

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

**Criminal Case No.23/2738
SC/CRM**

BETWEEN: Public Prosecutor

**AND: Lawrence Hinge Leo
Johnny Kasto Rau
Mark Motasi
Defendants**

Before: Justice Oliver A Saksak

Counsel: Ms Shirley R Langon for Public Prosecutor
Ms Kylie Karu for the Defendants

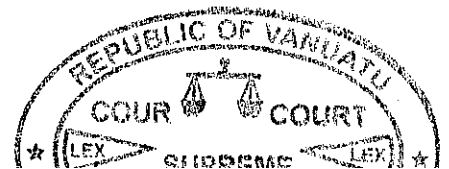
Date of Oral Verdict: 26th June 2024

Date of written 27th June 2024

Verdict:

JUDGMENT

1. Yesterday 26th June 2024 I returned verdicts as follows:-
 - a) In relation to Intentional Assault contrary to section 107 (a) of the Penal Code Act (Count 1) against Lawrence Hinge Leo – Guilty
 - b) In relation to Intentional Assault contrary to section 107 (a) of the Penal Code Act (Count 2) against Mark Motasi- Guilty
 - c) In relation to Intentional Assault contrary to section 107 (c) of the Penal Code Act (Count 3) against Lawrence Hinge Leo, Johnny Kasto Rau and Mark Motasi- All guilty.
2. I now provide reasons for those guilty verdicts
3. In every criminal prosecution the onus of proof rests on the Public Prosecutor to prove guilt of accused persons on the standard of proof beyond reasonable doubt. Section 8 of the Penal Code Act provides for the general rule as to burden of proof. Section 81 of the Criminal Procedure Code Act [Cap 136] provides for the statement of presumption of innocence normally read to accused persons at the beginning of every criminal trial which is a restatement of the general rule in section 8 of the Penal Code Act.



4. For the offences of intentional assault under section 107 (a) of the Penal Code Act, Prosecutions had to prove that-
 - a) Lawrence Hinge Leo and Mark assaulted Yosino.
 - b) They intended to do so,
 - c) No physical damage was caused.

5. For the offence of intentional assault under section 107 (c) of the PC Act, Prosecutions had to prove that-
 - a) All the three defendants assaulted Yosino.
 - b) They intended to do so.
 - c) They used a piece of timber to assault Yosino with.
 - d) They broke both bones to his left hand causing permanent physical injuries.

6. Prosecution adduced evidence from Yosino Tariuvi, the victim and complainant, Yollande Tariuvi, Amandine Tariuvi and Rossen Damassing. As well seven statements by police officers namely Iaris John, Henry Kalsei, Nidvaun Alain, David Itiltau, Tonny Lauto, Baptiste Kunuan and Athen David were tendered into evidence by consent of all counsel as Exhibits P1-P7.

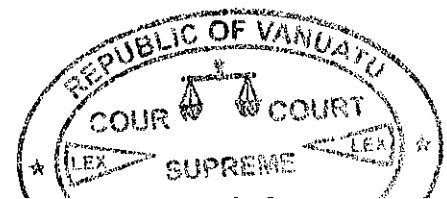
7. Further, medical reports from Dr R Mera, Dr T Patunvanu and a Report from Sonia Mangrou of Clinique Kundo-Magnin in Noumea, NC plus the photo Album were tendered by consent as Exhibit P8.

8. The fight occurred on 26th May 2021. Relevantly Yosino gave the following evidence from the witness box some 4 years after the event. He said when Lawrence came home, "I saw him with his 2 friends (Mark and Johnny). Mark called to me to come outside and they told me to go to the nakamal. And I followed them. At the nakamal I sat down on an iron chair or stool facing the road. I told them to sit down but they remained standing. They asked me about what I said to Serah (Housegirl). While I was trying to explain, Mark took his stance to fight me. I stood up to defend myself but Johnny hit my left hand with a timber. I felt as if it broke. Then Lawrence joined in the fight and we fought to the road. They hit me again with a piece of wood (Navenue) and timber. Lawrence kicked me and I fell down again. Then Mark broke the electric rope and all was dark. I ran outside and they continued to follow me with the piece of timber and continued to hit me with it. I went down the road and met my sister (Amandine) who worked with the Port Vila Municipality . She stopped and took me to the hospital in their vehicle. The doctor

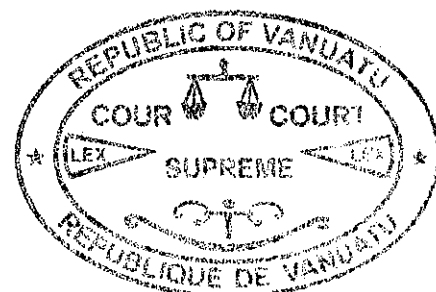


came and checked me and admitted me. The defendants came to Emergency and talked to me again there but I could not recall what they said."

9. In cross-examination it was put to Yosino that Mark did not fight him but only pushed him on his face to sit down again, Yosino said "No". When asked when he threw his right hand to fight Mark, he hit the post and broke his hand, he said No, that is not true". Then he was asked when he went to the gate his feet got entagled with the electric robes causing the lights to go off, he said "No". He was asked if he was sure it was Johnny who hit his hand with the timber and broke it, Yosino said "Yes" and maintained his answer. He was asked about the statement he made to the police on 27 May 2021 in which he described how the three defendants assaulted him starting at the nakamal and continued on the road, he confirmed that was his statement. When asked why he did not mention being hit with timber, he said he told the Police but the Police did not record it down.
10. Yollande Tariuri gave evidence. She said Lawrence returned from work around 5:00pm on 26/05/2021. She said Lawrence held a knife, talking aloud and swearing. Then she saw Johnny enter the yard. She said Johnny called to Yosino to come outside or he would go into get him out. She saw them walk to the nakamal and said she heard Lawrence questioning Yosino and he was trying to respond when Mark slapped him and he fell down. He turned to stand up but they surrounded him and assaulted him. They pushed Yosino through a little gate and in doing so they disconnected the lights and it was dark. She said they continued to assault him outside in the dark and she heard a loud scream from Yosino.
11. In cross-examination she maintained her story was correct as she was present and watching everything that happened. She maintained it was Mark who slapped Yosino. She confirmed that Yosino did not hit the post with his right hand as asserted by the defendants. She said however she could not see who broke Yosino's hand. She denied the proposition that it was Yosino's feet that got entangled with the electric robe causing a power cut. She said it was the defendants who did it when pushing Yosino out of the yard.
12. Rossen Damassing told the Court he was playing billiard at around 7pm in the nakamal when he saw the fight break out. He said he saw the 3 defendants go into Yosino's yard and called him to the nakamal. He said he saw Yosino sit down but the 3 of them stood around him and Mark slapped Yosino on his face and the fight broke out. They all went towards the store and the lights went off and it was dark. He heard a big noise on the road like a timber landing on someone's back.



13. In cross-examination he confirmed seeing Mark pushing Yosino's face resulting in the fight breaking out. Amandine Tariuvi gave evidence. Relevantly she was returning home from work when she saw Yosino on the road with a broken left hand hanging out like a chicken wing. She stopped and took her brother to the hospital. At the Emergency Room Lawrence and the boys went over and argued with them again.
14. The defendants opted to remain silent and not give any evidence. Mark and Johnny had their statements taken by the Police which have become part of the evidence for the Prosecution by consent. Only Lawrence Hinge did not give a statement because he indicated he would speak only in Court. But he did not.
15. The defendants called an independent witness in their defence by name of Mariana. Relevantly she said it was around 6:00 or 6:30pm when Lawrence went to ask Mark to go with him to the nakamal to speak to Yosino. She saw Lawrence, Mark and Johnny go together. Then she said Yosino came to the nakamal and sat down while Lawrence stood outside and asked him about his actions to Serah. This part of her evidence was inconsistent with Yosino, Yollande and Damassing's evidence therefore lacking in credibility. The rest of her evidence was purely hearsay which she heard from Mark, her husband and Lawrence who tried to make up the story that Yosino broke his own hand when he fought Mark and hit the post. That cannot be true and correct because Mark and Johnny said it was Yosino's right hand that broke. This is inconsistent with the evidence of Yosino and the Doctor's report that clearly shows it was the left hand that broke in both bones. And it was a result of strong force.
16. From the evidence of Yosino, Yollande and Damassing. I am satisfied beyond reasonable doubt that Lawrence Hinge had assaulted Yosino and that Mark had also assaulted Yosino by slapping him. No injuries were caused consistent with the Doctor's report. Prosecutions had proved the elements of section 107 (a) against Lawrence and Mark in relation to the charges in Counts 1 and 2.
17. In relation to the charge in Count 3, it was a concerted and joint enterprise action of all the 3 defendants. From the evidence of Yosino and Yollande and it was Johnny who hit Yosino with a piece of timber. It was their evidence also that Lawrence and Mark took part in the fight starting in the nakamal and continuing onto the road in the dark.



18. The intention to assault Yosino was all evident in the fact Lawrence had asked Mark and Johnny to accompany him to the nakamal not to talk, but to conceal their actions because from the evidence only Damassing and some children were at the nakamal at the time. Further, the lights were disconnected so they could beat up Yosino in the dark so nobody would really tell who did what.
19. Lawrence Hinge Leo took the law into his own hands. If he had any complaints about the behavior of Yosino that day, he should have called the Police to the scene to arrest Yosino. Instead he got Mark and Johnny on his side to do an unlawful act. As if what they did at Beverly Hills was not enough, they even followed Yosino to the Emergency room and argued with him and his sister there.
20. From the evidence by the Prosecution witnesses, I am satisfied Prosecutions had discharged its onus of proof beyond reasonable doubt that Lawrence and Mark assaulted Yosino but not causing any physical injury as charged in Counts 1 and 2.
21. Further, I am satisfied Prosecutions had proved beyond reasonable doubt that all three defendants assaulted Yosino causing him permanent injuries to his left hand, the charge in Count 3.
22. Accordingly I found all of the three defendants guilty as charged.

DATED at Port Vila this 27th day of June 2024.

BY THE COURT


Hon. Oliver A. Saksak

Judge

