stated that he was frightened by Mr Loughman saying that he would kill Vanessa and burn the house. That is what scared him. He confirmed that it was his own thinking to tell Vanessa what Mr Loughman had said and that they must leave the house and go to Bladiniere.
18. In re-examination, Mr Riri said that it was his own thinking to tell Vanessa because she is his daughter so he must tell her. He stated that if he hadn't told her and then a killing or house fire occurred, it would be too late.
19. I accepted Mr Riri as a truthful and accurate witness and accept his evidence. He gave his evidence clearly and was undeterred in cross-examination.
20. Ruth Riri is married to Abel Riri and is Vanessa's mother. She is 56 years old.
21. Mrs Riri came to know Mr Loughman from his coming to their house at night on 26 June 2021. She was inside the house and heard Mr Loughman whistle. She too came to stand with Mr Riri at the door of the house. She spoke but Mr Loughman told her to shut up or he would kill her and burn her house. This so frightened her that she didn't speak again after that. She was scared of Mr Loughman because of what he said, because he was drunk and because she is old. She could smell alcohol on Mr Loughman.
22. Mrs Riri stayed inside the house while her husband moved outside and spoke with Mr Loughman. She heard Mr Loughman tell Mr Riri what he said about killing and burning the house. They were frightened that Mr Loughman would kill them and burn their house so when Vanessa came home, they took her and all left the house at Ohlen to go to Bladiniere Estate.
23. Mrs Riri did not change her account in cross-examination. She confirmed twice that she heard what Mr Loughman said to her husband. She heard what he said to Mr Riri that he would kill and also burn their house.
24. Mrs Riri was also a truthful and accurate witness in my assessment. Her account remained constant, and it was consistent with that of Mr Riri.



25. Vanessa Riri is Mr and Mrs Riri's daughter. She is 28 years old. She already has children and is currently pregnant with Mr Loughman's child. Mr Loughman is her boyfriend. The father of her children is from Ambae and has left them.
26. When she returned from the fundraising event in the night of 29 June 2021, her parents told her that Mr Loughman told them that he would kill them if they did not allow her to be with him. He also told them that he would burn their house, he would kill Vanessa then would look for and kill her man from Ambae. She said that this scared her because Mr Loughman had previously threatened her with an axe and hit her. They all left for their house at Bladiniere. She went because she was scared by what Mr Loughman said and scared that he would do what he had said he would do.
27. In cross-examination, Ms Riri confirmed that she was not at home when Mr Loughman spoke to her parents. She repeated that they were all frightened by what Mr Loughman had said so they left for Bladiniere. She confirmed that she only heard the threats made on 29 June 2021 from her mother and father and that Mr Loughman had not told them to tell her what he had said. She agreed ('I stret') that there was no threat that Mr Loughman made against her. When asked in re-examination to explain why she had answered, 'I stret' to the last question in cross-examination, she said, "Yes, he did it!" ("Si, hemi mekem ia!").
28. I accepted that Ms Riri was a witness of truth. She was unshaken in cross-examination and her account was consistent with that of her parents, Mr and Mrs Riri. She did not receive a threat directly against her but was told by her parents that Mr Loughman threatened to kill her.
29. Mr Loughman. He is 35 years old. He is in a relationship with Ms Riri. She has 4 children and is pregnant with their child.
30. At 9pm on 26 June 2021, he was drunk and went to Vanessa's house. He whistled when he approached the house. Vanessa's parents opened the door. He asked where Vanessa was and told them that he was the one in a relationship with her. He and Mr Riri stood close to each other, face to face, and Mr Riri told him that Vanessa was out at a fundraising event. Then Mr Riri held his hand as he was very drunk and took him to the kava bar. Mr Riri said he would buy them kava but he (Mr Loughman) took VT100 and went home. He did not say anything else to Mr Riri.
31. In cross-examination, Mr Loughman agreed that he went to the house that night purposely to see Vanessa and that he was drunk. He confirmed that Mr Riri told him where Vanessa was so he knew she was not at home. He confirmed that Mrs Riri just stood at the door and could hear him and Mr Riri talking. He said that Mr and Mrs Riri lied about what he said. He denied that he was so drunk that he did not know some things that he did that night although he could not say with any specificity how long he was in the yard for. He denied that he was cross when he did not see Vanessa there. He agreed that the reason Mr Riri escorted him from the yard to the kava bar was because they did not want him to remain in their yard.
32. Mr Loughman's evidence was relatively brief, and when asked how long he had been in the yard, he said only for a small time. He said for 30 minutes or 15 minutes. He said



that he went to sleep at 8pm. Then no, not at 8pm but maybe 10pm. It was early. He seemed to be making up his evidence as he went along. There was credible and reliable evidence to the contrary of what he had testified that he did not say anything else to Mr Riri than what he had recounted. I determined that Mr Loughman was an unreliable witness.

E. Discussion

33. I accepted Mr and Mrs Riri's evidence. Their accounts were consistent with each other, and dove-tailed the evidence of Ms Riri.
34. I find it proved beyond a reasonable doubt that Mr Loughman indirectly caused the complainant to receive an oral threat to kill her.
35. The threat was made to the complainant's elderly parents in circumstances where Mr Loughman was under the influence of alcohol, and this was the first time for them to meet each other. Mr and Mrs Riri were immediately frightened by the threat. Mr Loughman clearly intended that they would take the threat seriously and relay the threat to the complainant.
36. I find it proved beyond a reasonable doubt that Mr Loughman intended the complainant to receive the threat.
37. Mr Loughman clearly knew the contents of his threat and by making it to the complainant's elderly parents, intended that it should be taken seriously by the complainant.
38. I was not concerned with having to decide whether Mr Loughman also threatened to kill Mrs Riri, and whether he had previously threatened to take an axe to Ms Riri as well as assault her. I consciously excluded those matters from my consideration of the evidence as highly prejudicial and not relevant to the charge before the Court.

F. Result

39. The Prosecution has proved Mr Loughman's guilt beyond a reasonable doubt.
40. Mr Loughman is convicted as charged.

**DATED at Port Vila this 29th day of October 2021
BY THE COURT**

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Justice Viran Molisa Trief

