

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

Criminal Case No 17/3589 SC/CRM

PUBLIC PROSECUTOR

V

RAYMOND PAKOA

Before: Chetwynd J
Hearing: 4th to 8th June 2018
Counsel: Ms Pakoasongi for the Prosecution
Ms Kalwatman for the Defendant

JUDGMENT

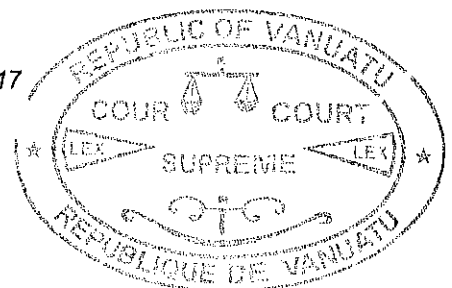
1. The defendant Raymond Pakoa is charged with the premeditated intentional homicide of Flora Jerry in the early hours of the 3rd of August, 2017. Much of what happened is agreed and admitted by the defendant. He admits early in the morning of the 3rd of August he stabbed the victim and he admits that as a result of the stab wounds he inflicted Flora Jerry died.

2. The only issue in this case is whether the murder of a Flora Jerry was premeditated. In the recent decision by the Chief Justice the question of premeditation was discussed ¹:

*“Any premeditated design means that there was a conscious decision to kill.
The decision must be present in the mind at the time the act was committed”*

Later His Lordship said:

¹ *Public Prosecutor v Johnson Namri Criminal Case 1859 of 2017*



"The decision to kill must be present in his mind at the time the act was committed. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the act"

3. Premeditation is not the same as planning. Obviously if there is evidence of planning the act then that would be compelling evidence of premeditation. However it is clear there can be premeditation without planning. As the Chief Justice says, premeditation involves a decision made at or before the act.

4. It may be difficult to establish in many cases whether or not there was premeditation. The state of mind of the accused can be difficult to establish because only the accused knows for sure what was in his mind at the time of, or just before the act. More often than not premeditation can only be established from circumstantial evidence and inferences based on the facts surrounding the incident.

5. As mentioned above, the defendant has made many admissions in this case. In addition to what has already been mentioned he agrees that he was violent towards the victim during their relationship. There is ample evidence of this. The family of the victim were so concerned about the violence that in June 2017 they arranged a meeting between themselves, their Chief, the victim and the defendant. At that meeting the victim related an incident where after assaulting her the defendant pointed a knife at her and said the words to the effect that he would kill her with it. The actual words used roughly translated from Bislama were that he would use the knife so that the victim could meet or follow her husband and as the victim was a widow, the meaning was clear.

6. The court heard from two witnesses about what went on during that meeting. August Karis is related to the victim. He confirmed he was at the meeting and when the defendant was asked whether he had said and did what the victim said he did, he confirmed the victim's version of events was true. Chief Obed Varatiamata was the families Chief. He confirmed that when asked if he agreed with what the victim said the defendant answered yes.

7. The defendant also admits there was an incident on the night of the 2nd of August. He agrees that he became angry with the victim and head butted her. This happened in front of the victim's five year old daughter. The incident in itself is not proof positive of premeditation but it is evidence of the defendant's state of mind mere hours before the murder was committed.

8. The defendant gave sworn evidence and when doing so he placed a lot of the blame on the victim. He agreed the relationship was stormy and involved violence but he said the victim caused many of the problems by criticising him and by not treating his sons (from a previous relationship) properly and by being jealous.

9. The defendant says that in the early hours of the morning of the 3rd of August he came to the realisation the victim's family might be cross with him because of the



head butting incident the night before. He decided he would have to leave for a while and get ready to pay compensation in order to be able to arrange a reconciliation. He was new to the Ohlen area and he had concerns about his safety. He thought he might be attacked as he was walking through the streets in the dark. He said he thought the area was unsafe for him as a stranger. He did not explain why he thought it was unsafe and did not introduce any evidence of threats or attacks on either himself or others. It was just a vague assertion that it was a dangerous area. He decided that he would take a knife with him for personal protection. He went to the kitchen and he picked up a knife. He does not know now and did not know then to whom the knife belonged. He says that the victim was with him when he picked up the knife and she could see that he had done so because there was a solar light in or close to the kitchen.

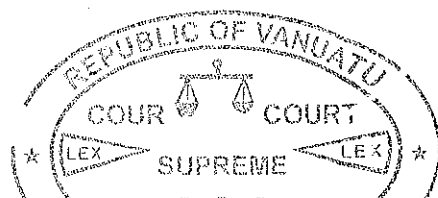
10. The defendant gave evidence that the victim was following him and walking behind him as he left their accommodation. She was making accusations about him and she swore at him. At the time she was slightly behind him to his left side. It was when the victim said that he could go and fuck his sister that he lost his temper and in a rage he pivoted to his left to face the victim and stabbed downwards with the knife which he had been holding in his right hand. He demonstrated what had happened in court room and the demonstration involved a downward blow from about head height.

11. When he was later interviewed by the police he told them that he thought he stabbed the victim twice in the belly. It is difficult to understand how the defendant could think that if he remembered himself stabbing downwards.

12. Prior to hearing from the defendant the court heard from Dr. Garae. She is the pathologist based at Vila Central Hospital. Her expert opinion was there were four distinct stab wounds. One was to the front right side of the neck, another to the right upper breast area, a third below was to the upper left abdomen and one was to the left side of the chin. There was also a cut caused by a bladed instrument on the left side of the neck, this was described as an incisional wound.

13. The unchallenged evidence from the pathologist was that the stab wound to the right side of the neck severed the carotid artery and the stab wound to the chest penetrated the right lung and the heart. Dr Garae was of the opinion either of those wounds would have resulted in the certain and rapid death of the victim through massive loss of blood. Dr Garae was unable to say in which order the wounds were inflicted but she described the fatal wounds as very deep with that to the neck penetrating 10 cm and that to the chest 9.5 cm. The doctor said that because the wounds penetrated muscle and bone they would have had to have been delivered with considerable or significant force.

14. More importantly Dr. Garae said in her expert opinion the wounds were caused by an attack from the rear of the victim. She was of the firm view that it would have been extremely difficult if not impossible for the blows, especially that to the right side



of the neck, to have been delivered by a right handed person stabbing the victim face to face. A left handed person could possibly inflict wounds to the right side of someone's neck when facing that person but blows from a right handed person would be blocked by the other person's face or chin. It was not put to Dr. Garae that the wounds she examined could have been caused in the manner that the defendant later demonstrated. That is unfortunate because we are now left with two conflicting versions of how the wounds were inflicted. Even though the doctor was never given the opportunity of commenting on the defendant's version of events I am much more inclined to accept her expert evidence that the defendant attacked the victim from behind.

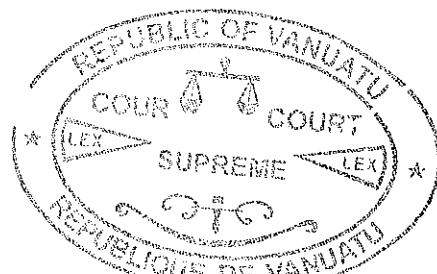
15. Earlier I indicated that in his evidence the defendant placed a lot of blame on the victim for all that had gone on. He said the victim frequently abused him and that was why he got cross and was violent towards her. When he was called to the meeting involving the Chief and the victim's family he made no mention of the victim being abusive. As the meeting had been called to try and resolve the issues between him and the victim one must question why he did not say anything. It would have been important to discuss the victim's alleged abuse and violence in respect of compensation and reconciliation as well as ensuring a complete resolution of the relationship issues.

16. When he was interviewed by the police the defendant said he was cross with the victim because she was cross with him. He said the victim was cross with him because he was going to give money to his two young sons. He told the police he never saw any of the victim's money and he seems to suggest she had been seeing another man. There is no mention to the police of the victim being violently jealous.

17. This seems to fit a pattern with the defendant. When he was when explaining to the court how the wound to the arm of his former partner (Manuela) was caused he said she was jealous and was fighting with him. He just happened to have a knife in his hand and as she was throwing her arms about she was accidentally cut. The defendant agreed that he had also stabbed Manuela in the stomach and that she had had to go to hospital where it took two operations to repair the damage. Sensibly he did not try and attribute the wounds to Manuela's stomach to some kind of accident.

18. The evidence of the defendant being violent to his previous partner and to the victim and his use of a knife in his assaults on both of them indicates his propensity to violence and to the use a knife during his violent attacks.

19. Then there is the action of the defendant running from the scene of the murder. Even according to his evidence, in his comments to the police, he has just stabbed the victim twice. Instead of immediately going to the victim's aid he simply ran off. He says he did so because he was frightened of what her family might do to him.



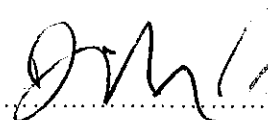
20. The defence has tried to suggest the prosecution evidence shows the defendant was unaware of the harm he had done to the victim. Noel Andre gave evidence of how met the defendant late in the afternoon of the 3rd August and just before the defendant's arrest. There was a conversation and when Mr Andre told the defendant Flora was dead, the defendant looked shocked. He said no she was at home. An alternative scenario was suggested by the prosecution namely when Mr Andre confirmed he was related to Flora the defendant denied he had killed her out of fear of retaliation or out of deceit.

21. The defendant said he'd been attacked by the victim's relatives. There was no other evidence offered about any assault by relatives. The defendant also claimed he had been assaulted by a police officer when he was taken to the police station. All the officers involved in his arrest denied any such attack. No other physical evidence was offered by the defence. The defendant's evidence has not been very credible.

22. Taking all the circumstances into account I do not accept the defendant's evidence. I do not accept that he struck out in anger. I do not accept that the victim's behaviour so enraged him that he struck out with a knife in a blind rage. The evidence demonstrates he inflicted at least four stab wounds to the victim, two of which were inflicted with significant force. These were deliberate stab wounds to vulnerable parts of the victim's body. They were deliberate in the sense that they were intended to cause damage to those vulnerable body areas and were aimed at them and they were deliberate in the sense that they were measured and intentional.

23. All the evidence leads me to the certain conclusion that during the early hours of the 3rd of August, 2017 the defendant followed Flora Jerry out of their house after he had armed himself with a knife and that he then stabbed her from behind. There was no lawful reason (such as self-defence) advanced or apparent for this attack. It may not have involved any detailed or long term planning but I am sure beyond reasonable doubt that the murder of Flora Jerry was premeditated. The defendant had it in his mind that he was going to stab Flora Jerry to death before he did so and at the time that carried out the attack with the knife. I find the defendant guilty as charged.

Dated this 8th day of June 2018


D. CHETWYND
Judge

