

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

Criminal
Case No. 21/2126 SC/CRML

BETWEEN: Public Prosecutor

AND: Joseph Garae
Defendant

Before: Justice Oliver A Saksak

Counsel: Mr Christopher Shem for Public Prosecutor
Mr Silas C Hakwa for Defendant

Date of Plea: 21st July 2021

Date of Sentence: 26th November 2021

SENTENCE

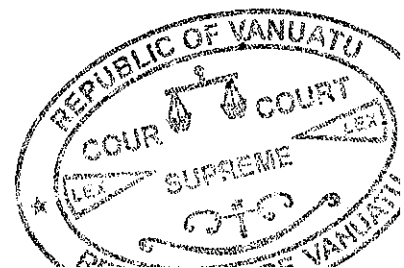
Background

1. Joseph Garae was initially charged with intentional assault causing temporary injuries (section 107 (b) – Count 1) to which he pleaded guilty, and with threats to kill (Section 115) (Count 2) to which he pleaded not guilty.
2. A trial hearing was held on 8th October 2021 on the second count. On 14th October 2021 the Court returned its verdict of not guilty and acquitted the defendant in relation to the threats to kill charge.
3. Today Mr Garae is for sentence in relation to the assault charge.
4. He admitted that on 21st April 2018 at his premises at Tagabe, he assaulted Simeon Vuti resulting in injuries of a temporary nature. He was charged under section 107 (b) of the Penal Code Act which states:

“107. Intentional assault

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

- Penalty:
- (a) Not applicable;
 - (b) if damage of a temporary nature is caused, imprisonment for 5 years;
 - (c) Not applicable
 - (d) Not applicable

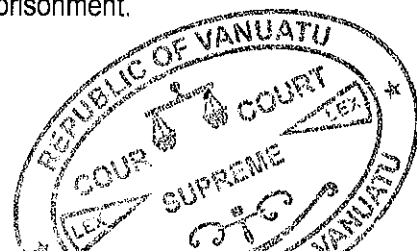


Facts

5. It was charged that *" sometimes on 21st April 2018 at Tagabe area in Port Vila, you intentionally assault the body of Simeon Vuti in which you took a mirror and hit him with it. And as the cause of you (sic) conduct, he had suffered temporary injuries to his body."*
6. The defendant accepted the facts but only in parts. He explained in submissions and indeed in his statement to the Police that he did take a mirror. However he hit the arm of a chair with it and it broke. It was the fragments of the mirror that caused some injuries. And he said he did not lure the defendant to his house in order to assault him.
7. The charge did not correctly reflect the actions of the defendant. The medical report issued by Rexton Rono shows a deep laceration into the bone tissue causing active bleeding. It is consistent with the defendant's story that he hit the chair causing the mirror to break into pieces one of which caused that wound.

Aggravating Features

8. A mirror was used by the defendant. There was a breach of trust as the defendant and victim are related. The defendant had taken the law into his own hands when he could have used the chief to call a meeting and solve their issues amicably. There was repetition of actions of assault and a chase to the main road.
9. The defendant explained the reason for his action in his statement to the police saying he was angry because the victim had had sexual intercourse with his wife when he had gone to his home Island (Ambae). His actions therefore were provoked but he went too far.
10. His actions deserve a custodial sentence to mark (a) the gravity of his offending, (b) the public condemnation of his actions (c) to deter him and like-minded persons and (d) to punish him adequately.
11. I therefore convict the defendant for intentional assault causing temporary injuries. I sentence him to a start sentence of 18 months imprisonment.
12. By comparison, this case is more serious than the case of PP v Tari Malon Horry Crc 21/489.
13. In mitigation I take note his early guilty plea and reduce his sentence by 6 months. The balance of the sentence is 12 months imprisonment.
14. I take into account his character and personal history as stated in his Pre-sentence Report. I take into account the delay factor as submitted by Mr Hakwa. I allow a further reduction of 4 months.
15. The defendant is therefore sentenced to an end sentence of 8 months imprisonment.



16. I order this sentence to be suspended for a period of 2 years on good behaviour, under section 57 of the Penal Code Act.
17. There is a right of appeal against this sentence within 14 days by the defendant.

DATED at Port Vila this 26th day of November 2021

BY THE COURT



OLIVER.A.SAKSAK

Judge

