

PUBLIC PROSECUTOR

-v-

ADAMS TARI VUTI

Coram: Chief Justice, Vincent Lunabek
Counsel: Public Prosecutor
Public Solicitor

JUDGMENT ON VERDICT

INTRODUCTION:

Defendant Adams Tari was charged with one Count of Unintentional Harm causing Death, contrary to section 108(c) of Penal Code Act [Cap135]. ("Act"). Section 108(c) of the Act provides that: "No person shall unintentionally cause damage to the body of another person through reckless or negligence or failure to observe any law. If the damage so caused results in death, imprisonment for 5 years."

The Defendant entered a not guilty plea. A trial was required.

The law is that the prosecution must prove each and all essential elements of the offence charged against the Defendant beyond reasonable doubt. It is not the task of the defendant to prove his innocence.

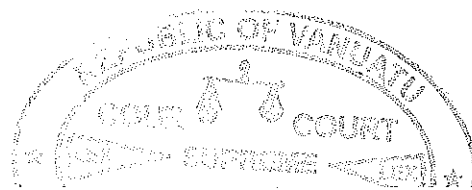
The defendant knew and understood that he is presumed to be innocent when his rights under section 81 of the C.P.C [Cap 136] was read and explained to him.

If there is a reasonable doubt at the end of the trial, I must acquit the Defendant.

For the defendant to be found guilty of the offence charged under s. 108(c) of Penal Code Act, the prosecution has to prove on the standard of beyond reasonable doubt, the following elements of the that offence:

1. That on 16 July 2007, Defendant Adams Tari unintentionally caused damage to the body of another person (victim child boy) at Teouma Road.
2. That the damage caused resulted in his death.
3. That the damage was caused through recklessness or negligence or failure to observe any law.

The crux of the prosecution case is that the defendant Adams Tari Vuti, on or about 16 July 2007 at Teouma road on Efate, near Teouma Shopping Centre, drove one Toyota Corolla Registration number 9343, he was reckless or negligence or failed to observe any law in his driving at the time he hit a child Joseph Pakoasongi causing injuries on his body resulting in his death.



The Defence case or response is that the Defendant denied that his driving was reckless on the road at Teouma on 16 July 2007 when his truck hit the child. He denied he was driving on a high speed. He said the collusion with the child could not be avoided. It was an unfortunate accident.

EVIDENCE:

Prosecution Evidence:

The Prosecution has called Four (4) witnesses.

Mr Dick Peter is the first prosecution witness. He testified that he is a taxi driver. He has his license and permit to drive a taxi. On 16 July 2007, he came back from Ekiye Village on board his taxi. He drove at a speed between 60-80 Km per Hour. He arrived at Teouma road and he saw the Toyota truck driven by the Defendant in Front of him. He saw a boy child behind a bus. He saw the child walked behind the bus. He saw the Toyota truck hit the child. He did not see the truck applied the break. He saw the truck stopped some 20 meters after hitting the boy. He saw the father of the child talked to the Defendant and did something to the Defendant after the incident.

When driving his taxi, he was about 20 meters from the vehicle driven by the Defendant. He did not know the Defendant. He said he normally drove at 100 Km/Hour. He reduced his speed to 60-80 Km/h when he saw the Toyota truck in front of him.

He said the Toyota Truck travelled at a speed more than 60 km per hour.

In his cross-examination, he confirmed his evidence that on 16 July 2007, he drive his taxi back toward Port-Vila. The bus in which the child boy and his mother were in was stopped on his left side of the road. The bus was facing Teouma. It was a red bus.

The boy run out behind the bus. The bus sided normally on the road. The Defendant had big space to pass. It was put to him and he said from what he saw, the accident could be avoid.

He confirmed he saw an old man there at the side of the road. He said he saw the driver of Toyota truck which was in Front of him, telling stories with passengers in that truck.

He confirmed he did not see the driver of the Toyota truck slowed down the speed of his truck as he did not see the breaks signs were on.

It was put to him and he confirmed the space between the bus and the drive way was big enough for the driver to see the boy and avoid the accident. It was also put to him that he did not see the defendant swinging the wheels of his truck nor that the Defendant applied the brakes of his truck. He confirmed again that at the time, the Defendant and two passengers who were with him in the truck were talking or telling stories.

He accepted that the impact between the truck of the defendant and the boy was quick.



He was re-examined. He explained that at that time, he was driving his taxi. He saw the boy coming out of the bus. The boy went behind the bus. At the time, he said he knew that the truck will hit the boy because when he saw the boy was in front of the bus, the driver of Toyota truck in front of him was talking with the two (2) others.

Jerry Kalo is the second prosecution witness. He is unemployed. On 16 July 2007, he was in the same red bus travelling to Teouma. The bus picked up a small boy at Kalmet School. At the Teouma Shopping Centre, the boy stopped the bus as he saw his mother and father on the other side of the road. When the bus stopped, his mother came and took bus fares from the boy's hand back and paid the bus fares.

He was sitting in the front seat behind the bus driver. He opened the door of the bus when it stopped. The boy went outside. His mother came toward the door of the bus. She paid the bus fares. The boy left her mother and went toward the rear of the bus. He run to cross the road, he saw a truck hit the boy. The boy saw his dad on the other side of the road. He did not see the truck coming. He heard the noise of point of impact.

He said when the truck hit the boy, the body of the boy was projected away from the place of impact to where the truck stopped, the distance was 22 meters as he saw the measurements when the police came and measured the distance.

He said the truck was in a high speed when it hit the boy. The body of the boy was projected to the right side of the road.

He saw the body of the boy. There were injuries or kills on his body. The boy died instantly at the place of accident on the road.

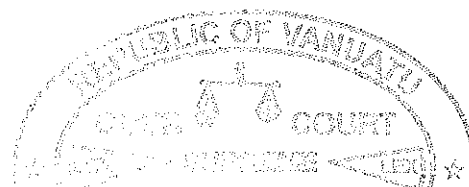
He said after the impact, he saw the truck stopped 10-15 meters away from the body of the little boy. The father of the boy cried and talked to the driver of the red truck. He saw the Father of the boy assaulted the driver of the red truck. He returned home and Police came and took him to the place of accident. He said the little boy's name is Joseph Pakoa Songi.

Witness Jerry Kalo was cross-examined. He confirmed his evidence in chief. It was suggested to him and he accepted that the accident is too quickly and nobody could do anything.

He clarified when re-examined that when, the truck hit the boy, the body of the boy was projected from the point of impact to the place marked by the police where there were blood on the road.

John Pakoa Songi is the third Prosecuting witness. He is the father of the little boy. He said the truck hit his son on 16 July 2007 on Teouma road. His son died instantly.

He said after the bus stopped, his wife assisted the boy to pay the fares. At that time, the boy left her mother and came behind the bus. He did not see the truck coming. He saw the body of his son behind the bus. He saw the truck speeded and stopped some distance away. He run behind the truck and the truck stopped. He assaulted the Defendant.



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He said the driver of the truck told him that he will pay for the death. He said he told the defendant he will go otherwise he will commit another offence and he left.

He was on the right side of the road when he saw the truck hit his son. There were injuries on the head of his son. He died instantly. He said the accident took place in the middle of the road. The truck hit the boy and threw his body on the other side of the road.

In cross-examination, he confirmed his evidence. He said the bus stopped on the side of the road one side wheel was on the grass while the other side was on the tar road.

He saw his son look on each side of the road before crossing the road and the truck hit him. He said the truck speeded. The truck hit the boy from the middle of the road. He said the truck speeded. The truck hit the boy from the middle of the road and threw his body on the side of the road. He denied the driver of the slowed down his speed and waved hands to him. He saw two men with the defendant inside the truck.

The taxi which followed the defendant's truck came and stopped. He said the truck took a short cut behind the bus which collided with the child. He said if the truck took his right side space, he would not hit the child.

He confirmed that the truck hit the child from the left side and threw him on the right side:

Police Officer Edward Kaloran is the next prosecutor witness. He is a corporal. He was involved in the investigation. He visited the scene after the accident.

He took an eye witness on the scene. The eye witness showed him the point of impact and the blood stained on the road where the body of the boy was after the impact. He said his eye witness is Jerry Kalo. He measured the point of impact of the road to the blood staint and to the road side.

The point of impact to blood staint is 22.6 meters. The widths of the road is 6.5 meters. The point of impact to the road side is 1.5 meters.

He was asked and he said he driver of the truck who caused the accident presented himself to the police station. He found that the left side of the vehicle from the forehead was bent. There was no other damage. The road was tar sealed road. There was no mark of tyres on the road. From a sketch map he drew a diagram and he said from his experience of 15 years involving the road accident, the skid marks on the road would mean that the driver applied the brakes of his vehicles. He was asked and he stated that from the point of impact to the blood staints, the vehicle must be of very fast speed at that time.

In cross-examination, he confirmed his evidence that what he drew on the sketch plan was that what Jerry Kalo told him about the positioning of the bus, the point of impact and the blood staint where the body of the child was. He stated that the point of impact was the place where the child's father was standing before the impact. He said the bus is about 4 meters lengths and more than 1.50 meter wide. The point of impact is at the rear of the bus where the child was crossing the road.



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The part of the left side of the vehicle which was damage, was the left side of the truck from the driver of the vehicle's position. The left side of the vehicle hit the boy. There was no skid marks. The driver speeded the truck or did not see the child. The speed was between 60-80 Km/H. That is the end of the prosecution evidence.

Defence Evidence

The Defendant is Adams Tari who elect to give evidence himself after his rights under s.88 of the CPC [Cap 136] was explained to him.

Mr Adams Tari gave evidence to the following effect. He is from Ambae Island. He has 5 children. On 16 July 2007, he drove a group of people to do some work. They started working at 10.00am o'clock and finished sometime 11.00am o'clock with lunch. Darkal Banga, Morgan Vira and Vatu Daniel are some of the members of the group. The group surveyed land for a Private Company belonging to James Wango.

They came back to town toward 11.30am. He drove the vehicle they were in. It was a left steering wheel vehicle. Banga, Vira and Daniel were in the vehicle with him at the time of accident.

It was a sunny day. The road is tar sealed road. He was driving at 80km per hour. When he arrived, they turned into a corner. He saw a red bus stationed at a corner. There was a curve and a slope and he saw the bus. There was a creek before Teouma shopping Centre. The bus was about 100 meters. He said he slowed down about 50 meters. He said he slowed down about 50 meters. He said he saw an old man. The speed of his truck was below 50. He said he saw the kilometers screen. He did not see any truck coming behind him. He waved his left hand to the old man. The old man waved his right hand to him.

The bus stopped there directed toward Rentabao on his left side of the road. He run closer to the bus. He did not see anything or any person. The bus was about 2 meters from him. He said when he waved to the old man, he was surprised as the child was standing in front of his vehicle. He applied his brakes trying to turn the vehicle steering wheel close to his left side and he hit the child. At the time the child was running. If he saw the child some distance before, he could save the child's life by applying the brakes of his vehicle. He hit the rip of the child. The child's head hit the vehicle's forehead where the engine was. The child's leg felt on the side of the road. There was noise at the time of impact.

After the accident, he swang his vehicle to the right side of the road. He reversed his vehicle toward the place where the body of the child was. They all came out of the vehicle. The father of the child close the door of the vehicle and assaulted him inside the truck. People shouted out. People came to assault them. Banga suggested to him to drive his vehicle and surrendered themselves to the police station. He did so. He denied that the father of the child told him to go otherwise people will kill him. He also denied he told the child's father to pay for the death. He saw the mother of the deceased boy cried and checked the head of her child at the place where the body of the child was after the impact.

He denied he was driving too fast. He said he never drove at 100km per hour. The child was in the road and had just passed the white mark in the middle of the road, he hit the child and swang his vehicle on the left side of the road. They rendered themselves to the police station for their own safety.



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In his cross-examination, he admitted it was a Monday or a school day. He had to pick up a child from school at 11.30am. He accepted that was the reason why he drove at 80km per hour. He was running at gear 4. He said he slowed his speed under 50 when he saw the old man on the side of the road. He admitted when he waved to the old man, he turned his head toward him. He did not see the child. It was put to him that on 19 July 2007 when he was interviewed he said he did not apply his brakes when he hit the child. He answered at that time his heart did not settle as yet. He referred what was in his written statement to the police in the answer to the question put to him and said he thought he told the police, he had applied his brakes. He said at the time of accident, he cried and he slowed down his driving.

It was put to him that the taxi driver saw that he did not apply the brakes of his vehicle. He said he applied brakes when he hit the child. He accepted he told the police that after he had passed the rear of the bus, he hit the child. He accepted the child had passed the white mark on the road. He was on his right side of the road. He tried to apply the brakes. He banged the child and said "Oh Lord mi bangem wan pikinini" and he close his eyes after. He denied he banged the child on the left side of his vehicle. He said he had no chance to brake. He said his vehicle had no damage. He said the child ran passed the white mark. He swang the vehicle on the left side and banged the child on the right side of his truck.

However, he admitted that the white line on the road was more on the left side. He stated that when he applied the brakes 1 or 2 seconds the child had passed the line. He applied the brakes and the child moved to the side of the road. He said when he applied brakes, there was no noise of the wheels, the engine did not stop and he said he applied in such away to save the child and passengers in the vehicle.

It was suggested to him that when he run at gear 4 the engine should have stopped. He repeated that the accident happened at a far too short a distance. It was also put to him and he answered it was too late for him to apply hand brakes. He accepted that if he was speeding the vehicle at the time of impact with an object, the object would fly. It was put to him and he said he was not in a hurry.

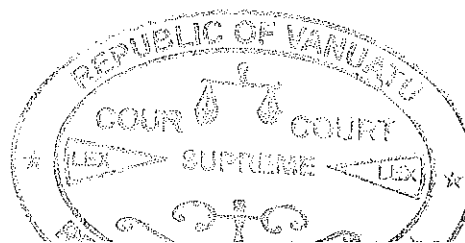
In his re-examination, he said the police got his answer wrong when they said he closed his eyes. He clarified passenger Banga closed his eyes but not him as he was concentrated on his driving. He did not see the child and his mother. He only saw the old man.

DISCUSSION ON EVIDENCE

I have assessed the evidence of each and all witnesses. I make the following fact findings:

Defendant Adams Tari drove one Toyota Corolla Registration number 9343 on 16 July 2007 at Teouma Road, Efate near Teouma Shopping Centre. Defendant Adams Tari hit a child, Joseph Pakoa Songi causing his death.

Defendant Adams Tari admitted, it was a Monday – a school day and he had to pick up a child at school at 11.30am. Defendant and others stopped worked at 11.00am. He admitted that was the reason why he drove at 80Km per hour.



He was running at gear 4. Before the point of impact, Defendant Adams Tari did not apply the brakes of his vehicle. He admitted just before he hit the boy on the road, he did not see the boy as he turned his head and eyes on an old man on the other side of the road. He tried to apply his brakes at the point of impact but he had already been in contact with the body of the boy.

Defendant Adams Tari was in a high speed when he hit the boy on 16 July 2007. The Defendant's evidence that he had reduced his speed from 80 to 50 and under 50Km per hour is rejected. The body of the child was projected from a distance of 22 meters from the point of impact. The point of impact was from the rear of the bus on the left side of the road and where the old man was standings from the right side of the road. The projection of the body was from that point of impact to the place where the body was after being projected i.e. the blood stain on the side of the road.

Dick Peter, the taxi driver, drove his taxi and was behind the Defendant's vehicle at the time. The taxi driver drove at a speed of 80Km per hour.

At no stage the taxi driver catches up with the Defendant's vehicle or overtakes the Defendant's vehicle. It is rational to infer that the Defendant was travelling at the same distance of 80Km per hour.

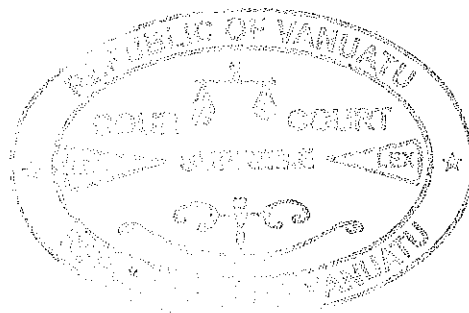
The Defendant said he did not see the child but the taxi driver saw the mother of the child crossing the road, the old man on the other side of the road and the child. The taxi driver was behind the Defendant's vehicle. The defendant saw the bus stopping on the left side of the road, he did not look in front of him on the road as he said he waved his hand at the old man on the right side and as he said he turned his head toward the old man at the time of impact and also the evidence is that they were talking or telling stories with his passengers.

The evidence of the prosecution witnesses Dick Peter, Jerry Kalo, John Pakoa Songi and Police Office Edward Kaloran confirmed and support the prosecution version of facts. They are accepted by the court. The court rejects the evidence of the Defendant on the disputed facts. The court also rejects any suggestions or submissions made by the Defence counsel to the contrary as not supported by evidence.

APPLICATION OF LAW

Applying the law to the facts, the court found that on 16th day of July 2007, on Teouma Road whilst travelling towards Port Vila, Defendant Adams Tari was negligent in his driving to the extent that it caused the death of the deceased boy. Further, Defendant Adams Tari was negligent in his driving on 16 July 2007, on Teouma Road whilst travelling towards Port Vila to the extent that he had failed to exercise such care, skill or foresight as a reasonable man in his situation should exercise.

The Prosecution has proved each and all elements of the offence of unintentional harm causing death, contrary to s. 108(c) of Penal Code on beyond reasonable doubt.



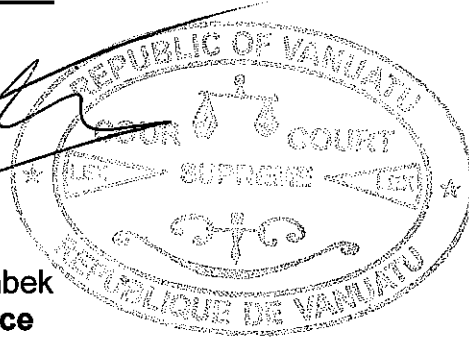
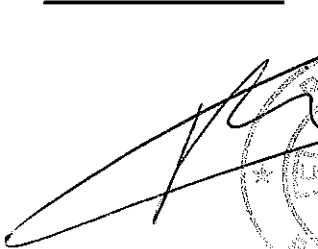
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VERDICT

1. Defendant Adams Tari is found guilty of the offence of unintentional harm causing death, contrary to section 108(c) of Penal Code Act [Cap 135]; and
2. Adams Tari is convicted of the said offence accordingly.

Dated at Port Vila, this 5th day of September 2013.

BY THE COURT



Vincent Lunabek
Chief Justice

The seal of the Supreme Court of Vanuatu is circular. It features a central emblem of a scale of justice. The text 'REPUBLIC OF VANUATU' is written along the top inner edge, and 'REPUBLIQUE DE VANUATU' along the bottom inner edge. The words 'SUPREME COURT' are prominently displayed in the center, with 'LEI' on either side. There are two small stars on the left and right sides of the seal.