

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

Criminal
Case No. 18/253 SC/CRML

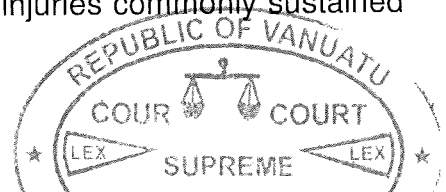
PUBLIC PROSECUTOR
v.
HARRIET YATIPU

Coram: Justice D. V. Fatiaki
Counsel: Ms M. Taiki for the State
Mr A. Godden for the Defendant
Date of Ruling: 7th February 2019

RULING

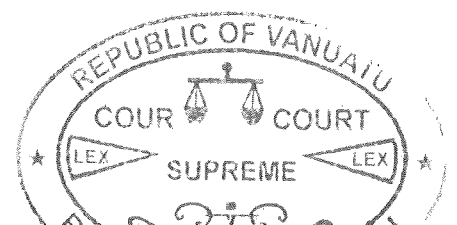
1. In this no case submission defence counsel submits that as a matter of law the prosecution's case taken at its highest, "... *there is no evidence on which the accused could be convicted*". In particular counsel submits that:
 - (1) There is no clear evidence of the accused having consumed any alcohol at or in the Planet 107 nightclub;
 - (2) In the undefined circumstances of the case, there should have been but no coronial inquest was sought or held;
 - (3) There were no traces of blood on the front of the accused's bus as might be expected if the deceased was in fact struck by the bus;
 - (4) There was no evidence of reckless driving on the part of the accused immediately before or at the time of the alleged accident involving the deceased. Indeed she had safely delivered 2 passengers to Blacksands and was returning to go home;
 - (5) The deceased's injuries could have been the result of a vicious assault on him;

Having carefully considered the above 5 factors I reject them all. In particular, I accept the medical evidence that the head and leg injuries that were observed on the deceased when he was taken to the VCH was consistent in the examining doctors' opinion and experience, with the types of injuries commonly sustained



by victims of a motor vehicle accident. It was also consistent with the history relayed to the doctor by the escorting police officers.

- (6) Finally counsel submits, there is a serious doubt about where on the Tagabe roundabout, the accident occurred arising from the sworn testimony of two eye-witnesses called by the prosecution who both claimed to have seen the accident.
2. The first prosecution eye-witness was Ms Marie Massing who claims to have seen the accident whilst standing outside Brothers Takeaway. She saw the collision between the accused's bus and the deceased with the help of the headlights of the bus. She claims that the accused had taken a short-cut on entering the Tagabe roundabout from Blacksand's side triangle going in the wrong direction and heading directly across the roundabout without following the correct route around the roundabout on the right.
 3. The second eye-witness called by the prosecution was Ms Caroline Malapa who is a friend of the accused and who was sitting in the front passenger seat beside the accused when the bus entered the Tagabe roundabout in the early morning of 01 July 2017. She says the accused's bus was following its correct route at the Blacksands triangle by turning right and heading towards Port Vila town when a man suddenly appeared on the right side of the bus causing the accused to violently swerve to avoid the man and the bus ended up mounting the kerb and bursting its front right tyre before coming to a stop.
 4. I am satisfied that the two essential ingredients that the prosecution must establish on the charge of Causing Death by Reckless Driving are two-fold:
 - (1) The deceased met his death as a result of head and bodily injuries sustained in a motor vehicle accident; and
 - (2) At the relevant time and place the accused drove the motor vehicle which caused the deceased's injuries in a reckless manner.
 5. As to (1), I am satisfied that the deceased died from head and bodily injuries he sustained as a result of being hit by the accused's bus. As to (2), the evidence of Marie Massing if accepted, is evidence on which the accused could (**not** would) be convicted. Needless to say it is not the Court's role on this application to determine whether or not the prosecution has discharged its burden to the required criminal standard or to finally determine, which prosecution eye-witness is to be accepted.
 6. Accordingly I dismiss the application and call upon the accused to make her defence.



7. Section 88 of the CPC read to the accused.

DATED at Port Vila, this 7th day of February, 2019.

BY THE COURT



D. V. FATIAKI
Judge.

