

**BETWEEN:** LEONARD NEFTAHAL, COLLEN YET, PETER  
PAUL YET (aka BOBBY YET), JOSEPHO  
FRANK, ROMARICK LARKIN, ROWE YET,  
MORRIS YET, JAMES YET  
Appellants

**AND:** PUBLIC PROSECUTOR  
Respondent

**Date of Hearing:** 6 November 2023

**Coram:** Hon. Acting Chief Justice O. Saksak  
Hon. Justice Mark O'Regan  
Hon. Justice Richard White  
Hon. Justice Dudley Aru  
Hon. Justice Viran M. Trief  
Hon. Justice Edwin P. Goldsbrough  
Hon. Justice William K. Hastings

**Counsel:** RT Willie for the Appellants  
S Blessing for the Respondent

**Date of Judgment:** 17 November 2023

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## JUDGMENT OF THE COURT

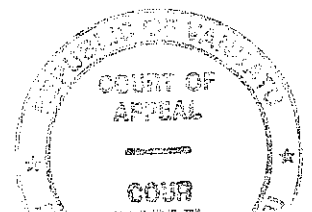
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### A. Introduction

1. This was an appeal against a conviction after trial on a charge of arson, and against the sentence on multiple charges. Appellants' counsel Mr Willie accepted that the appeal against sentence would only arise for consideration if the appeal against conviction was allowed.

### B. Background

2. The Appellants Leonard Neftahal, Collen Yet, Peter Paul Yet (also known as Bobby Yet), Josepho Frank, Romarick Larkin, Rowe Yet, Morris Yet and James Yet reside at Port-Olry on the East Coast of Santo Island.
3. The complainants Mr Rovea Lal Weh and Mr Tarat Lal Weh reside at Port-Olry Cape de Queiroz area.
4. On 18 September 2021, the Appellants, led by Collen Yet, assembled at Cape de Queiroz with intent to commit offences. Their conduct caused the complainants and nearby persons to fear that they would commit a breach of the peace.



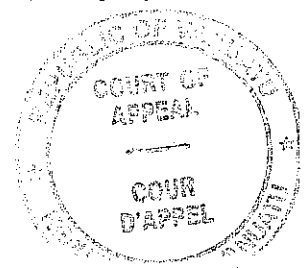
5. On 18 September 2021, the Appellants executed the purposes for which they assembled, including damaging a water tank belonging to Mr Rovea Lal Weh.
6. Also on 18 September 2021, the home and kitchen of Mr Tarat Lal Weh were burnt down. The items destroyed by the fire together with the houses included a solar TV screen, a solar panel, a roll of wire, VT1,000,000 cash, 2 copra bags filled with cocoa, a chainsaw, clothes, 1 carton of tinned tuna, 5 packets of torches, a battery and 40 packets of cracker biscuits.
7. The Appellants pleaded guilty to unlawful assembly, riot and malicious damage to property and not guilty to arson. Five of them, namely Josepho Frank, Romarick Larkin, Rowe Yet, Morris Yet and James Yet pleaded guilty to escape from lawful custody.
8. After trial, the primary Judge returned verdicts of guilty as to the arson charge: *Public Prosecutor v Neftahal* [2023] VUSC 63 – Reasons for Verdict. He sentenced the Appellants to imprisonment and ordered payment of compensation to the victims Mr Rovea Lal Weh and Mr Tarat Lal Weh: *Public Prosecutor v Neftahal* [2023] VUSC 115. Orders were also made for the confiscation of vehicles, cash and cattle in favour of Mr Tarat Lal Weh and his family: *Public Prosecutor v Neftahal – Confiscation order* [2023] VUSC 104.

#### C. The Appeal

9. The appeal was advanced on the grounds that the conviction of arson was based on doubtful and insufficient circumstantial evidence, and thus the verdicts were unsafe and unsatisfactory. It was submitted that the Prosecution evidence did not establish that the Appellants had a motive to burn down the houses, and that there was no evidence of how the fire was actually started. The sole ground for the appeal against sentence is that if the appeal against conviction is allowed, then the Appellants must be re-sentenced. Further, given that they have already served over 3 months in custody and have replaced the water tank that they damaged, that is sufficient punishment and the Appellants should be released from custody forthwith.
10. Respondent's counsel Mr Blessing submitted that the Prosecution case consisted of circumstantial evidence as well as one piece of direct evidence relating to the Appellants' visit to the complainants two days after the house-burning in which they said words to the effect that they (the Appellants) had already burnt down their houses but the complainants had not yet left and that if the complainants were still there on their return, that they would make them 'swim' in their own excrement. He submitted that the Prosecution proved the primary facts beyond reasonable doubt and that the only available inference, which the primary Judge drew, was that the Appellants committed arson as charged.

#### D. Consideration

11. The elements of the offence of arson which the Prosecution had the burden of proving beyond a reasonable doubt were as follows:



- (i) That on 18 September 2021. the Appellants set fire to the property of Mr Tarat Lal Weh;
  - (ii) That the Appellants set fire to the property wilfully and unlawfully; and
  - (iii) That the Appellants knew that the property belonged to another person (Mr Tarat Lal Weh).
12. Some of the Prosecution evidence was directed to motive on the part of the Appellants to either retaliate against Mr Tarat Lal Weh for earlier actions by his relatives, or in relation to a land dispute. However, motive is not an element of the offence which the Prosecution was required to prove beyond reasonable doubt.
13. The primary Judge set out his findings of fact, relevantly, as follows:

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-Olry.*

80. *There is evidence which pointed to the fact that Collen Yet is the leader of the defendants.*

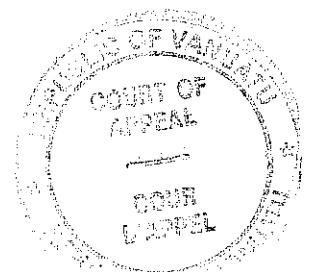
81. *There is evidence that on 18 September 2021, on their way from Port-Olry to Cape de Quieroz, the Red Toyota Hilux stopped and defendant Josepho Frank purchased benzene in one litre plastic [bottle] at Loic Ravor's shop.*

82. *The evidence is also that the white Bongo camion and the red Toyota Hilux double cabin 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 litre [benzene] by Josepho Frank on 18 September 2021 on his and other defendants' way to Cape de Quieroz 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 litre of benzene.*

84. *The Court accepted that at Cape de Quieroz, 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 the 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 Quieroz, on 20 September 2021, defendant Collen Yet and other defendants came back to Mr Tarat Lal Weh and his family at Cape de Quieroz, 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*

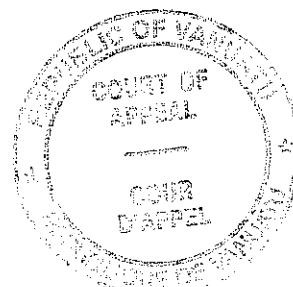


*his family at Cape de Quieroz with the two vehicles of Collen Yet. There, the defendants pointed a gun at Mr Tarat Lal and his family and threatened them to the following effect – “Yufala ino go yet, mifala l bonem house blong yufala vnis. Bae mifala lgo mo come back sipos yufala ino go yet bae yufala iswim long sitsit blong yufala long place ia” (evidence of Tarat Lal Weh). This evidence [was] not challenged in the evidence of Mr Tarat Lal. 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.”*

14. The primary Judge’s findings at paras 76-84 of his Reasons for Verdict were all matters of circumstantial evidence. They included that the Appellants were all present at Cape de Queiroz on 18 September 2021, they were seen in the vicinity of Mr Tarat Lal Weh’s house and kitchen which were burning and that while the house and kitchen were burning, they ran towards Collen Yet’s two vehicles and left, back to Port-Olry, that one of the defendants had earlier purchased 1 litre of benzene on their way to Cape de Quieroz, and that neither vehicle operated using benzene. None of these findings of primary fact were challenged on appeal.
15. The Judge’s finding at para. 85 of the Reasons for Verdict was that on 20 September 2021, the Appellants returned to Mr Tarat Lal and his family at Cape de Quieroz in the same two vehicles, pointed a gun at Mr Tarat Lal and said, “Yufala ino go yet, mifala l bonem house blong yufala vnis. Bae mifala lgo mo come back sipos yufala ino go yet bae yufala iswim long sitsit blong yufala long place ia” (“You guys have not left yet? We have already burnt your house. If we come back and you are still here, we will make you swim in your own shit”).
16. Mr Willie submitted that the words spoken did not mean that the Appellants burnt down Mr Tarat Lal’s house and kitchen as it was already common knowledge by then that those houses had burnt down. We cannot agree. Mr Willie agreed that the English translation of the Appellants’ words was accurate. The words spoken were clear and to the effect that the Appellants set fire to Mr Tarat Lal’s house and kitchen. The Appellants’ words were a direct admission by them that they burnt down Mr Tarat Lal’s house and kitchen. Being direct evidence, it could have been relied upon by the Judge independently of the circumstantial evidence or in combination with the circumstantial evidence.
17. As to a prosecution based on circumstantial evidence, in *Boihilan v Public Prosecutor* [2022] VUCA 6 at [55], this Court held as follows:

“55. *Based on these authorities we agree with the requirements that need to be met for a Court to use circumstantial evidence to convict...:*

- a) *First that the primary facts from which the inference of guilt is to be drawn must be proved beyond reasonable doubt;*
- b) *Secondly, the inference of guilt must be the only inference which is reasonably open on all the primary facts which the Judge finds;*
- c) *Thirdly, inference may be drawn from proved facts if they follow logically from them;*



d) *Fourthly, 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."*

18. All of the requirements set out in *Boihilan* for a Court to use circumstantial evidence to convict were met. That is, the primary Judge clearly set out the primary facts proved by the circumstantial evidence adduced by the Prosecution. He concluded from that circumstantial evidence, together with the Appellants' direct admission in their words spoken on 20 September 2021 to Mr Tarat Lal and his family, that the Appellants burnt down Mr Tarat Lal Weh's house and kitchen. In our view, this was the only inference open on all the primary facts which the Judge found, and followed logically from those primary facts.
19. Mr Willie submitted with reference to *Boihilan*, in which this Court held that without evidence as to the cause of death, it was not open to the primary Judge to infer that the appellant strangled the deceased to death, that similarly in the present matter, without evidence as to the cause of the fires, that the Judge could not infer that the Appellants set fire to Mr Tarat Lal Weh's property. As already stated, *Boihilan* was a case based solely on circumstantial evidence. Accordingly, there had to be evidence of the cause of death before any inference could be drawn as to who killed the deceased and how.
20. In the present matter, however, the Prosecution case was based on circumstantial evidence as well as direct evidence namely the Appellants' admission that they burnt down Mr Tarat Lal's houses. The primary Judge relied on the direct evidence in combination with the circumstantial evidence to conclude that the Appellants committed arson as charged. Proof of the cause of the fires was not required, as there were other primary facts established (by both the circumstantial and the direct evidence) from which the Judge drew his inference that the Appellants set fire to Mr Tarat Lal Weh's property.
21. For the reasons given, no error has been demonstrated in the conviction of the Appellants for arson. That appeal will be dismissed. It follows that the appeal against sentence does not arise for consideration and must also be dismissed.

**E. Result**

22. The appeals against conviction and sentence are dismissed.

**DATED at Port Vila this 17<sup>th</sup> day of November 2023**

**BY THE COURT**

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**Hon. Acting Chief Justice Oliver Saksak**

