

REPUBLIC

V

**Myko Olsson**

Date of Hearing: 11 February and 1 March 2016

Date of Judgement: 3<sup>rd</sup> March 2016

*Mr. Lacanivalu for the Republic*

*Mr. Ravunimase Tagivakatini Legal Aid Office for the defendant.*

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**JUDGEMENT NEWTON HEARING**

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**INTRODUCTION**

1. The defendant is charged with 1 count of Assault Causing Actual Bodily Harm contrary to section 339 of the Criminal Code 1899. The defendant pleaded not guilty. The defendant pleaded guilty and the following agreed facts were tendered by consent.

**AGREED FACTS**

2. On the night of the 26 August 2015 between the hours of 12 am and 1:30 am, the complainant saw her Sister Sarah Eoae arguing with the defendant beside their home. Sarah Eoae was heading to a relative's home beside the Aiy's Store when the defendant opened the back door of the store at the front of her Aunt Mrs. Marietta Namaduk's place and told her to follow him. Ms. Sarah Eoae had a conversation with the defendant about their son and walked away. The defendant called out to her but she did not listen and she heard him saying that he will enter the house to get her. Ms. Sarah Eoae was afraid and she ran to her relative's home where the complainant was playing cards at outside the porch. The defendant went after Sarah Eoae but the complainant confronted him and told him to leave. The defendant tripped picked up a stone and threw it towards the complainant and her sister. The rock missed the complainant and her sister Sarah Eoae. The complainant's husband came out and challenged the defendant for a fight but he ran away. The complainant went home and felt pain on her forehead and realised it was bleeding. The complainant then looked back and saw the defendant coming towards her with a rock in his hand. The defendant threw the rock but it missed the complainant. The defendant then ran away but continued throwing stones from his family home. The complainant and her family kept dodging the stones until the police arrived.


**FACTS TO BE DETERMINED BY THE COURT.**

3. The issue to be determined by the court is whether or not the head injuries and injuries on the hand of the complainant were sustained by complainant as a result of being hit with a stone. The prosecution case is that the complainant sustained the injuries in the head as a result of being hit in the head by stones that the defendant threw and the injuries sustained by the complainant on her right hand was as a result of being hit with a stone by the defendant whilst she was using her hands to protect her head from being hit with the stone by the defendant. The defence case is that the both the injuries on the head of the complainant and on the hand of the complainant were not caused by the stones as alleged by the prosecution.

**THE EVIDENCE**

4. The complainant gave evidence that she was hit in the head with a stone and that she saw the defendant holding onto a stone and fearing that she would be hit in the head with the stone held by the defendant, she put both her hands over her head in an attempt to protect her head and that was when she felt the defendant hit her hand with the stone. She maintained her evidence during cross-examination despite being strenuously cross-examined by Mr. Tagivakatini on this point.
5. The evidence of Dr Wyn could be summed up as that in terms of the injury to the head, she agreed that it is consistent with being caused by blunt trauma and her findings are consistent with the history that she has been given. In terms of the injury to the hand, Dr Wyn agreed during cross-examination that the injury caused to the finger may have been caused by a heavy punch. The defendant gave evidence that he threw stones but the stones missed the complainant as the stones were not intended for her. The stones thrown were intended to keep the complainant's husband and cousin away. The defendant also gave evidence that he did not see any stone hit the complainant in the head and that the particular stone he intended to throw at the complainant fell back because it was too heavy.
6. The only evidence that is consistent with being hit in the head with a blunt trauma is that of the complainant that she felt something hit her in the head. What else could have on the evidence hit her in the head as she was standing but one of the stones admittedly thrown by the defendant? I find that the injury to the head of the complainant is caused as a result of being hit in the head with a stone.

Dated this 9 day of March 2016

  
Emma Garo  
Resident Magistrate

