

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

Criminal Case No. 39 of 2009

**PUBLIC PROSECUTOR
V.
KALORIS KALI**

Coram: Justice N. R. Dawson

Counsel: Mr. G. Takau
Mr. T. Loughman

Date of Hearing: 15th – 16th March 2010

Date of Decision: 17th March 2010

VERDICT

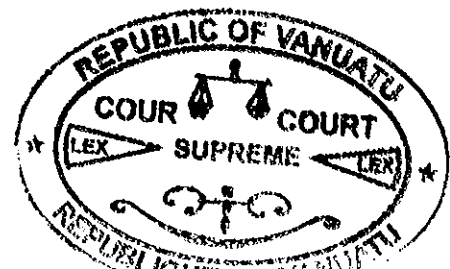
1. Mr. Kali, we have just completed a trial where you have been charged with one count of Intentional Homicide contrary to section 106 (1) (a) of the Penal Code Act [Cap.135]. The count alleges that you caused the death of your daughter Florina Kali by an unlawful act, on 7 September 2004. Section 106 (1) (a) says:-

"Intentional Homicide

106 (1) No person shall by any unlawful act or omission intentionally cause the death of another person.

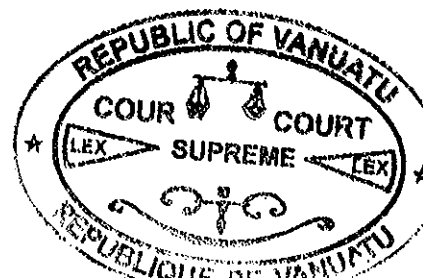
Penalty: (a) if the homicide is not premeditated imprisonment for 20 years."

2. In every trial the burden of proof or the onus of proving the charge rests on the Prosecution. That onus remains on the Prosecution from the beginning to end. An accused person is not required to give or call evidence. In this case the defence chose to call evidence which is his right. However, the onus of proof still lies on the Prosecution.
3. The Prosecution must prove the charge to the standard of proof of beyond reasonable doubt before the accused may be found guilty of the charge. The prosecution must prove the charge and every element of the charge to the point of beyond reasonable doubt. In other words, the Court must be sure and satisfied upon the basis of the evidence produced at trial that the accused is guilty of the charge before reaching that verdict. If there is a reasonable doubt



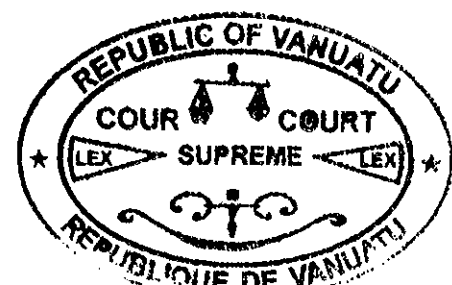
about the charge or any element of the charge, then the Court is bound to find the accused not guilty of the charge.

4. The essential elements the prosecution must prove for the charge are:-
 - (1) The accused committed an unlawful act that caused the death of his daughter.
 - (2) The accused intentionally caused the death of his daughter.
5. Prosecution evidence was given by Toas Thierry, a policeman of 20 years experience, who investigated the death of Florina Kali. He produced a Police Statement taken from the Accused on 26 September 2004. In that Police Statement the Accused made a full and frank admission that he had killed his daughter Florina, why he had killed her, how he killed her, when he killed her and what he did after she died.
6. In his Police Statement the Accused says he killed his daughter because she was pregnant to a boy in the village, that she could not marry, as he was too closely related to her. He also says that Florina already had another child and she did not live with the father of that child. The Accused says that he was taking care of the child and Florina got pregnant again.
7. The Accused says that early on the morning of 7 September 2004 between 3.30 a.m. and 4.30 a.m. he woke and heard Florina go outside. He followed her and saw her taking the road towards the garden. He says he was angry, caught up to her, grabbed her by the neck with his left hand and punched her to the left side of her head near the ear with his right hand. He says he then grabbed her neck with his right hand also and strongly squeezed her neck to stop her breathing. When Florina fought back he bit both her hands and chest. When Florina stopped struggling hard he continued to squeeze her neck with his left hand, and with his right hand he grabbed and squeezed her vagina in anger. After she was no longer breathing and still holding her in the same way, he carried her up and across the road and laid her body down under a tree close to their toilet. He then took a piece of wood and hit her backside once, then went home.
8. In his Police Statement the Accused says that when assaulting Florina he was really angry and had lost his temper and control. He says he knew that he had assaulted Florina to death before he went back to the house to sleep. He also says that he made a silent and fast killing that no-one could hear.
9. The Accused says that he slept until about 5.30 a.m. to 6.00 a.m., when his wife told him Florina was not sleeping in her bed. While lying on his bed he heard his wife cry out from near the toilet that Florina was dead. He jumped out of bed, ran to the body and carried it to the house where he washed her.
10. Constable Thierry's evidence was that before he took the police statement from the Accused he told the Accused of his full rights and the Accused said



he understood them. He also said that after receiving a phone call at about 9.00 a.m. on 7 September 2010, he and two other policemen went to the Accused's house, saw the deceased, and saw that she had been washed and her clothes changed. He described seeing her body which was covered in scratches and had bite marks on her arms and body. There were also marks on her neck. He said that at the site of the alleged homicide there was signs of a struggle having taken place, including abrasions to the skin of tree roots. He then called a nurse to examine the body of the deceased to produce a medical report.

11. Dominique Delege a medical officer from Norsup Hospital of 22 years experience told the Court that he was called by the Police and went to the deceased's home on 7 September 2004 and examined her body. He found that her mouth was full of blood, her upper tooth broken, lower lip torn, finger scratches to her belly and jaw and bite marks on her right hand. There were also dark marks around her neck consistent with strangulation. He submitted his written medical report of 7 September 2004 as Exhibit 2.
12. The Accused chose not to give evidence and therefore has not denied the content of his Police Statement.
13. Juliette Kali, the wife of the Accused gave evidence of waking early in the morning of 7 September 2004. She noticed Florina was not in her room and her grandson was crying. She put the grandson with the Accused, who was asleep in his bed, while she went to the toilet. She says that she saw a man standing near the entrance to Pop's house but could not recognize him as it was still dark. When she came out of the toilet, she says he was still there, and when she walked towards him, he walked away and disappeared. She then found her daughter lying on the ground dead. She tried to make her daughter stand, then went back to the house to get the Accused to help her. They carried the deceased to the house where she was washed and dressed in new clothes.
14. She also says that where her daughter was found were some red kava leaves but did not take much notice of them. She also says that she told the Accused about the man she saw near Pop's place that same day.
15. Mrs. Kali says that her husband, the Accused, is not a violent man and does not believe he killed their daughter. She was not aware that the Accused had made a statement to the Police admitting he had killed Florina. She believes that the man she saw from 50 metres away in the gloom of the early dawn killed her daughter. She can only describe that person as of medium height but did not know if he was young or old, what clothes he was wearing, or even if he was wearing clothes at all. She was unable to explain why she believed this person to be a man and not a woman.
16. Mr. Aiwas Kali, a 69 year old cousin/brother of the Accused also gave evidence. He first heard of Florina's death when the Accused's son came and told him. He went to look at the site where Florina's body was found and noticed red kava leaves on the ground near to where he believed the body




had been. He says that he heard a person called Luki says he had dropped the kava leaves there. He believed Luki is responsible for Florina's death as in North-West Malekulan culture red kava leaves can be used to control a spirit to do the actions we want. He says the spirit works through a person to carry out those actions and Florina would have been killed by a person controlled by a spirit. He also says that he was not aware of the Accused having made a Police Statement admitting to the killing of Florina.

17. Policeman Thierry had earlier said in his evidence that he had interviewed a man called Luki who said he got the red kava leaves from his garden and was walking down the road chewing them as medicine and he had thrown them away when he was near the place where Florina's body was ultimately found. He says that he had no reason to investigate the presence of the red kava leave any further.
18. I find the Prosecution witnesses were both credible and reliable. In addition, the statement that the Accused gave to the Police is a detailed account of exactly what he says he did which lead to Florina's death. His version of his assault upon her is entirely consistent with the medical evidence. There is no reason or evidence to link the mysterious person Mrs. Kali says she saw in the vicinity of Florina's body or the man named Luki to her death.
19. The Accused's Police Statement described in detail how he killed his daughter and why he did it. It is clear that once he began his attack upon her, he intended to kill her. He also gave his statement to the Police on 26 September 2004, 19 days after his wife says she told him what she saw that morning, and also 19 days after the presence of the red kava leaves near Florina's death was made known to him. Notwithstanding these facts, he made a full, frank and detailed confession to his daughters homicide that is entirely consistent with the Medical Report.
20. I am satisfied to a standard of proof beyond reasonable doubt that the prosecution has proven each of the elements in each charge against Mr. Kali and I therefore found him guilty as charged.
21. You have the right to appeal this verdict. For any appeal you must lodge a notice of appeal within 14 days of today's date. You are remanded in custody to 7 May 2010 at 2.00 p.m. for sentencing at Port Vila. A pre-sentence report is ordered to be prepared by the Probation Service for sentencing.

DATED at Lakatoro, Malekula, this 17th day of March, 2010.

BY THE COURT


.....
N. R. DAWSON
Judge.

