

Between: PUBLIC PROSECUTOR

And: DERRESEN KRISBEN  
Defendant.

Coram: Mr. Justice Frederick G. Cooke, Chief Justice.  
Mr. U. Bani, Bani, Assessor,  
Mr. P. Malsunga, Assessor,  
Mr. F. Coté, Prosecutor,  
Mr. Hudson, Defence Counsel,  
Miss J. Walsh, Chief Registrar,  
Miss M. Leona, Interpreter.

### JUDGMENT

This is a sad case of a man who returning from evening church and a visit to his mother's home on the way, with his wife and seven month old baby boy. His wife had gone ahead of him to their home to put the child to bed. When he reached home a short time later he saw his wife sitting on a fallen coconut tree, his wife called him to sit beside her, which he did. His wife then said, she was not very happy that her sister was marrying into the same family. She was very annoyed, she got up and went behind him and caught hold of his hair and started ruffling it. He had a bad leg so found it hard to stop her. She then let go of his hair and started to shake his shoulders. He said, in an effort to stop her shaking him, he closed his fist and swung it behind him and hit her some where on the body. He did not know where. His fist made contact with her body and he heard her shout out and say, "Oh Ben, my rib", and at the same time cried. He got up and brought her into the house and sat her on the bed. She said she wanted to sit on the floor but he told her to wait as he wanted to get a mat for her to sit on. He went to get a mat but when he returned he found her on the floor. He tried to lift her up onto the bed but found she was dead.

The accused was charged with intentional assault contrary to section 107 (d) of the Penal Code.

He pleaded guilty to the charge through his Counsel Mr. Hudson.

Mr. Barrand the Surgeon, at the Central Hospital gave evidence to the effect that the deceased had an enlarged spleen and it was the result of the hitting of that enlarged spleen which caused it to rupture, resulting in the death of the accused's wife.

Mr. Hudson submitted the accused should be acquitted of the charge because under Section 27 of the Penal Code there was sufficient provocation diminishing the responsibility. Section 27 (1) states:-  
"Criminal responsibility shall be diminished in the case of an offence immediately provoked by the unlawful act of another against the

offender or, in his presence, his spouse, descendant, ascendant, brother, sister, master, or servant, or any minor or incapable person in charge, provided that the reaction constituting the offence be not disproportionate to the degree of provocation.

2. Without prejudice to the generality subsection (1) the intentional killing or wounding of another shall be deemed to be not disproportionate to provocation caused by violent blows or injuries.

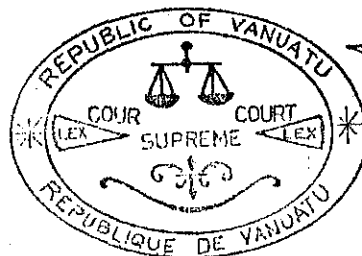
3. In order that criminal responsibility be diminished, provocation must be of such degree as to deprive a normal person of his selfcontrol.

The accused must have been annoyed as a result of the actions of his wife and may have swung his hand to push her away. He did not do so, he clenched his fist and struck the deceased who was behind him, in my opinion, intending to stop her actions once and for all. He hit her in the stomach which ruptured her enlarged spleen resulting in her death.

I do not consider the provocation given by the deceased was sufficient to deprive a normal person of his self control. It was purely a husband and wife affair.

The Assessors agreed with my views and we found the accused guilty of assault but not guilty of assault with intention to cause death.

Due to the unfortunate death of the wife as a result of the enlarged spleen and the incapacity of the accused, who had a deformed leg, due to operations on the knee, which would here made it quite impossible for the accused to seriously assault his wife (deceased) we considered that we should deal with this case under Section 42 of the Penal Code. We accordingly did not pass any sentence on the accused but we ordered the accused, if he misbehaved himself or committed any offence within one year, to appear for sentence on this offence, if called upon to do so.



*Frederick G. Cooke*  
Frederick G. Cooke.

CHIEF JUSTICE

Dated at Vila this 4th day of March, 1982.