

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

**Criminal**  
**Case No. 19/3309 SC/CRML**

**BETWEEN: The Public Prosecutor**

**AND: Andfalo Vemboe**

**Defendant**

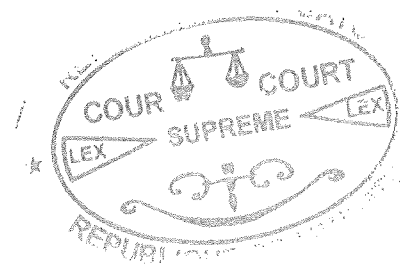
**Date of TRIAL:** 11th day of August, 2020 at 9:00 AM  
**Before:** Justice Oliver Saksak  
**In Attendance:** Mr Damien Boe for Public Prosecutor  
Mr Rollanson Willie for the Accused

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**VERDICT**

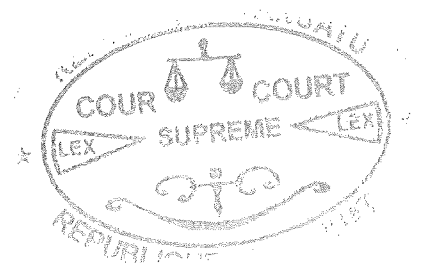
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1. The accused Vemboe Andfalo was jointly charged with attempting to commit intentional premeditated homicide together with Meletau Trief, his wife Remond Trief and Vematan Albert. The charge was laid under sections 28 and 106 (1) (b) of the Penal Code Act [CAP 135] (the Act). It was charged that on 22nd October 2019 at Narango Village South Santo, the accuseds had planned to kill Sandrine Litu by witchcraft and sorcery by removing her intestines. On 22nd October 2019 they were only partly successful in executing that plan by attempting to remove the victim from her house by removing her clothes and hitting her head with a solar battery causing her serious injuries.
2. The accuseds Meletau and Andfalo Vemboe made admissions to the police under caution but challenged their interviews. Justice Wiltens held voir dire hearings and ruled the statements made by this accused and Meletau Trief were given voluntarily and admitted them into evidence.
3. Subsequent to that ruling Meletau Trief pleaded guilty on the basis of his admissions to this charge and he has been convicted and sentenced.
4. The accused also pleaded guilty; however she changed her mind during her Pre-Sentence Report Interview with a Probation Officer and claimed she was innocent. Justice Wiltens allowed the

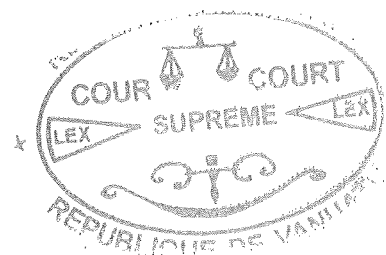


accused to reverse her plea and recusing himself, scheduled the case for trial before another judge.

5. The file was allocated to me as the next circuit judge. After a call-over on 10<sup>th</sup> August 2020 the trial was fixed for today 11<sup>th</sup> August 2020.
6. Before the Prosecution opening its case, Section 81 of the Criminal Procedure Code Act CAP 136 was read and explained in Bislama to the accused. This is the stament of presumption of innocence.
7. By that statement the burden of proof rests with the prosecution to prove the accused's guilt beyond reasonable doubt.
8. The prosecution relied on the statements made by 14 witnesses namely Sandrine Litu ( victim) Exhibit P1, Antitle Tangis Exhibit P2, Timothy Litu, Exhibit P3, Baia Sio, Exhibit P4, Amando Triere, Exhibit P5, Susan Sale, Exhibit P6, Johnny Robby, Exhibit P7, Ester Andfalo, Exhibit P8, Vari Sube, Exhibit P9, Obed Warsal, Exhibit P10, Giselle Tepi, Exhibit P11, Georgina Twomey, Exhibit P12, Peter Solwie, Exhibit P13 and Puala Zebedee, Exhibit P14. Both the prosecutor and defence counsel agreed to the tender of these statements into evidence without any cross-examination.
9. Further Counsel agreed the following to be tendered into evidence: the medical report as Exhibit P15, the Crime Scene Album as Exhibit P16, a CD recording as Exhibit P17, the stone and water boots as Exhibit P18, the solar battery as Exhibit P19. In addition, the Record of Interview of the accused which was tendered previously in the voir dire hearings was already part of the evidence.
10. With all that unchallenged evidence, the prosecution closed its case. Defence Counsel made a no-case submission orally and Mr Boe responded orally as well.
11. I ruled that on the evidence produced there was evidence established against the accused to require her to put up a defence.



12. She maintained her position and chose to exercise her right to remain silent.
13. Section 88 of the CPC Act was read and explained to her in Bislama. The defendant called no evidence.
14. I heard oral closing submissions. Mr Boe submitted there was overwhelming evidence establishing guilt beyond reasonable doubt, and that the Court should find the accused guilty of attempted premeditated intentional homicide.
15. Mr Willie submitted none of the 14 witnesses was able to identify the accused being part of the plan made on 18<sup>th</sup> October and its execution on 22<sup>nd</sup> October 2019. Counsel submitted the Court could not simply rely on the sole admission of the accused, that it needed corroboration. Finally, counsel submitted it was unsafe for the Court to convict the accused on her own admission without any corroborative evidence.
16. I found the submissions by Mr Willie to be untenable. When the accused's admission was ruled voluntary and admissible, the admission stands and there is no room for any further corroborative evidence. The sensible thing for the accused to have done was to maintain her guilty plea and not to reverse it as she did. In doing so she put herself in the most difficult position that even if she chose to give evidence in her defence, her evidence would lack credibility.
17. Be that as it may, on the evidence presented by the prosecution first, the medical report showing injuries to the victim's body were consistent with the facts of the injuries inflicted on her based on the record of interview of Meletau Trief.
18. Second, Meletau Trief confirmed this accused was part of the plan made on 18 October 2019. Then on the night of 22<sup>nd</sup> October 2019 Meletau Trief confirmed the accused was in the group when they flew over to victim's house. Meletau and his wife Remond went into the victim's house to get her out. This indicates the accused and Vematan waited outside. This is consistent with the accused's own admission statement. At its best Meletau's statement is a confirmation and



corroboration that the accused was part of the attempted premeditated intentional homicide which eventually failed, had it not been for the interference of Timothy Litu.

19. Third, Timothy Litu, the 6 year old son of the victim who saw Meletau and Ramond, his wife in the house removing his mother. He intervened and broke the spell that was upon her and saved her life. He did not mention the accused's name. That confirms the accused's version that she did not enter the house but waited outside with the other accused. Had she done so, Timothy would have seen her and identified her.

### The Law

20. Section 28 of the act provides-

**"28. Attempts**

(1) An attempt to commit a criminal offence is committed if any act is done or omitted with intent to commit that crime and such act or omission is a step towards the commission of that crime which is immediately connected with it, or would have been had the facts been as the offender supposed them to be.

(2) An attempt shall be committed notwithstanding that complete commission of the offence was impossible by reason of a circumstance unknown to the offender.

(3) Acts committed in mere preparation of an offences shall not constitute an offence.

(4) The commission of an attempted offence shall constitute an offence punishable in the same manner as the offence concerned.

(5) The criminal responsibility of a person committing an attempted offence who voluntarily withdraws from the attempt before the offence has been committed shall be diminished.

(My emphasis)

21. Section 106 of the Act provides for intentional homicide:

**"106. Intentional homicide**

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

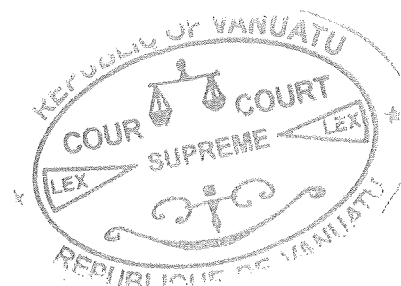
Penalty:

(a) if the homicide is not premeditated, imprisonment for 20 years;

(b) if the homicide is premeditated, imprisonment for life.

(2) For the purpose of subsection (1), premeditation consists of a decision made before the act to make a homicidal attack on a particular person or on any person who may be found or encountered."

(My emphasis)



## The Issues

22. Was there a plan to intentionally commit homicide through witchcraft and sorcery on Sandrine Litu?  
From the evidence of Meletau and the accused's admission, the plan was made on 18 October 2019 by the water. All 4 accuseds including the defendant were part of that plan.
23. Was the plan executed? From the admission of Meletau and the accused the plan was executed but failed because Timothy Litu intervened by seeing them executing it and grabbing his mother's clothes. In doing so he broke the spell of the witchcraft and saved his mother's life.
24. Was there an attempt?  
Timothy's evidence shows the plan was executed but failed in part. The elements of attempt in section 28 (1) and (2) were made out.  
And had the plan been fully implemented without interference the offence of intentional homicide under section 106 (1) (b) would have been committed.

## Conclusion

25. I am satisfied the prosecution has established the guilt of the accused Vemboe Andfalo beyond reasonable doubt and has discharged its burden of proof to the required standard.
26. Accordingly, I return the verdict of guilty on Vemboe Andfalo for attempted premeditated intentional homicide. The accused is accordingly convicted of the charge.

DATED at Port Vila this 11<sup>th</sup> day of August 2020  
BY THE COURT

OLIVER.A.SAKSAK  
Judge

