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PUBLIC PROSECUTOR - v - JOSEPH RAMAWI

Coram: V. Lunabek CJ

Counsel: The Public Prosecutor
The Public Solicitor

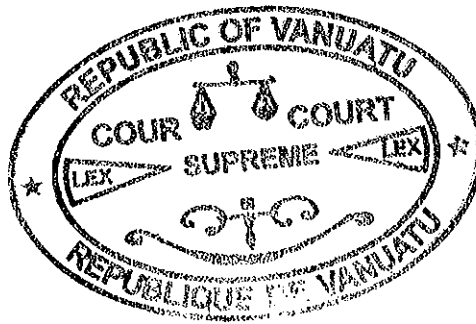
**REASONS FOR ORAL
VERDICT OF ACQUITTAL
OF ACCUSED ON 13 MAY 2008**

The accused Joseph Ramawi was charged with 1 count of intentional assault, contrary to 107(c) of the Penal Code Act [CAP.135]. It was particularised that on 3rd March 2007, the accused intentionally assaulted one Makali Sandy (the complainant) at Tagabe area, Port-Vila. The complainant had his jaw fractured and had injuries on his left eye. The damage caused on the body of the complainant are alleged to be permanent.

The accused pleaded not guilty to the offence charged against him. He was tried. The Court orally acquitted and discharged the accused of the said offence on 13 May 2008 after the trial. There was no typed version of the reasons. The written reasons are now set out for record purposes.

For the accused to be convicted under s.107(c), the prosecution must prove the following elements on the criminal standard of proof of beyond reasonable doubt:

- (1) The accused caused damage on the body of the complainant.
- (2) The accused intended to cause damage on the body of the complainant.
- (3) The damage caused on the body of the complainant is permanent.



The law is for the prosecution to prove each of the elements mentioned above beyond reasonable doubt. The defendant is not required to prove his innocence. It is not his task to do so. If there is a reasonable doubt, I must acquit the accused. If I am sure of the culpability of the accused, I must convict him. If at the end of the trial, I have assessed the evidence but I am not sure of the culpability of the accused, I must acquit him. If the accused gave evidence and called witnesses, I must assess his evidence and the evidence of his witnesses on the same footing as I have done on the evidence of the prosecution witnesses.

The prosecution case is that on 3rd March 2007, at about 2.00pm in the afternoon, Mr Makaly Sandy was on his way to International Airport to join his group of string band (Sawia String Band) to entertain the tourists on their arrival. He took a red bus on his way to the Airport. He saw a group of people from Tanna Island talking. The bus stopped. The accused used a stone to assault the complainant on his jaw. One eye witness (Fred Kalkaua) saw the accused assaulted the complainant at Gladys Store at Tagabe area. Police arrested the accused.

The prosecution called 4 witnesses. The complainant gave evidence to the effect that it was a Saturday. He was on his way to the Airport to join his String Band Group (Sawia). They entertained the tourists at their arrival at the International Airport. He missed the bus they usually arranged to take them to the airport. So he took another bus. It was a red bus driven by a man from Tanna Island. Sandy said he is from Emao Island, North Efate. At Tagabe, a group of Tanna people stopped the bus. They assaulted the driver. One young boy from Tanna threw a stone and hit his left eye. He said he could not see. He was pulled out from the bus and taken outside. He did not recognise the person who pulled him out of the bus. The person was wearing a red T-shirt. He assaulted him and kicked him on his ribs. He said that person pulled and pushed him against the wall of the store. His jaw was broken. He was unconscious. He was then taken to the hospital by one Jack Naunum of Tanna.

He was cross-examined. He said there were lots of people (more than 20) at the bus stop. A person threw a stone and hit his left eye. He did not see the person. Later on he was asked and he said there were more than a person who pulled



him out of the bus and they threw him against the wall of the Store. He was asked and he mentioned there were three (3) men.

Witness Roy Seule gave evidence about the arrest of the accused few days after the alleged incident (8 March 2007).

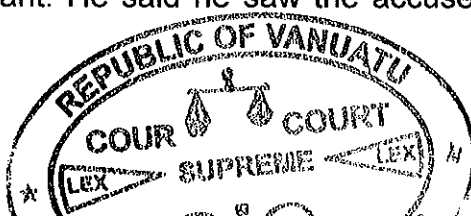
Doctor Basil Leodoro gave evidence of his examination of the complainant when he was in the Vila Central Hospital. He provided a medical report of the injuries sustained by the complainant Makaly Sandy. His findings were 3 main injuries:

- 1 fracture bone on the front jaw.
- 1 fracture bone on the lower jaw and another on the side.
- There were injuries on the left eye. He noted the injuries were skin injuries.

The Doctor's testimony was that with the medical treatment provided, the victim will be fully recovered from the injuries he has sustained.

Witness Fred Kalkaua was a police officer of 14 years experience. He came from Pele Island, North Efate. On 3rd March 2007, he was not on duty. He said he saw what happened as a civilian. He testified that he was at home as he lives in that area. Two police officers came and asked for a bag to place video camera inside to film an incident which occurred there. He came and observed the incident as a civilian. He did not wear his police uniform. He said he knew the accused Joseph Ramawi of Tanna. He saw a red bus coming. He saw Joseph Ramawi stopped the bus. Plenty people run toward the bus. He said Joseph Ramawi wore a red T-shirt and behaved as he was drunk. He said he saw the victim complainant held on his eyes and he saw Joseph Ramawi assaulted the complainant on his jaw and kicked the complainant on his ribs. He saw lots of people there and others still coming.

He was cross-examined. He said he saw the accused stopped the bus. He was asked he said there were more that 20 people there. He was about 10 metres from the incident. He was asked and he said he did not see people who pulled the complainant out from the bus. He was asked and he described how he saw the accused assaulting the complainant. He said he saw the accused assaulted the

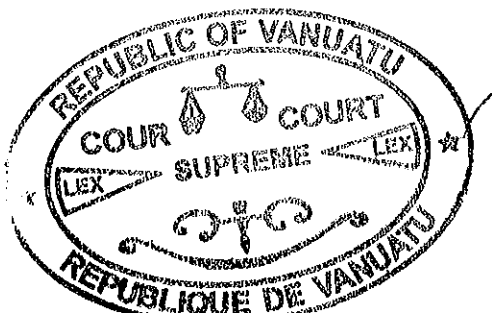


complainant with his right hand. He said he saw the accused kicked the complainant with his right leg.

The accused Joseph Ramawi elected to give evidence after his rights under ss.81 and 88 were read and explained to him. He gave evidence that he is from Tanna Island. He was employed as a security officer at Le Meridien Hotel. The day before the incident, he consumed some alcohol and went to a night club (Le Flamingo) until early morning of the incident. He tried to stop buses. Bus drivers refused to take him. So he walked and arrived at a Black Market Store and got few bottles of beer and then felt asleep near that store. One of his uncles came and told him that there was a riot. Lots of people were crowded and moved toward the place he were. He said he run with others to hide in the yard of Pastor Moli (the prosecuting counsel's father's house). He saw the crowd rioting about 30 metres from the place he was. He said he was a left handed person and he could not use his right leg to kick the complainant. After the rioting people passed, he came out from the place he was and he went home.

On assessment of evidence, it was found and accepted that on 3 March 2007, there was a group of people including people from Tanna Island rioting from the road at Tagabe area toward Port-Vila. The complainant, Mr Makali Sandy took a red bus to go to the International Airport. That red bus was stopped at Tagabe area by a group of people. Mr Makali Sandy got injured on his left eye while he was in the bus. He said he got hit by a stone. Doctor Basil Leodoro confirmed that the type of injuries sustained may be caused by a throw of a stone.

Mr Makali Sandy's oral evidence in chief said a person pulled him out of the bus, assaulted him and pushed him against the wall of a store and as a result, his jaw was broken. When he was cross-examined he said three (3) men pulled him out of the bus and pushed him against the wall of Store. In his statement to the police, Mr Sandy said his left eye was hit by a stone thrown by a person he did not see or he did not know. He stated also that four (4) men pulled him out of the bus and pushed him against the wall of the store and his jaw was broken.



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Witness Fred Kalkau's evidence that he saw the accused Joseph Ramawi assaulting the complainant and threw him against the wall was inconsistent with the evidence of the complainant himself. Fred Kalkau's evidence was not to the effect that the accused was one of the 3 or 4 persons who pulled the victim complainant out from the bus, assaulted him and pushed him against the wall. Kalkau's evidence was that he saw the accused alone pulling the victim out, assaulted him and pushed him against the wall. Witness Kalkau did not see who pulled the victim out from the bus. While on the complainant's own evidence, he was pulled out from the bus by more than one person. The inconsistency of the prosecution's evidence generated a reasonable doubt in favour of the accused.

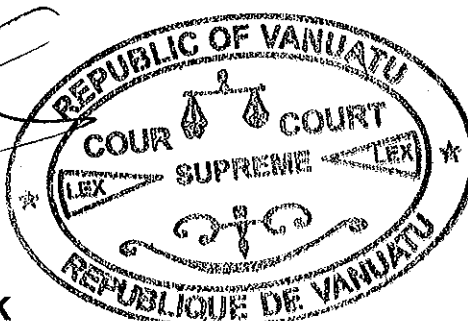

There was no evidence that the accused threw the stone which caused damage on the complainant's left eye. There was inconsistent evidence as to the accused assaulting the complainant resulting in the fracture of his jaw. The evidence of witness Kalkau were rejected.

The prosecution failed to prove beyond reasonable doubt the elements of the offence of Intentional assault, contrary to s.107(c) of the Penal Code Act [CAP.135] laid against the accused Joseph Ramawi.

Joseph Ramawi is acquitted of the offence of intentional assault, contrary to s.107(c) of the Penal Code Act and he is discharged for such an offence accordingly.

DATED at Port-Vila this 14th day of May 2008

BY THE COURT



Vincent LUNABEK
Chief Justice