

PUBLIC PROSECUTOR
v
LEONARD NEFTAHAL
COLLEN YET
PETER PAUL YET (also known as BOBBY YET)
JOSEPHO FRANK
ROMARICK LARKIN
ROWE YET
MORRIS YET
JAMES YET
JAMES YARSEL (absconded his bail conditions and went on RSE)

Coram: *Hon. Chief Justice V. Lunabek*

Counsel: *S Blessings for the State
RT Willie for the Defendants*

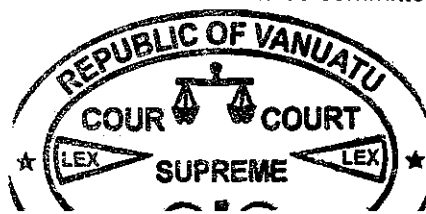
Dates of Trial: *31 May & 1 June 2023*

Date of Reasons for Verdict: *2 June 2023*

REASONS FOR VERDICT

A. Introduction

1. The above-named Defendants: Leonard Neftahal, Collen Yet, Peter Paul Yet (also known as Bobby Yet), Josepho Frank, Romarick Larkin, Rowe Yet, Morris Yet, James Yet were charged with two counts of unlawful assembly (counts 1 and 2), two counts of riots (counts 3 and 4), one count of malicious damage to property (count 5), one count of theft (count 6), one count of arson (count 7) and one count of escaping lawful custody (count 8), contrary to respective provisions of Penal Code as charged against each and all defendants in the Information (Amended) dated 26 May 2023.
2. On 30 May 2023, each defendant entered guilty pleas to the following offences: one count of unlawful assembly (count 1), one count of riot (count 3), one count of malicious damage to property (count 5) and, those offences were said to be committed on 18 September 2021



at Port-Olry–Cape de Queiroz. The following six (6) defendants: Josepho Frank, Romarick Larkin, Rowe Yet, Morris Yet, James Yet and James Yarsel pleaded guilty to one count of escaping lawful custody (count 8) on 30 September 2021 at Luganville, Santo.

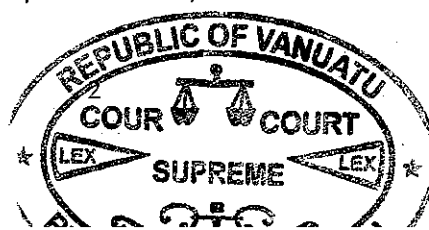
3. On 30 May 2023, each defendant entered not guilty pleas in respect to one count of unlawful assembly (count 2), one count of riot (count 4), one count of theft (count 6), one count of arson (count 7). The three (3) defendants, namely, Leonard Neftahal, Collen Yet and Peter Paul Yet (also known as Bobby Yet) pleaded not guilty to one count of escaping lawful custody (count 8).
4. The respective offence of unlawful assembly (count 2), riot (count 4), theft (count 6) is dismissed in respect to each defendant and; the offence of escaping lawful custody is dismissed in respect to the three defendants (Leonard Neftahal, Collen Yet and Peter Paul Yet (also known as Bobby Yet)) on the basis of the prosecution's application to offer no evidence pursuant to section 29 of Criminal Procedure Code (CPC) [CAP 136].
5. The sentences of the defendants relating to the charges they entered guilty pleas are adjourned pending the outcome of the trial.

B. A Criminal Trial is required

6. The prosecution only proceeded with a trial in relation to the offence of arson (count 7), contrary to section 134 (1) of Penal Code. The particulars are that on 18 September 2021 each and all above-named defendants committed the offence of arson in that they willfully and unlawfully set fire to the house they knew belonged to Tarat Lal Weh at Port -Olry -Cape de Queiroz in the Republic of Vanuatu.
7. A two-day trial is scheduled commencing on Wednesday 31 May 2023 at 9:00am. Before the beginning of the prosecution case, the right of the defendants of the presumption of innocence was read and explained to each of them. They understood their rights which is under Section 81 of the Criminal Procedure Code (CPC).

C. Elements of offence to be proved, onus and standard of proof

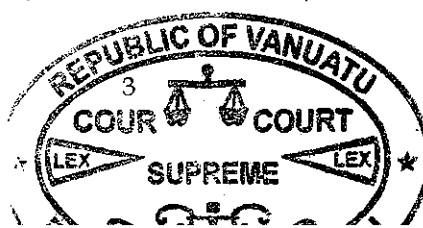
8. The elements of the offence that the prosecution has to prove beyond a reasonable doubt are these:
 - (i) That on 18 September 2021, the defendants set fire on the properties of Tarat Lal Weh at Port -Olry – Cape de Queiroz;



- (ii) That on 18 September 2021, the defendants set fire to the properties willfully and unlawfully;
 - (iii) That the defendants knew that the properties (house and kitchen) belong to another person, and here they belong to Mr Tarat Lal Weh.
9. As this is a criminal trial, the prosecution has the burden to prove each and all essential elements of that offence on the standard of beyond reasonable doubt. The defendants did not have to prove their innocence. If, at the end of the trial, there is a reasonable doubt in respect to any defendant or all of them, I must acquit any or all of them of that charge. If the defendants give evidence or call witnesses, I must assess their respective evidence in the like manner as I will do for the prosecutions.

D. Prosecution case

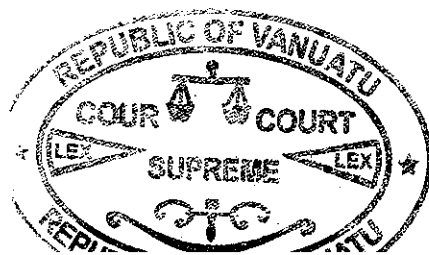
10. The prosecution will call six (6) witnesses. The prosecution case is that a dispute arose out between Mathew Warsal and the defendants. The dispute was triggered by a statement made by Mathew towards the Defendants to the effect that "*the defendants to stop using the seashore as a public toilet*". As a result, the prosecution says, the defendants were not happy of that and on 18 September 2021, they assembled together went and confronted Mathew Warsal in the morning while he was at his copra bed. Then, the defendants went to Reginald Palo at his house, and they chased him to kill him. They could not catch him. They drove towards Tarat Lal's house at Cap de Queiroz, a close relative of Mathew Warsal and Reginald Palo.
11. The prosecution witnesses will give evidence and say that at the time of the incident, they saw all the defendants in two (2) vehicles (a white bongo camion and a red Toyota Hilux double cabin. These two vehicles belong to Collin Yet. They used the two vehicles when they confronted Mathew Warsal and when they chased Reginald Palo.
12. They went to Loic Ravor's shop, on their way to Cap de Queiroz, and purchased a container of benzene. Defendant Josepho Frank went to purchase benzene in Mr Loic Ravor's shop.
13. The prosecution said, then, the defendants went to Cap de Queiroz and Tarat Lal's house and kitchen were burnt.
14. The witness will say at Cape de Queiroz, there were no vehicle. These two vehicles were the only vehicles seen at Cape de Queiroz on 18 September 2021.



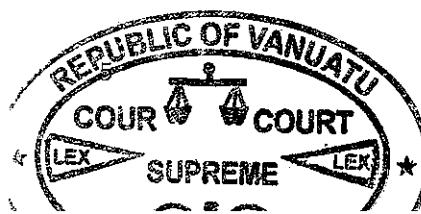
15. The prosecution said they will rely on the circumstantial evidence to prove the case against the defendants.

E. Prosecution's evidence

16. Mathew Warsal is the first prosecution witness. He is 48 years old. He lives at Port-Olry Village. To go from Port-Olry to Cape de Queiroz, 45 minutes or 1 hour is required because of the bad conditions of the road. He was in the main village of Port-Olry on 17 September 2021, he saw one of the sons of Collin Yet (Yetni Yet) went to the seashore and used it as toilet. He said he reprimanded and stopped Yetni Yet not to use the seashore as public toilet. He said the seashore is a public place. Yetni Yet swore at him saying "*you fuckem papa blo yu*". Yetni Yet ran to his house and came back at the seashore with a red Toyota Hilus and swore at him again. Mathew said he followed him on the road. Yetni Yet went to his house, took an axe and wanted to cut him with that axe when Mathew was on the main road. Yetni Yet swore at him again. Mathew went to his truck and drove off to his house.
17. The next day on 18 September 2021, Mathew was doing some fencing at his copra bed when Collen Yet and other defendants came with the white bongo camion. They came and confronted him with knives and sticks (wooden coffee). Collen Yet told him: "*you ia nao*". Mathew told him and others that they should not use the seashore as toilet place. The seashore is a public place. Bobby Yet swore at him.
18. Then Mathew's sister, Mathilde Rourecq, came as her house is close to Mathew's copra bed and because she heard the talking. Bobby yet swore at Mathew again with his sister: "*you fuckem sister blong you we istap close up long you*". The defendants went back to the white bongo camion and left.
19. Mathew Warsal was cross-examined. He confirmed his evidence he talked to Yetni Yet on 17 September 2021 at Port-Olry. He confirmed that on 18 September 2021, the defendants confronted him at his copra bed, and they returned to Port- Olry village.
20. Reginald Palo is the second prosecution witness. He is 30 years old. He lives at Port-Olry. He lives also at Cape de Queiroz, and when his children attend school, he returns to live at Port -Olry.
21. On 18 September 2021, in the morning at about 7 – 8:00am, a white bongo camion and a red Toyota Hilux double cabin came to his house.



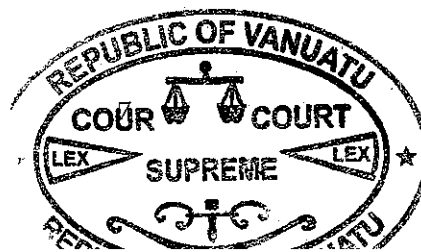
22. He recognized and identified defendants Leonard Neftahal, Collin Yet, Bobby Yet, Josepho Frank, Rowe Yet, Yetni Yet, James Yet, James Yarsel, Romarick Larkin and others. They came and chased him at his house. He run off and they could not catch him.
23. There is no vehicle at Cape de Queiroz. The two vehicles he saw were Collin Yet's vehicles.
24. Reginald Palo was cross-examined. On 17 September 2021, he went to the seashore and met Mathew Warsal. He was with Mathew Warsal when Mathew told Yetni Yet not to use the seashore as a toilet place. At that time, he went to collect dried coconuts for his pigs. He confirmed his evidence that on 18 September 2021, the defendants he mentioned their names came to his house and chased him.
25. He was taken to Cape de Queiroz, and he said there were different people living at Cape de Queiroz.
26. He was asked and he said he did not know that Collin Yet has a land at Cape de Queiroz. He said after the defendants chased him; he saw they left. He did not know there they off to.
27. Loic Ravor is the third prosecution's witness. He is 50 years old. He is from Port -Olry. He works as a shop keeper in his own shop, and he started that shop in or about 2005 in the main village of Port -Olry.
28. On 18 September 2021 he was working in his shop, about 8:00am in the morning, a red Toyota Hilux came and stopped on the road. Defendant Josepho Frank came to his shop with one liter plastic bottle and purchased benzene in that 1 litter plastic. He said in his experience as a shop keeper, Toyota Hilux used mazut not benzene.
29. He was cross-examined. He knew Josepho Frank. He knew very well of Josepho Frank's father. His father owns a sawmill. He also worked for a short time at Josepho Frank's father's sawmill. Josepho Frank's father used to purchase benzene from his shop but in big quantity. He did not know why Josepho Frank purchased the benzene of 1 liter bottle. He did not know where they went after the purchase of the benzene in his shop.
30. Loic was re-examined. He confirmed that every time Josepho Frank's father purchased benzene, he purchases it in big quantity for the sawmill.
31. Rachelle Lal is the fourth prosecution's witness. She is 70 years old. She lives at Cape de Queiroz. Tarat Lal Weh is her husband. She has a house and a kitchen with her husband at Cape de Queiroz.
32. Reginald Palo is her grandson and Mathew Warsal is her brother.



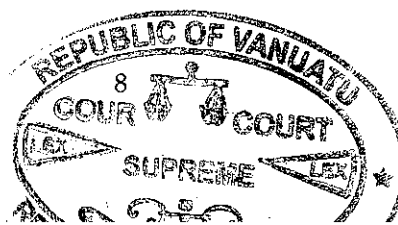
33. On 18 September 2021, she was at Cape de Queiroz. She was at the seashore doing some laundry with her daughter Marina Silas. She heard the noises of the engine of two (2) trucks.
34. She run to her house. When she arrived, she saw her house was burning. The seashore is not far away from her house. The main road is close to her house. She did not finish washing. She heard the vehicles coming, she heard the noises of broken things and she described as "*mi harem ol samting oli fire up long house*".
35. When she went to her house she stopped at a place where they killed a pig. It is near the house about 10 – 15 meters. She saw her house was burning. Then she saw these people run and went into the vehicles. She saw the red vehicle took off first. The red vehicle was the red Toyota Hilux double cabin. These people were these in court, they are the group of Collin Yet. She recognized and identified the vehicles as Collin Yet's.
36. She looks at the defendants and said she knew they are Collin Yet's group.
37. Her house was a big house and a kitchen. She built the house with her husband. The defendants did not own the house and the kitchen. The house and the kitchen were burnt on 18 September 2021 at 9:00am o'clock.
38. On 18 September 2021 she was in Cape de Queiroz, no other vehicles came there. There were no other problems apart from these made by the defendants. No one at Cape de Queiroz has a vehicle.
39. Rachelle Lal was cross-examined. She was asked and she denied she lived on Mark Ati's land. She denied she lived on a land close to Collin Yet's land. She said they claimed the land Collin Yet said his. That land was near the land she lives on. She denied the dispute over the land was resolved as they filed an appeal against the village court's decision. Collin Yet obtained a green certificate on a land which is not his land.
40. She denied she locked the chain at the gate of that land Collin Yet claimed to be his. She said the land is not Collin Yet's land.
41. When she was standing at the place they killed the pig, the house was burning. She saw the defendants went to their vehicles and left. They returned back to Port -Oly. She maintained her evidence that the defendants burnt the house. Reginald Palo lives on the land Collin Yet claimed to be his. She said the land is not Collin Yet's land. Reginald Palo lives in that land. He has also a house at Port -Oly. She was asked she said Reginald Palo's house was damaged by the defendants but it was not burnt.



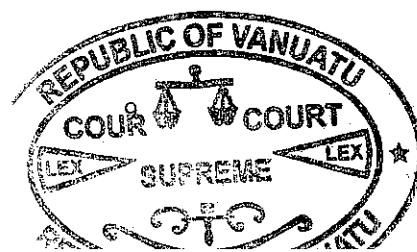
42. Marina Silas was the next prosecution witness. She is 36 years old. She lives at Port -Olry Cape de Queiroz.
43. On 18 September 2021, she was at the seashore with her mother doing laundry. They heard noises of vehicles. She run towards the house. She saw two (2) houses were burnt. She saw two (2) vehicles, the white and red vehicles. The two vehicles were Collen Yet's vehicles.
44. She was at the seashore; she heard the noise of the vehicles and the noise of what was destroyed by the fire. She ran and the houses were burning. She stopped at a lemon tree. When she arrived, she saw the defendants went into the two vehicles and then left. She recognized the defendants who jumped into the vehicles. She recognized Collen Yet, Bobby Yet, Row Yet, Morris Yet, Leonard Neftahal, James Yet, James Yarsel, Josepho Frank, John Stoven Yet, Luciano Larkin, Kiki Larkin, Robert. She knew them.
45. She knew Leonard Neftahal and identified him as defendant 1 in the row they are in the court. She identified Collin Yet as their leader. He is defendant 2 in the row. Bobby Yet is defendant 3 in the row. Josepho Frank is defendant 4 in the row. Romarick Larkin is the defendant who was travelling (RSE). Rowe Yet is defendant 6 in the row. Morris Yet is defendant 7 in the row. James Yet is the last defendant in the row.
46. On 18 September 2021, she saw the white bongo camion and the red Toyota Hilux double cabin at Cape de Queiroz, and apart from these two vehicles no other vehicles came at Cape de Queiroz on that date. There was no other person doing any other problem at Cape de Queiroz on 18 September 2021, apart from the group of Collin Yet. The house and the kitchen that were burnt on 18 September 2021 belonged to her father and mother.
47. Marina Silas was cross-examined. On 18 September 2021, she did not see who set fire on the houses. She saw the defendants went into the vehicles and returned back to Port -Olry. She confirmed her evidence. She knew them and recognized them. She said she made her police statement in her family name Marina Rorgor.
48. She was questioned about her statement to the police when she stated: "*Mi ron igo mi look 1 white truck mo 1 red double cabin. Mi look plenty man. Me no look save one*". She accepted she made that statement. She said she saw them. It was put to her she made up her evidence in court. She said "*hemi true oli burnem house*". She was also challenged on her evidence that the fire was set on the houses at 9:00am o'clock. She did not have a hand watch but she had her mobile phone.
49. In her re-examination, she said the police wrote her statement.



50. The last prosecution witness was Tarat Lal Weh. He is 72 years old. He lives at Cape de Queiroz. He lives at Cape de Queiroz for about 70 years. His father took him there.
51. He is the grandfather of Reginald Palo and Mathew Warsal is his brother-in-law.
52. On 18 September 2021, in the morning, he went to the garden while his wife and daughter were doing some washing. His garden was a bit far. He heard the noise of the things "oli fire up" so he walked back towards his house. When he arrived, he saw the smoke on his house and started to run, and he saw the fire burning his house. He could not save anything more from the house. The fire was too strong. His house and kitchen were burnt down.
53. On 18 September 2021, when he was watching the fire that damaged his house, he said only Prosper came to him. He told Prosper that he did not see who set the fire at his house.
54. He said two (2) days after the burning of his house, on 20 September 2021, he and his family were in a rotten house, they saw the two vehicles of Collin Yet, Collin Yet and his group were in the two vehicles, they drove and came to them at Cape de Queiroz.
55. The two (2) vehicles were the white bongo camion and the red truck. When Collin Yet and his group arrived, Tarat Lal said, they pointed gun to them and they told them: "*yufala ino go yet, mifala ibonem house blong yufala vinis. Bae mifala igo mo came back sipos youfala inogo yet bae youfala iswim long sitsit blo youfala long place ia*".
56. He said those in the vehicles made that statement to them. The two vehicles were Collen Yet's vehicles. At Cape de Queiroz, no one has a vehicle.
57. The house and the kitchen that were destroyed by the fire were his. The defendants did not help him to build the house and the kitchen.
58. When he saw the defendants on 20 September 2021 at 3:00pm, he said he had just seen them when they were grown up. He knew them by names. He did not know them. He questioned why they burnt his house; he did not make any trouble.
59. Tarat Lal was cross-examined. He confirmed his house and kitchen were made of thatched (natangura). He was asked and he replied a small amount of fire could light a thatched house but if the group of the defendants did not come, his house will not be burnt. The first destroyed his house and as he said "*every something plates, spoon ...*".
60. He was asked about the green certificate, he said he did not agree with the green certificate, he was not coming to court to talk about the ground (land). He gave his evidence about the house.



61. He was asked if he was still angry with Collin Yet and his family. He replied, "*oli bonem house blong me. Mi harem nogud. Ol thing blong mi oli lus*".
62. He was not happy that Collin Yet got the green certificate while his appeal against the decision of the custom court was pending for hearing.
63. He did not see who set fire at his house. He heard noises of the things they cut like plates. The house was burnt down.
64. He was asked again he did not see the defendants burning his house. He replied "*mi no look be olgeta italem se olgeta ibonem house*".
65. He was asked about Prosper, he confirmed he saw Prosper and Prosper told him he saw the two vehicles of those who came.
66. He denied the hypothesis that Prosper burnt the house. He said he was already at home when Prosper told him that the defendants came with their two vehicles the white camion and the red truck and they left. He denied Prosper damaged his house. He repeated Prosper had just confirmed to him that he (Prosper) saw the two vehicles and those who came with the vehicles. He denied any other person set fire at his house.
67. He was asked the only reason he said the defendants set fire at his house was because he was angry, they had a certificate on the land. He replied to the effect that Collen Yet has a green certificate on the land despite his appeal against the decision of the custom court and his appeal is still pending. He said he was not angry with them because they went and obtained the green certificate which he claimed to be wrong because his appeal on the decision they had is still pending.
68. He was asked and he confirmed his evidence that on 20 September 2021, Collen Yet and his group came at Cape de Queiroz. They pointed the gun at them; and they threatened them to the effect - they are still there, they did not go yet, they have already burnt their houses; they will go and return, and if they did see them again there "*bae youfala iswim long sitsit blo youfala*".
69. The defendants were talking to them. The camion vehicle was full of people and the red vehicle too was full of people.
70. He was asked, he accepted that to go in the land Collen Yet got the certificate, the road passes through their house. But that land is not Collen's land.



F. Application of Section 164(1) and Rights under section 88 both of CPC [CAP 136]

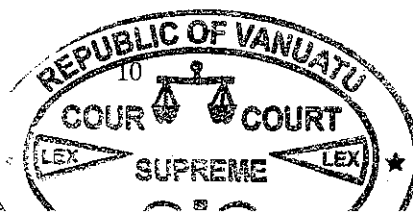
71. At the end of the prosecution's evidence, the court made a ruling that there is a prima facie case made out against each and all the defendants. Each defendant is required to put forward his defence (section 164(1) of CPC).
72. Section 88 of the CPC was read and explained to each defendant. Each defendant understood his rights under section 88.
73. Each defendant decides to exercise his right to remain silent. Each defendant should not be criticized of doing so.
74. That is the end of the evidence and trial.

G. Discussion on evidence

75. Before assessing the evidence in the trial, I need to set out the facts that are agreed and admitted by the parties as conclusive evidence in this trial based on the Formal admission by the parties on 31 May 2023 in accordance with section 84 (1) of the CPC [CAP 136]: -

H. Agreed Facts

- (i) That the defendants reside in Port -Olry on the East Coast of Santo;
- (ii) That the complainants also reside at Port -Olry- Cape de Queiroz;
- (iii) That the defendants assembled on 18 September 2021 at Cape de Queiroz on the East Coast of Santo with intent to commit offences;
- (iv) That on 18 September 2021, their conduct caused the complainants to and nearby persons to fear that they will commit a breach of the peace;
- (v) That on 18 September 2021, the defendants executed the purposes for which they assembled;
- (vi) That on 18 September 2021, they damaged a water tank belonging to Mr Rovea Lal Weh;
- (vii) That on 18 September 2021, the home and kitchen of Mr Tarat Lal Weh were burnt down;

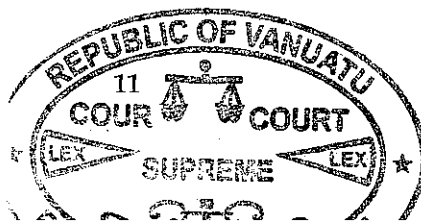


(viii) That the following items were destroyed by the fire together with the houses inter alia:

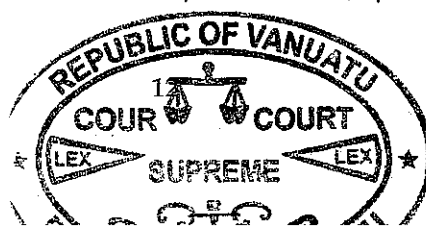
- (a) 1 solar TV screen;
- (b) 1 solar panel;
- (c) 1 role wire;
- (d) Cash money (notes) in the amount of VT1,000,000;
- (e) Other cash money;
- (f) 2 bags cocoa (copra bag);
- (g) 1 chainsaw;
- (h) Clothes;
- (i) 1 carton tuna;
- (j) 5 packets of torch;
- (k) Battery;
- (l) 40 cracker packet biscuits

I. Findings

76. The following defendants, were seen and identified at Cape de Queiroz, on 18 September 2021: Collen Yet, Bobby Yet, Leonard Neftahal, Josepho Frank, Rowe Yet, Morris Yet, James Yet (evidence of Marina Silas). Marina said Romarick Larkin is one of the defendants who travelled overseas on RSE schemes. Marina Silas was mistaken as defendant Romarick Larkin was present in court. Defendant James Yarsel was the one who absconded his bail conditions and travelled overseas on RSE Schemes.
77. Defendant Romarick Larkin is one of the defendants who accepted and admitted he was present with the other defendants when they committed the offences of unlawful assembly, riots and damaged the water tank of Rovea Lal Weh on 18 September 2021 at Cape de Queiroz.
78. Marina's mistake on the name of Romarick Larkin has no consequence on the presence of defendant Romarick Larkin with other defendants that Marina identified them to be present while the houses (sleeping house and kitchen) of Tarat Lal Weh were burnt down at Cape de Queiroz on 18 September 2021 in the morning at 9.00 am o'clock.
79. The evidence that the Court accepted was overwhelmingly against each and all the defendants that they were present at Cape de Queiroz on 18 September 2021. Each and all defendants were identified in the vicinity of the houses of Tarat Lal Weh which were burning with smoke and flames. They were seen running and jumping into the White Bongo camion and the Red Toyota Hilux double cabin and left. They returned back to Port-Orly.

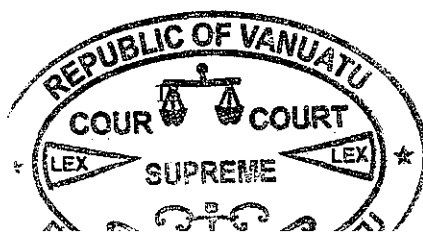


80. There is evidence which pointed to the fact that Collen Yet is the leader of the defendants.
81. There is evidence that on 18 September 2021, on their way from Port-Orly to Cape de Queiroz, the Red Toyota Hilux stopped and defendant Josepho Frank purchased benzene in one liter plastic at Loic Ravor's shop.
82. The evidence is also that the white Bongo camion and the red Toyota Hilux double cabin Hilux belong to Collen Yet. The two vehicles do not use benzene but mazut to run or operate.
83. There is also evidence that, Josepho Frank's father regularly purchased benzene at Loic's shop but in big quantities for his sawmill. The purchase of 1 liter plastic by Josepho Frank on 18 September 2021 on his and other defendants' way to Cape de Queiroz to commit the offences of unlawful entry (count 1), riot (count 3) and malicious damage to property (count 5) belonging to others, could not be used for the sawmill as the sawmill will require a very large quantity than just 1 liter of benzene.
84. The Court accepted that at Cape de Queiroz, there were no vehicles there. The only two vehicles seen and identified on 18 September 2021 were the two vehicles belonging to Collen Yet (the White Bongo camion and the Red Toyota Hilux double cabin). The offences referred to above were committed, and the two vehicles were also seen at the vicinity of the houses that were burning and all the defendants were seen running towards the two vehicles and left for Port -Olry while the house and kitchen were burning.
85. The evidence is also that two (2) days after the burning of the house and kitchen of Tarat Lal Weh at Cape de Queiroz, on 20 September 2021, defendant Collen Yet and other defendants came back to Mr. Tarat Lal Weh and his family at Cape de Queiroz, while they were trying to repair a rotten house they temporarily occupied after the destruction of their houses by the fire on 18 September 2021. The defendants came back to Mr. Tarat Lal and his family at Cape de Queiroz with the two vehicles of Collen Yet. There, the defendants pointed a gun at Mr. Tarat Lal and his family and threatened them to the following effect – *"Youfala ino go yet, mifala ibonem house blong youfala vinis. Bae mifala igo mo come back sipos youfala ino go yet bae youfala iswim long sitsit blong yufala long place ia"* (evidence of Tarat Lal Weh). This evidence is not challenged in the cross examination of Mr. Tarat Lal Weh. Collen Yet was identified with his group on 20 September 2021 at Mr. Tarat Lal Weh's temporary house at Cape de Queiroz. Collen Yet and each of the other defendants were seen and identified in the vicinity of Mr. Tarat Lal Weh's house which were burning at Cape de Queiroz in the morning on 18 September 2021. It is accepted by the court.
86. The court accepted the evidence that there was no person or individual who committed the offences at Cape de Queiroz on 18 September 2021, apart from the defendants, and apart



from the fact that they were seen in the vicinity of the houses that were burning and they were running and jumping into the two vehicles of Collen Yet and drove off back to the main village of Port-Orly.

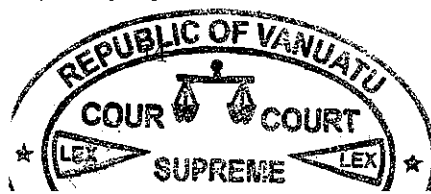
87. I accept the evidence of Tarat Lal Weh that he was not happy that Collen Yet obtained a green certificate while his appeal against the decision of the custom court in favour of Collen Yet was still pending for hearing.
88. I also accept the evidence of Mr. Tarat Lal Weh that Prosper did not set fire on his houses as Mr. Tarat Lal explained that he was already at home, watching the hot flames of the fire destroying his houses and when Prosper came to him and told him that he had seen the two vehicles of those who came.
89. I reject the hypothesis that Prosper set fire on Mr. Tarat Lal Weh's big sleeping house and kitchen on 18 September 2021, as unlikely inference, far outweighed because the defendants were present at Cape de Queiroz on 18 September 2021, they were seen and identified there after one of them (Josepho Frank) had purchased 1 liter benzene less than 1 hour ago, they were seen in the vicinity of the houses of Mr. Tarat Lal Weh which were burning. It is rational to infer that the defendants used the benzene to set fire on the house and kitchen of Mr. Tarat Lal Weh. The defendants were seen running away and jumping into the white Bongo camion and the red Toyota Hilux of Collen Yet, parked on the road there, which were in the vicinity of the burning houses.
90. This finding is also supported by the admission of the defendants that on 18 September 2021, they committed the offences of unlawful assembly, riot and damaged the property (water tank) at Cape de Queiroz belonging to Rovea Lal Weh, a very close relative of Mr. Tarat Lal Weh and his family on that same date of 18 September 2021 in the morning. Mr. Tarat Lal Weh's sleeping house and kitchen were set on fire in the morning of 18 September 2021 too at around 9.00 am o'clock.
91. This finding is further supported by the evidence of Tarat Lal Weh that on 20 September 2021, two (2) days after the destruction of the house and the kitchen by fire, Collen Yet and other defendants came back to Mr. Tarat Lal Weh and his family at Cape de Queiroz with the two vehicles, they threatened Mr. Tarat Lal Weh and his family with a gun to the effect that they were still there, they did not leave yet, they (defendants) have already set fire on their houses, they will go and come back and if Mr. Tarat Lal Weh and his family were still there, they will cause them to be covered with their wastes. The effect of the evidence of 20 September 2021 was that Collen Yet and his group of defendants were identified of setting the fire on the house and kitchen of Mr. Tarat Lal Weh on 18 September 2021 at Cape de Queiroz in the morning at about 9.00 am o'clock in the morning.



92. Each and all of the eight defendants were acting in concert in pursuit of a common design or joint enterprise, namely as participants in the unlawful assembly, riot, malicious damage to property of Rovea Lal Weh and set fire on the house and kitchen of Mr. Tarat Lal Weh at Cape de Queiroz to force Mr. Tarat Lal Weh and his family to leave the land Collen Yet and his family claimed to be theirs, and /or to ease the access of that land by Collen Yet and his family. The evidence leaves no real doubt that the plan was a carefully executed one, and it was plainly open to me as a judge of fact to find on the evidence that each and all eight defendants were knowing participants in that plan.
93. The doctrine of common purpose has been considered in the case of Public Prosecutor v Kilman and others [1997] VUSC 21; Criminal case No. 006 of 1997 (23 July 1997) and, on appeal in Kilman v Public Prosecutor [1997] VUCA 9; Criminal Appeal case 02 of 1997 (21 October 1997). There, the Court of Appeal considered the decision by the High Court of Australia in *McAuliffe v The Queen* [1995] HCA 37; (1995) 183 CLR 108; 130 ALR 26. The High Court, in a joint judgment, said at CLR 113-114; ALR 29-30:

*"The doctrine of common purpose applies where a venture is undertaken by more than one person acting in concert in pursuit of a common criminal design. Such a venture may be described as a joint criminal enterprise. Those terms - common purpose, common design, concert, joint criminal enterprise - are used more or less interchangeably to invoke the doctrine which provides a means, often an additional means, of establishing the complicity of a secondary party in the commission of a crime. The liability which attaches to the traditional classifications of accessory before the fact and principal in the second degree may be enough to establish the guilt of a secondary party: in the case of an accessory before the fact where that party counsels or procures the commission of the crime and in the case of a principal in the second degree where that party, being present at the scene, aids or abets its commission: see *Giorgianni v The Queen* [1985] HCA 29; (1985) 156 CLR 473. But the complicity of a secondary party may also be established by reason of a common purpose shared with the principal offender or with that offender and others. Such a common purpose arises where a person reaches an understanding or arrangement amounting to an agreement between that person and another or others that they will commit a crime. The understanding or arrangement need not be express and may be inferred from all the circumstances. If one or other of the parties to the understanding or arrangement does, or they do between them, in accordance with the continuing understanding or arrangement, all those things which are necessary to constitute the crime, they are all equally guilty of the crime regardless of the part played by each in its commission: cf *R v Lowery and King* [No 2] [1972] VicRp 63; [1972] VR 560 at 560, per Smith J.*

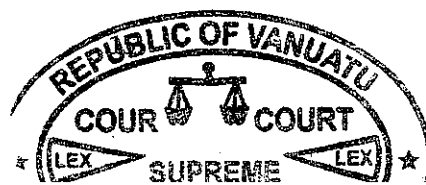
Not only that, but each of the parties to the arrangement or understanding is guilty of any other crime falling within the scope of the common purpose which is committed in carrying out that purpose. Initially the test of what fell within the scope of the common purpose was determined objectively so that liability was imposed for other crimes committed as a consequence of the commission of the crime which was the primary object of the criminal venture, whether or not those



other crimes were contemplated by the parties to that venture: Mansell and Herberts Case (1556) 2 Dyer 128b [73 ER 279]; Ashtons Case (1698) 12 Mod 256 [88 ER 1304]; R v Radalyski [1899] ArgusLawRp 25; (1899) 24 VLR 687; R v Kalinowski [1930] NSWStRp 89; 1930) 31 SR (NSW) 377. See generally Smith, A Modern Treatise on the Law of Criminal Complicity (1991), pp 209-214. However, in accordance with the emphasis which the law now places upon the actual state of mind of an accused person, the test has become a subjective one and the scope of the common purpose is to be determined by what was contemplated by the parties sharing that purpose: see R v Johns [1978] 1 NSWLR 282 at 287-290, per Street CJ.

It is sufficient to make one of the parties sharing the common purpose guilty of an offence committed by another of the parties sharing the common purpose that the offence must have been foreseen as a possible incident of the common unlawful enterprise: see *Chan Wing-Siu v The Queen* [1984] UKPC 27; [1985] AC 168 and *Hui Chi-Ming v The Queen* [1992] 1 AC 34 at 49-51."

94. I reject the hypothesis that because Tarat Lal and his family were angry because Collen Yet and his family obtained a green certificate on a land Tarat Lal and his family claimed to be theirs, they said that the defendants burnt the houses of Tarat Lal Weh at Cape de Queiroz.
95. This was a case where the prosecution was based wholly or partly on circumstantial evidence.
96. As a judge of fact, I acknowledge that the defendants could be convicted only if guilt is the only reasonable inference open on the facts.
97. Inferences may be drawn from proved facts if they follow logically from them. If they do not, then, the drawing of any conclusion is speculation not proof. Speculation in aid of an accused is no more permissible than speculation in aid of the prosecution. Inferences are not irresistible. The prosecution is not required to disprove any inference that the ingenuity of counsel might devise. The prosecution must exclude any reasonable hypothesis based on evidence which is consistent with innocence, but no more.
98. In circumstantial evidence where the accused makes no statement out of court and/or elects not to give evidence, inferences can be drawn from the absence of any explanation from the person with unique knowledge of the dealings to which the charge relates.
99. In this case, I do not rely on the silence of the defendants as a basis for drawing adverse inferences against the defendants.
100. Here, the inferences are available to be drawn from the unchallenged evidence that on 18 September 2021, the defendants accepted and admitted they went to Cape de Queiroz with the White Bongo camion and the Red Toyota Hilux double cabin belonging to Collen Yet



and they committed the offences of unlawful assembly, riot and damage to property. The property in question was the water tank of Rovea Lal Weh. It is rational to infer that Rovea Lal Weh is closely related to Tarat Lal Weh and his family.

101. I am satisfied that the evidence is overwhelmingly against each and all the defendants.
102. I am satisfied that the circumstances are such as to be inconsistent with any reasonable hypothesis other than the guilt of each and all the defendants.
103. I am satisfied beyond reasonable doubt of the guilt of each and all defendants based on the rational inference which is the only inference that the circumstances would enable me to draw.
104. The prosecution has proved each and all essential three (3) elements of the offence of arson against each and all defendants beyond reasonable doubt.

J. Verdicts

105. I find defendants: Leonard Neftahal, Collen Yet, Peter Paul Yet (also known as Bobby Yet), Josepho Frank, Romarick Larkin, Rowe Yet, Morris Yet and James Yet guilty of the offence of arson, contrary to Section 134(1) of Penal Code as charged against each and all of them in the information (amended) dated 26 May 2023.

DATED at Luganville, Santo, this 2nd day of June 2023.

BY THE COURT

Vincent LUNABEK
Chief Justice

