

IN THE SUPREME COURT **Criminal**
OF THE REPUBLIC OF VANUATU **Case No. 18/2506 SC/CRML**
(Criminal Jurisdiction)

PUBLIC PROSECUTOR

V

NIGEL JOHN GILTRAP

Coram: *Chief Justice Vincent Lunabek*

Counsel: *Mr. Ken Massing for Public Prosecutor*
 Mr. Mark Hurley for Defendant

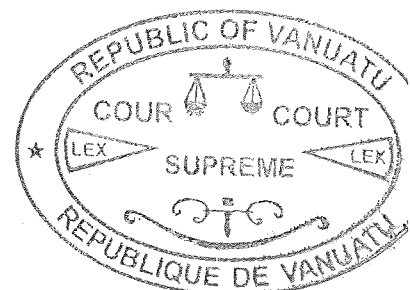
Date of Trial: *10, 11 and 12 June 2019*

Date of Verdict: *28 June 2019*

REASONS FOR JUDGMENT

Introduction

1. This is the criminal trial of Defendant Nigel John Giltrap for two incidents of assaults on the body of Mrs. Ruth Nicola Quinto and Mr. Steven Quinto, an elderly married couple in Si Chuan Restaurant at Luganville, Santo, Vanuatu.
2. The assaults are alleged to occur on the night of 20 March 2018 at Si Chuan Restaurant when the elderly couple went into the restaurant to have their dinner at about 7.00pm O'clock in the evening.



3. The defendant, Mr. Nigel John Giltrap, is a New Zealand citizen and a resident of Vanuatu. He lives in Christchurch (NZ) and in Luganville, Santo, Vanuatu.

Nature of Charge

4. The prosecution charged Mr. Giltrap with two main counts of assaults and an alternative count of assault in an Amended Information filed 04 June 2019 as follows:

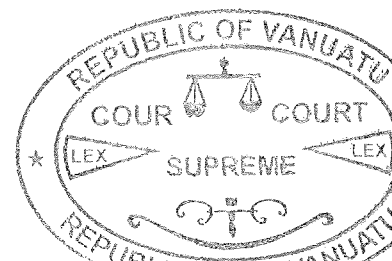
In Count 1: Intentional Assault – contrary to section 107(c) of the Penal Code Act [CAP 135].

It is particularized that Nigel John Gitrap, on the 20 March 2018 at Si Chuan Restaurant in Luganville, he intentionally assaulted Nicola Quinto on the body and as a result caused damage or injury thereto of a permanent nature.

In Alternative to Count 1

In Count 2: Intentional Assault – contrary to section 107(b) of the Penal Code Act [CAP 135]. It is particularized that Nigel John Giltrap, on the 20th of March 2018, at Si Chuan Restaurant in Luganville, he intentionally assaulted Nicola Quinto on the body and as a result caused damage or injury thereto of a temporary nature.

In Count 3: Intentional Assault – contrary to section 107(a) of the Penal Code Act [CAP 135]. It is particularized that Nigel John Giltrap, on 20th



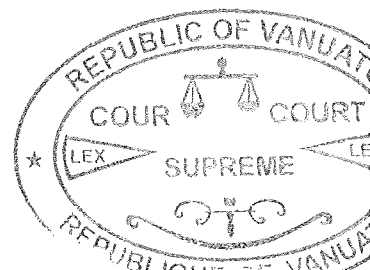
March 2018, at Si Chuan Restaurant, in Luganville, he intentionally assaulted Stephen Quinto on the body without occasioning physical damage.

Nature of pleas and rights of accused

5. Mr. Giltrap entered not guilty pleas to each of these three counts as laid against him. The trial proceeded on that basis.
6. The right of the presumption of innocence was read and explained to the Defendant before the prosecution case began. (S.81 of CPC [CAP 136] and also at the end of the prosecution case after a ruling was made that a case has been made out against Mr. Giltrap and he was required to put forward his defence under Section 164(1) of CPC [CAP 136], the right of the Defendant under Section 88 of the CPC [CAP 136] were also read and explained to him.

Onus and standard of Proof and Elements of Offences

7. This is a criminal trial and like all criminal trials, the law is that the prosecution who brings the charges against the defendant must prove each and all of the elements of each charge beyond reasonable doubt. If there is a doubt which is not fanciful and frivolous but which is reasonable as to the guilt of the defendant, I must acquit him in respect to that charge. If the defendant elects to give evidence, I must also assess his evidence on the same basis as any other witness.
8. In this case, before I convict the defendant (Mr. Giltrap) on any or all of the two principal counts or on the alternative, the prosecution must prove each



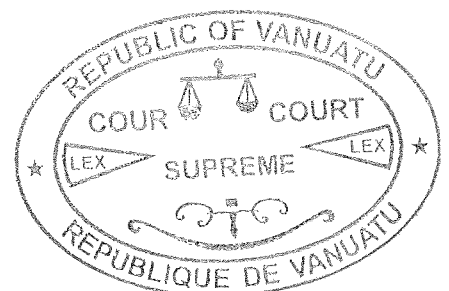
and all essential elements of the charge(s) beyond a reasonable doubt. These elements are set out below in respect to each charge.

A. Elements of offence of assaults against Section 107(c) in Count 1 that the prosecution must prove beyond reasonable doubt:

- (i) That on 20th March 2018, the Defendant (Mr. Giltrap) assaulted the body of the complainant (Mrs. Quinto).
- (ii) That Defendant Giltrap intended to assault Mrs. Quinto; and
- (iii) That the assault caused damage on the body of Mrs. Quinto, which is of permanent nature.

B. In the alternative, elements of offence of assaults against section 107(b) in Count 2 that the prosecution must prove beyond reasonable doubt:

- (i) That on 20th March 2018, the Defendants (Mr. Guiltrap) assaulted the body of the complainant (Mrs. Quinto).
- (ii) That the assault on the body of the complainant (Mrs. Quinto) is intended.
- (iii) That the assault caused damaged on the body of the complainant (Mrs. Quinto) which is of temporary nature.



C. Elements of offence of assaults against Section 107(a) in Count 3 that the prosecution must prove beyond a reasonable doubt:

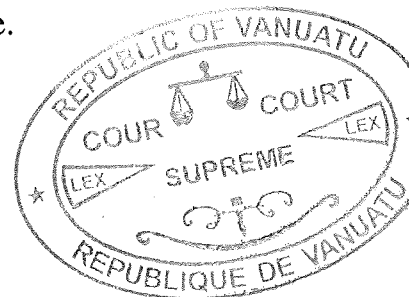
- (i) That on 20th March 2018, Defendant Giltrap assaulted the body of the complainant (Mr. Quinto).
- (ii) That the assault was intended.
- (iii) That the assault sustained no damage or injury.

Prosecution Case

9. It is the Prosecution case that Defendant Nigel John Giltrap is a strong man. He is physically fit and has power and strength who assaulted two elderly man and woman (couple) inside Si Chuan Restaurant on 20 March 2018. It is said that on 20 March 2018, Defendant Giltrap assaulted Mrs. and Mr. Quinto at Si Chuan Restaurant. As a result of assault on Mrs. Quinto, she has sustained damage or injury on her body which is of permanent nature. The assault on Mr. Quinto did not result in damage or injury on his body.

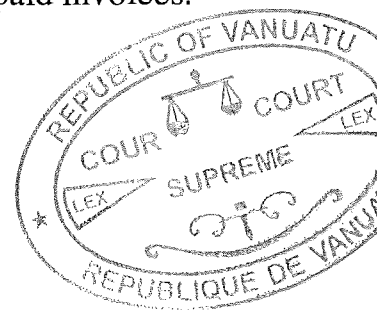
Defence case

10. The defence denied the commission of the offences. The defence raises the issue of self - defence and says that the damage caused on the body of Mrs. Quinto is done on her own misfortune. The defence finally says that the damage caused on Mrs. Quinto was not of a permanent nature.



Prosecution evidence - summary

11. The prosecution called Five (5) witnesses. The first witness for prosecution is Mr. Steven Quinto (PW1). His evidence is summarized to the following effect. He was born in New York City in 1935. He is 83 years old. He is married to Ruth Nicola Quinto for 50 years. He lives at Side River and Big Bay (Santo). He became a Ni-Vanuatu Citizens in 2017. His wife Mrs. Quinto is 76 years old. He knew Mr. Giltrap, the defendant who is in Court.
12. On the event of 20 March 2018, he gave evidence that he and his wife went to Si Chuan Restaurant at about 7.00pm O'clock to have dinner. The Defendant was standing at the counter when they entered the restaurant. Mr. Giltrap was already there and there were two other people there present behind the counter, Chef KWang and his colleague. They are both Chinese. The Restaurant is a Chinese Restaurant. The two Chinese are the Chef and owner of the restaurant, Wang Ken. He did not know the names of the other Chinese. He wrote down his name after – Joseph.
13. He gave evidence of what happened when they met the Defendant at Si Chuan Restaurant. Mr. Giltrap immediately began to arangue him about the money he claimed he owed him. There were 2 claims he made. First, money of 5,000 Dollars it costs him in lawyers' fees. The other claim is of unpaid invoices to which he tried to reply that he has sent Defendant a cheque long ago. If Defendant was not happy he has the recourse like we all have to the courts. Defendant continued. Of the unpaid invoices he said he has all letters with him. He sent a cheque payment to the Defendant of the unpaid invoices.



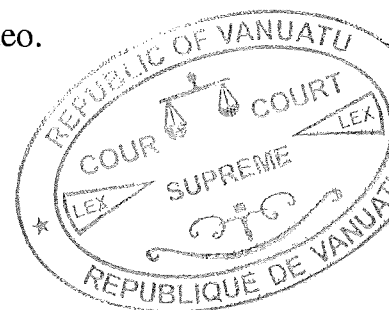
The payment was for the use of sleep way of which he has become proprietor. The cheque was of the amount of 221,000 Vatu. Mr. Giltrap continued to arangue him aggressively, inside the restaurant standing near the counter. After he was abused verbally, he turned and walked into the dining room to get away from him because he was angry and aggressive.

14.He walked into the dining room and Mr. Giltrap followed him there in the dining room.

15.In the dining room, Giltrap continued to harangue him telling him that he was a very dangerous guy and he should not fucking around with him. Giltrap would have him taking care of. Giltrap then banged on him across the room. Mr. Quinto grabbed a chair so as not to fall down. When he was steady, he went back to the counter where his wife and the owner still standing there. He pleaded to the owner of the restaurant to call the police. The owner was not responsive. He thought he did not understand what he has just said. Then he and a Chinese guy went back into the dining room. He did not know what to do.

16.And when he returned into the dining room, Mr. Giltrap knocked him across the door and this time, the Chinese man and his wife saw it. Giltrap used his body like a football player using his body. Giltrap was in rage. He stained. Giltrap stormed around him.

17.His wife, who saw Mr. Giltrap doing this to him so as the other Chinese, went after Giltrap when he wanted to flee out of the restaurant. She said to him loudly: "You can't behave like this." Mr. Giltrap willed around on her and with his both fists knocked her down. All this is on the video.



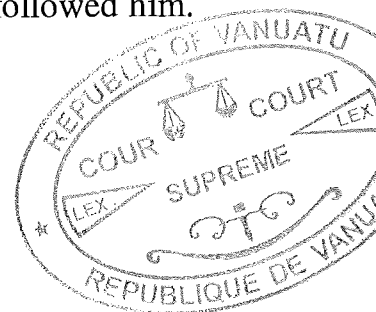
18. Mr. Quinto went to Mr. Giltrap not knowing what to do to restrain him or something. Mr. Giltrap knocked him down and when Giltrap was finished with him, he turned and went out. He explained he went to Giltrap as he did not know what to do. Giltrap knocked down his wife. She lay there with her eyes closed. Both the owner and the other Chinese were there when Mr. Giltrap assaulted him.

19. He gave evidence of the video of the whole event captured on a CCTV camera footage that the owner of the restaurant had it there captured the counter. In the video, one can see the table moved when his wife fell against it. It was a very heavy piece of furniture. She fell so hard. The owner of the restaurant kept it there. He came to know that he showed it to him some 20 minutes after the incidents.

20. After the incidents, he needed to help his wife. She was badly hurt. He needed an ambulance, the police; the Chinese helped his wife to lift her up. She was laying there with her eyes closed. He too was hurt. He was concerned about his wife. She could not walk. He started first to make sense of what happened.

21. After the owner showed him the video, he took his mobile phone and copied it into his smart phone. The video lasted about a minute and half or 2 minutes. When they left the restaurant, he gave the video to the police officer who came in that night.

22. The video which was marked exhibit P1 was shown to him. He explained the video showed Giltrap was demonstrating him; showed he followed him.

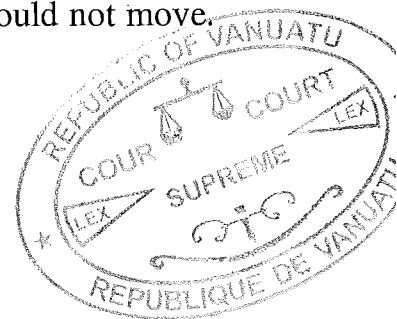


Everybody heard noises of what happened to him in the other room. The video showed him walked to the counter asked Chinese to call the police. This man was just assaulted him and it showed Mr. Giltrap knocked him. It showed his wife said “you can’t behave like this” and with both his fists knocked her down. It showed he went after him. Giltrap turned and punched him down to the ground. Then he was most concerned to get an ambulance because she could not move.

23.As to receiving help, he must have waited for more than 2 hours. He tried to get help from the police. A police officer on the phone said to him: “are you Steve Quinto?” He was shocked and the police officer said: “why don’t you pay this man what you owe him?” Then he got the number of promedic. The manager of Promedic came in, the ambulance was not there as it were somewhere at Matantas. The manager of Promedic brought a wheel chair and they were able to get his wife into it. When the manager of the Promedic came in (Mr. Jerome) he looked at him. He was bruised on the back. They put his wife in the wheel chair. They went to his truck. They put the wheel chair behind the truck. Then they went to the police station.

24.At the police station, he scripted out his statement. His wife made a small statement. The police officer there took over the case. He was told they tried to arrest the Defendant that night.

25.On the next day of the assault, his wife was carried as she could not move. The ambulance came. They took her to the hospital to take X-Rays and they took her back to the department. She was in bed for the next month and in great pain. He and her sister helped to care of his wife. She could not move. They finally get her on crutches.



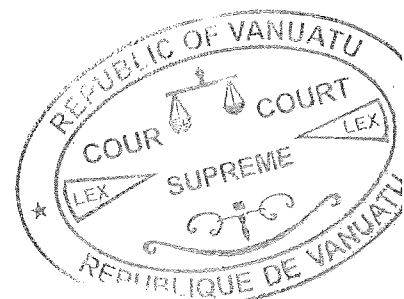
26. While his wife was in bed, he asked Doctor Timothy Vocor to examine her several times. The doctor came several times.

27. Before the assaults, exactly one year before, she had a fracture to her right femur and she was brought to Noumea, New Caledonia for operation. Prosthesis was inserted to repair the fracture. She received rehabilitated care right from the outset and some months before the incidents, she said she was finally out of pain. She told her therapist. She had her operation in March 2017. Doctor Vocor came to visit his wife at least 4-5 times. He could not recall exactly. The pain was not really gone away.

28. As a husband, his wife told him her life is over. She was in continuous pain. Her general health is good. It hurts as pain keeps coming back. It tried to correct it for the past year. The past year she fell and broken a fraction of her femur. She slept and fell in the apartment. She had no more pain before this had occurred.

29. Mr. Quinto was cross-examined. He was asked and he answered he could not recall whether he assisted his wife and had his hand into her elbow. He was asked about discussions that took place at the counter he responded he would not call it a discussion. He was asked he confirmed he used the words harangue and remonstrate.

30. He confirmed he owed the defendant money when his ship was at the sleep way of the defendant. He confirmed that in 2016, he had paid the defendant 221,000 Vatu. He was asked of any receipt, he confirmed he has a copy of cheque which was delivered by hand to the defendant. He denied he has a



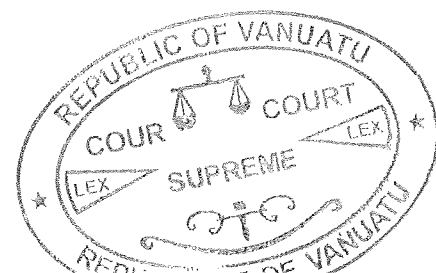
copy of a cheque which was delivered by hand to the defendant. He denied he has a copy that it was received. He was asked of his statements he replied he blocked his email account. He made 4 attempts to pay the defendant. He was asked he said the defendant harangued him. He said when he said he harangued him the defendant was furious with no details of invoices and he did not remember them. He came to the restaurant to have dinner.

31. He remembered he said the defendant mentioned also a figure of 5,000 dollars. It was specific about 5,000 dollars in lawyers' fees. He confirmed 5,000 dollars is for lawyers' fees as a result of a Supreme Court case of defamation he had then discontinued.

32. It was suggested the defendant was upset as he had not paid any money. He said he can't say what he was upset about as he did bring it to his attention.

33. He confirmed he made a couple of statements to the police. The first statement on 20 March 2018 at 8.00pm (Exhibit D1). On his second statement, (Exhibit D2) he was asked of what he said in his statement, he said the video corroborates it not the second time, the first time. He confirmed his statement is what it was in it. He confirmed before he walked in the dining room he did not ask the owner to call the police. He added that he walked in the dining room two times. He accepted that after the defendant remonstrated at the counter, no body called the police. It was put to him that that is not what his statement said. He answered not really. He asked the owner to call the police and walked into the dining room again. That is the second time he walked into the dining room of the restaurant again.

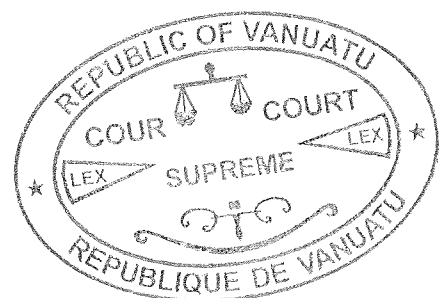
34. He denied Mr Giltrap continued with his complaint at the dining room. He denied there were further words exchanged and no other words from him in



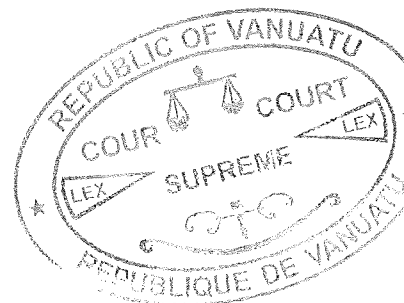
the dining room. He said Giltrap was bitter and angry. He denied he put up a chair, lifted up and motioned it to Giltrap. He confirmed he pick up a chair to keep him from falling.

35.He was asked questions on the video. He walked into the dining room, Giltrap followed him. He confirmed.

36.It was put to him when he returned into the dining room and the time Giltrap followed him into the dining room 37 seconds on the video clip and what the video show at 1.07 minutes. Mr. Giltrap had knocked him. He denied. He was asked he said Mr. Giltrap thrown him across the room. He answered he did. He banged him across the room. He accepted he was on his fit he was not injured. He accepted he started to talk to the Chinese man. He denied he told the Chinese men to put Mr. Giltrap out of the restaurant. He said he did not say a word like that. He confirmed he did say call the police twice. He had his mobile phone with him. He accepted nobody stopped him to call the police. He was asked of the door frame leading to the dining room and was put to him that at no stage Mr. Giltrap used his body like a football player on him. He answered we can't see that. He knocked him on the door side. He was asked he denied his wife jabbed Mr. Giltrap at the back. He was asked she has called Giltrap back, he answered what she said is "you can't behave like that". He was asked if he can see Giltrap turning up with his fists. He said he knocking her down. It was put to him they don't see any contact. He said she was knocked down. It was suggested to him that what he saw he thought. He said what he testified was corroborated by the video.



37. He was asked of his evidence that Mr. Giltrap was in contact with his wife. He answered he saw it from an angle Giltrap punched her with his fist. He was asked he did not say that in his statement and did not say punch. He answered he said thrown her on the ground. He did this when he was on shock himself. He was asked Quinto had her body on the counter. He said he did not make a full statement it is quickly done.
38. He accepted he went after Mr. Giltrap, Giltrap turn his back. He said he was not thinking. He said he went after him to restrain him. He did not even know how. He was so big. He accepted he got his arm raised. He wanted to restrain him. He had both of his hands raised. He went after him. He did not hit him, Giltrap hit him. Giltrap punched him down. John Giltrap pushed him down. He was on the ground and he denied he launched out.
39. He confirmed after they left the restaurant they went to the police and made a statement to police officer Seru.
40. In his evidence in chief he confirmed he was speaking of a fracture of the right femur. He confirmed his wife underwent an operation which resulted in a prosthesis put in Noumea. He did not recall of the name of the surgeon. She went about 5 – 6 weeks operation. He accompanied her. They both came back to Santo. He was asked he said she had not seen a doctor post the operation in Noumea. She had seen Doctor Vocor for Malaria. They live in Santo for 12 years, Doctor Vocor was not their traditional doctor just on occasion she saw him. He cannot recall how long before this incident Mrs. Quinto seen Doctor Vocor. He denied she saw Vocor within 6 months of operation. He denied he said she saw a therapist before 6 months. She did



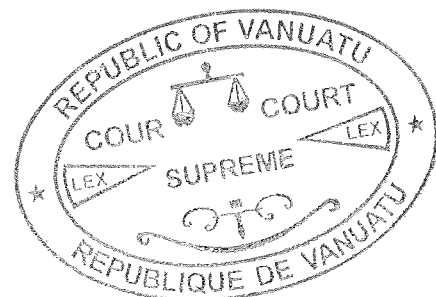
not go back to Noumea to see the surgeon. She did not see any doctor. She had completely medical free. She had not taken any medication.

41. On 21 March 2018, he denied asking James Harold Neel to make a copy of CCTV Video. But James was there the night after he called him. He denied James was back at the Restaurant at his request. He was there when the video was run.

42. Before 20 March 2018, he has no close relationship with Giltrap. He knew he owed money to him. He had complained to VIPA about Giltrap. He said he was just trying to deal with the facts. On 20 March 2018, he did not have any feeling in relation to Mr. Giltrap. He accepted he had concerned about prosecution of Mr. Giltrap. Mrs. Patterson was his lawyer for 2 years. He was concerned very much about the delay and the prosecution.

43. He denied taking on himself to publish the video. He denied the video was there at his request. He showed the video to people and made commentaries when he described what happened. He denied he spoke to campaign for justice. He was the founder of that. The video was at the office. He did not tell them of what to do. They actually investigated. He accepted he gave them the clip.

44. Mr. Quinto was re-examined. He did not publish the video clip. The found it out. He did not even know whether it was published by campaign for justice. He confirmed his evidence he did not call the police. He did not know what he could. He needed help.



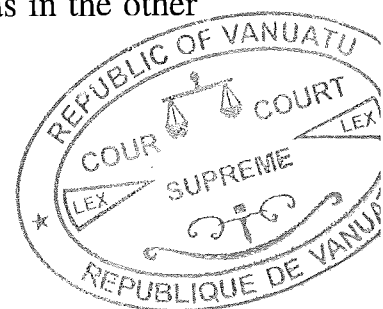
45. He confirmed he made a statement to the police immediately after the incident. He was in shock. He did not know what happened. He saw the video. He was in a bad shape. He was raising his arm on Mr. Giltrap to try to stop him. He confirmed his evidence that his wife was knocked down by Mr. Giltrap. When he was thrown down by Giltrap, he did not have any thought. He was modified. He entered into the dining room two times.

46. As to the work the Defendant did to his ship, he wrote to him letters and at 4 times he wrote and enclosed his offer of payment to the money he owed to him. As to any proof of payment he suspected Giltrap did not cash the cheque.

47. On 20 March 2018, he confirmed he could not recall whether he assisted his wife by holding her elbow when they entered the restaurant. They frequently hold hands. He said finally that the defamation case was discontinued on the advice of his own counsel.

48. Ruth Nicola Quinto was the second prosecution witness. She gave evidence to this effect. She is 77 years old. Steven Quinto is her husband. They live together for 50 years. She did not know of Defendant Giltrap. She never met Giltrap.

49. On 20 March 2018, she recalled being at the restaurant with her husband to have some food. They went at Si Chuan Restaurant. The two of them, Mr. Giltrap and the two Chinese persons behind the counter were there. She did not recall of him being there until something happened between him and her husband. She was not seeing exactly what happened as she was in the other



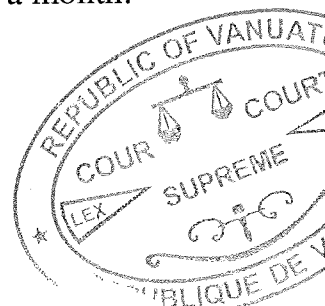
room in the counter. There was dining room and there was the entrance room.

50. When she was in the other room, she heard sound, voices and movement. She went there for dinner. Then she saw her husband coming out she heard him saying call the police he was attacked but she could not recall exactly. She can't say whether the defendant was in the dining room or not when Mr. Quinto called out for help she looked for the Chinese if they can do it. Her impression was that they can't because they do not understand what he wanted. She did nothing at that time. She was wondering. She saw Mr. Giltrap came through and still pushed her husband with his arm and walked toward the door. She followed him and said: "you cannot behave like that". The defendant turned around. He did not really punch her but he pushed her with his hands not flat but closes hands toward fists but not closed fists.

51. She was on the ground between the counter and the place she was thrown. She could hear scuffle. She could hear her husband on the ground. She could not see it as she was on the ground. She was aware of a video CCTV footage, somebody took and her husband took a copy of it.

52. She followed the defendant as she wanted to tell him that what he was doing was not the proper way to behave. She denied touching the defendant. He was twice her weight.

53. The next day after the assault, he could not recall of anything. She did not believe they have X-Rays. As a consequence of the assault, she could not use her right leg at all. Her right hip could not sustain her weight. She was unable to use her right leg for 2 weeks. She was unable to walk for a month.



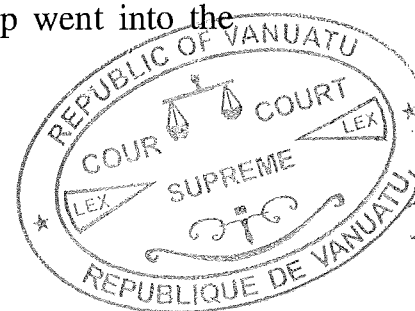
54. After the assault, she was in shock. It was a shocking thing. She was in shock through all that night and her husband Steve was in a very bad shape that night too. As she was unable to walk, she felt incapacitated. She tried to figure out why this all had happened. She comes from a culture that arguments about money do not amount to violent action. There is no argument of money with violence. Never.

55. Before March 2018, she went to Noumea for an operation. It was about 2017. She was asleep and fell on the stoned floor of their house and she had a fracture of her right femur. They inserted a rug with 2 other pieces to hold her leg. That injury was over. She was looking at her email she was writing to a friend she has no more pain.

56. Now she has again an injured femur. It could not be sustained. Her health was excellent. She was on crutches for 2-3 months.

57. She had seen Doctor Vocor 3-4 times. Each time he had questioned her and told her that he considered that the damage was permanent. He said the reasons were it was overlapping the earlier damage and it has interfered with the complete healing of the previous damage of her right femur.

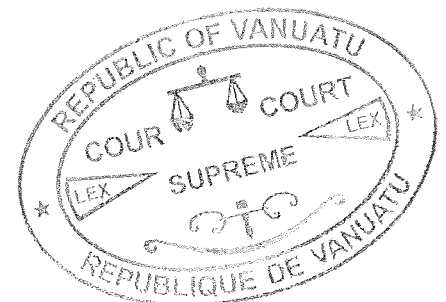
58. Mrs. Quinto was cross-examined. Before the event at Si Chuan Restaurant, she did not know Mr. Giltrap. They never cross-passed. She was asked she said it is possible Mr. Quinto held her arm. Initially there was no discussion or tension. The discussion was between her husband and Mr. Giltrap. She accepted but she could not recall. Her husband and Giltrap went into the dining room.



59. The video clip was played. She can't see what was going on in the dining room. Then something happened in the dining room attracting her attention and her husband coming back at the counter she accepted. She denied her husband said take this man outside. She could not recall of that. She recalled he says called the police. She watched the video. She could see Mr. Giltrap was moving away from her. She did not touch him at all. She told him precisely that he cannot behave like that.

60. It was put to her she got a motion toward Mr. Giltrap's back. She came into contact with Mr. Giltrap. She said it is possible but highly unlikely. (Photo Exhibit D2). She denied her right arm came into contact with Giltrap's forearms. She answered improbable. It was put to her possible. She said yes something is going on but she could not say what. One of the possible ranges is that her hand comes into contact with Mr. Giltrap. She answered he was also in contact with her. There were on motioned (photo D3). She was asked Mr. Giltrap did not have any contact with her. She replied how one can explain her fall. She watched the video. She said at that point he made something to her. She did not recall falling on the counter. The impact was very serious.

61. She remembered making a statement to the police. She remembered she said Mr. Giltrap pushed her husband like a jab with his arm. Mr. Giltrap did not punch her with his fist but his hand on her was not punch on her. Doctor Vocor made more than 1 report. Dr. Vocor used the word punch and it was not a word she used in her statement. She did not recall how they asked Dr. Vocor to make reports on her medical conditions.

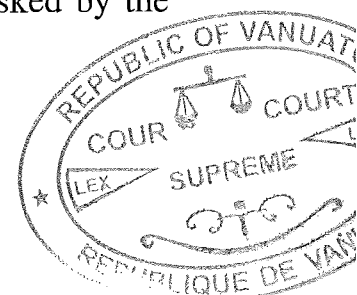


62. She was asked she said her hip operation in Noumea was for few days 5 days or a week. The doctor was a gentleman. She did not see him again. She returned to Santo after 7 days. She did not use any medication. She used therapist. She finds her therapist by phone and e-mail within a week or two to find her. The therapist was in New California. They did skype every week. Her name is Carolina Weber. Mr. Quinto was present during the skype not every week. Her therapist had given her protocols she followed them about 8-9 exercise about alignment of the body. She talked to Dr. Vocor from time to time about her hip operation and he came for house visit. She did not tell Dr. Vocor of protocols Ms. Weber was giving her (Exhibit D4).

63. In Mrs. Quinto re-examination, she explained that there is no reason to make a physical contact with Mr. Giltrap. None.

64. Doctor Timothy Vocor was the third prosecution witness. His evidence was to this effect. He is 68 years old. He lives at East Santo at Lonoch Village. He is medical doctor. He is qualified with medical degree in Medicine in 1981. He has diploma and Degree in Obstetrics and Venerology. Obstetric is specialized in looking after the mothers when they need treatments and any other diseases in re woman reproductive system. He worked as a doctor since 1981. He was working for Government Hospitals and now he is doing his private practice. Steven Quinto is one of his clients. Steve entered his private practice some years back.

65. Mrs. Nicola Quinto is also one of his clients. He recalled he had seen Mrs. Quinto in March 2018. On 21 March 2018 he provided a report after he was asked to examine Mr. Quinto. On the same date also he was asked by the



police to provide a medical report on Mrs. Quinto. His findings on Mr. Steven Quinto are:-

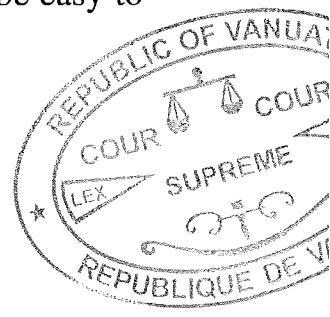
- 1) Bruises on upper rib
- 2) Painful and bruises on left hip area
- 3) Bruises on right elbow joint. The findings were made on medical examination based on observation and feeling. (Exhibit P2).

66.His findings on Mrs. Quinto are:

- 1) Pain on the right hip down to the right foot.
- 2) Very painful when she moves.
- 3) Pain on her lower abdomen.

The causes of the findings are that the victim was assaulted. (Exhibit P3). He made another report on Nicola Quinto on 27 March 2018. This is 6 days after the first report was made. She could not stand on her right leg. The pain is very much severe. (Exhibit P4).

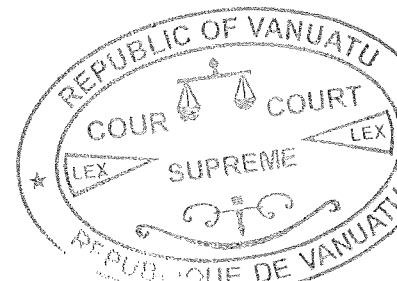
67.He made a report on Nicola Quinto also on 4 April 2018. 15 days after he was called to see Nicola Quinto. From history she was assaulted and fell on her back and landed on her prosthesis on the right hip joint of Nicola they put two metal screw and metal plate. (Exhibit P5). He made another report on Nicola Quinto on 14 June 2018. From this report done on 14 June 2018. He was called to see Nicola Quinto. She was still on the pain on the injury. This is now 2 months after incident. Nicola Quinto did not completely recover. She will take time to recover. She was 76 and it will not be easy to



say how long for the healing. But pain was still there (Exhibit P6). He made another report on Nicola Quinto on 29 June 2018. Findings: At 76 years old constant persistent pain is still there. The fracture of the femur or may be the bone is not joined. The healing process will not take place. There is a special test of MRI like a scan without radiation could assist with the process of healing. (Exhibit 7). He saw Nicola Quinto on 23 August 2018. His findings are now 5 months since Nicola Quinto was assaulted she still has the pain affecting her mobility movement. She is 76 years old. Likely that damage is done beyond repair/recovery. The current injury is an injury to an old injury. Where the age is young, we look very young, process in the body including healing. As we get older, the healing process is slower and it is not easy for the bone to join. The bone normally takes about 6-8 months to heal up. This is now 5 months after, it helps him to draw his findings on the report (Exhibit P8).

68. Doctor Vocor was cross-examined. He does not have special qualification in obstetrics. He does not make operation. He was told Mrs. Quinto was assaulted. He gained that information from Mr. and Mrs. Quinto. His findings were based on what he was told. He was vaguely informed that Mrs. Quinto had an operation and had prosthesis installed when the operation occurred. He knew this when he did examination on her. It was put to him when somebody had hip operation recovery is 12 months. He says 8 weeks.

69. The police requested him to provide reports on Mr. and Mrs. Quinto on 21 March 2018 (Exhibit P2 and P3). He was not aware Mrs. Quinto went to the hospital. He did not have any information from the hospital. On 27 March

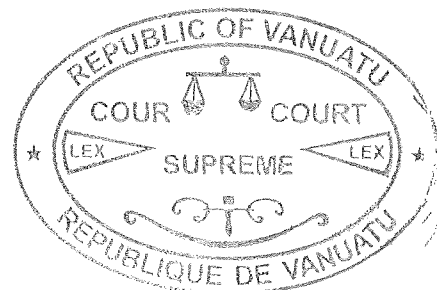


2018 Mr. Quinto requested him to make the report (Exhibit P4) Exhibit P5, P6, P7 and P8 are reports requested by Mr. Quinto made verbal by phone. In his report of 4 April 2018, P5 and P7, he used the words Nicola was assaulted/punch was a word Mr. Quinto used. In Exhibit P6 report of 14 June 2018 he did not use the words permanent damage to Mrs. Quinto. He confirmed.

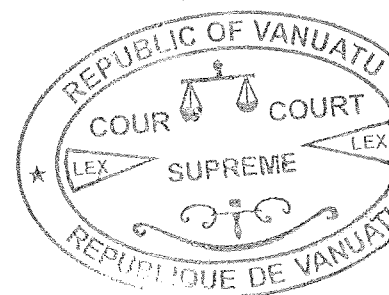
70. In the next report (Exhibit P7) 15 days later and the report of 29 June 2018. He then written “permanent injury” he confirmed. He denied he was asked by Mr. Quinto to include these words. It was part of his findings based on the information he has with his assessment of what he has. He accepted there is a need for Mrs. Quinto to have an MRI. No MRI done on Mrs. Quinto. There were no X-Rays done. He did not see any Report made by the operating Surgeon of Mrs. Quinto as it was done in Noumea. The fracture of Mrs. Quinto is overlapping. He was asked if she will have a permanent damage. He answered if the repair is not done it will not be shortening. The pain will be there. He was asked even after right hip operation positioned leg will be shorten. He answered this is if the bone are joined. It could be or not.

71. Doctor Vocor was re-examined. He clarified that the report of 14 June 2018 at the last paragraph it will not be easy to say 2 weeks based on the information fracture need 6-8 months plus the age.

72. Kwang Tchín Seu is the Fourth Prosecution witness (PW4). His English name is Wang Kenny. (“Mr. Wang”). He is 43 years old. He is from China. He is the manager of Si Chuan Restaurant. He was present in the restaurant on the night of 20 March 2018 when Mr. Giltrap assaulted Mr. and Mrs. Quinto.



73. On that night, Mr. Giltrap came to the restaurant to pick up a take away. When he finished and wanted to leave, Mr. and Mrs. Quinto came in the restaurant. They had a conversation. He did not understand what they say (because they spoke in English). The discussion was between Mr. Giltrap and Mr. Quinto and as he did not understand what they are saying, he came to the Bar table at the Counter to see Mrs. Quinto. There was a CCTV camera video footage in his restaurant. It captured the incident occurring on 20 March 2018 at the Counter. Mr. Quinto came and recorded the CCTV video footage on his mobile phone on 20 March 2018.
74. The video clip taken from his CCTV footage was played and he recognized the video and confirmed it was the once taken on 20 March 2018 at his restaurant.
75. On 20 March 2018 in the night, Mr. Giltrap came to the Restaurant and placed order for take away. When he finished with his order, Mr. Steven and Mrs. Nicola Quinto came in the Restaurant. Mr. Steven Quinto and Mr. Giltrap talked for 10 minutes. He did not understand what they were saying. He remembered a contact Mrs. Quinto fell on the counter. He did not remember whether he pushed her with his hands or arm. He saw Mr. Giltrap pushed Nicola Quinto down. Mr. Quinto and Mr. Giltrap were fighting. He did not see they were fighting.
76. Mr. Wang Kenny was cross-examined. He confirmed his evidence that Mr. Giltrap came to the Restaurant to order a take away and went to the other room. He confirmed he did not understand what Mr. Giltrap and Mr. Quinto are saying. He saw Mr. Quinto went into the dining room. Mr. Giltrap



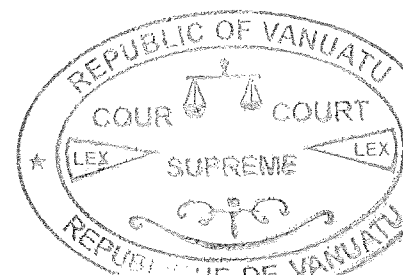
followed Mr. Quinto. He saw Mr. Quinto coming back to the Counter (0-36 minutes on the clip). He was asked he can't see Mr. Giltrap and Mr. Quinto into the dining room. He said he needed to bend or lay his head (1.04 minutes). Mr. Quinto talked to him he did not understand what he said.

77. Mr. Giltrap came into the dining room he run out and Mrs. Ruth Quinto wanted him to stay. He saw Mr. Giltrap wanted to get out. Mrs. Nicola Quinto holds him back. He was asked if Mrs. Quinto reached out Giltrap with her hand. He said he cannot see Mrs. Quinto put her hand. But he saw Mr. Giltrap put his hands like that on Mrs. Quinto (gesture showing push with his arm). He saw Mrs. Quinto touched Mr. Giltrap. Mr. Giltrap turned back and pushed Mrs. Quinto. It was put to him he could not see what happened. He answered that Mrs. Quinto put her hands and Mr. Giltrap pushed her back. Mr. Giltrap used his arm and pushed Mrs. Quinto after.

78. He did not have the original CCTV video of the incidents of 20 March 2018 anymore. The I-Pad is broken down after this happened 1 month after.

79. Constable Nimau Seru is the fifth and the last prosecution witness (PW5). He serves as a police officer for 12 years. He is investigating this case. He downloaded a copy of the video capturing the incidents of 20 March 2018 at the Restaurant Si Chuan to him that night of incident. He also took pictures of the crime scene (Exhibit P9). On 23 March 2018 at 8.00am, he also took a cautioned statement of the defendant (Exhibit P10).

80. In his cross-examination, he said he requested a medical report from the Northern Hospital from Mr. and Mrs. Quinto. He was shown Exhibit P2 and P3 and he said he did not received medical report from the Northern



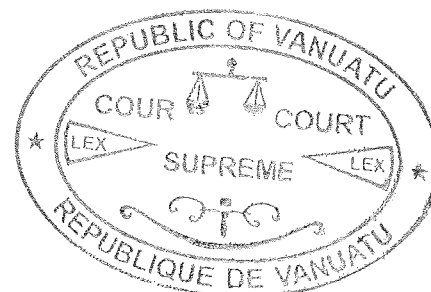
Hospital. He filled out the report form and gave them to Mr. and Mrs. Quinto. They sought medical examination and reports from the other. He accepted the position that although he requested a medical report from Northern Hospital, they gave the request of reports from Doctor Timothy Vocor. He confirmed Mr. Quinto gave him a copy of the CCTV video footage of the incidents of 28 November 2018.

81. It was his own decision to charge Mr. Giltrap. He confirmed he saw the video before he made the decision to charge Mr. Giltrap. He looked at the video many times. He confirmed he looked at the video continuously. Mr. Giltrap came back to the Counter area. He accepted Mr. Giltrap was moving away toward the entrance door of the Restaurant.

82. He was asked whether he noticed Mrs. Quinto put a hand on Giltrap. He responded it was a moving position. He is walking. She did not touch him. It was put to him Mr. Giltrap was walking toward her; it is possible Mrs. Quinto came into contact with Mr. Giltrap. He said yes. It was put to him there was no contact from Mr. Giltrap before Mrs. Quinto fell down. He answered he saw a contact from Mr. Giltrap. He came on duty on 10.00PM O'clock. He was asked he did not recall being shown any photograph of Mrs. Quinto by the Promedic.

83. Mr. Giltrap was arrested on 21 March 2018. He was in jail up until granted bail on 27 March 2018.

84. In re-examination, he was asked to clarify his answer when he said he did not receive a report from the Northern Hospital why he gave that answer. He



answered he only mentioned the Northern Hospital because it is the biggest hospital in Santo.

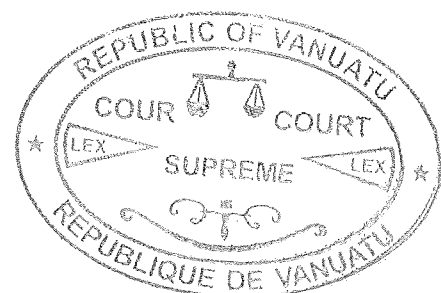
Defence evidence – Summary

85.Mr. Nigel John Giltrap elected to give evidence. He lives in Luganville and Christ Church. He is a company director.

86.On 20 March 2018, he recalled he was in the Si Chuan Restaurant in Luganville. It was around 7.00pm O'clock to buy something to eat. Then he added he believed to eat in the Restaurant. He put his orders at the counter area. There was no customer initially. Then he saw Mr. and Mrs. Quinto came into the Restaurant and Mrs. Quinto appeared to have trouble walking and Mr. Quinto assisted her by putting his hand on her elbow.

87.He said he asked Steven when he is going to pay his outstanding. Mr. Quinto had his boat into his slip yard and he did not pay him the charges. Mr. Quinto said he had paid the bill and he told him he has lied.

88.He said he told Mr. Quinto that he had also a bill coming of half million dollars because of a defamation case he put against him and just a day or two before the hearing, Mr. Quinto withdraw the case. He said Mr. Quinto did not respond to that at that time. He believed Mr. Quinto walked off. He walked into a large door way into the sitting part of the restaurant. He said he followed him. He was going there anyway. There was no other person in the dining room apart from Mr. Quinto and him.

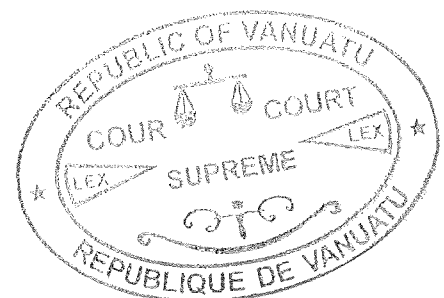


89. When he went into the dining room he sat on a table on his left. When Mr. Quinto went in they turned for the same table and bumped to each other. He sat down at a table. Mr. Quinto just standing there. He said Mr. Quinto told him he was not going to pay him because his prices were too high. He responded to him what the fuck did he know about running a business. He gave him his pedigree of what he thought of him. Mr. Quinto did not respond to him.

90. He told Mr. Quinto he knew he had three (3) failed business that he knew of. He knew his Eden business failure and that he knew he is going to lose 14 Million dollars in only 3 years. He told Mr. Quinto he was a fraud coming to Vanuatu making out he was some successful Eden entrepreneur when in fact he has gone bankrupt owing over 1.500 people money. He went on to say that he was a parasite on Vanuatu. He has come to Vanuatu, does nothing constructive and continuing drag Ni-Vanuatu and Expats to serve his own interests. He went on to say that he was a disgrace expat community running around in the bush naked with Ni-Vanuatu girls and he told him he was a pedophile.

91. At that point, he said Mr. Quinto had picked up a chair and shaken it at him (Mr. Giltrap). Mr. Quinto did not say anything; he had just shaken the chair. He said he told Mr. Quinto “fuck you the old cant”.

92. Mr. Quinto went out the door way trying to get the owner to evict him by telling the owner: “get this man out of the restaurant”. Mr. Giltrap decided he did not want to be there then left.



93. He was shown the video (Exhibit P1) he is familiar with the video. Referring to his evidence at 1.20 minutes on the video he was leaving. He confirmed.

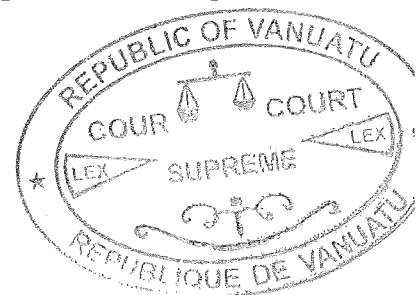
94. He said Mrs. Quinto hang him in the back. But he said he did not know who was at the time. He thought Steven was attacking him. Then he said he span around as fastest he could and it was the old lady. As he turned around, she stubbed her right nails into his left arm. It was really sharp (1.22 minutes). He said he was terrified. She put himself backward. He turned to leave the restaurant again. Steven Quinto came charging from the other side of the room at him. Mr. Quinto had both his fists put up. He was grabbling with him and put him on the ground. He then left (1.33 minutes on the video record). He went directly to the police station. He saw a police officer there. He did not get the name of that officer.

95. When Mrs. Quinto fell on the floor, he saw she slugged back, slept down on the bench and landed on her buttock.

96. He said he showed the police officer the straight mark on his arm and he told the police officer that Mr. Quinto owed them money. He was at the police station for about 5 minutes. The police officer told him to come back the next day. He left the police station and went to have diner somewhere else.

97. The next morning, he took some of his boys to Santo Hardware to take some materials. He said he noticed that the door to the restaurant was open. He stopped and he went in to see if he owes the Chinese any money.

98. He walked in and an employee of Mr. Quinto was there. His name is Harold Neel. He asked him what he was doing. He said he is making an interesting

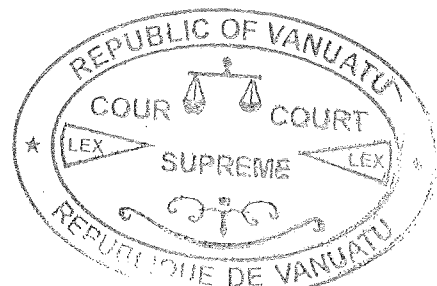


video. He told him who authorized you to do that. He said Steve did. He said he told Mr. Harold what the hell he was doing. At that point he said he had no knowledge that there were CCTV footage of the incidents the night before. He wanted to protect it at all cost. He grabbed a device he thought was the recording machine. It was Harold's laptop. He now knew Harold grabbed it too. They are going to tab a war. It seemed like a long time. He was screaming to grab it. So he threw it over him to one of his boys and he caught it.

99. Tony run with it toward the road to the airport. Harold was chasing Tony. He got into his truck with two of his boys looking for Tony. As they drove they turned to that street where Harold was chasing Tony and as they drove passed, Harold tripped over head to the street they drove around Harold. They were cut on his face. There was bleeding. He carried on. Tony passed the laptop through the window of the truck and he also came in the truck by the back. Mr. Giltrap went directly to the office of the Marine Regulator. He gave them the laptop for safe keeping. He left it with one of the ladies working there.

100. He went back to Santo Hardware to get some supplies and the police arrested him at Daming Store. They brought him to No. 6 and after 24 hours police released him and police arrested him again and took him before the Magistrate's Court at Luganville, Santo. He said he was refused his lawyer. He was put into jail no legal representation for a week and he get bailed since up to this trial.

101. In his cross-examination, he said he first arrived in Vanuatu 5 years ago. He lived in New Zealand at Christ Church.



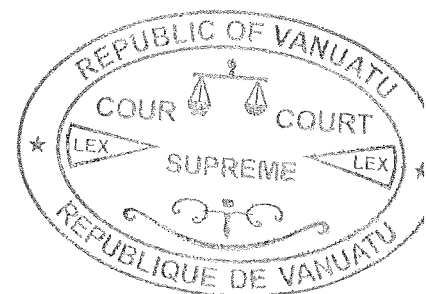
102. He was asked of his evidence that Mrs. Quinto appeared to have difficulty and Mr. Quinto assisting her. He confirmed. It was put to him also that he saw (in the video) that Mrs. Quinto was walking behind him (without assistance). He answered he saw that in the video. It was putt to him he was not telling the truth. He answered no. He asked the question to be repeated. He said Steve is assisting her. May be he loved her. He did not know. He was asked again, he saw Mrs. Quinto in the video unassisted. He answered she was walking unassisted. He agreed with that.

103. He was asked that in the counter area, there was a chair a customer can wait when an order is made. He confirmed by saying yes.

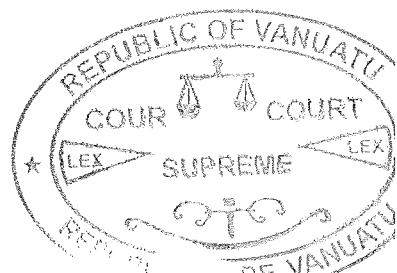
104. He accepted that Steve was the first to enter the dining room. He accepted also that he followed Steve there. There were many tables in the dining room. He confirmed he and Mr. Quinto bumped into each other. He denied it was not possible. He said it had taken 1 minute or so in the dining room.

105. He accepted he was the one doing the talking. He accepted he used the words "Fuck of the old cunt". It was put to him and he denied he used the words: "you will not fucking around with him". He was asked if he said he was the one who sat on the table. He denied.

106. He was asked and he denied he was the one who pushed Mrs. Quinto. He said she fell because she was frightened of him.



107. He was asked to see the video, the table of the counter moved at the impact of the fall of Mrs. Quinto. He could not see that. He has seen it shake.
108. It was put to him the table of the counter was moving because there was force applied. He did not accept that the table moved but he said the table was just shaken. It was put to him and he confirmed his evidence that Mrs. Quinto fell on her own motion.
109. He was asked as a right minded person whether it is possible to say that she fell on her own motion. He answered it is appropriate her husband was attacking him. He was leaving. He was asked and he confirmed that the business dealing was between him and Mr. Quinto but not Mrs. Quinto.
110. It was asked of him he did not help Mrs. Quinto. She was fine he said. He accepted he did not help her. He disagreed that if someone assaulted his wife he will defend her as it was not lawful.
111. He was asked to agree that Mr. Quinto raised his hands. He answered, if he was concerned about his wife, he would help his wife but not came at him. He accepted Mr. Quinto is an old man and in good health. He accepted he is stronger and a fit person. It was suggested he could walk away. He said he had no choice. He did not know what he was capable of.
112. He was asked of his evidence that Mr. Quinto planted her nail finger into his arm. He confirmed. He was asked about the photos of injury. He said he took the photos but did not have them. He took pictures over pictures. He was challenged that he was making up the story. He denied. He



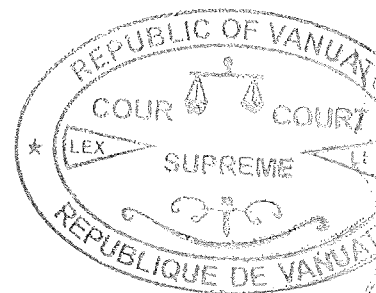
was asked again that was the reason he did not provide any photos of the injury. He said the photo did not come out. He was arrested and put in jail the next day. He was asked of his evidence that he went to the police and told the police that there was an incident. He confirmed. He was asked he showed the police that Mrs. Quinto crimped his arm. He confirmed. It was put to him that in his evidence, he said the police told him to come the next morning and he was arrested on the midday. He answered he has people working for him and he has millions of dollars to manage.

113. He was asked and he said he did not want to lay charges against the Quintos under legal advice.

114. He confirmed his evidence that he took a laptop from Harold Neel the next day of the incident. He confirmed he gave the laptop to the office of Maritime Regulator. He said he know he could not be trusted. It was put to him that the intention was to destroy the evidence. He denied. The laptop was given back to Harold and was destroyed so that he could not have it. He denied he went back to the restaurant purposely to steal the evidence.

115. He confirmed his evidence that Mr. Quinto told the Chinese owner to get him out of the restaurant.

116. He was asked of his evidence that Mr. Quinto was there for his own personal interests. He answered that was what his court cases are about more than any person in this country. He was asked if he knew that Mr. Quinto was clearing 15 kilometers bush road at Big Bay area. He said no. He was asked of his evidence that Mr. Quinto owe 1500 person money. He said that



was what is in the internet. He did not have any proof. It was his own opinion based on what he knew.

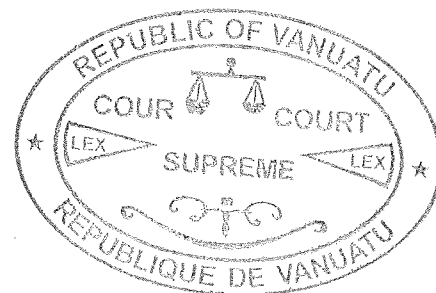
117. He was taken back to the video, (1.02 minutes on record), the two Chinese were trying to look into the other room he was with Mr. Quinto, as he was trying to reach Mr. Quinto. He denied. He denied he punched Mrs. Quinto and she fell down (at 1.25 minutes). He denied he hit Mrs. Quinto and punched her on the floor at 1.23 minutes on record.

118. He was asked the laptop he took from the restaurant belong to Mr. Harold. He answered if he insists. It was put to him that Mr. Harold is not an employee of Mr. Quinto. He said Mr. Quinto is lying. He was working on Mr. Quinto's Yatch.

119. In his re-examination, he clarified he took the laptop to the OMR instead of the police because the wanted to go to a reputable Ni-Van organization. The police was compromised. Mr. Quinto had previous relations with the police. He assumed.

Discussion on evidence

120. The evidence in this case is provided by oral testimonies of prosecution witnesses and defendant who elected to give evidence on his own behalf himself.



121.The evidence from the prosecution and the Defence was about two incidents of assault on an elderly couple of 83 and 77 years of age (Mr. and Mrs. Quinto respectively).

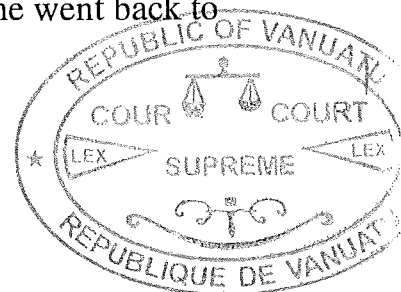
122.The incidents of assault occurred at Si Chuan Restaurant in Luganville, Santo on 20th March 2018 at about 7.00pm O'clock in the evening. It is a Chinese Restaurant.

123.The Restaurant had a CCTV Camera video footage which captured what happened in the counter room and also the entrance door to the dining entrance door to the dining room in the restaurant. A copy of this CCTV video footage was used during the trial as the check on what was said happening at the two incidents of assault, before and after (Exhibit P1).

124.Mr. Giltrap, the Defendant, was the first customer in the Restaurant. He was at the counter when Mr. and Mrs. Quinto entered the Restaurant.

125.Mr. and Mrs. Quinto went to the Restaurant to have dinner. Mr. Giltrap was there to buy some food by ordering his take away. He was not there to have dinner at the Restaurant. Mr. Wang Ken gave evidence that Mr. Giltrap went to the restaurant and ordered take away and when he finished with his order and ready to leave, Mr. and Mrs. Quinto entered the restaurant.

126.I accept the evidence of Mr. Wang Ken, the owner of the restaurant, that Mr. Giltrap was ordering the take away in the Restaurant and I reject the evidence that Mr. Giltrap was in the restaurant to have his dinner there. This finding is supported by the evidence of Mr. Giltrap himself when he volunteered information that on the next day of the incidents he went back to



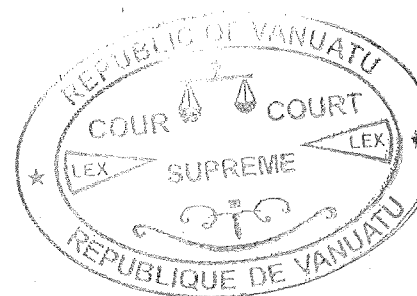
the restaurant to see if he owed the Chinese owner money. This is the evidence that Mr. Giltrap was there to buy food by placing orders for take away but not to have dinner in the restaurant.

127. When Mr. and Mrs. Quinto arrived in the restaurant, Mr. Giltrap, Mr. Wang and another Chinese man were all at the counter of the Restaurant. There was a chair in the counter room, some flowers on the right side of the table there and other things on the right side of the table at the counter.

128. In the counter room there were the two Chinese, Mr. and Mrs. Quinto and Mr. Giltrap. Mr. Giltrap talked to Mr. Quinto. He talked from a distance and moved closer to him (video show this). On the evidence, Mr. Quinto said Mr. Giltrap was remonstrating and arranging him about outstanding of invoices of charges Mr. Quinto owed to Mr. Giltrap of the use of sleepway by Mr. Quinto. Mr. Quinto said he settled the bills by sending a cheque of VT221,000 Vatu. Mr. Giltrap said Mr. Quinto was lying. There was also mentioned of half Million dollars of lawyers' fees of a Supreme Court case on defamation Mr. Quinto lodged against Mr. Giltrap and the case was discontinued a day or two before the trial date. Mr. Quinto said on the advice of counsel.

129. Mr. Quinto said Mr. Giltrap was arranging him so he decided to avoid him and he went to the dining room. Mr. Giltrap followed Mr. Quinto in the dining room.

130. On the evidence as found, Mr. Giltrap was not supposed to be in the dining room of the restaurant that night.



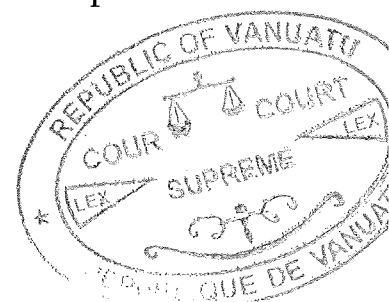
131.I accept the evidence that Mr. Giltrap was angry when he followed Mr. Quinto in the dining room.

132.When Mr. Quinto and Mr. Giltrap were inside the dining room, Mrs. Quinto and the two Chinese were at the counter.

133.Something happened in the dining room between Mr. Quinto and Mr. Giltrap. On the evidence, there were loud voices and movements there. Mr. Quinto said Mr. Giltrap was angry and aggressive. He harangued him. He punched him. He held a chair to be steady and not to fall. Mr. Giltrap said Mr. Quinto lifted a chair and motioned it at him.

134.It is more probable than not that Mr. Giltrap was angry and aggressive toward Mr. Quinto. That is the reason why Mr. Quinto came back to the counter room and asked the owner of the restaurant to call the police (twice). Mr. Giltrap said Mr. Quinto asked the owner to get him out of the restaurant. The Chinese owner and his colleague were not responsive as they seemed not to understand what Mr. Quinto said. Further, in Mr. Giltrap's evidence, he was the one who did the most talking in the dining room.

135.Mr. Quinto did not say anything. There was more than a table in the dining room. Mr. Giltrap said they were bumping to each other in the dining room as they turned for the same table. Mr. Quinto was standing. Mr. Giltrap said Mr. Quinto told him he was not going to pay him because his prices were too high. Mr. Quinto said he did not say anything like that. Mr. Quinto said he did not say a word. Mr. Giltrap told Mr. Quinto what the fuck he knew about running a business. Mr. Giltrap said he gave Mr. Quinto his pedigree of what he thought of him. Mr. Giltrap said Mr. Quinto did not respond to

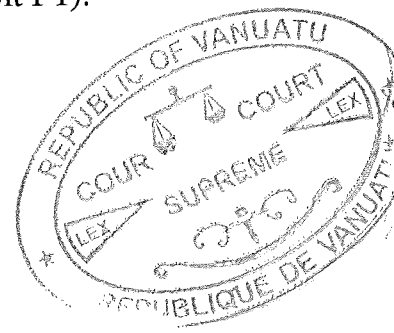


him. This is confirmed by the evidence of Mr. Quinto. It is more likely than not that Mr. Giltrap was angry and aggressive towards Mr. Quinto. On his own evidence Mr. Giltrap believed that Mr. Quinto walked off when he walked into a large door way into the sitting part of the restaurant (Dining room). Mr. Giltrap followed Mr. Quinto in the dining room. Mr. Giltrap said he is going there anyway. I cannot accept that part of his evidence as Mr. Giltrap was there in the restaurant to collect food ordered as take away as found earlier. He followed Mr. Quinto because he was angry and became aggressive toward Mr. Quinto.

136.Mr. Quinto said Mr. Giltrap harangued him. He was angry and aggressive toward him. He punched him in the dining room causing him to come back to the counter room to ask for the owner of the Restaurant to call the police.

137.It is also a fact that after Mr. Quinto came to the dining room and told the owner to call the police; Mr. Quinto went back to the dining room. At this point in time he followed Mr. Wang there in the dining room. Mr. Giltrap was still there. Mr. Quinto said Mr. Giltrap knocked him across the door and this time, the Chinese man and Mrs. Quinto saw it. Mr. Quinto said Mr. Giltrap used his body like a football player using his body. Mr. Quinto might characterize his evidence and exaggerate some details but Mrs. Quinto said in her evidence that Mr. Giltrap came through and still pushed Mr. Quinto with his arm and walked toward the door. I accept the version of fact given by Mrs. Quinto that Mr. Giltrap pushed her husband (Mr. Quinto) with his arm and walked toward the door.

138.This is confirmed by the CCTV camera footage video (Exhibit P1).

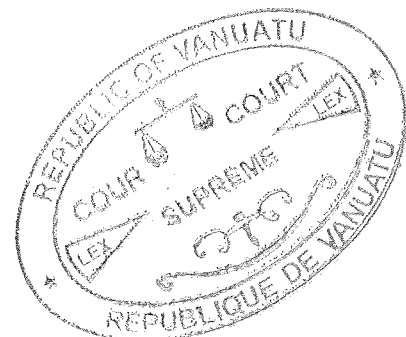


139. At that stage, Mrs. Quinto was advancing toward the entrance of the dining room and saw that Mr. Giltrap was pushing her husband with his arm and walked toward the door to go out. She followed him and told him: "You cannot behave like that". She said she did not jab or touch Mr. Giltrap as he was twice her weight.

140. I accept that Mrs. Quinto was shocked of what happened to her and may not remember the details of what she went through. On the evidence I accept that she touched Mr. Giltrap on his back as testified by Mr. Wang Ken. This is confirmed by the video. The touching was on Mr. Giltrap's back but not on his hand or arm. It was a touching but not a jab. I reject the evidence that there was a scratch on the arm of the Mr. Giltrap. Exhibit D3 was the sequence of video when Mr. Quinto was thrown down on the floor by Mr. Giltrap with his right arm. Exhibit D3 is not evidence of scratch as testified by Mr. Giltrap. I reject that evidence. I accept that Mrs. Quinto was thrown down on the floor by Mr. Giltrap using his right arm. The video (Exhibit P1) shows this.

141. I do not accept that the touch on the back is the triggering fact of the incidents of assault.

142. I accept as a fact that the triggering fact was the push with the arm on the body of Mr. Quinto at the door of the dining room by Mr. Giltrap before he walked away. Mrs. Quinto saw that and disapproved it. Because Mr. Giltrap walked pass her, on her walking motion, she touched the back of Mr. Giltrap in order to tell him to behave.

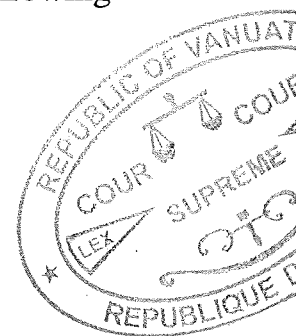


143.Mr. Giltrap turned himself. He looked at Mrs. Quinto and threw her on the floor with his right arm. At 01.21 minutes of the video record, when Mrs. Quinto touched his back, Mr. Giltrap looked on his left side at the direction of Mr. Quinto. Mr. Quinto was there but not near Mrs. Quinto. Mr. Giltrap looked at Mrs. Quinto. Mr. Giltrap looked at Mrs. Quinto (01.22 minutes) and threw her on the floor with his right arm.

144.It may be plausible that Mr. Giltrap turned around because Mrs. Quinto touched him on the back and told him to behave.

145.It may also be plausible that Mr. Giltrap had his back turn. He did not know who touched him on the back and told him to behave. His instinct was Mr. Quinto who had spoken to him earlier, the options exist: First there was no contact as Mrs. Quinto was terrified and threw her backwards. I reject that evidence. There was a contact from Mr. Giltrap. The second aspect is that there was a contact from Mr Giltrap as testified by Mrs. Quinto to the extent that the contact from Mr. Giltrap was not a punched but a hard push by Mr. Giltrap with his right arm throwing her down on the floor and she banged heavily against the counter. I accept that the throwing was with force taking the weight and size of Mr. Giltrap as a fit and strong man. On that part of evidence, the CCTV video shows that the impact of the fall of Mrs. Quinto against the counter caused the left side of the counter table which was made of hard furniture to move. The flowers that were on the right side of the table were shaken.

146.It is a fact that Mrs. Quinto sustained injuries as a result of her throwing down by the Defendant.



147.It is also a fact that Mr. Quinto had a fracture to her right femur and she went through an operation in Noumea, New Caledonia on March 2017. Prosthesis was put to help her right femur to heal.

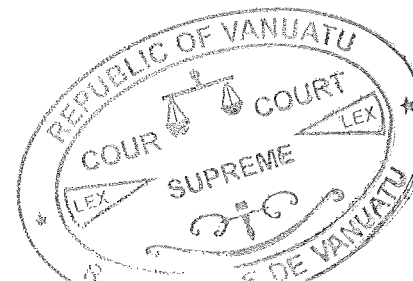
148.It is accepted that that injury was over. However, as a result of the injury she sustained on 20 March 2018, the next day she could not use her right leg at all. Her right hip could not sustain her weight. She was unable to use her right leg for 2 weeks. She was unable to walk for a month.

149.She has again an injured femur. It could not be sustained. Her health was excellent. She was on crutches for 2-3 months. Doctor Vocor said he considered the damage to be permanent. The reason was it was overlapping the earlier damage and it had interfered with the complete healing of the previous damage of her right femur. [Exhibits P5 and P6 and P7].

150.It is also a fact that there were no photographs of Mrs. Quinto's leg and injury there were no X-Rays made of the leg and the injury, the doctor says there was a need for an M.R.I to be done but there is none in Vanuatu.

151.It is a fact that Doctor Vocor does not call himself specialist on orthopedics. He never did operation on hip. There was no report from the Northern Hospital, no X-Rays, and no RMI. There was no diagnostic evidence at all. There was no report from the Surgeon who did the operation on Mrs. Quinto in Noumea, New Caledonia in 2017.

152.It is a fact that Mr. Quinto saw that the Defendant assaulted his wife by throwing her on the floor against the counter. He reacted by raising his both hands toward Mr. Giltrap. Mr. Giltrap confronted him. Mr. Quinto did not



throw a punch. Mr. Giltrap assaulted him by throwing a right punch at him. Mr. Quinto was thrown down on the floor and while he was on the floor, Mr. Giltrap assaulted him again twice by pushing on his body against the floor.

Application of law to the facts

153. The Defendant is charged with the offence of intentional assault on the body of another person under paragraphs (a), (b) and (c) of Section 107 of the Penal Code, which provides:

"INTENTIONAL ASSAULT

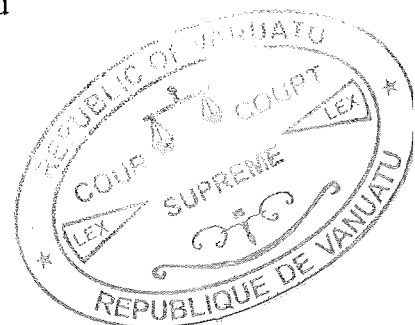
107. No person shall commit intentional assault on the body of another person;

- (a) If no physical damage is caused, imprisonment for 1 year; and*
- (b) If damage of temporary nature is caused, imprisonment for 5 years*
- (c) If damage of permanent nature is caused, imprisonment for 10 years.*

154. The Defence from the outset raised the issues of self-defence. The burden of proof in disproving beyond reasonable doubt such pleas rests upon the Prosecution. The relevant section is section 23 of the Penal Code. It is reproduced below.

SELF-DEFENCE NECESSITY, PREVENTION OF OFFENCES ETC.

23. (1) No criminal responsibility shall attach to an act dictated by the immediate necessity of defence of the person acting or of another, or of any right of himself or another, against an unlawful action, provided that the means of defence be not disproportionate to the seriousness of the unlawful action threatened



(2) Without prejudice to the generality thereof, subsection (1) shall apply to the intentional killing of another in defence of an attack causing a reasonable apprehension of death, grievous harm, rape or sodomy

(3) No criminal responsibility shall attach to an act, not being an act to which subsection (1) applies, done in necessary protection of any right of property, in order to protect the person acting or another, or any property from a grave and imminent danger, provided that the means of protection used be not disproportionate to the severity of the harm threatened.

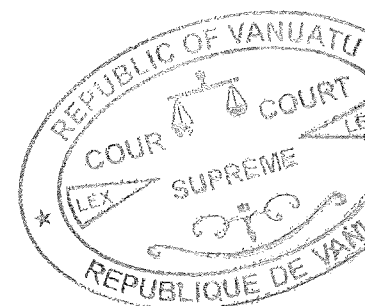
(4) No criminal responsibility shall attach to the use of such force as is reasonable in the circumstances for the purpose of-

(a) preventing the commission of an offence (not being an offence against the person acting); or

(b) effecting or assisting the lawful arrest of any offender or suspected offender or any person unlawfully at large.

154. I consider the Judgment of the English Court of Appeal in *Palmer v [1971] AC 814* as a good case authority and I rely on it. I note that the Australian High Court decision in *Zecevic v DPP (1987) 61 ALJR375* is also in line with **Palmer** decision. The English Court of Appeal in **Palmer** said that the simple question was whether the Defendant was acting in self-defence? If the prosecution satisfies the jury (here the Judge of fact) that the defendant was not, then any other issues of justification or excuse remain but not self-defence. An assertion that the use of force was considered subjectively necessary or reasonable would await issues in mitigation. The relevant part of this judgment is this:

"It is both good law and good sense that the (accused) may do, but may only do what is reasonably necessary. But everything will depend on the particular facts and circumstances (of the case) ... the defence of self defence, where the evidence makes its raising possible, will only fail if the prosecution shows beyond reasonable doubt that what the accused did was not by way of self defence. (If this is shown by the prosecution) then the issue is eliminated from the case... The defence of self defence is either succeeds so as to result in an acquittal or is disproved in which case the defence is rejected."



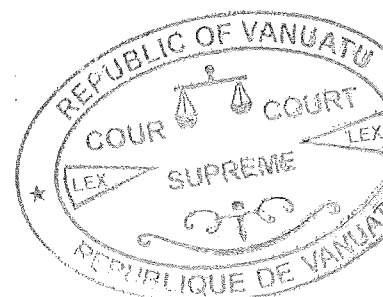
155. I now apply Palmer case in respect to the facts and circumstances of this case. Was the throwing of Mrs. Quinto on the floor against the counter on 20th March 2018 within the conception of necessary self defence judged by the standards of common sense, bearing in mind that Mr. Giltrap was angry and aggressive towards Mr. Quinto in the dining room and at one stage pushed him across the door of the dining room and Mrs Quinto saw it and wanted to tell Mr. Giltrap to behave which resulted in the assault against her and also assault against Mr. Quinto or was it the case of an angry retaliation or the pure aggression on Defendant Giltrap's part?

156. In order to establish self-defense, Mr. Giltrap must show:

- a threat of unlawful force or harm against him;
- a real, honest perceived fear of harm to himself (there must be a reasonable basis for this perceived fear);
- no harm or provocation on his part; and
- there was no reasonable chance of retreating or escaping the situation.

157. Was there a threat of unlawful force or harm against Mr. Giltrap by the touch by Mrs. Quinto on Mr. Giltrap's back?

158. The relevant facts are that Mr. Giltrap was angry and aggressive toward Mr. Quinto over outstanding bills of invoices Mr. Quinto owed money to Mr. Giltrap. Mr. Giltrap was persistent and abusive although a notice and reminder to Mr. Quinto of his unpaid invoices and recourse to the courts will be the way forward as testified by Mr. Quinto. Instead, Mr. Giltrap followed Mr. Quinto into the dining room when Mr. Quinto tried to avoid him. Mr. Giltrap had ordered take away food that night. He was not supposed to be in the dining room and, among other actions, Mr. Giltrap was so angry and aggressive towards Mr. Quinto that he pushed Mr. Quinto with his arm across the door of the dining room. That is then the triggering factor leading to the incidents of assault happening in the night of 20 Mach 2018 at Si Chuan Restaurant. Mrs. Quinto saw what Mr. Giltrap was doing to her husband. She disapproved it. Because Mr. Giltrap was walking passed her, on her walking motion behing Mr. Giltrap, she touched his back and told him to behave. Is this a threat of unlawful force or harm against Mr. Giltrap by Mrs. Quinto, an elderly lady of 77 years of age, warranting him to defend himself against? I answer in the negative. No.

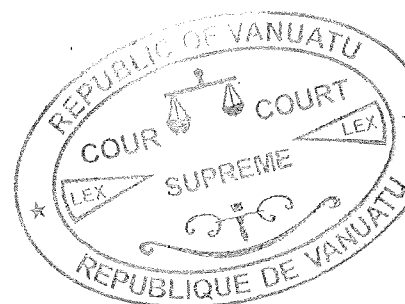


159. Was there a real, honest perceived fear of harm to Mr. Giltrap? The next factor is that Mr. Giltrap believed that the touch in his back was Mr. Quinto who he has spoken of. He turned himself quickly and reacted by throwing Mrs. Quinto on the floor against the counter. He said he realized it was Mrs. Quinto but not Mr. Quinto. Mr. Giltrap was said to have a real and honest perceived fear of harm to himself. However, the record of video showed that during the few seconds that Mr. Giltrap turned himself, he turned his head and eyes at the direction of the door to the dining room where Mr. Quinto was with the two Chinese as he was on his way to go out of the restaurant. He saw Mrs. Quinto was facing him not Mr. Quinto. He heard the old lady telling him to behave. He was so angry and aggressive that he did what he did to her. I do not think the situation created a real and honest perceived fear of harm to himself. It is a pure aggression on this old lady.

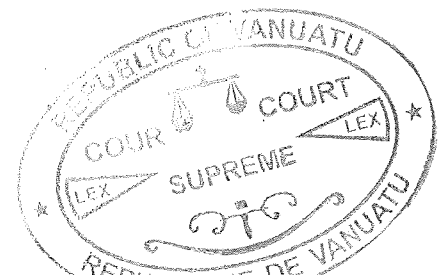
160. Was there no harm or provocation on Mr. Giltrap's part? Another factor in this case is that Mr. Giltrap was angry and aggressive towards Mr. Quinto. He was abusive towards him by telling him he was "an old fucking cunt" and treating him a "pedophile" and the like. These abuses amount to provocation made by Mr. Giltrap to Mr. Quinto. Mr. Quinto did not respond to any of these types of provocations. In addition, Mr. Giltrap was assaulting Mr. Quinto by pushing him across the door of the dining room with his right arm. Mrs. Quinto saw and disapproved such behaviour and wanted to tell him to behave to which Mr. Giltrap reacted aggressively towards her. I sense Mr. Giltrap was not charged with this incident. However, it is part of the facts provided in evidence and is relevant for facts assessment consideration.

161. The last consideration was whether there was no reasonable chance of retreating or escaping the situation. In this case, Mr. Giltrap was on his way out of the restaurant. He has a reasonable chance of retreating or escaping the situation. He was so angry and aggressive that he could not make use of the opportunity when facing with a tiny elderly lady of 77 years of age; he was twice her size and weight.

162. On the facts and law the issue of self-defence raised by Mr. Giltrap in respect to assault on Mrs. Quinto is rejected on beyond reasonable doubt. Simply, there is no self defence.



163. The doctrine of self-defense has a number of limitations in addition to those outlined above. Simply because someone acts in self-defense does not mean that all bets are off as far as the amount of force that can be used to defend one's self. The force used in self-defence must not be disproportionate when compared to the threat posed by the victim. Also, even if all the elements outlined above are met, an individual defending himself may still be found guilty of assault if the victim was physically no match for him in the first place (this could be due to size, age, etc.).
164. As to the assault on Mr. Quinto, Mr. Quinto was 83 years old. He was abused; harangued and now he saw his wife thrown down against the counter by Mr. Giltrap. He was trying to defend his wife by lifting his two hands up toward Mr. Giltrap to restrain him or do something. He did not know what to do.
165. There may be a threat of unlawful force or harm against Mr. Giltrap when Mr. Quinto lifted his two hands up toward Mr. Giltrap; there may be a real, honest perceived fear of harm to Mr. Giltrap; Mr. Quinto was assaulted by Mr. Giltrap at the door of the dining room; Mr. Quinto was abused by Mr. Giltrap when Mr. Giltrap told him: "He is an old fucking cunt..." He was treated as "a pedophile" by Mr. Giltrap. His Eden entrepreneurship status was tarnished. It was said he was a fraud and a bankrupt. These abuses amount to provocation of Mr. Quinto by Mr. Giltrap. Mr. Quinto did not respond to these provocations.
166. Mr. Quinto, an old man of 83 years old wanted to defend his wife of 77 years old which was thrown down on the floor lying there against the counter. He did not throw any punch at Mr. Giltrap. Mr. Giltrap grabbed with him and punched him to the floor. While Mr. Quinto was on the floor, Mr. Giltrap continued to assault him twice. The circumstances of this case, rule out the defence of self defence. However, even if the issue of self defence is tenable, the force used is disproportionate compared to the threat posed by the victim (Mr. Quinto). Also taking Mr. Giltrap's physical size and weight as a strong and fit man compared to Mr. Quinto of 83 years, Mr. Quinto was physically no match for him in the first place due to his size and age.
167. The case of *Vuduy v Public Prosecutor* [2018] Criminal Appeal case No. 2587 of 2018 (16 November 2018) referred to by the defence is factually distinguishable from the factual circumstances of the present case. In



Vuduy case, there were actually exchanges of punches between the victim (deceased) and the Defendant/Appellant (Vuduy) when the Appellant threw the fatal punch to respond to the deceased's. In the present case, there was no exchange of punches and Mr. and Mrs. Quinto are no match to Mr. Giltrap taken his physical size as a strong and fit man with power and strength compared to Mrs. Quinto who is first a lady and an old lady of 77 years of age and her husband, an old man of 83 years of age.

168. The issue of self defence raised in respect to assault on Mr. Quinto is rejected also on the facts and law on beyond reasonable doubt.

169. The next question is whether the prosecution has proved beyond reasonable doubt each and all essential elements of the offence of assault causing damage of permanent nature, contrary to section 107 (c) of the Penal Code in count 1 and the offence of assault, contrary to section 107 (a) of the Penal Code in count 3.

170. I am satisfied beyond reasonable doubt that the prosecution has proved each and all essential elements of the offence of assault, contrary to section 107 (a) of the Penal Code, charged in count 3 of the information.

171. In relation to the offence of assault causing damage of permanent nature charged in count 1 of the information, I am satisfied of the following:

First element

172. Mr. Giltrap assaulted Mrs. Quinto on 20th March 2018 inside Si Chuan Restaurant. On the facts, it is proved on beyond reasonable doubt;

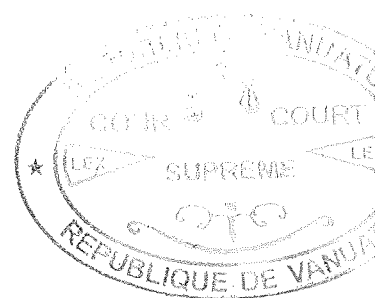
Second element

173. Mr. Giltrap intended to assault Mrs. Quinto on 20th March 2018 inside Si Chuan Restaurant. On the facts, it is proved beyond reasonable doubt;

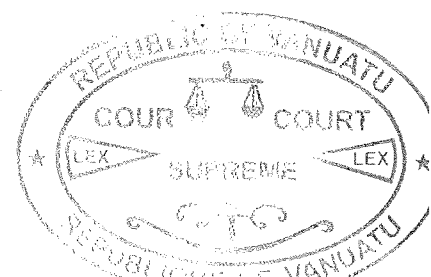
Third element

174. The assault caused damage to the body of Mrs. Quinto. On the facts, it is proved beyond reasonable doubt;

Fourth and last element



175. The damage or injury caused is of permanent nature. The prosecution evidence was through Doctor Timothy Vocor. Dr. Vocor provided a series of reports from 21 March 2018 (Exhibits P2 and 3); 27 March 2018 (Exhibit P4); 4 April 2018 (Exhibit P5); 14 June (Exhibit P6) 29 June 2018 (Exhibit P7) and August 2018. It is noted that in the first report of 21 March 2018 to 14 June 2018, the report did not mention that the damage was of permanent nature. The report of 29 June 2018 wrote that the damage was of permanent nature- that is 15 days after the report of 14 June. That finding was made on the basis of what the doctor said he has.
176. Doctor Vocor accepted there is a need for Mrs. Quinto to have an MRI. No MRI was done on Mrs. Quinto. Dr. Vocor accepted that there were no X-rays done on Mrs. Quinto. Dr. Vocor accepted that he did not have a report made from the operating surgeon of Mrs. Quinto as it was done in Noumea, New Caledonia. The fracture of Mrs. Quinto is overlapping. He was asked if Mrs. Quinto will have a permanent damage, he answered if the repair is not done, it will not be shortened and this is if the bones are joined the damage could be permanent or not.
177. It is clear that Doctor Vocor does not call himself specialist in orthopedics. Doctor Vocor never did a surgical operation on the hip. There was no photographs (photos) taken of Mrs. Quinto's injured leg before (in 2017) and after in respect to the injury of 20 March 2018 for the purpose of comparison between the two injuries on the same right femur and hip as it is the case here. There were no X-Rays done on Mrs. Quinto's leg. There was no MRI done on Mrs. Quinto. There was no diagnostic evidence provided in the particular circumstances of this case bearing in mind that Mrs. Quinto had an operation of her right femur and prosthesis was put to support the healing of her injury in March 2017. Although Mrs. Quinto testified that the previous injury is over as there was no longer pain since February 2018, the above analyses of the medical evidence on whether or not the damage sustained by Mrs. Quinto is of permanent nature, is in doubt. That doubt is not frivolous or fanciful but it is a reasonable doubt based on the absence of relevant medical diagnostic report to compare the two injuries on the same right leg and hip and to assess their impact and in particular the extent of the new damage of the same right femur so that one could be able to say whether the damage caused was of permanent nature.
178. On that basis, the prosecution has failed to prove on the criminal standard of beyond reasonable the fourth element of the offence of assault causing



damage of permanent nature, contrary to section 107(c) of Penal Code. The prosecution has therefore failed to prove on beyond reasonable doubt the offence of assault causing damage of permanent nature in Count 1 of the information.

179. Mr. Giltrap will accordingly be found not guilty in count 1.

180. But on the facts as found, Mr. Giltrap is found guilty on each and all essential elements of the offence of assault causing damage of temporary nature, contrary to section 107 (b) of Penal Code as charged against him in Count 2 in the alternative of count 1 in the information. The prosecution proves each and all the elements of the offence in count 2 beyond reasonable doubt.

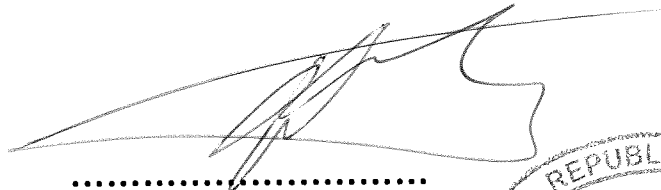
Verdicts

181. The verdicts against Mr. Giltrap are as follow:-

1. Count 1: Intentional assault causing damage of permanent nature, contrary to section 107 (c) of Penal Code Act - NOT GUILTY;
2. Count 2: Intentional assault causing damage of temporary nature, contrary to section 107 (b) of Penal Code Act - GUILTY;
3. Count 3: Intentional assault causing no physical damage, contrary to section 107 (a) of Penal Code Act – GUILTY.

DATED at Luganville Santo this 28th day of June, 2019.

BY THE COURT



.....
Vincent Lunabek
Chief Justice

