

PUBLIC PROSECUTOR VS- RODNEY WILLIE

Coram: *Mr. Justice Oliver A. Saksak*

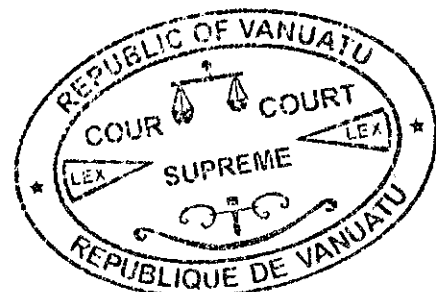
Counsel: *Losana Matariki for the State*
Jacob Kausiama, Public Solicitor for the Defendant

Date of Trial Hearing: *16th, 17th, 18th and 20th February 2015*

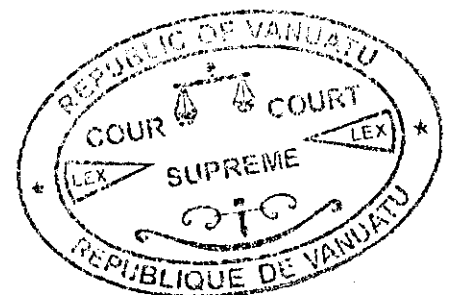
Date of Judgment: *2nd April 2015*

JUDGMENT AS TO VERDICT

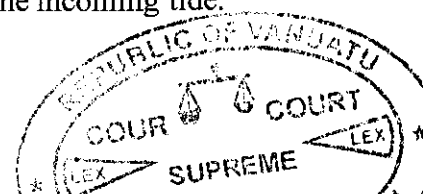
1. The defendant was charged with intentional assault causing death contrary to section 107 (d) of the Penal Code Act [Cap.135] (the Act) and with a lesser charge of unintentional harm causing death under section 108 of the of the Act, as an alternative charge.
2. The defendant pleaded not-guilty to both charges warranting a trial. The prosecution led evidence from 15 witnesses namely-
 - a) Adrian Tanoleo
 - b) Alex Luis
 - c) Titus Tapi
 - d) Frank Manean
 - e) Kat Yalou
 - f) Veloboe Kalmelu
 - g) Leitari Maile
 - h) Wendy Jack
 - i) Toumel Kalmelu
 - j) Roger Willie
 - k) Inspector Maryline George
 - l) Silas Ben
 - m) Mahun Robert
 - n) Johnathan Vuti, and
 - o) Police Constable Terry Lapinpal



3. At the end of the prosecution case, the Public Solicitor made a no case submission. The Court found that the prosecution had established a prima facie case against the defendant to require him to make a defence.
4. The defendant took the witness box and gave evidence on oath. He produced evidence in his defence from his father Kalmelu Willie.
5. The defendant's core defence was that he was not sufficiently or adequately identified as the person who assaulted the deceased and causing his death in the early hours of Sunday 15th June 2014.
6. In regard to the charge of intentional assault causing death it was alleged that on 15th June 2014 at Fatumaru Bay area, the defendant assaulted Bensley Banga (the deceased) causing injuries to his person and causing him to fall onto the stones, causing his death.
7. And in regard to the alternative charge of unintentional harm causing death it was alleged that on 15th June 2014 at Fatumaru Bay the defendant had unintentionally caused the death of Bensley Banga (deceased) by assaulting him and causing him to fall onto the stones by the sea, and leaving him there with injuries to his body.
8. The Prosecution has both the legal and evidential burden of proof. That duty of proof is a high one of proof beyond reasonable doubt pursuant to section 8 of the Act.
9. The following facts were agreed and admitted-
 - a) The defendant Rodney Willie was born on 13th February 1997 and originates from Emau and Santo but residing at Tebakor, Port Vila.
 - b) That the defendant Rodney Willie is a student at the Titus Training Centre Mechanical School, Blacksand.



- c) That the deceased and victim Bensely Banga sustained injuries as a result of an assault at the early hours of the 15th of June 2014 opposite the TVL Building Area at the Seafront area.
- d) That the late Bensely Banga was assaulted and fell onto the bed of rocks on the sea shore.
- e) That the assault on Bensely Banga continued even when he was lying down on the rocks on the sea shore.
- f) That after the assault Bensely Banga was left lying on the sea shore, injured.
- g) That the tide was coming in at the time Bensely Banga was left lying at the scene of the assault and was found on Sunday 15th June around 3:00pm by a Mr Kenneth Kude. The deceased's body was under water at the Fatumaru Bay area, near where he was assaulted.
- h) That Bensely Banga was pronounced dead when his body was found.
- i) Mr Heinrich Bower, a specialist in Forensic Medicine conducted the autopsy of the body of late Bensley Banga.
- j) That the report of Heinrich Bower's findings conducting autopsy confirmed the cause of death as Drowning in the setting of Blunt Head Trauma and Alcohol Intoxication.
- k) That it was also confirmed in the autopsy report that there was blunt trauma to the head, mainly confined to the right side of the jaw, face and head.
- l) That the report confirmed that Mr Bensely Banga had sustained some injuries to his head and body.
- m) That the report stated the possibility of that the combination of severe intoxication and the blunt force trauma to the head may have rendered the deceased's unconscious prior to being washed out to sea by the incoming tide.



10. The relevant sections of the Act the defendant was charged with are:-

a. Section 107 (d) which states:

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

Penalty:

- a) N/A, (Not Applicable)
- b) N/A,
- c) N/A
- d) If the damage caused results in death, although the offender did not intend to cause such death, imprisonment for 10 years.”

b. Section 108 states:

“No person shall unintentionally cause damage to the body of another person, through recklessness or negligence, or failure to observe any law.

Penalty:

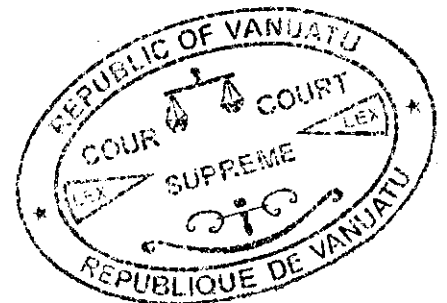
- a) N/A
- b) N/A
- c) If the damage so caused results in death, imprisonment for 5 years.”

11. The elements to be proved under section 107 (d) of the Act are-

- a) A person,
- b) Who intentionally assaulted another, and
- c) As a result of that assault, the victim died.

12. The elements to be proved under section 108 of the Act are-

- a) A person,
- b) Who caused damage unintentionally to the body of another person,
- c) Through recklessness or negligence, or failure to observe any law,
- d) Death occurs as a result of the damage caused.



13. I consider first the first element of “a person” in relation to both charges. Was the person who approached Andrian Tanoleo, Alex Lui and Lindy Lehina (who was not available to give evidence) the defendant?

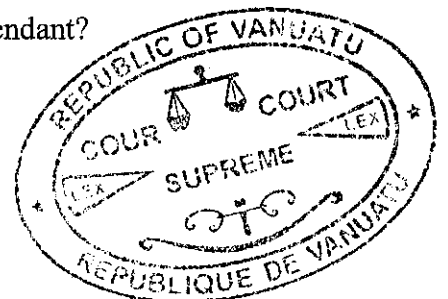
The evidence of Adrian Tanoleo and Alex Lui are relevant. Both witnesses gave consistent evidence that they saw the defendant approach them in the early hours of 15th June 2014. The Flaming Bull night club had closed at 0300 am and the three girls went across the road to sit down on a concrete stool directly opposite the TVL House. They recognised the defendant because he sat in between them in very close proximity. He had asked them their names and residential addresses and they responded to him. When they asked him his name and where he was from, the defendant said he was from Santo/Paama. He also told them that he attended a mechanic school at Blacksands belonging to a Pentecost man by the name of Titus. Titus Tapi was called by the Prosecution. He confirmed only the defendant who attended his mechanic school is from Santo and there is no other student from Santo. Both witnesses identified the brown jumper that the defendant was wearing at the time. The defendant also admitted it was the same jumper he was wearing that night.

14. I am satisfied beyond reasonable doubt that the person seen and identified by witnesses Andrian Tanoleo and Alex Lui and whose name and Island was confirmed by Titus Tapi is the defendant Rodney Willie. The first element of “a person” in both offences are therefore proved to the required standard.

15. The defendant’s disclosure of himself as being from Santo/Paama and that he was from the Ulas family were lies by the defendant. And his blunt denial that he was the person seen by the two witnesses is not sustainable.

16. I now consider the second and third elements of the offence under section 107(d) of the Act. The questions are:

- a) Did the defendant Rodney Willie assault intentionally Bensley Banga (the deceased), and
- b) Did the deceased die as a result of the assault by the defendant?



17. The relevant parts of Andrian Tanoleo's evidence in chief shows as follows: (as translated in English).

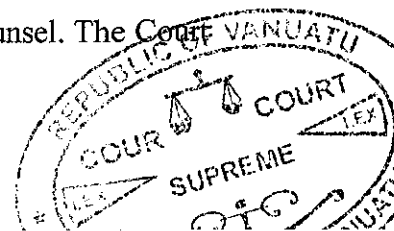
"Then we saw another boy come towards us. He was drunk. He came towards us and we ran to hide by the trees. The second boy (the deceased) came and slapped the one on the chair (the defendant), but he missed. Then the first boy (defendant) assaulted the second boy (deceased) and he fell down by the rocks. Alex told us to go because she wanted to go and smoke on the other side of the road by TVL House. The defendant came to us and he talked with Gino and smoked. Later he crossed the road to the other side and assaulted the deceased again. We called to him to stop but he continued to do so...."

18. Alex Lui gave the following version (translated into English):

" Then not long after another boy came around. He saw us and approached us. He was yelling. Then he slapped us but we ran away. The other boy (defendant) bent his head and then a fight broke out. The other boy was very drunk. He fell down. We told him to stop. He followed us to the other side. We were smoking with Gino. He remained there, we crossed the road again. Later the boy (defendant) came back to us. He went to the deceased then he came back to us and asked to stop a bus for us. We said no, so a green bus came, he stopped it and went off."

19. Lindy Lehina was not available to give her version of the story. Gino Liptik is mentioned by the two witnesses but sadly he could not make himself available in Court despite the Court granting an adjournment at the request of the Prosecutor for the specific purpose of allowing time for these two witnesses to travel to Vila from Santo and Malekula.

20. The only other witnesses whose evidence would be of some relevance and assistance was Kat Yalou, the security officer of Flaming Bull. In his evidence in chief he said he was at work at the time. When they had finished, he went out and saw Gino and the two girls (witnesses) standing outside. He did not see anything or any fight. He only heard the news in the morning. When the club had closed, they went out and saw the two girls standing outside. He was not cross-examined by defence Counsel. The Court



posed a question to the witness as to what he saw the girls doing and he answered saying he did not see what they were doing.

21. As to whether there was any light in the area where the alleged assault took place, in cross-examination defence counsel asked the witness Andrian Tanoleo the following-

“Q Was there any light where you were sitting?

A No there was no light”

To witness Alex Lui, defence Counsel asked in cross-examination-

Q Was there light where you sat?

A Only small light from TVL.

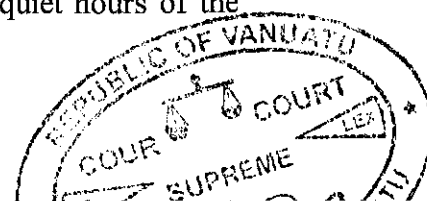
Q Where are those lights?

A At TVL House towards the road

Q Where you sat, there are no lights?

A Only reflection from TVL lights.”

22. The evidence of Adrian Tanoleo and Alex Luis were not consistent. The place was dark without the street lights. Adrian Tanoleo said they ran off to hide behind the oak tree. If there was no light and she was hiding, how did she see the defendant “fighting” the defendant while Alex said “he slapped us but we ran away”. Then Alex said that “... a fight broke out”. Alex is painting a picture here that gives an inference that a lot more people were involved in this fight. If a fight in fact broke out, then the evidence of the Yalou that he did not see any fight is false. Was there a cover-up because some of the Flaming Bull employees were also involved? Could it be that Gino Niptik and James Andrew were involved? Why was Gino Niptik at his home island and not at his workplace? Why was he not available to give evidence? Why did Lindy Lehina go off to the other side of Santo when she is from Pentecost? Why did the girls not call to Gino, Andrew or Kat Yalou the security to assist by either stopping the fight or calling the police? The girls saw the deceased assaulted and thrown onto the rocks and left there helpless without any evidence of any attempt whatsoever to alert the police or the security officer. Had they taken responsibility and done so the situation would have been completely different. How could the girls be calling out to the assailant to stop assaulting the deceased in the quiet hours of the



morning and no one in the vicinity heard them. There was Gino, Andrew, Kat Yalou, Paul Tasisis and Samson Obed around at the time. These factors and questions bring the credibility of the two main prosecution witnesses into question.

And these are questions and circumstances which create doubt in my mind so that I am not satisfied beyond reasonable doubt that it was this defendant who assaulted the deceased resulting in his death. And the defendant must be given the benefit of the doubt.

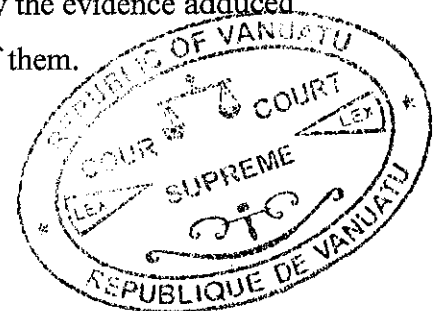
23. The autopsy report and its comments at paragraph 5 states:-

“ it is possible that the combination of severe intoxication and the blunt force trauma to the head may have rendered the deceased unconscious prior to being washed out to sea by the incoming tide....”

24. The “severe intoxication” comment and the “blunt force trauma to the head” appears consistent with the two witnesses evidence that he deceased was assaulted to the head and fell onto the stones or rocks. But the comment that those factors “ rendered the deceased unconscious prior to being washed out to sea by incoming tide, is inconsistent with the two witnesses evidence that after the assailant had left on a bus, another person approached them with a jumper and hooded and inquired of them what happened. Alex explained to him about a fight that had taken place and that the deceased was still alive but was in danger of being washed away by the incoming tide. Alex did infact asked the man to move him up, which he did. As the girls were leaving towards Chantilly’s, the man followed and they had to dash off.

25. And the photographs of the deceased at pages 7 and 8 of the PI Bundle show the deceased’s T-shirt on a rock and his black jumper down on the sand. The issue is: who removed these? If as the autopsy report suggests he died prior to his being washed away then the deceased should have been in his clothes and not bare-chested as he was. (as shown in the photographs)

26. All these factual inconsistencies lead me to conclude that perhaps there was more than one person involved in this incident. And I am not persuaded by the evidence adduced by the prosecution that the defendant Rodney Willie was one of them.



27. Having found as I have, it is not necessary for me to consider whether the remaining elements of both charges were proven or not. These hinge on the first element.

28. I therefore return the verdict of not guilty in favour of the defendant Rodney Willie in respect to the charges of Intentional Assault causing death contrary to section 107(d) and to the charge of Unintentional Harm Causing Death contrary to section 108 of the Act.

29. Accordingly I dismiss both charges against Rodney Willie and acquit him of them.

DATED at Port Vila this 2nd day of April 2015

BY THE COURT


OLIVER.A.SAKSAK

Judge

