

**PUBLIC PROSECUTOR**  
**v**  
**LI JIANJUN**

Before: Justice D. V. Fatiaki

In Attendance: Counsel – Ms. M. Tasso for the State  
Counsel – Mr. S. Hakwa for the Defendant

Date of Ruling: 14 August 2019

---

**RULING**

---

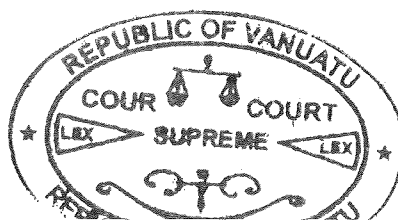
1. At the close of the prosecution's case, defence counsel made a "no-case" submission invoking Section 164(1) of the Criminal Procedure Code which provides inter alia:

*"... If where the case for the prosecution has been concluded, the judge rules, as a matter of law that there is no evidence on which the accused person could be convicted, he shall thereupon pronounce a verdict of not guilty".*

2. The defendant is charged on two counts – Intentional Assault causing temporary injury and Threats to Kill. To establish its case the prosecution called "**Sun Ye**" an eye-witness (**not** the actual victim/complainant) and a medical officer who examined the victim on the day of the incident. Both witnesses were cross-examined.
3. I respectfully adopt the "test" laid down by the Chief Justice in Public Prosecutor v Verlili [2017] VUSC 166 where he said of a "no-case" submission:

*"... the test is not proof beyond reasonable doubt but rather as a matter of law whether the accused person could be convicted on the evidence presented thus far. The test is whether a finding of guilt **could** be made by a reasonable judicial officer sitting alone on the evidence thus far presented. The submission ... requires the Court to refer to the evidence adduced by the prosecution more particularly, the evidence relating to the elements of the crime the defendant has been charged with" (**see also:** PP v Suaki [2018] VUCA 23 esp. at paras. 10, 11, 16 and 18).*

4. As to Count 1 the Assault charge, the eye-witness describes the incident in chief as follows:



**Q:** What did you see or hear?

**A:** There was an argument between my friend (the victim) and the defendant about a shipment container from China and about the transportation fees. They basically had a fight. During the fight the defendant got a knife and cut the left forearm of my friend.

Yes I saw the defendant with a small knife which he used on my friend".

5. As to the Threat to kill, the eye-witness said:

**Q:** What did you hear?

**A:** the defendant said 'I'm a big (gangster) boss here, I can hire a lot of ni-vans to kill you...'.  
.

**Q:** How did you feel?

**A:** I was afraid and couldn't sleep at night and I applied for a court order to keep defendant 5 metres away from me".

6. In cross-examination "**Sun Ye**" said:

"I was next to my friend. I saw the defendant fight my friend then he pulled out the knife and cut. **The defendant punched my friend with his clenched left fist.** My friend fought back and afterwards police came.

**Q:** What kind of knife?

**A:** Couldn't see it clearly but it was white in colour. A short knife.

**Q:** How long?

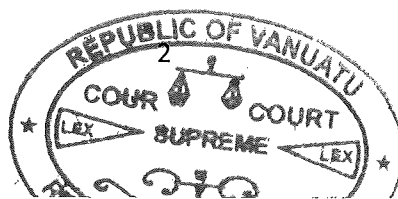
**A:** 9 – 10 inches long (witness indicates between 2 index fingers)

**Q:** Did you see defendant hit any part of friend's body with the knife?

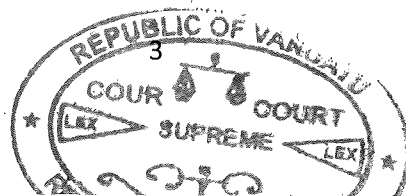
**A:** left forearm (witness indicates)".

As for his friendship with the victim, "**Sun Ye**" said he met the victim for the first time on the day of the incident and that the victim was in fact Mr Langlang's friend and was introduced to him on the day of the incident.

7. Cross-examined about his police statement [**Exhibit P(1)**] which he signed and accepted, "**Sun Ye**" confirmed telling the police that he "... saw the defendant punch the complainant with his right hand (not his clenched left fist as stated in chief).
8. Questioned about applying for a protective court order, "**Sun Ye**" retracted his evidence in chief and said he had not applied for an order nor had he asked anyone to apply on his behalf.
9. In similar vein "**Sun Ye**" changed his evidence in chief about being an investor in Vanuatu to being an employee. Asked if he had a work permit he said yes and then said he didn't need one when questioned about working illegally.
10. To the court "**Sun Ye**" said he saw a lot of blood on the victim's forearm and also saw his forearm bandaged at the Police Station.

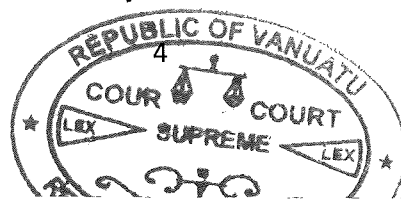


11. Cross-examined about who was present during the threat, "**Sun Ye**" said he, his friend (the victim) and Langlang were present and the threat was directed at all of them. In this regard the Chinese language interpreter who assisted police in recording the eye-witness and other witnesses' statements identified his signature on Langlang's police statement wherein Langlang is recorded to have said of the defendant's threat: "... (the defendant) *even threaten us that he can kill us all and use bad words as 'Dogs, I can kill you people' Sun Ye (the eye-witness) was also with us*".
12. Significant by its absence, is any mention by "**Sun Ye**" of the defendant being: "*a big (gangster) boss in Vanuatu who can hire nivans to kill ... (the victim himself and Langlang)*". Yet, the police officer who recorded "**Sun Ye's**" statement Sgt Donald James was adamant that he accurately recorded what was said and the officer said "**Sun Ye**" did not mention "**dogs**" as part of the defendant's threat.
13. This inconsistency in the prosecution's evidence about the exact words used in the threat is further exemplified by the several changes to the threatening charge which alleged the threat was originally directed at three individuals namely: "**Shiu Sheng Bin, Sun Ye and Langlang ...**" and contained the following words (as charged): "*You're like dogs, I can kill you and I have people behind me that can kill you, I am a big boss in Vanuatu and I can hire people in Vanuatu to kill you*".
14. Later the charge was amended to remove the names of "**Sun Ye**" and "**Langlang**" and the actual words in the threat was amended and shortened to (indirect speech): "*he is a big boss in Vanuatu and he can hire people in Vanuatu to kill us*". The reference to "**dogs**" and the defendant personally killing the victim were removed altogether.
15. The prosecution's other main witness was **Dr Reuben Willie** who examined and treated the victim at 9am on 07 September 2018 at the Vila Central Hospital soon after the assault had occurred. The doctor testified from his medical report that the patient he examined was: "*Liu Sheng Bu*" (not Liu Sheng Bin as recorded in the charge). Even accepting that the spelling of the victim/patient's last name is a *typo*, the doctor's findings were limited to the patient's "*left hand*" and "*middle finger on the left hand*". The injuries noted were: "*superficial contusions*" on the left hand and "*swelling with muscular skeletal pain [middle finger left hand]*". There is no mention of any injury to the patient's left forearm.
16. There were no fractures noted on an x-ray of the victim's left hand other than soft tissue injury. The victim was treated for his injuries with tablets and the swollen finger was dressed with gauze. The injuries noted in the doctor's opinion, were caused by the victim being "*physically assaulted by (a) foreign item*" such as a piece of wood.
17. In cross-examination the doctor said his examination began at 8am and lasted an hour. The "*superficial contusion*" he observed was swelling with blood clots. He saw no bleeding on examination and the doctor was shown a piece of wood



by the patient which he described as a "*foreign item*" in his report. The doctor was adamant that the victim's injuries were the result of "*blunt force trauma*" and were **not** caused by a knife which would leave an open incised wound nor did the patient's injury require suturing or stitches. He noticed no injury on the patient's forearm nor did the patient show him or tell him of such an injury as part of the history.

18. Although there is clear evidence from the doctor that the victim of the assault sustained injuries to his left hand and left middle finger, the fact that the injuries could not be caused by a knife and did not occur to the victim's forearm, both of which were crucial elements of "**Sun Ye's**" eye-witness evidence, reinforces my doubts and in my view, seriously undermines "**Sun Ye's**" credibility.
19. "**Sun Ye**" was not the victim or complainant in either of the charges filed against the defendant as finally amended. He was an interested spectator who claims to have observed the assault on his "*friend*" and heard the threat uttered by the defendant. His evidence is crucial to the prosecution's case and, if discounted, leaves the prosecution with no case at all.
20. Given the importance of "**Sun Ye's**" evidence I listened closely to it and recorded his evidence carefully. Prosecuting counsel submits that the Court should accept "**Sun Ye's**" evidence as sufficient at this stage of the proceedings. I disagree.
21. "**Sun Ye**" struck me as a witness who cared little for details or indeed, the truth. He was evasive and often changed his answers to suit his purposes **eg.** his immigration status and to avoid having to answer questions. He tended to exaggerate his evidence to make matters appear worse than they **eg.** his claim of obtaining a court order against the defendant because he feared for his safety after being threatened. To several seemingly innocuous questions concerning the identity of his employer or "*boss*", he totally refused to answer them because he considered them: "*not relevant*". In fact he had to be warned and reminded of the provisions of Section 85 of the Criminal Procedure Code concerning a refractory witness before he agreed to answer all questions asked of him.
22. "**Sun Ye's**" evidence of the assault was that after the defendant had fought with the victim, he had stabbed his friend on the forearm with a short knife which caused much bleeding. The examining doctor however, found no bleeding or injuries on the victim's forearm, much less, any injuries that were caused by a sharp knife. This is one example of the eye-witness "**Sun Ye's**" exaggeration and lack of concern for details or the truth.
23. Likewise with the threat, "**Sun Ye's**" evidence is that the defendant had threatened all three of them present including the complainant that: "... *he was a businessman in Vanuatu who could hire people in Vanuatu to kill us*". No mention is made by "**Sun Ye**" of any direct threat by the defendant to kill them or of them being called or compared to "*dogs*" by the defendant in the course of being threatened. Yet the police statement of "*Langlang*" who was also allegedly threatened by the defendant, clearly records the defendant's threat uttered in the



presence of "Sun Ye" as being: "***I will kill you dogs I can kill you people ...***" and in similar vein in the threat recorded in the victim's ("***Liu Sheng Bin***") police statement which reads:

***"(the defendant) then swore at me and my two friends that we are like dogs. He can kill me and he had people behind him that can kill us".***


24. In light of the foregoing I can do no better than to adopt as wholly appropriate in this case, the words of the Court of Appeal in the Suaki case where it said:

*"... the evidence adduced in support of the prosecution's case has been so discredited as a result of cross-examination (and) so contradictory (and) so manifestly unreliable that no reasonable tribunal (could) safely convict upon it".*

25. The no-case submission is upheld and in accordance with Section 164(1) the defendant is found "*not guilty*" and ordered to be released forthwith.

**Dated at Port Vila, this 14<sup>th</sup> day of August 2019.**

**BY THE COURT**

  
**D. V. FATIAKI**  
Judge.

