

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

Criminal
Case No. 17/3478 SC/CRML

BETWEEN: Public Prosecutor

AND: Jeffrey Bob
Defendant

Coram: Justice Aru

Counsel: Ms. L. Lunabek for the Public Prosecutor
Mr. A. Bal for the Defendant

JUDGMENT
(ORAL VERDICT)

Introduction

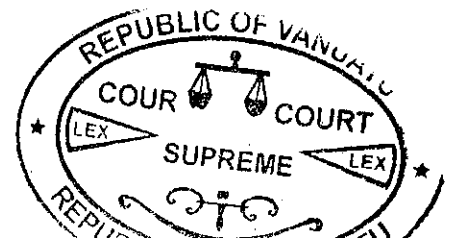
1. This case arose from a drunken brawl involving a number of people including the defendant and the deceased following New Year celebrations in early January 2016 at the Simbolo area in Port Vila.
2. The defendant Jeffrey Bob is alleged to have inflicted injuries to the head of the deceased by beating him with a heavy piece of wood which had a nail at the end. As a result, it is alleged that the deceased died a few days later in hospital.

The charge

3. The defendant is charged with 3 counts. He pleaded guilty to two counts of intentional assault contrary to s 107 (b) of the Penal Code [CAP 135] but entered a not guilty plea to count 1 on the charge of intentional homicide contrary to s 106 (1) a); that he attacked the victim by assaulting him with intention to cause his death although the homicide was not premeditated.
4. This trial only relates to count 1.

Elements of the charge

5. There are two elements of the charge that the prosecution must prove and they are:-
 - a) The defendant intended to do an unlawful act; and



- b) The unlawful act caused the death of the deceased.

Burden of proof

6. The burden of proof as set out in s8 of the Penal Code rests with the prosecution and it must prove both elements of the offence beyond reasonable doubt.

Undisputed facts

7. On 1 January 2016 there was a drunken brawl involving a number of people including the defendant and the deceased. This occurred at the Simbolo area sometime around 2.00 pm in the afternoon.
8. As a result, the deceased suffered a head injury and was taken to the hospital. A few days later on the 5 January he died whilst still recovering at the hospital.
9. A medical report on the likely cause of death was tendered by consent. It was prepared by a Dr Bwabwa Oten, a surgeon. Dr Oten's assessment and diagnosis of the deceased is that :-

"Clinical findings revealed a small laceration on his forehead. His pupils were 3mm in diameter bilaterally and both sluggish to light. There was periosteal swelling of the right eye. In addition a dry clot was seen in his nose. His neck reveal no swelling or steps. His chest showed no obvious bruises and has good air entry bilaterally. His abdomen is soft and his extremities were all normal, moving all limbs the whole time.

Diagnosis

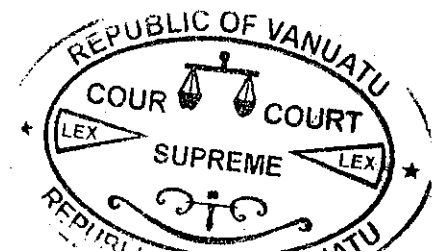
- (1) Head injury (moderate)*
(2) Basal skull fracture (likely)

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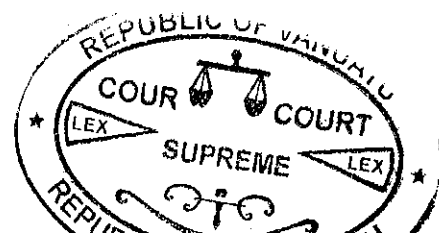
The cause of his death based on physical assessment is most likely oral secretions Aspiration, which is attributed directly to his head injury and semi-conscious state."

Evaluation of the evidence

10. The prosecution called three (3) witnesses, Mrs Ruth Willie, Mr Manoa Toka and Mr Noel George. All three witnesses said they saw the defendant hitting the deceased with a heavy piece of wood with a nail at the end.



11. Ms Willie said she saw the defendant hitting the deceased on the head and back with a heavy piece of wood with a nail at the end until the deceased fell to the ground. Mr Toka saw the deceased when he was already lying on the ground. He did not see how the deceased fell to the ground.
12. Whilst lying on the ground Mr. Toka said he saw the defendant take a heavy piece of wood with a nail in it and was hitting the deceased. He said he saw blood gushing out as a result.
13. Mr George said when he looked out of his window he saw someone hitting another lying on the ground. He later identified this person as the defendant hitting the deceased. He said the defendant's face was covered in blood as a result of being hit with a heavy piece of wood with a nail at the end.
14. The defendant does not have to prove anything. It's the prosecution who carries the burden of proof and it has to prove all elements of the offence beyond reasonable doubt. When considering all the evidence called by the prosecution, none of the witnesses produced the heavy piece of wood with a nail at the end alleged to have been used by the defendant to assault the deceased although Mr George said he gave it to the Police.
15. Second, the medical report which was done independently revealed that there was a small laceration on the deceased forehead with a swelling of the right eye. It went further to state that there was no swelling of his neck, no bruises on his the chest and his abdomen and extremities or limbs were all normal. The medical assessment of the deceased body contradicts the prosecution witness accounts of what occurred. Had the deceased been hit with a heavy piece of wood with a nail in it there would have been deep nail holes on the head and body of the deceased but that is not what Dr Oten observed.
16. The medical assessment confirms the evidence given by defence witnesses. More particularly the evidence of Mr Francisco Bob. He said he punched the deceased on the head really hard with one punch and the deceased fell to the ground. At that time he said he had a ring on his finger. The "*small laceration on the deceased forehead*" and the "*swelling of the right eye*" is in my view very likely the result of such a strong punch in the face. And those are the only injuries observed. No other injuries are observed to the neck, chest and body of the deceased .
17. Mr Francisco Bob said he was behind the defendant. His evidence is that he was fighting with the deceased behind the defendant. The defendant's back was facing him. The defendant himself said when they entered the yard he went in first and broke a sugarcane stem and was hitting someone by the name Tangat with it. His uncle Francisco Bob was behind him.



Findings

18. I find that :-

- On 1 January 2016 the defendant and Francisco Bob entered a yard at Simbolo area and had a fight with a group of people including the deceased.
- When they entered the yard the defendant went ahead and took a sugar can branch and started hitting Tangat.
- Behind the defendant was Francisco Bob. He punched the deceased so hard that it caused a small laceration on his forehead and a swelling of the right eye. As a result the deceased fell to the ground.
- The deceased died as a result of being punched by Mr Francisco Bob and his death resulted from complications sustained as a result of his head injury.

Verdict

19. I am not satisfied that the prosecution has proved its case to the required standard.

20. As to count 1- I find the defendant not guilty on the charge of intentional homicide and he is hereby acquitted.

DATED at Port Vila this 4th day of September, 2020
BY THE COURT

D. Aru
Judge

