

PAPUA NEW GUINEA  
[IN THE NATIONAL COURT OF JUSTICE]

**CR No. 832 & 833 OF 2017**

**THE STATE**

**V**

**KASI PURING**

Kimbe: Miviri AJ  
2018: 11, 12 & 13 September

***CRIMINAL LAW – PRACTICE AND PROCEDURE – Armed as to cause fear S70 CCA – Assault occasioning bodily harm S340 CCA – Trial – State evidence credible – corroboration of State evidence – medical evidence – defence evidence incredible – deliberate lies from defence – Proof beyond doubt – guilty of both charges.***

**Facts**

Accused was a policeman who went armed with a pistol to the victim. He discharged the pistol at the victim's foot and also assaulted him.

**Held**

State evidence credible  
Medical evidence corroboration  
Defence evidence incredible  
Rejected  
State evidence accepted  
Guilty of both charges

**Cases Cited**

*The State v Amoko*, [1981] PNGLR 373  
*The State v David Kandakason* [1998] Supreme Court Judgement SC 558  
*The State v Jaminan* [1983] PNGLR 318  
*The State v John Beng* [1977] PNGLR 115  
*The State v Nataemo Wanu* [1977] PNGLR 152  
*The State v Porewa Wani* [1979] PNGLR 593

**Counsel:**

*D Kuvi*, for the State

*J Waiwai*, for the Defendant

**VERDICT**

**13<sup>th</sup> September, 2018**

1. **MIVIRI AJ:** Kasi Puring of Wampun, Markham Morobe Province is charged that he on the 13<sup>th</sup> February 2016 at Morokea VOP here in Kimbe without lawful occasion went armed in a public place in such a manner to cause terror to one Vitalis Lakoya.

2. He is further charged that on the same day at the same place at the same time he unlawfully assaulted Vitalis Lakoya.

**Charge**

3. The first charge is contrary to section 70 *Going Armed so as to cause fear, Criminal Code Act*. It reads, “(1) *A person who goes armed in public without lawful occasion in such a manner as to cause terror to any person is guilty of a misdemeanour.*”

*Penalty; Imprisonment for a term not exceeding two years”*

4. The section denotes that the person must be armed. And he does in public as opposite to private. And he does so without any lawful reason or that the occasion is not by law such as for example in the course of duties as a policeman or soldier. And it is in a manner as not to cause terror to any person.

5. The second charge is under section 340 “*Assaults occasioning Bodily harm,*” of the *Criminal Code Act*. It reads, “(1) *A person who unlawfully assaults another and by doing so does him bodily harm is guilty of a misdemeanour.*”

*Penalty: Imprisonment for a term not exceeding three years.”*

6. There must be an unlawful assault from which is derived bodily harm

**State Case**

7. The following evidence was tendered by consent and marked as exhibits in the state case :

(i) Exhibit S1 (a) Pidgin original record of interview of Kasi Puring dated the 17<sup>th</sup> February 2017. Accused admits going to the house of Vitalis

Lakoya and picking him up but not assaulting him. And that he was armed with a rifle at that time. He elects to remain silent when asked about the discharge of the gun and production of the empty shell Exhibit S8 a 9 mm shell casing capable from emanating from a pistol only. There is no explanation in the record of interview that he was armed with a rifle that he had discharged it into the ground when Vitalis Lakoya is alleged to have struggled with him. He denies assaulting him. And does not disclose who is responsible for the injuries nor names of policemen he went with even though he is the Non Commissioned officer in Charge of Bravo section MS 19. He also does not state that he took off his uniform because of the water level at the creek crossing into Vitalis Lakoya's house. He was therefore in civilian and not uniform.

(ii) Exhibit S1 (b) English translation of that record of interview.

(iii) Exhibit S2 (a) Affidavit of Orovu Sere Senior Service Emergency Registrar of the Port Moresby General Hospital. This is a medical affidavit dated the 14<sup>th</sup> March 2016 of this witness who was at that date with the hospital for 12 years. He was presented with history by the patient Vitalis Lokoya who was assaulted by policemen in Kimbe on the 13<sup>th</sup> February 2016. He examined him on the 1<sup>st</sup> March 2016 and observed the following injuries multiple lacerations/ knife wounds to his right upper eyebrow, forehead, left hand and left knee. And also patient complained of bilateral bleeding ears with reduced hearing, abrasions to upper arm with the shoulder as well as generalized pains bumps and bruises. And that the multiple wounds show healing process after initial empirical treatment but disfigurement from scarring tissues remain. He concluded that it had been assessed to be caused by severe police brutality and should be dealt as grievous bodily harm.

(iv) Exhibit S2 (b) Medical Report of Vitalis Lakoya dated the 1<sup>st</sup> March 2016 under hand of Doctor Orovu Sere MBBS Senior Service Emergency Registrar Port Moresby General Hospital Confirms these injuries and evaluating that they were assessed to be caused by severe Police brutality to be dealt with as grievous bodily harm.

(v) Exhibit S3 is Statement of Flora Lakoya wife of the victim Vitalis Lakoya dated the 23<sup>rd</sup> February 2016 recounts events of the 13<sup>th</sup> February 2016. She did not see the police until they were in their premises. Her husband was asleep at that time. And she was with her children when the police came. They were not in uniform and appeared new to the area so she thought they were rascals who had come to steal from them. So she told daughters Pascaline and Lucian to run away. She got a spade and was about to go into the plantation when the policeman called out, Are you the wife of Vitalis and I said yes and told that I did not know where he had gone as I

feared they might be enemies. They asked for his phone and I said he had none. They appeared angry and said they would arrest me when my husband came out and asked them why they wanted to see him. The policeman came close to Vitalis held his hand but Vitalis removed his hand and asked him why he wanted to hold him. *“Dispela man kirap na rausim wanpela pistol aninit long jacket bilong em na laik sutim lek bilong Vitalis na pointim go daun long lek tasol em abrus. Mi lukim simuk kamap long graun na mi tink man bilong mi polis sutim pinis.”* This man took out a pistol from under his jacket and wanted to shoot Vitalis leg and pointed it but he missed. I saw smoke came out of the ground and I thought that police had already shot my husband. At that time my daughters Paskalin and Lusian were there and together we saw what the police did to our father. I was really afraid and the children and grand children were also very scared and cried when the gun fired. We did not know why the police came and did that to our father. I was afraid and begged the police not to shoot father. This policeman with another pulled my husband went and assaulted him. And this policeman shot twice again with the gun into the air. And pulled father into the vehicle parked on the other side of the creek. When we wanted to follow the other policeman who held a big gun fired into the air and said if we came close he would shoot us. I was worried about my husband and followed them to the vehicle where they put him inside. And before they drove off they threw empty bottles of beer out of the vehicle. And I went and got this empty beer bottle and later gave it to police when they came to get my story. I also gave them an empty bullet casing that I got from place where police shot Vitalis my husband.

(vi) Exhibit S4 is statement of Paskaline Blasius her evidence is similar to her mother. These were new faces and not wearing police uniform. She saw what they did to her father Vitalis Lakoya together with her mother. That one of this man came and held her father's hand and he removed his hand and asked him why he was holding him. And he reached inside his jacket pulled out a pistol and pointed it at the foot of her father and discharged it. She thought that her father was already shot by this man. I was very frightened together with my children and husband and we cried when the gun was fired. He appeared very drunk and his eyes were blood shot. He put father on the vehicle and together with the other man assaulted father. And this policeman fired the gun twice into the air again. And when they wanted to follow one of the other policemen with the big gun fired into the air and said if we came close he would shoot us.

(vii) Exhibit S5 Statement of Alphonse Kolokolo dated the 23<sup>rd</sup> February 2016 he was with his wife, daughter of the Vitalis Lakoya at the house when all happened before him and his evidence is similar in material particulars with that of Paskaline Blasius. He confirms that they were not able to see if these were policemen or not as they were not in uniform nor did they identified themselves. And he confirms the discharge of the pistol and firearms at that area. And the threat as set out by Paskaline Blasius after the

pistol and firearm was discharged from the vehicle.

(viii) Exhibit S6 statement of Arresting officer Alexander Isouve is the investigator who was handed a spent bullet casing together with wine bottle by the witnesses which they retrieved from the scene and handed to him for safe keeping. They were allegedly of the guns discharged at the scene and bottle that was thrown out by one of the policeman out of the vehicle there. He also conducted the record of interview with the accused in pidgin and translated into English set out above.

(ix) Exhibit S7 is that empty wine bottle that is set out by Alexander Isouve's evidence supra.

(x) Exhibit S8 is the shell casing of a bullet retrieved by the witnesses at the scene of the shooting allegedly by the policeman who went there and given to the arresting officer Alexander Isouve. Notably this is a 9mm shell which is a small arms calibre a pistol used and not a rifle. There is no dispute that a pistol was fired at the scene that is the reason why there is a spent shell emanating and collected by the witness Flora Lakoya wife of the victim and handed to the informant.

8. The Statements of Flora Lokoya, Paskaline Blasius and Alphonse Kolokolo have all been tendered by consent through these witnesses into evidence. In all material particulars they speak the same of the events of the 13<sup>th</sup> February 2016 hand in hand that accused came out held their father Vitalis Lokoya who removed the hand of the accused who pulled out a pistol from under his jacket and fired down wards to his leg but missed. There is no dispute too that a 9 mm as opposed to 5.56mm shell casing was retrieved by the witness Flora Lokoya from the area where the pistol was fired into the ground.

9. Accused also does not dispute that he did hold Vitalis Lokoya who he says resisted arrest and so he discharged the gun into the ground to stop him. He called one Walters Mallo who was lawyer for Cakara Alam at that time and who accompanied him on that occasion that afternoon. Who stated that Vitalis Lokoya charged out and wanted to tackle the accused who was armed with a rifle that he slung across his right side. The Accused stated that the rifle was cocked and in safe. He released and fired into the ground subdued him and took him to the vehicle. A Wabag policeman assaulted him not accused. He told them to stop but they were from different areas of the country and did not listen to him. He was the NCO commander of the section but could not stop what they were doing assaulting Vitalis Lokoya. He was in a position of authority a policeman who saw by his training an assault taking place by those with him his men and he did nothing to stop that wrong. He was not the assailant but it was within his powers to stop what was happening he did not and allowed it to culminate to injury to the victim, *Porewa Wani v The State* [1979] PNGLR 593. He aided and abetted the offence of assault occasioning bodily harm pursuant to section 340 of the *Code*.

10. It is appropriate at this juncture to make the following observations in which I take judicial notice of that Policemen are both uniform and plain clothes. The mobile squad are uniform police personal and always wear uniform in their line of duty as opposed to Criminal Investigation Branch which is plain clothes because of their line of duty. That the accused is a member of the Mobile Squad 19 based at Kavugara who are in uniform always. Being armed is part of the uniform. And on this occasion he was Non Commissioned Officer who was armed in his evidence with a rifle in the State witness a pistol. They demarcate with a pistol and a big gun. He was the Commander of the bravo section.

11. Together with the evidence by consent exhibits for the State and the observations set out above the following are proved beyond all reasonable doubt, accused was not in police uniform on the 13<sup>th</sup> February 2016 when he went to the premises of Vitalis Lokoya. And he was armed with a pistol because if he was armed with a rifle, shells emanating of it would be found at the scene. I make that finding because the house of Vitalis Lokoya is not a war zone, nor is it a police firing range or a military range. It is a village where spent shells would be hard to come by. And here according to the evidence of the informant Alexander Isouve only a pistol can emit 9mm shell and not 5.56mm which is from a rifle. This is consistent with all State witnesses account that it was pulled out of under his jacket. A Pistol unlike a rifle is capable of being concealed which was the case here. The scene is clear daylight good lighting the observations are made at close quarters the evidence in principle have been tendered and no serious objection by defence. In my view therefore it is clear the subject weapon was not a rifle as contended by the accused. He is not supported in his contention. The State witnesses have been consistent and are witnesses of the truth. They have no reason to lie. Their assertions of their observations are independently verified by Doctor Orovu Sere at the Port Moresby General Hospital not Kimbe. He is neither related nor interested in the outcome of the proceedings except his profession as a doctor per the medical report before court. It independently verifies the account of the State witnesses.

12. It is consistent with the sworn evidence of Vitalis Lokoya particularly in the light of the fact that he would be an incredible witness to try to tackle a man who is armed with a pistol or gun for that matter clearly visible. To come out rushing and trying to tackle as in the words of Walters Mallo and the accused would be not within common sense and logic appreciating that a gun is a lethal weapon and can kill instantly at the squeeze of the trigger.

13. It is therefore consistent to hold that Vitalis Lokoya came out drawn by the fact that his wife was going to be taken in. He enquired why they were looking for him. Accused placed his hand on the shoulder of Vitalis who removed his hand and asked why they were looking for him. Accused drew out the pistol then under his jacket and fired downwards at the leg of Vitalis Lokoya who reacted avoiding it. Then he was taken to the vehicle and was beaten assaulted and taken away and further assaulted suffering multiple injuries lacerations/ knife wounds to his right upper eyebrow, forehead, and left hand and left knee.

14. This findings are consistent with the law clearly stated in *David Kandakason v The State* [1998] Supreme Court Judgement SC558 where the Supreme Court said that where the witness is shown to have made previous statements inconsistent with the evidence given by that witness at the trial, the court must regard and treat that evidence as unreliable, and similarly disregard that previous statement, whether sworn or unsworn, as it does not constitute evidence, upon which the Judge can act. In other words both the sworn testimony of the Witness, and his statement given out of court are discredited and both are no longer reliable evidence: *Palili v The State* [2006] PGSC 16; SC848 (31 August 2006). Accused is contradictory in his evidence there is no ring of truth in the light of the evidence set out above. It would be contrary to law to rely on his evidence in the light of the law set out and his evidence is rejected in its entirety particularly with respect to the fact that he fired with a rifle as opposed to a pistol. And that he did not assault the victim.

15. Both he and his witness Walters Mallo are accomplices to a criminal offence (*The State v Amoko* [1981] PNGLR 373 (4 June 1981) and must have independent evidence corroborating their accounts which is lacking here. This is so because the evidence of Paskaline Blasius is that this man together with the other man pulled father to the vehicle and assaulted him. Walters Mallo's evidence on oath is that he went out to identify the house of Vitalis Lokoya to the accused. And he was there he used his mobile phone on speaker to contact Steven Bunga the Police Station Commander. He was the only person accompanying all others were 70 meters and then 20 meters across a creek to the vehicle: *The state v Nataemo Wanu* [1977] PNGLR 152. There is no corroboration and therefore no ring of truth in their evidence. In any case his evidence confirms that this was a civil matter as opposed to a criminal matter. If it were a criminal matter where a complaint was laid at the police Station there would be no need for a lawyer acting for Cakara Alam and in the employ of that company to out with the police at the house of the chairman of a local land owner company Matawat Moil Investment Limited who had entered into an agreement with a rival company Evergreen Limited. It was a commercial matter and not a criminal matter. In the ordinary course of events it would be criminal investigations and not mobile Squad let alone mobile Squad 19 Bravo section there was no riot or civil disorder needing deployment of a mobile squad section out at Morokea village Oil palm where Vitalis Lokoya was with his family on the 13<sup>th</sup> February 2016. There was a robbery at Buluma not Morokea village Oil palm which is a distance in kilometres apart. It was evident that bravo section of mobile squad 19 was not on duty as they were not in uniform nor were they in police marked vehicle with instructions to that effect a court order or instructions by mobile phone from Steven Bunga as non of the State witnesses recount even though all were at the same place at the same time. Lies that have been told in the knowledge of imminent guilt glaring by the accused and his witness Walters Mallo corroborate the account of the State witnesses: *Jaminan v The State* [1983] PNGLR 318 (29 September 1983).

16. It follows that consistency and truthfulness has been forfeited by the

accused and his witness in their haste to cover up particularly also in the light that *John Beng v The State* [1977] PNGLR 115 which settles the law on identification in these terms:

*“Whenever the case against an accused person depends wholly or substantially on the correctness of one or more identifications of the accused which the defence allege to be mistaken, the trial Judge should warn the jury of the special need for caution before convicting in reliance on the correctness of the identification. He should make some reference to the possibility that a mistaken witness could be a convincing one and that a number of such witnesses could all be mistaken. Provided such a warning is given, no particular form of words need to be used.*

*Further, the trial judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made...*

*Recognition may be more reliable than identification of a stranger, but even when the witness is purporting to recognize someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made. All these matters go to the quality of the identification evidence. When the quality is good, the jury can be safely left to assess the value of the identifying evidence even though there is no other evidence to support; Provided always, however, that an adequate warning has been given about the special need for caution. When the quality of the identifying evidence is poor — i.e. a fleeting glance or a longer observation made in difficult conditions— the Judge should then withdraw the case from the jury and direct an acquittal unless there is other evidence which goes to support the correctness of the identification”*

17. There is no real issue for my determination in this respect except that it was still daylight and the witnesses made positive identification of what the accused and his witness did on that there is no problems in this light.

### **Sworn Evidence**

18. **Vitalis Lakoya’s** evidence on oath is that he was at his house at Morokea village oil palm on the 13<sup>th</sup> February 2016 at about 6.00pm when the accused came to his house. He was questioning his wife about him when he came out of the house. Accused was in his own clothes. Accused placed his hand on his shoulder and tried to take him in. He pushed off his hand. Accused pulled out a pistol from his jacket and discharged it towards his leg but he avoided it. And he was taken then to the vehicle where he was assaulted and then taken to the police Station where he was further assaulted. As a result he suffered serious injuries to his face, head, hands and knee. Then taken to the police Station where he was further assaulted. He suffered injuries to his face, head, hands and knee for which he was



treated at the Port Moresby General Hospital and a report of his medical condition was given by Doctor Orovu Sere.

19. His evidence is consistent with the witnesses whose statements have been tendered including the medical report. There is a very strong ring of truth that runs through their evidence. The accused also agrees and corroborates their evidence in all material particulars except as to whether or not he struggled to resist arrest if ever it was made. And whether it was a pistol or a rifle. The accused version in this regard remains uncorroborated firstly it is not a rifle spent casing or 5.56mm but a 9mm that is retrieved by the witnesses from where the gun was discharged. It is not disputed by the accused that he discharged the gun there where the witness has retrieved the shell casing. Because it is where Vitalis Lokoya was their father. It may have not been test fired but it is a spent casing not of a rifle but a pistol evidence of Alexander Isouve police detective. I accept his evidence as the truth. He was unshaken in his evidence and gave evidence of his investigation maintaining consistency and credibility with all other evidence before the court.

### **Findings of Fact**

20. On the 13<sup>th</sup> February 2016 at 6.00pm Kasi Puring went to the dwelling house of Vitalis Lakoya accompanied by six other men including Lawyer for Cakara Alam Walters Mallo. He was not in police uniform nor was he in a police marked vehicle. Nor did he produce any documents of law to take Vitalis Lakoya into custody. He was armed with a pistol and a rifle.

21. He confronted and laid hands upon Vitalis Lakoya who removed his hands and the accused discharged a pistol into the foot of Vitalis Lakoya who avoided but then was assaulted and taken to the vehicle. And when his wife Flora Lakoya, daughter Paskaline Blasius and son in-law Alphonse Kolokolo tried to follow the vehicle because the victim and father was taken away, the rifle was discharged into the air and they were told that if they came again they would be shot.

22. Vitalis Lakoya was taken to the police Station and assaulted. He suffered multiple injuries to his facial head, hands and knee as a result and was seen by Doctor Orovu Sere who viewed that these injuries were assessed to be caused by severe Police brutality to be dealt with as grievous bodily harm. The Accused was identified not in police uniform or in police marked vehicle with a pistol and another had a rifle both of whom were discharged at Morokea a public area. And that Vitalis Lakoya the victim was assaulted and a medical report confirmed that independently. Section 70 is settled by this evidence beyond all reasonable doubt.

23. On the basis of this evidence I am satisfied beyond all reasonable doubt that the accused is guilty that he went armed in a public place Morokea Village Oil Palm so as to cause fear in particular that he was armed in the presence of Vitalis Lakoya so as to cause him fear. The gun a pistol was discharged and did not only cause him fear but that he was assaulted and suffered as a result evidenced *prima facie* by the medical report and affidavit of Doctor Orovu Sere. A second gun was

also discharged and the accused was part of that group who were together he was the Non Commissioned officer in charge of that unit which was not acting in the course of police duties. The witnesses saw them as new faces to the area and thought they were enemies. The force used in the discharge of the weapon was not reasonable: *Tapea Kwapena v The State* [1978] PNGLR 316; *Kairi v The State* [2006] PGSC 8; SC 832 (28 April 2006) and therefore fitting of sections 70 and 340 of the *Criminal Code* because Vitalis Lakoya's injuries at the hands of the accused and those who were with him are confirmed independently and beyond all reasonable doubt.

24. I find him guilty of section 70 *Going Armed so as to cause fear*, of the *Criminal Code Act* and I convict him. Further I find him guilty of Section 340 "*Assaults occasioning Bodily Harm*" of the *Criminal Code Act* and I convict him.

*Orders Accordingly,*

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Public Prosecutor: *Lawyers for the State*  
Emam Lawyers : *Lawyers for the Defendant*