

PUBLIC PROSECUTOR -v- NADEGE KOROKA

Coram: Vincent Lunabek, Chief Justice

*Ms Kayleen Tavoia, Public Prosecutor for the prosecution.
Mr Felix Laumae Counsel for the Defence*

*Dates of Trial: 27th, 28th, 30th, November 2006 and 1st, 4th, 5th, 6th & 7th
December 2006.*

Date of Judgment: 8th December 2006.

JUDGMENT

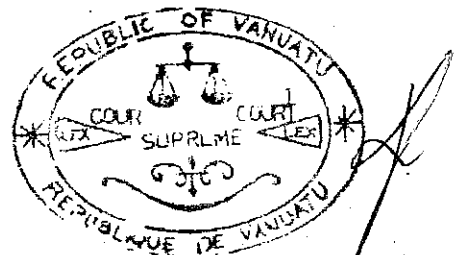
1. INTRODUCTION: CHARGE, PARTICULARS OF OFFENCE & PLEA

(a) THE CHARGE

This is the judgment in this case. The accused, Nadege Koroka, is charged with the offence of Intentional Homicide, contrary to Section 106(1)(a) of the Penal Code Act (CAP.135). The particulars of the charge alleged against the accused, are that:

(b) PARTICULARS OF OFFENCE

Nadege Koroka is from Tongoa Island. She lives in Luganville, Santo. On or about the evening of Sunday 20th August 2006, at Esmie Roy's house at Fiber Glass area, in Luganville, Nadege Koroka intentionally caused the death of a girl, Kathia Tom, by assaulting her with a clam shell, as a result of which Kathia Tom sustained serious gravious bodily injuries and died on the same evening of 20 August 2006.



(c) PLEA

The Defendant pleaded not guilty to the charge. The trial proceeded on this basis.

II - ESSENTIAL ELEMENTS OF THE OFFENCE AND BURDEN OF PROOF

(a) THE OFFENDING PROVISION

Section 106(1) of the Penal Code Act [CAP.135] is the offending section. It provides:

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

Penalty: (a) If the homicide is not premeditated, imprisonment for 20 years.

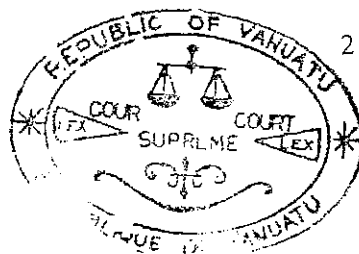
(b) ...

(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."

(b) THE ESSENTIAL ELEMENTS OF THE OFFENCE

The following are the essential elements of the offence that the prosecution must prove before the court can convict the Defendant, Nadege Koroka:

- (1) The Defendant, Nadege Koroka, caused an unlawful act on Kathia Tom on 20 August 2006;
- (2) The unlawful act caused, was intentional;
- (3) The unlawful act which was intentional, caused the death of Cathia Tom, on 20 August 2006.

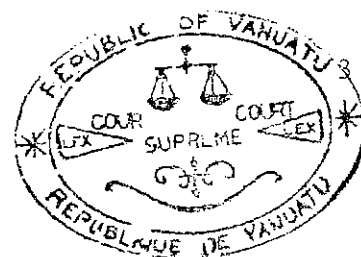


(c) THE ONUS OR BURDEN OF PROOF

This is a criminal trial. As in every criminal trial, the law is that the prosecution has the duty to prove each and all essential elements of the offence beyond a reasonable doubt against the Defendant. The Defendant is not required to prove her innocence. If the Defendant has to give evidence herself or call other person to give evidence on her behalf, I must consider her evidence and the evidence of her witnesses on equal basis as any evidence of the prosecution.

The onus or burden of proving guilt of the accused person beyond a reasonable doubt rests upon the prosecution and it never shifts. The prosecution must prove beyond reasonable doubt that the accused person is guilty of the offence which she is charged before she can be convicted. If I have a doubt and the doubt is a reasonable doubt as to whether the accused committed the offence of intentional homicide, it is my duty to give the accused the benefit of the doubt and to find her not guilty on the charge.

Proof beyond a reasonable doubt has been achieved when I as a judge of fact feel sure of the guilt of the accused. It is that degree of proof which convinces the mind and satisfies the conscience so that I as a conscientious judge of fact feel bound or impelled to act upon it. Conversely, when the evidence I have heard leave me as a responsible judge of fact with some lingering or nagging doubt with respect to the proof of some essential elements of the offence with which the accused is charged so that I am unable to say to myself that the prosecution has proven the guilt of the accused beyond a reasonable doubt as I have define these words, then, it is my duty to acquit the accused. If I believe the accused and she did not commit the offence or what she did lacks some essential elements of the offence or if the evidence of the accused either standing alone or taking together with all of the other evidence leave me in a state of reasonable doubt I must acquit her. But if upon consideration of all of the evidence taken together at the end of the trial, the arguments of counsel and the charge I am satisfied that the accused has

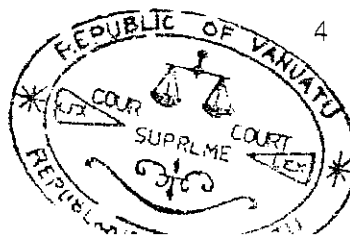


been proven guilty beyond a reasonable doubt as I have define these words above, it is my duty to convict the accused. I must say that it is rarely possible to prove anything with absolute certainty. So the proof or the burden of proof on the prosecution is only to prove guilt beyond a reasonable doubt. When I speak of reasonable doubt I use the words in their ordinary natural meaning, not as a legal term having some special connotation. A reasonable doubt is an honest and fair doubt based on reason and common sense. It is a real doubt, not an imaginary or fanciful doubt which might be conceived by an irresponsible judge of fact to avoid his or her plain duty. This is emphasized by Section 8 of the Penal Code Act [CAP.135] in these terms:-

- "8.(1) No person shall be convicted of any criminal offence unless the prosecution shall prove his guilt according to the law beyond reasonable doubt by means of evidence properly admitted; the determination of proof of guilt beyond reasonable doubt shall exclude consideration of any possibility which is merely fanciful or frivolous.
- (2) In determining whether a person has committed a criminal offence, the Court shall consider the particular circumstances of the case and shall not be legally bound to infer that he intended or foresaw the natural or probable consequences of his action.
- (3) If the prosecution has not proved the guilt of the accused, he shall be deemed to be innocent of the charge and shall be acquitted forthwith."

III – THE PROSECUTION CASE

The thrust of the prosecution case is that the accused, Nadege Koroka, has caused the death of the deceased, Cathia Tom, on the evening of Sunday 20th August 2006 at Esmie Roy's House in Luganville, Santo. It is part of the prosecution case that the Accused intentionally caused an unlawful act on the body of the deceased girl with a clam shell inflicting serious and gravious bodily injuries on the victim. The victim died as a result of the unlawful act.



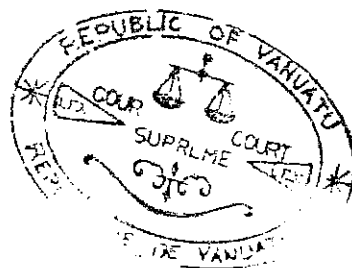
The prosecution case is based on circumstantial evidence. There is no direct evidence that the Accused killed the victim girl. To prove the case against the accused, the prosecution called witnesses to give circumstantial evidence as to what occurred on the 20th August 2006 and what occurred days after 20th August 2006 in respect to the Accused. It is the prosecution case that when one looks at all the factual circumstances taken together as a whole at the end of the trial, there is only one rational conclusion that is available to the Court, that the accused, Nadege Koroka, caused the death of Kathia Tom on 20 August 2006 sometimes between 7.00PM and 7.30PM o'clock.

IV -THE SUMMARY OF THE PROSECUTION EVIDENCE

The prosecution called 14 witnesses. However, the following are agreed facts admitted in evidence by the consent of both counsel:

- The statement of Tom Ben, the father of the deceased girl;
- The date of death of the victim girl, Kathia Tom, is 20 August 2006.
- The photographs of the deceased;
- The sketch plan of the crime scene and the surrounding area.

Esmie Roy is the first prosecution witness. She gave evidence to the following effect. She is from Malo Island and works at Fiberglass located at Sainte-Thérèse area, Luganville, Santo. On 20 August 2006, she was at home. It was a Sunday. She said at about lunch time, the victim Kathia came to her house which is at Fiberglass. Kathia arrived at 11.00AM and they had lunch together and rested in her bedroom. At about 2.30PM to 3.30PM, someone knocked on her front door. Her sister Kathia went and opened the door. Kathia told her that a boy was standing and wanted to see her (Esmie). Esmie went to see the boy. She recognized the boy. It was Gerald Savoie. She said Gerald was holding a bottle of tusker and he was drunk. She said, Gerald, Kathia and her went outside and sat around a table there. Gerald Savoie asked her (Esmie) if she is still in boy/girl friendship with his big brother, Jean Pascal. Esmie replied that she no longer has Jean Pascal as her boyfriend.

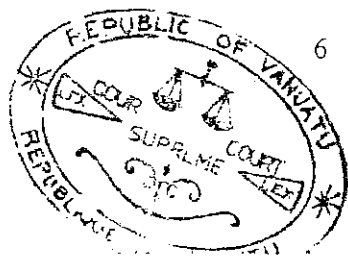


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They sat there until Jean Pascal called him to get out of the yard by saying "you must respectem yard ia" and Jean Pascal took Gerald back to the next yard in which he (J.P.) lives.

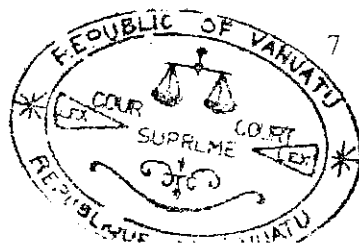
Then Esmie and Kathia went back in the house. They were in Esmie's bedroom. At about 10-15 minutes later on, they saw through the curtain of the bedroom a shadow. She said she recognized the shadow is Gerald's. She said Gerald Savoie came to her yard again. This is the second time. She said when they saw the shadow, they locked the front door but not the back door. The back door was open. Kathia and her stayed quiet inside the bedroom. Esmie was in her bed. To her surprise, she saw Gerald Savoie standing in front of the door near her bedroom (Esmie's). She told Gerald to go outside. Gerald sat on the steps outside. Gerald told Esmie if she wanted him and loved him, he will do everything Esmie wanted. Esmie did not answer him. Then, Gerald stepped inside Esmie's sitting room and laid down there. Esmie sent Kathia to the next yard where Jean Pascal lives, to call Jean Pascal and Mickie (his brother-in-law) to take Gerald out of her yard. Esmie sat on the steps outside and Jean Pascal and Mickie came and took Gerald back to their yard.

Esmie and Kathia stayed inside Esmie's house. Somewhere about 6.00PM, she locked the front and the back doors. They heard someone knocking at the back door. She told Kathia to remain quiet. Then 2 or 3 minutes later, someone knocked on the front door. Esmie opened the front door and saw Diana Lopez. Diana mentioned to Esmie that she had a plan to have dinner with Shirley (an Indian Fijian lady). Diana told her "Esmie you alright or you kam wetem mifala". She told Diana that someone was knocking heavily on the back door. Diana took the taxi driven by Stelio. Stelio stopped the taxi in front of the gate. Stelio and Shirley were inside the taxi. Diana, then, went to see Stelio and Shirley in the taxi and told them to come and see the person who knocked at the back door of Esmie's house. Then, Esmie, Diana, Shirley, Kathia and Stelio went to the back door and saw Gerald Savoie – who was laying down there. Esmie said she and Kathia got into the taxi with Diana, Shirley and Stelio. They went to Diana's house. Esmie's gate was open.



Before they left, Esmie told May to tell her husband Mickie and Jean Pascal to get Gerald out of her yard and to close her gate. The taxi left. They went to Diana's house which is 5 minutes to Esmie's house. The taxi stopped at Diana's place. Esmie talked to Kathia and told her to go and stay with Diana's children at Diana's house. Kathia agreed to go. Kathia got out of the taxi and walked towards the door of Diana's house and the taxi left. The time must be between 6-6.30pm o'clock. The taxi went to Unity Shell store for Shirley to get some spices for her cooking. Then the taxi went to Shirley's home. Then Stelio went and left the taxi and went back to join Esmie, Diana and Shirley at Shirley's place.

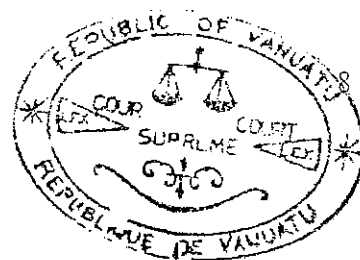
After dinner, Esmie, Diana and Stelio walked back home - on their way, Stelio took a taxi to go home as he was too drunk with kava. Esmie and Diana walked to Diana's house. There, they asked about Kathia to Diana's son. Diana's first son was sleeping in the living room. The second son told Esmie and her mother that Kathia was not there and there was no Kathia coming in the house. Esmie was worried. She asked Diana to follow her to her house at Fiber Glass. They walked on the road - Diana left Esmie next to the main gate. Esmie walked, opened her gate and walked into her yard. She went to the front door. She could not open it. The door was locked from inside. She went around toward her bedroom as the light in her bedroom was on. She called on Kathia 3 times. There was no response. She walked around the house and to a window, withdraw the window glass and got herself inside the house. When she went in the house, she saw Kathia's slippers were in the house. She went to check Kathia in the bedroom. She was not there, she called her, no response. She walked through other bedrooms, she could not find her. She went to the toilet and the bathroom, Kathia was not there. Esmie went to the sitting room. She saw the table and arm chair were not at their usual place. She went on and saw Kathia laying there covered with blood. Esmie stood up shocked. Then, she ran outside by the back door shouting and calling Diana. Diana asked Esmie of what happened. She told Diana that Kathia was laying and was covered with blood on her body. She said Kathia was laying on the floor. Her face was facing the floor. Kathia was wearing a T-Shirt and a trousers. She recalled the police and the doctor



turned the body of Kathia up so that the body could face up and laid on her back as it appears on the photographs. Esmie said after she talked to Diana she went to see Kathia and she realized that Kathia was dead. She estimated the time to be between 10.30 pm to 11.00pm o'clock. She said she saw a toaster close to Kathia's body. There was blood on it. She put it back on her shelves in the dining room. Esmie and Diana, then, told a family of Hog Harbour about the incident and they run and got police officers.

Esmie was cross-examined. She knew the accused. She was a friend of her. She drinks kava with the accused sometimes. Sometimes this year, Esmie took the accused into her house and her bedroom. She confirmed that on the second time Gerald Savoie came to her yard, he was drunk. She confirmed that she told May to tell her husband and Jean Pascal to take Gerald out of her yard on the 3rd occasion, before she, Kathia got the taxi with Diana, Stelio and Shirley. She confirmed the time was between 6.00pm to 6.30pm. She could not tell if May and others took Gerald Savoie from her yard. She denied seeing the accused at the round about of Fiber Glass before they got into the taxi.

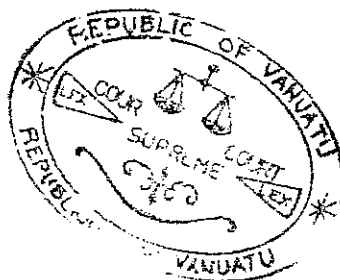
Diana Keith Lope is the next witness. Diana gave evidence that she is a mother of 3 children. She lives in Luganville. On 20 August 2006, she prepared some food. Esmie called her and asked what she will be doing that afternoon. She replied she will stay at home. Then her friend Shirley came to her house about 6 – 6.30PM. Shirley invited Diana for diner at her home. When Shirley arrived, Diana asked her to go and get Esmie at her house. Stelio drove Shirley and Diana to Esmie's house. Stelio stopped the taxi at Esmie's gate. Diana went into Esmie's yard and knocked at the front door. When she got there, the door was closed and the light of the bedroom was on. She said she knocked 6 or 7 times and called Esmie. Then Esmie opened the door. Then Esmie told her that it was good that she came. She and her sister (Kathia) locked the doors and stayed in the house because of a drunken boy. Diana told Esmie that she came to see her to go and have dinner with Shirley. Esmie told Diana that she will come with her sister because of the drunken person. Esmie and Kathia walked to the taxi. Diana told Stelio about



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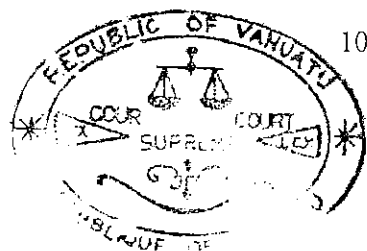
the drunken man behind Esmie's house. Stelio, Diana, Shirley, Esmie and Kathia went at the back of Esmie's house and saw Gerald Savoie laying there. Stelio tried to speak to him but Gerald was in a deep sleep as he was too drunk.

Then, Stelio, Diana, Shirley, Esmie and Kathia left Gerald Savoie there. Esmie locked her doors and they all got into Stelio's taxi. Before the taxi took off, Esmie and Kathia went and called their next yard neighbours and spoke to a lady. Diana was in the taxi, she saw Esmie and Kathia talking to the lady but she could not hear what they said. Esmie and Kathia, then, got into the taxi and the taxi left to her place (Diana's). Her house is about 3 minutes. Esmie told her that her sister Kathia will stay with Diana's children at Diana's house. Diana agreed and suggested also that Kathia could come with them at Shirley's place. But Esmie said Kathia could not come with them because she is a student. Then Kathia opened the taxi's door and got outside. Kathia opened Diana's gate and walked toward the house (Diana's). Diana then got out of the taxi to take Kathia inside her house. Kathia told her "anti hemi olraet nomo". Diana then told her, "ok go inside. Ol pikinini blong mi oli stap inside." Diana and the others went to Shirley's house. At Shirley's house, Shirley cooked the diner. At about 8.00PM o'clock Diana came to her house and fed her baby and then went back to Shirley's house for diner. They left Shirley's house at about 10.00PM – 10.30PM. Stelio, Esmie and her walked. Then Stelio got a taxi home. Esmie and her walked to her house for Esmie to get Kathia back home. When they asked about Kathia, she was not there. She followed Esmie to her yard. Esmie opened her gate and Diana left. When She walked back, Esmie was knocking on the doors. Diana walked passed Jacques Tronquet's house. She heard Esmie shouting saying "Mi gat bigfala problem small sista blong mi mi look olsem wan man i killim hem". Esmie asked Diana to go with her in her house, Diana refused as someone might hide there. So she asked Esmie to call the people of Hog Harbour who live there to call the police. Diana was cross-examined. She confirmed her evidence in chief and her evidence was not disturbed.



Stelio Giovanni was the next witness. He gave evidence to the following effect. He is a taxi driver. On 20 August 2006, at about 6.00AM he dropped his boss at his house after he got some cabbage from the market. At about 6.15AM, he drove Gerald Savoie and Jean Pascal Savoie to the Airport. Gerald Savoie wanted to get a flight to Malekula. There was no flight on that day. He drove them back in town. Gerald and Jean Paul gave him 3,000 Vatu for him to drive them around. He took them to Chapuis black market and then to town. They stayed in his taxi for about 3 hours. He then dropped them at Santo East. He continued with his taxi services. Then later on that day, he came back to Gerald and Jean Pascal at Santo East. Then took Jean Pascal and his small brother to Bangbang village. The girlfriend of Jean Pascal's small brother ran away. Jean Pascal and his brother went to Bangbang looking for the girl at her mother's house. The girl was not there at her mother's place. He drove them to the other side of the river. He said he drove Jean Pascal back to the house he lives in with Velina at Robert Coulon's yard and drove Jean Pascal's little brother back to Santo East and continued with his taxi services on that day.

In the evening, at 5.40PM o'clock, Shirley rang him. He arrived at Shirley's place near the police station. Shirley told him to drive her to Diana's house somewhere behind Unity Shell Store. When he drove Shirley to Diana's house, Diana was bathing her baby. Then, Diana told Stelio that they went and got a friend of her. She is from Malo and she lives at Fiberglass. He drove the taxi and stopped at Esmie's gate at Fiberglass. He and Shirley were inside the taxi. Diana went to call on Esmie. Then he saw Diana, Esmie and Kathia walking toward the taxi and called him. They told him that there was a drunken man laying on the steps at Esmie's house. He then followed them to see the drunken man. He recognized the drunken boy to be Gerald Savoie. He said Gerald was "KO". He did not hear him. So they told the girl who lives on the opposite yard to get Gerald out of Esmie's yard. He then drove Shirley, Diana, Esmie and Kathia to Diana's house. Esmie told Kathia to stay with Diana's children. Kathia opened the taxi's door and got outside the taxi. He then drove Shirley, Diana and Esmie to Unity Shell Store, then to Shirley's

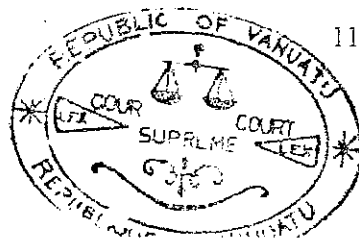


house and left the taxi at his place and returned to join the others at Shirley's house. They stayed there until 10.30PM – 11.00PM o'clock in the evening.

Stelio was cross-examined. He confirmed that during the day of 20 August 2006, he dropped Jean Pascal and Gerald at Santo East and did not see Gerald again until he saw Gerald again at Esmie's house at about 6.00PM o'clock. He confirmed Gerald was drunk. He confirmed his evidence in chief.

Franco Warsal was the next witness. He gave evidence to the effect that he is from Port-Olry, Santo. On 20 August 2006, he was staying at Sainte-Thérèse. It was a Sunday. He went to the church service there, then, went to stay with Father Albert. Somewhere about 7.00PM, after cooking rice, he decided to go and get some kava at Nemo Nakamal. He followed a road toward Fiberglass. That road leads to Jacques Tronquet's house. He described the road to be the white road there. He said he saw 3 men. They were at the cross section to Jacques Tronquet's house. They were 2 boys and one girl. The two (2) boys were drunk but the girl was not drunk. They were walking in front. He was walking behind them. He recognized them but he did not know their names. He said he later knew about their names, Gerald, Jean Pascal and Féline. He said they walked in front of him. He followed them. When they walked there, he said he heard cries in the house indicating on the chart map, Esmie's house. He said he recognized the cry to be that of a woman. He said he thought this was about a domestic dispute because the house is fenced. He said when he heard the cry, the three others also heard the cry. He described and imitated the cry in Court. He said the woman cried like this "AH OH MAMA". He said when the woman cried, one of the boys ran back to him and told him "hey brother come yumi go killim ol man we oli stap stap antap ia." He said he told Gerald words to this effect: "you no pushum mi i go long problem blong different man". He said then the two (2) boys and the girl went to Unity Shell Store and he went to Nemo nakamal.

Franco Warsal was cross-examined. He confirmed that at that time he did not know the names of the two (2) boys and the girl he saw them that evening. But he said he recognized them and he knew of their names later. He



confirmed also that it was Gerald who ran toward him when the woman cried out and told him to go and assault the people who were in the house. He said he knew the Accused. He did not see the Accused that night.

Ishmael Tabianga was the next witness. His evidence was to this effect. He is from Pentecost Island. He works as a volunteer at the Youth Dropping Center. He lives in Luganville, Santo.

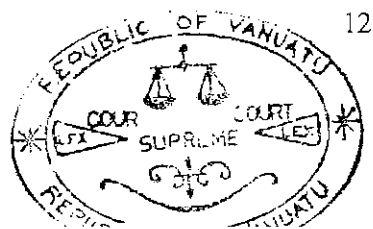
On 20 August 2006, he was staying at home. In the evening, he had food with his family. He said during diner, his mother sent him to go and get the key for the store and get a can of meat.

He said he walked on the veranda of their house. He heard a voice shouting. He said "Mi lukluk igo back down. Mi lukluk igo down long house we i facem mifala. Mi luk 2 man i ran i kam out long wan room. Mi luk narafala wan i ronem narawan mo i stap sakem hand blong hem igo behind long narawan".

He described how the one behind threw the hands on the one in front. He said he saw them running to the window which was facing him. He said "Narawan i sakem hand blong hem mo narawan i stap cry." He said the cry was very different. After observation, he said the two persons were not men but they were two women. One was chasing another. He described the female in front to be little short. He could not recognize her. The one behind: "hemi shortfala smol nomo long narawan. Hemi no fattat tumas. Hemi no tintin be hemi stret nomo." [The defendant mumbled words when this witness gave that piece of evidence].

He said the woman behind assaulted the other in front. The one in front cried "hemi signaot i callem mama blong hem". He said he saw the one in front "hemi foldaon i go down. Afta, mi think se i finish ia nao mi go."

He said his house is a story house. They live on the second floor. The house is on top of the hill. Jacques Tronquet's house is situated downward. The house in which he was observing is situated next to Jacques Tronquet's house. He identifies the location of his house, Tronquet's and Esmie's house



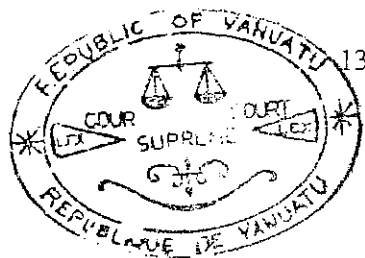
in the agreed chart map. He described the distance of his house where he was standing to the scene of crime to be of 50 – 60 meters. He said he could see inside Esmie's house because his house is on the hill. He looked at Esmie's house down.

Ishmael Tabianga was cross-examined. He confirmed he heard a noise and cry somewhere about 7.00PM to 7.30PM. He confirmed the location of his house, Jacques Tronquet's and Esmie's house. When asked about a dark bush next to his house, he confirmed. He confirmed also that there is a mango tree at Jacques Tronquet's house. He confirmed also that there is a mango tree at the yard he was hearing noise and cry. He was asked if there were hibiscus flowers, he said yes. He indicated in the agreed chart map where the mango trees, bush, flowers were. It was put to him that at Esmie's house, the hibiscus flowers were high. He said they are not too high.

He denied the branches of mango trees blocked his observation of what he saw at that time. He said: "mi stap antap. House blong mifala hemi storey. Mi stap antap mi luk igo down. Dark bush ia hemi down. House blong mi hemi storey. From se igat some oli live underneath mifala. Mifala i live on top."

He said he did not know the persons he was looking at but he said the shape was that of women. There was curtain hanging. He said he could see inside because there was light inside the room the action started to the sitting room because the security light was on. He was asked if what he saw was his own thinking. He denied that. He said he could not confirm that he saw the Accused. In his cross-examination, he said he could not exactly say who he saw but maintained that he saw two (2) women and of the description he has given.

Velina Tom is the next witness. She said she is Robert Coulon's house girl. On 20 August 2006, she said she was at home. She lives at Robert Coulon's house. She was at home and did the cooking for the boys (Jean Pascal, Gerald and little brother of Jean Pascal). She said when the boys arrived at her house, they were drunk. She said Gerald went to Esmie's house and



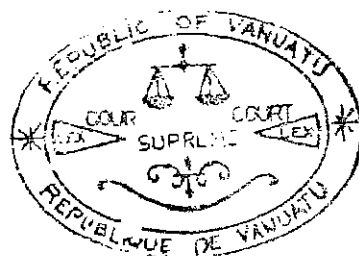
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talked to Esmie and then they got Gerald back into their yard. Then Gerald went back in the other yard (Esmie's). They got him back into their yard. Then in the afternoon, Gerald got again into Esmie's yard and fell asleep there because he was too drunk. She said, Esmie and others told them to go and take Gerald out of her yard and to close Esmie's gate. She said they waited until Esmie, Stelio, Diana and Kathia got into the taxi and left. Then she and May (her sister-in-law) went to Esmie's yard and got Gerald back to their yard.

She said after they got Gerald back, then, not long after, she saw Kathia running back, opened Esmie's gate and got into Esmie's house. She was staying with Gerald because he was too drunk while others prepared food. She said they are waiting and others brought them some food and then Jean Pascal, Gerald and herself left for hospital. She indicated on the agreed chart map the road they had followed to go to the hospital. She said, she left her house with Gerald and Jean Pascal to go to the hospital by following that small white road down to the main road at Unity Shell. She said she made a statement. In her statement she said that during that evening they heard cry from Esmie's house and Gerald wanted to go but she stopped him to go. She said Gerald wanted to go at Esmie's yard because they heard the cry but she stopped him and this was in the small road they followed, near a soft mud. When she heard about the cry, she thought Esmie was back and her boyfriend assaulted her.

Velina was cross-examined. She confirmed Gerald went into Esmie's yard 3 times on 20 August 2006. She and May went on the 3rd occasion to take Gerald out of Esmie's yard into their yard.

She confirmed that after she and May took Gerald back to their yard, not long after, she saw Kathia running and got into Esmie's yard. She said: "taem mitufala igo tekem Gerald ikam, mitufala i lockem gate finish mifala istap kam nao mifala I meetim girl ia Katia hemi stap kam go inside long house. So time ia hemi kam hemi no even toktok wetem mifala. Kathia hemi go openem gate same time hemi go inside." She confirmed they went back into their yard. They got food to bring to hospital. Then she said: "Nao mifala i kam out folem



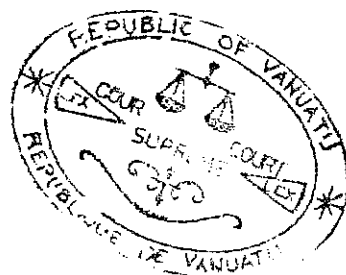
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road igo down – mifala i harem olsem Kathia stap cry smol smol long house be long tingting blong mifala, se ating boyfriend blong Esmie stap kilim Esmie.” When she was asked to clarify she said that because she thought Esmie was back.

She confirmed Esmie told her to get Gerald out of her yard. She was then asked: “Ino long taem nating you talem se you hearem olsem Kathia stap cry smol smol...” She answered: “mi ting se smol girl ia hemi cry be hemi no signaot blong oli helpem hem”. She was challenged: “mind blong you less than 10-20 minutes you save forget?” She answered: “may be mi ting.”

She confirmed Jean Pascal is her boyfriend. Her relationship with Jean Pascal is very close. It was put to her: “taem hemi mekem wan wrong samting you must helpem hem aot.” The witness replied: “No”. The following questions and answers were recorded (at p.103 of the record of evidence):

- “Q. You bin talem long Court se Gerald I bin go long yard blong Esmie.
A. Yes.
Q. No.3 time hemi go. You mo May yutufala igo singaot Gerald I kam.
A. Yes.
Q. You bin go singaotem hem from se hemi brother blong boyfriend blong you. You wari long hem and you no wantem se hemi stap long problem.
A. Yes.
Q. You mekem long tingting ia nao.
A. Yes.
Q. You save wanem i mekem i wrong finish blong go long yard blong narafala man.
A. Yes.
Q. Long night ia you never look Nadege.
A. No.”

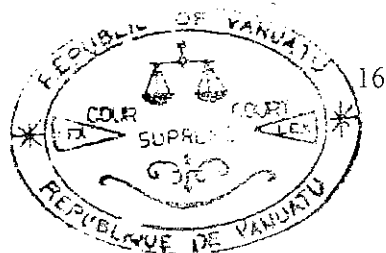


When she was re-examined, she confirmed that she heard the cry when she was on the road with Gerald and Jean Pascal: "long wan whole soft mud down long road".

Micah Bule was the next prosecution witness. He gave evidence that on 20 August 2006, he and Jimmy were at Bangbang village. They built a house. Jimmy came to town to prepare kava for the evening. Micah runs a kava bar business. His kava bar is called Sokale Nakamal. The nakamal is about 59 – 67 meters from Esmie's house, the house where the incident took place. He came after Jimmy. He went to the nakamal. He saw the kava was ready. He came to Unity Shell Store to buy some peanuts. He came outside the shop, he met the Accused, Nadege Koroka at about 6.00PM o'clock in the evening. She was wearing a white T-shirt and black trousers. He said he told the Accused to come to his nakamal and paid some kava for him and her. He said the Accused told him that she was going first to the nakamal downward and then she will come to Micah's nakamal.

When he arrived at the nakamal, there were 3 persons: Joseph, Pwatsy and Garae. At the nakamal he asked his brother Jimmy if there was still some kava left. Jimmy told him "close up i finish nao". He then went and squeezed some more kava. He gave the kava to Jimmy to sell at the counter. He confirmed he made a statement to the police. He said on 20 August 2006, at about 7.00PM o'clock he saw Nadege Koroka talking to his brother Jimmy at Sokale Nakamal. He was about 3 meters. Nadege asked Jimmy about Velina of Tanna: "Hey Velina ino kam long place ia?" Jimmy i reply se: "no". Then he said: "Toktok blong Nadege hemi no olsem oltaem from mifala i save save gud long mifala. Mi meanim se from taem hemi kam olsem, mifala i laugh be hemia, hemi no even sakem wan toktok but hemi askem Velina stret."

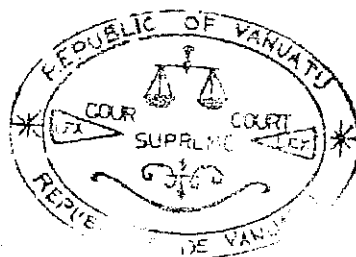
He said Nadege told Jimmy: "sipos Velina i come, bae Jimmy i talem long hem blong go meetim Nadege long Nakamal blong Steven. From se Nadege i talem se hemi no laekem blong stap long Nakamal blong mifala". He said Nadege come to drink kava in his kava bar 3 times a week. He said when Nadege said she did not like his Nakamal, he told Jimmy words to this effect:



"wanem i wrong wetem Nadege. Hemi no olsem oltaem we hemi stap friendly mo fun. Toktok blong hem i sharp tumas olsem se tingting blong hem i busy long wan something:"

Micah was cross-examined. He said Esmie was his sister in law. His wife is Esmie's cousin sister. He confirmed he saw Nadege at the Unity Shell shop somewhere about 6.00pm o'clock on 20 August 2006. He confirmed somewhere about 7.00pm Nadege Koroka came to his Nakamal. It was put to him that Nadege came from Nemo Nakamal. He said he could not confirm that because he did not know where she came from. He confirmed that he asked Nadege Koroka to come to his Nakamal and bought some kava. He confirmed that at Sokale Nakamal, Nadege asked Jimmy "Micah i no stap?". He said Jimmy told Nadege that Micah was behind. He said he saw Nadege drank water from the jag. He said he could not hear properly what Nadege was saying to Jimmy because he was busy with the preparation of kava at the back of Nakamal which is about 3 meters. He said Jimmy told him about the cloth Nadege was wearing when she came at the Nakamal. He said he told the police that he saw Nadege at the Nakamal when she drank water from the jag. He confirmed police wrote down his statement and read it to him before he signed it.

He was given the agreed chart map. He looked at it and showed the court where his Nakamal is, and which direction is the Nemo Nakamal (Steven's). He said there was a toilet at his Nakamal and a sink inside the toilet room. There is water to wash hands in the sink. Esmie's house is about 59 – 67 meters from the Nakamal. He denied he could hear any noise at Esmie's house except if the noise was from a stereo. He said when Nadege came at the Nakamal she did not hear anybody crying or shouting. He confirmed there were 3 customers. He was shown on the chart map, the location of the house of Ishmael Tabianga, which he said "hemi stap antap long house blong Jacques Tronquet". He confirmed that. He confirmed that the distance from Esmie's house is about 50-60 meters. He was asked about a soft mud on the white road. He confirmed the existence of that soft mud on that road on the chart map not far from Esmie's house.

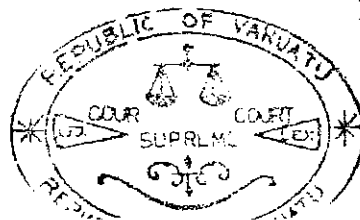


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Patricia Joseph was the next witness. Her evidence is that she works at Jacques Tronquet's house. She is from Pentecost. Jean Tronquet is her boss. She was asked as to how she was involved in this case. She gave evidence that on 21 August 2006, at 2.30PM she followed her boss to open the gate. She opened the gate and Jacques Tronquet left. She closed the gate. She came back and saw a clam shell in the flowers. She said it was unusual as she never saw a clam shell at that place when she cleaned up the yard. Further she said that place was the place she rested from time to time when she cleaned up the yard. She said she approached the shell and saw blood inside the shell. She then called Joyceline and his father to see the shell. She said both confirmed that there is blood in the shell. She then rang the police from her boss's house. She described the colour on the clam shell to be red like blood. There were tracks of human hands on it from inside the shell. She described the shell from the outside. It was full of blood and there were human hairs which were sticking on the shell from the outside with the blood. She was then shown the said clam shell. She identified it and recognized that it was the shell she saw on 21 August 2006 at her boss's yard. She pointed to the sharp edge of the shell where she saw the blood. She described the size of the shell like the court room clock. The clam shell was tendered in evidence exhibited (P1).

Patricia was cross-examined. She was given the agreed chart map. She identified Mr. Jacques Tronquet's house, Esmie's house where the deceased died on 20 August 2006 which is the next yard to Tronquet's. She was asked if there is a mango tree at Jacques Tronquet's yard. She confirmed that. She confirmed also a mango tree at Esmie's house with big branches. She confirmed the nakamal (Sokale) was in front of her boss's house. She marked on the chart map where she found the clam shell.

She confirmed that when she saw blood inside the shell, she meant inside the shell from its sharp edge. She showed the Court the human hairs which were sticking on the shell from the outside when the defence counsel put to her that what she saw on the shell is not human hair but some bush rope. She



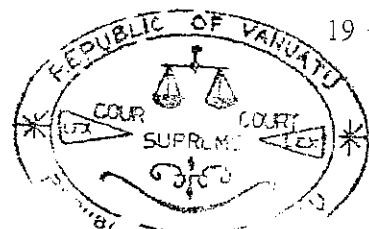
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confirmed it was human hair. When questioned about the weight of the shell, she said "hemi no heavy tumas". She said when she saw the blood on the shell it looked like the human blood. It was put to her that whether she showed the shell to Esmie. She denied that. She said she did not ask Esmie about the shell. She said there was no such a shell in her boss's yard before.

Serah Moli was the next witness. Serah is a house girl. She used to sell food at Steven Nakamal when people drunk kava. She said police asked her if she sold food at Steven Nakamal on the evening of Sunday 20 August 2006. She said "no". She confirmed she sold food at Steven's nakamal but on Sunday 20 August 2006, she went to the mouth of the river and fished until 8.00PM o'clock. She knows the Defendant because she used to come and drink kava in the nakamal of Steven and talked to her. But she said on Sunday 20 August 2006, she was not selling any food at Steven's nakamal.

Elsie Michael was the next witness. She said on the Sunday 20 August 2006, she was not doing any market at Steven nakamal. She said police asked her the question because the Defendant told them that she was doing the market at Steven nakamal on that evening. She told the police that it was her day but she did not do any market at the nakamal and she does not know the Defendant either.

Police officer John Daniel was the next witness. He is a Sergeant within the police rank. He is the officer on duty. He was informed by 2 boys of the death of the deceased Kathia. He drove the 2 boys to Unity Shell Store. The 2 boys showed Esmie to him as he does not know her. On their way to Esmie's house, they got a photographer with them. He drove Esmie and the photographer to Esmie's house. He asked Esmie about the dead body. He saw the back door was open. He saw the body covered with lots of blood. He used Esmie's phone to call a doctor. There was no vehicle to get the doctor so he went and got the doctor with the police truck. After the doctor arrived at the scene, He asked the doctor if the girl is still alive, the doctor told him she was dead. He asked the doctor to get a CID officer. He saw the body of the girl, sleeping on her belly. The body was turned up when the CID officer, Terry

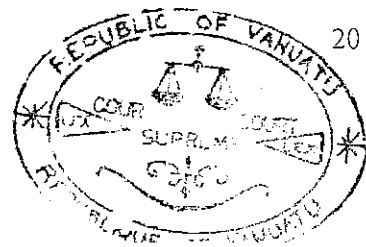


Alick and the photographer took photographs of the victim. He was shown the photographs of the dead body and the rooms of the house. The doctor asked them to remove the body to the hospital. He said when the doctor turned the body up, he saw the wounds and injuries on the body of the deceased girl.

He was cross-examined. He said he worked in the police for a long time. This is his first attendance at a crime scene. They entered the house by the back door. It was not too dark. The back door was open.

He confirmed what Esmie told him that evening that Kathia came to her house; they had lunch and rested until 5.30pm o'clock, and then they left. He confirmed he did not know Esmie. He described the injuries. There was one stabbed wound on the forearm. It looked like a stabbed wound of a small knife but not the stabbed wounds on the head. The girl's clothes were alright. She wore a T-shirt and a trousers. There were no footprints nor shoeprints at the crime scene.

Police Officer George Alick was the next witness. He gave evidence to the effect that he is working in the investigation section from 1990's to now. He attended the crime scene on 21 August 2006. He saw blood in the sitting room. He described the blood splashing on the wall and on the floor where the deceased was found. He said there were shoe print and the crime scene was disturbed. He said because they have no expert on the shoe print, he decided to leave it there. He took part in the investigation of this case. He obtained statements from some of the witnesses. He said he obtained the statements of Diana Keith Lopez, Jimmy Bule, Stelio. He was present at the interview of the Defendant, by the Police from the beginning to end. The defendant is Nadege Koroka. He said Sergeant Ronald Kalorip, Alick Walter and himself were present. The interview occurred from 25 September 2006 to 10 October 2006. Then Sergent Alick Walter left. So Sergeant Ronald Kalorib and himself finalize the interview with the defendant. He gave his explanation about what is in the statement and an interview and the process they followed. The defendant was cautioned before she was interviewed. They asked the accused 278 questions. The accused person answered the

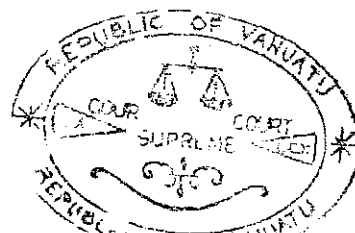


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questions and Sergeant Ronald Kalorip recorded the questions and answers. They spent some days to ask 278 questions.

At the end of the interview they asked the Defendant to sign the records of interview. The defendant exercised her right not to sign the records of interview. He gave evidence of 2 venues of enquiries. The first venue of this investigation is to do with Esmie's business at Fiber Glass and the Franchipani. Whether or not Esmie has had threats to her business and the management of it in Luganville. He said after investigation, there was no threat to Esmie's business and the management of it. They then go to the second venue which was about every relationship Esmie has with males and females in Santo and Luganville. Through that inquiry, they arrested Nadege Koroka. But before that, they questioned Diana Lopez and Esmie. After the inquiry, both have been ruled out. Following the police inquiries, they have the confirmation of the information between Esmie and Nadege before the incident took place about Nadege's boyfriend, a Jeremy of Maewo. There were 278 questions asked. 163 questions were answered. 150 questions asked, the accused remain silent or refused to answer. She answered questions asked about events before the incident of 20 August 2006. But she did not answer questions asked about the incident of 20 August 2006. He said there were no threats, promise, pressure, gift or force they used on Nadege Koroka when she answered the questions.

Sgt. George Alick was cross-examined. He was not part of the arrest of the accused at her house. He said Police questioned Gerald Savoie and then released him. He confirmed and explained the procedure they followed to interview the accused. They investigated, collect information and asked questions during the record of interview. He said on the investigation, the deceased died about 7.00pm o'clock on 20 August 2006. The accused was not seen at the crime scene but she was 50 to 100 meters from the crime scene at Untity Shell Store then to Sokale Bar. He was asked whether the police have explored the venue of rape or attempted rape. He said this was to be clarified by the medical opinion - as the police based their inquiry on the basis of the medical examination of the doctor on the body of the deceased



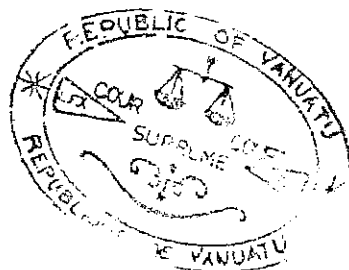
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which ruled out that the deceased was raped or there was an attempted rape on the deceased. He confirmed that there is no harsh treatment of the accused during the interview. He confirmed the police questioned and arrested Nadege because of her relationship with Esmie about her boy friend. He said that he did not know whether or not Nadege has a problem of boyfriend relationship with the deceased girl. He attended the crime scene on 21 August 2006 at 6.00AM.

The next prosecution witness was Sergeant Ronald Kalorip. He gave evidence that he served with the Vanuatu Police Force for 23 years. He now served as an investigating officer for over 10 years. He said he was investigating in another matter and after 2 months of investigation, he was then asked to involve in the investigation of this case. He explained the process of investigation as to how they obtained information leading up to the Accused, Nadege Koroka. He said he had arranged with other officers to go and arrest the Defendant on 25 September 2006 at 9.00AM o'clock. They took the Accused to CID office which is the place prepared for the interview.

He stated that George Alick, Alick Walter and himself were involved in the interview. The record of interview took at least 1 week. He asked questions and wrote down these questions and answers from the Accused. He described the procedure followed during the interview to be as follows:-

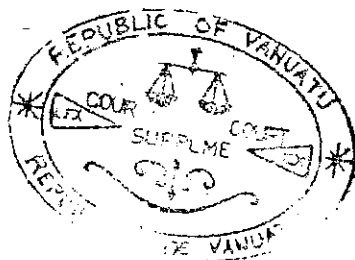
- (1) He explained to the Accused who the interviewing officers are;
- (2) He put the allegations to the Accused;
- (3) He cautioned her;
- (4) He got her agreement that the information obtained will be used in Court;
- (5) He went through the body or the substance of events of the incident. He confirmed the interview commenced on 25 September 2006 and ended on 10 October 2006. He said after the interview, when the Defendant denied she went to Sokale Nakamal instead she said she went to Steven Nakamal, they have to interrupt the



interview to cross-check with the information given through investigation, questions they asked to potential witnesses.

During the interview, Sergeant Ronald Kalorip also asked question to the Accused about the fact that on 20th August 2006, he was also present at Steven nakamal and so whether the Accused saw him at the Steven nakamal at that evening. He said he did not see the Accused at Steven Nakamal on 20 August 2006 at about 7.00PM o'clock. He denied any suggestions of pressure, threats or gifts made by police officers on the Accused. He was asked whether or not the records of interview was complete and he confirmed that it was and the records of interview were tendered in evidence as Exh.P2. He explained that after they asked 163 questions to the Accused and got the answers, they suspended the interview until 6 October 2006 and when they resumed with the interview of the Accused, the Accused refused to answer to the questions from Q164 to Q278.

This officer was also cross-examined. He said he was the arresting officer. He said he and other police officers went to the Accused's house and invited the Accused to the police station. He said the arrest took place at the police station. He was part of the investigating team and he is the responsible officer for the records of interview. He spent some substantial part of witness time under cross-examination. He confirmed that after the interview of 25 September 2006, they arrested the Accused and locked her into the police cell No.6. He confirmed that Sergeant Alick George and Alick Walter were present during the interview. Police officer who is responsible for CID branch at Luganville police station was not part of the interview team. There was no interview on Tuesday 26 September 2006. He denied any suggestions of threats, force, pressure, oppression, promises or gifts that were put on him that the police may have done on the Accused during the interview. He was challenged that the record of interview was not a complete record. He confirmed that he was asked to read Q142 and the witness read it with its answer: "Q.142 you agree wetem mifala se Q137, 138, 139, mo Q140 oli falso or kiaman?"

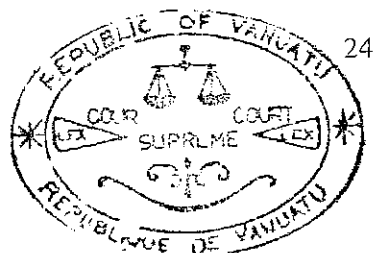


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Answer: Yes". He confirmed that this is the record of the question he asked. It was put to him that he referred to numeric questions and he did not referred them to the accused as they were not on the records. He replied that, when he referred to the numeric questions and answers on the records, he referred the accused to the previous questions and answers first to the Accused before he asked the Accused the question 142 and the Accused answered it. But he said, due to spacing on the record sheets, he referred the questions but recorded only the numeric number of the questions and recorded the answers. He confirmed he cautioned the Accused before the interview took place. He confirmed he was involved in the investigation of this matter after two (2) months. He was asked whether the police questioned Gerald Savoie. He said other police officers questioned Gerald Savoie and released him before he got involved in the investigation and interview. He said he took statements from some witnesses.

This witness police officer said he was at Steven nakamal at about 7.45PM on 20th August 2006. He did not see the Accused, Nadege Koroka. He said he was accompanying 2 police officers at that nakamal. He obtained statements from Franco Warsal and one statement each from Micah Bule and Jimmy Bule. He confirmed that Micah Bule said he saw Nadege at the Sokale Nakamal at about 7.00PM. He explained to the Court where he was at Steven Nakamal on 20 August 2006. He got 2 shells of kava and got some in a plastic bottle and then left. He confirmed the Accused did not sign the records of interview. He confirmed that this is part of the Accused's right to remain silent and not to sign the record of interview.

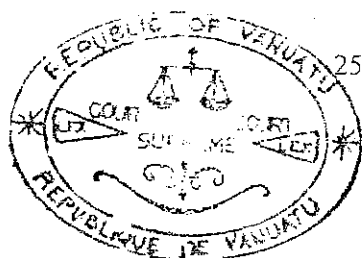
He confirmed that the police questioned and arrested the accused because she has a problem with Esmie about her boyfriend, Jeremy. He said they have no information that the Accused has a problem with the deceased girl, Kathia Tom. He confirmed that after the arrest of the Accused, the police kept the Accused under their custody under the power of warrant of remand. He confirmed the Accused was at the police cell from Monday 26 September 2006 to 30 September 2006 but not under the correctional services because the correctional services was just opened on 30 September 2006.



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Jimmy Bule was the second last witness and main prosecution witness. He gave evidence to the effect that he works on board the ship MV KEIDI. He said he was involved in this case because his nakamal is near the place where a girl died on 20 August 2006. It was a Sunday. On that Sunday, 20 August 2006, he and his brother Micah built a house at Bangbang village. He said he prepared kava and then sold it to customers at that night. He confirmed he made a statement to the police on 15 September 2006, that Nadege Koroka came to Sokale nakamal on 20 August 2006 somewhere about 7.00PM.

He was just out of the counter and sat on the stool used by customers of the nakamal. He then saw Nadege was standing at a place in front of a door of the nakamal. Then she went directly to water jag and drunk the water. Then she came and sat for a few seconds. She then asked Velina of Tanna: "Velina ino come long place ia?" He told her "no". He said he knows Nadege Koroka. He said he observed her and saw that her actions were not as usual. The witness used the chart map to locate the kava bar, the toilet, the sink in the toilet room. The place he saw the Accused standing at the front of the door of the nakamal on 20 August 2006 somewhere about 7.00PM that night. He said she was standing at the front of a door and went to drink water and he described the action of the Defendant to be different from what she used to do when she came to his nakamal. He said "hemi olsem hemi busy long wan samting samples". He asked Nadege "you kam where?" She told him she came from her friends. Then she asked him "we hem Mic...?" but the witness said the Accused did not mentioned directly the name of Micah, then, he said he got up and asked the Accused: "you talem wanem bakegen - "Micah"? The Accused then got up from where she sat and said "yes". The witness said he told her that Micah was behind the Nakamal and the Accused went to the toilet room and she then left. He said when Nadege arrived at the Nakamal, she stood at the front of the door for about 5 seconds, drunk water of the jag for 2 seconds and sat for 2 minutes. He said at that time she was wearing a black or dark blue sleeves cold shirt. He could not see what trousers she was



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wearing. He confirmed the content of his statement to the police that the Accused was wearing:

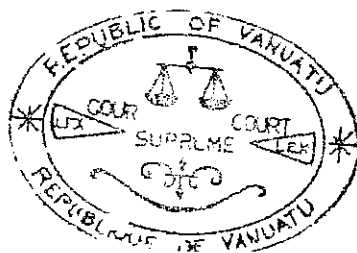
" 1 long hand cloth blong cold we colour blong hem i black or dark blue olsem," and she was the last person to use the toilet room of the nakamal that he saw that night; [at that point in time, the accused mumbled words towards him] and the witness, then, added: "be ino gud blong pointem finger long wan person".

On 21 August 2006, he said his father Solomon cleaned up the Nakamal and when he came outside, he saw blood and called on him and Micah. He said when his father Solomon called on them, he saw the blood too at the front of the door. He said he recognized it was blood. It was blood but he could not say if it was human blood or not. He said he saw the blood at the front door of the Kava Bar and he went to the toilet and wanted to wash his hands, then, saw blood again at the bottom of the sink. The colour of the sink is white and he could see the blood. He saw blood at the bottom of the sink. He said he saw the blood at the sink and the size is not very big because it started drip down. He was finally asked:

"Q. Long night ia you talem se you look Nadege i go long toilet after hemi go – wanem I happen long toilet. Wanem you mo ol narafala long Nakamal i mekem."

"A. Taem we hemi aot ia mifala stap storian smol taem nomo after ".

Jimmy was cross-examined. He confirmed he saw Nadege at his Nakamal somewhere about 7.00pm o'clock. He explained and confirmed where the sink in the toilet room was in the Nakamal. He said during that night when he left the counter that time and sat on a stool, he was facing the toilet room. He confirmed that Nadege sat 2 minutes. He confirmed he saw blood drops at the place Nadege was standing on 20 August 2006 somewhere about 7.00PM, in front of the door. He said she was standing there for about 5 seconds. He was asked if he saw blood where she stood to drink water. He said there was none. He said after she drank water, she sat 2 minutes in the Nakamal. He said he did not see any blood where she sat that night. Then she went to the toilet room and left. He said at that night, Micah was in the Nakamal. He



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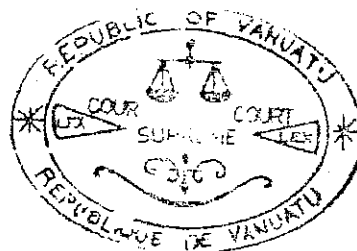
confirmed that Micah was 3 meters from him at the back of the Nakamal. He said Micah did not see when Nadege arrived but he had just heard the story of the cloth Nadege was wearing at the nakamal that night on the next day. He was busy preparing the kava. He confirmed the cloth the defendant was wearing at that night to be "1 long hand black T-shirt". He confirmed that on 21 August 2006, in the morning when his father Solomon cleared up, he saw the blood and called out "Hey blood" and the witness said he saw that blood too. He could not confirm the number of customers at that night. There were not too many because it was a Sunday, one came and left. The other came and left. There were more than 3 customers. He was then asked, "ol customers ia oli go long toilet" he said "yes" but he could not say how many used the toilet - when asked "you save nomo se Nadege nomo i go long toilet". He said "yes from se long time ia we hemi come stap small time nomo after hemi go long toilet. From se door taem we you openem, hemi mekem noise. He said there was no blood on the tap of the sink - nor at the door handle. He was asked if the blood he saw was for woman or a dog? He said "place ia bae mi no save talem". He said the blood in the bottom of the sink was there because there was a rubber at the bottom which hold the blood on so he saw the blood. He said on 21 August 2006, he did not call the police - he said he saw the blood on that day. He said the CID police officers took photos of the blood. He could not identify which photograph is on the album of photos. He said there is no photograph of the blood he mentioned on the series of the photographs shown to him by the defence counsel.

He continued that he saw blood but he could not say whether the blood was for human being or not.

He said he could not say that the blood came out from the accused Nadege Koroka because "i gat fulap man". He was finally asked:

"Sipos police i talem long Nadege you look blood i come out long Nadege bae i no tru". He replied "Yes bae hemi no tru".

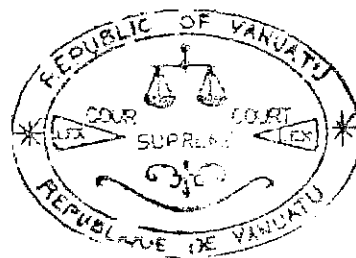
Doctor Santus Wari was the last prosecution witness. He is responsible for the Northern District Hospital. He is the local surgeon. He prepared the



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Medical Report on 23 August 2006. He said he saw the body of the deceased girl on 21 August 2006. The doctor saw the injuries on the body of the girl and said it was a result of a murder incident. He said when he saw the girl she had died. The body was identified to be that of Kathia Tom. Her clothing was intact showing no sign of tear and no blood stain. He said generally the blood stained was on the swollen face. The close examination revealed deep stabbed wounds on the left side of the head. She had a complete left periorbital haematoma with intact skin. There was large haematoma over the right mastoid bone with intact skin. There were bleeding from right ear canal. There were multiple stabbed wounds in the left forearm, one in the snuffbox area. The post mortem examination made on the body of the deceased revealed that the skull are underlying all the head wounds was intact with no evidence of injury to outer table of the skull. Hence, the wounds were located to the soft tissues only. The brain area appeared grossly normal with no evidence of internal bleeding. He said swabs were taken on three (3) separate occasions in the vagina of the deceased girl. There was no evidence of spermatozoa deposit in the girl's vagina after swabs taken. The injuries were caused by a sharp object. A clam shell was shown to him. He described it. It has a sharpened edge. There was blood on that sharpened edge and outside the shell with human hairs stuck on it. He said it is possible that the injuries were caused by the sharpened edge of the clam shell. He said the edge of the wounds were not regular. They were rugged. The edge of a knife wound is different and this might explained why the wounds did not reach the skull of the deceased because after the post mortem examination, the brain was found to be grossly normal and intact. The doctor said finally that the deceased died because of the loss of blood and shock.

The doctor was cross-examined. He said he was not attending the body of deceased at the crime scene. He said there must be a force used on the body to cause the wounds. He confirmed his evidence in the description of the wounds on the body of the deceased. When cross-examined about the wound on the left forearm, the one on the snuffbox area, he explained and confirmed that that part of the body is a sensitive area used by the doctor to check whether a person is still alive or dead. He confirmed there was a big cut on



the left forearm in the snuffbox area. The size of the wound is about 2 centimeters wide deep. He stated if the snuffbox is cut a person will lose plenty of blood because blood will shoot out: "olsem blood i pispis." When he was further questioned about the cut at the snuffbox area on the left forearm of the deceased girl, he confirmed that that cut caused the loss of plenty of blood by the deceased girl. He said further there was no evidence of struggle on the deceased's clothing. There was no tear on the deceased's clothing. He was asked if it is possible that the clothing of the deceased were changed. He said it is possible. He was asked if such action could be carried out by more than one person. He said it is possible.

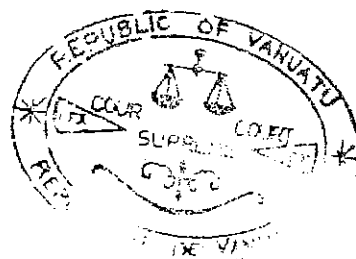
He was re-examined and he said on the type of injuries like the ones on the body of the deceased he expected to see more blood on the deceased cloth. But then, said he was not attending the crime scene. He was not called to attend the crime scene. Another doctor did. The injuries were caused by a sharp object and he confirmed that it is possible that the injuries were caused by the sharpened edge of the clam shell. The stabbed wounds were rugged.

That is the prosecution case and the end of the prosecution case.

V - NO CASE SUBMISSION

At the end of the prosecution case, the defence made a submission of no case to answer pursuant to Section 164(1) of the Criminal Procedure Code Act [CAP.136]. The Court ruled that, as a matter of law, there is evidence that a reasonable Court could convict on the strength of such evidence. There was a case made out against the Defendant. The Defendant was, therefore, required to put forward her defence in accordance with Section 164(2) of the Criminal Procedure Code Act [CAP.136].

VI - THE DEFENCE CASE



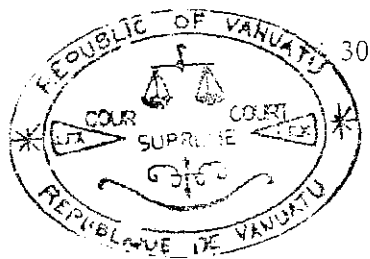
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Before the defence case began, Section 88 of the Criminal Procedure Code [CAP.136] was read and explained to the Defendant. The Defendant understood her right under s.88 of the Criminal Procedure Code [CAP.136].

On 6th December 2006, the defence counsel opened the defence case.

The defence case is that on 25 September 2006, somewhere about 8.30AM, the police came to the Accused house and invited the Accused to go to the police station. The police told the Accused that they were going to ask her questions and then they will release her. When they arrived at the police station, Sergeant Ronald Kalorip and others asked her some questions about the death of the deceased Kathia Tom. It is part of the defence case that the police interviewed the Defendant for sometime, then, she was confused to answer questions. Finally the Defendant refused to sign the records of interview. It is part of the defence case that the police told the accused that they must lock her in cell No.6 because she refused to answer questions. So she was locked into the cell from 26 September 2006 to 30 September 2006 when the police took the Accused to the newly opened correctional services waiting for the Court hearing. The prosecution case is that the Accused caused the death of Kathia Tom on 20 August 2006 and the death occurring between 7.00PM to 7.30PM.

The Defendant denies she had caused the death of Kathia Tom on 20 August 2006. It is the defence case that there is no direct evidence that she killed the victim girl on 20 August 2006 as alleged. The Defendant will exercise her right to remain silent and she will call 4 witnesses to testify about the Defendant's whereabouts and her identification on 20 August 2006. The defence says that the only evidence that the prosecution attempted to link the Defendant with the killing on 20 August 2006, were the blood stains, found at the front door of the Nakamal Sokale and also the blood stains found in the sink at Sokale Nakamal's toilet room. The blood stains were discovered on 21 August 2006. That is the critical point the prosecution linked the Defendant to the death of the deceased, Kathia Tom. The evidence of blood stains is from Jimmy Bule. It is the defence case that the blood stains did not come out from



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the defendant. The Defendant is going to call a witness, the photographer who took the photographs of the crime scene. It is said, the photographer will tell the Court that at the primary scene where Kathia died, he saw a pair of shoes of a man. There were also blood stains on the window and at the back door.

The Court adjourned to allow the defence time to prepare her case.

When the Court resumes, the defence counsel informed the Court that the Defence is not going to call 4 witnesses but just one, the photographer. The Court adjourned again, to allow the defence to prepare its case. When the Court finally resumes, the Court was informed that after the review of the defence case, the position of the Defendant's case has changed.

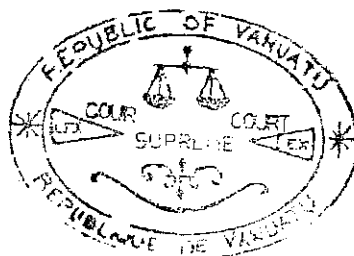
The defence is not going to call a witness and the Defendant will exercise her right to remain silent.

That is the defence case and the end of the defence case.

VI -DISCUSSION ON THE EVIDENCE: ADMISSIBILITY, CREDIBILITY OF WITNESS, FINDINGS OF FACTS.

The defence has called no witness and the defendant exercises her right to remain silent. This is her right and she should not be criticized for doing so. The defence Counsel has advanced some facts in his attempt to open the defence case. However, these alleged facts are not facts to be relied upon by a court as they are made from the Bar Table and there are no evidence adduced in support. They are, thus, rejected. The only evidence adduced in this trial came from the prosecution.

I have heard, observed and considered the evidence of each and all witnesses and their demeanor in the witness box. At the end of the trial, I take



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the evidence together as a whole and after factual consideration, the following findings of facts are established:

On Sunday 20 August 2006, at about 11.00AM o'clock the deceased girl, Kathia Tom, visited her cousin sister, Esmie Roy, at Fiberglass, Luganville, Santo. Kathia Tom was a year 8 student of the College de Santo and she is from Malo Island. Esmie Roy and Kathia Tom had lunch and rested in Esmie's bedroom at Fiberglass area on 20 August 2006.

Esmie's house is next to Jacques Tronquet's on the same side of a white road. Velina Tom's house is located at Robert Coulon's yard on the other side of another white road as shown on the agreed chart map.

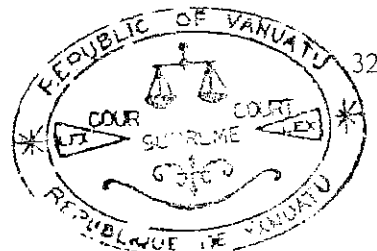
The Unity Shell Store is located on the main road of Luganville Town. The Sokale Kava Bar is situated behind the Unity Shell Store. The Sokale Kava Bar is about 50-60 meters from Esmie's house, the house in which Kathia Tom was found dead covered with blood on 20 August 2006.

Esmie's house is in a yard. The yard has a gate. Esmie's gate is facing Robert Coulon's gate in which Velina Tom resides. Near the cross-section of Esmie's yard and Jacques Tronquet's, there is a soft mud on the white road as indicated by witnesses Franco Warsal, Velina Tom and also confirmed by Micah Bule under his cross-examination.

Sunday evening at Sokale Kava Bar, there were few people in the kava Nakamal to drink kava. Sunday evenings (as described in the evidence by Micah Bule and Jimmy Bule) were quiet and calm.

Esmie's house was built in a yard surrounding by fences and a gate. There were hibiscus flowers at the back fence of Esmie's house. There is a big space at the back of Esmie's house and a mango tree with big branches is in the back yard of Esmie.

Jacques Tronquet's house is also located near the white road surrounded by fences and a gate. Between the corner of Jacques Tronquet's house and the



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fence constituting the limit of his house and the white road, Patricia Joseph found a clam shell there. She has identified on the chart map where she found the shell with blood inside on the sharp edge of the shell and outside the body of the shell. It was covered with blood and human hairs stuck on it as a result of the drying process of blood. A mango tree is far at the back of Jacques Tronquet's house as indicated on the chart map by witnesses (with a colour orange on the chart map).

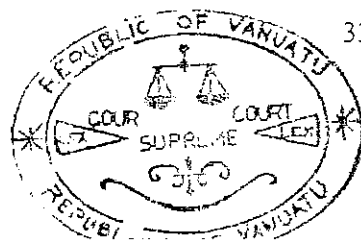
Witness Ishmael Tabianga's house is situated upon the hill. Jacques Tronquet's house is down. There is a bush near Ishmael Tabianga's house. Tabianga's house is on the hill. It is a storey house. He lives on the top floor and others live under Ishmael's floor on the same building.

Esmie's house was down the hill. Ishmael Tabianga's house is 50-60 meters from Esmie's house. The distance 50-60 meters is given by Tabianga in evidence on a flat distance basis when he said the distance is similar to the distance from the Court House to Pastor Samuel's house. However, the distance from where Ishmael Tabianga was on 20 August 2006 and the window of Esmie's house must be a shorter distance from the angle of his observation directly from the hill down to Esmie's house.

It was a fact that on 20 August 2006, Gerald Savoie was drunk and went into Esmie's house on 3 occasions. The first occasion was when he knocked on the front door and Esmie and Kathia then went and sat with Gerald around a table outside. Jean Pascal, Gerald's brother, told him to respect Esmie's yard and brought Gerald back to Velina's resident at Robert Coulon's yard as Velina is Jean Pascal's girl friend and lives there.

The second time Gerald got into Esmie's house was when he got in through Esmie's back door and told Esmie that "if she loves him, he will do everything she likes". Then, Jean Pascal and Mickie got Gerald back into Velina's residence where she lives with Jean Pascal.

The third occasion was when Esmie locked the front and back doors and Gerald got into her yard and knocked heavily at the back door and felt asleep



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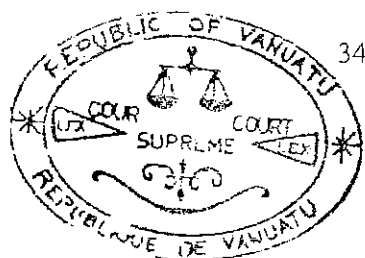
on the steps outside Esmie's back door because he was too drunk. This was confirmed by the evidence of Esmie Roy, Diana Keith Lopez, Stelio Giovanni and Velina Tom.

It was a fact that on Sunday 20 August 2006, Esmie, Kathia, Diana, Shirley and Stelio left Esmie's house at about 6.00PM o'clock to have diner at Shirley's place.

It was a fact that before they left Esmie's house, Gerald Savoie was lying on the steps at the back of Esmie's house.

It was a fact that before Esmie and Kathia got into the taxi driven by Stelio, they called on May, Velina and others who lived with Jean Pascal and Mickie at Velina's residence to get Gerald out of Esmie's house and to close Esmie's gate. After Esmie, Kathia, Diana, Shirley and Stelio left, it was a fact that Velina and May went into Esmie's house and got Gerald back into Robert Coulon's yard where Velina resides with her boyfriend, Jean Pascal. When Velina and May got Gerald back into their yard on the opposite side of the road, they closed Esmie's gate.

It was a fact that when Esmie, Diana, Shirley Stelio and Kathia arrived at Dania's house, Esmie told Kathia to go and stay with Diana's children at Diana's house because she is a student. It was a fact that Kathia Tom opened the door of the taxi, got out and walked toward Diana's house. Diana followed Kathia to get Kathia inside her house then Kathia told Diana words to the effect that "Anty hemi alright nomio bae mi go inside long house". It was a fact then that Diana got into the taxi and the taxi left. After the taxi left Diana's house Kathia never gone inside Diana's house. This is confirmed by the evidence of Esmie and Diana. After diner at Shirley's house near the police station at Luganville, Esmie walked back with Diana to Diana's house to get Kathia back home, they found out that Kathia was not there and Diana's son told them that Kathia was not there and there was no Kathia coming into their house that evening. The distance between Esmie's house and Diana's was about 3-5 minutes walk. On the chart map, it was not far away from Esmie's house. I find and accept the evidence of Esmie, Diana and Stelio. Their evidence is logical, consistent and corroborate with each others and also with the evidence of Velina Tom.



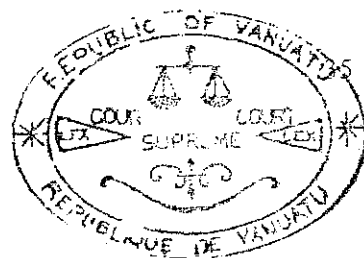
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It is a fact that Kathia run back toward Esmie's house, opened the gate and got inside Esmie's house as testified by Velina Tom. Velina was outside her house with Gerald because he was too drunk. The time was between 6.15PM to 6.30PM o'clock.

It was a fact that Micah Bule saw the Defendant, Nadege Koroka, outside Unity Shell Store on 20 August 2006 at about 6.00PM o'clock. Micah Bule had a conversation with the Defendant, Nadege Koroka. Micah told the Defendant to come to his nakamal (Sokale Kava Bar) and bought some kava for both of them. The Defendant told Micah that she would go first to Steven Nakamal.

It was a fact that while Velina was with Gerald outside her house, others prepared the food inside her house and brought them some food and, then, Jean Pascal, Velina and Gerald went to the hospital. Velina Tom described the road they followed on 20 August 2006, to be the small road down on the agreed chart map (Exh. P4). When Velina, Jean Pascal and Gerald walked on the road Velina said they heard something like "Kathia hemi cry small small", but she thought Esmie was back and her boyfriend assaulted her (Esmie). The cry happened when, Velina, Jean Pascal and Gerald arrived near the cross-section between Esmie's house and Jacques Tronquet's house. Velina said Gerald heard the cry and run back and wanted to go and assaulted those who assaulted Esmie. Velina stopped Gerald not to go back into Esmie's yard. They arrived at a soft mud on the small road when they heard the cry at Esmie's house. She identified where the soft mud was with a yellow colour on the chart map. They then walked down to the Unity Shell and got a taxi to the Hospital. It was a fact that the time was about 7.00PM o'clock.

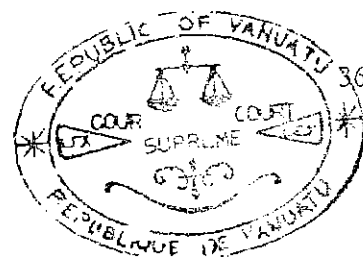
It was also a fact that at about 7.00PM o'clock on 20 August 2006, Franco Warsal, after cooking rice at Father Albert's residence, a catholic priest, at Sainte Therese, decided to go and drink kava at Nemo Nakamal. He came down from Sainte Therese and followed the small white road where Jacques Tronquet's house is. Franco Warsal testified that when he followed the road, he saw 3 persons walking. Two (2) boys and a girl. The two boys were drunk. The girl was not drunk. The two (2) boys and the girl were walking in front and he was walking behind them. He testified that when he arrived near the house in which the incident occurred on 20 August 2006, he heard noises and cries.



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He recognized the cries to be that of a woman. He described in Court how he heard the cry to this effect: "AH OH MAMA". He thought that was a domestic dispute between a couple because the yard was fenced and there was a gate. He said it was when he heard the cry that one of the boys run back towards him and told him "hey brother come yumi go killim ol man ia". Franco Warsal then told him: "hey yu no pushum mi igo long problem blong narafala man". Franco stated that the boy ran back toward him when they (the two (2) boys and the girl) arrived at a soft mud between the house where the incident occurred on 20 August 2006 and Jacques Tronquet's house. Franco testified that he recognized them but he does not know their names. He said he knew about their names later on. He said further when cross-examined that the two (2) drunken boys were Jean Pascal and Gerald and the girl was Velina. He said it was Gerald who ran back to him after they heard the noise and the cry at Esmie's house. After this, he said, the two (2) boys and the girl walked on the road toward Unity Shell Store and he went to the Nemo nakamal.

Franco is an independent witness. He is clear and very consistent in his answers to the questions. He spent less time under cross-examination. Franco Warsal is a powerful and a trustworthy witness. His evidence corroborates the evidence of Velina Tom. Velina Tom is also a trustworthy witness. I believe her evidence that she and May went to get Gerald out of Esmie's yard. On their way to the hospital, they heard the cry. She said "mi harem olsem Kathia hemi cry smol smol." She thought Esmie was back and her boyfriend assaulted her (Esmie). Velina's evidence corroborates the evidence of Esmie when Esmie told May and others to go to her yard and get Gerald Savoie out of her yard and also to close her gate on 20 August 2006. Velina gave evidence of the fact that she and May got to Esmie's yard and got Gerald Savoie out from Esmie's house and closed Esmie's gate and, not long after, while she was standing with Gerald outside because he was too drunk, she saw Kathia running and opened Esmie's gate and got into Esmie's house. It was a fact that the time was about 6.15PM – 6.30PM o'clock on 20 August 2006. It was a fact that at that time, Esmie Roy was not in her house with Kathia. Esmie and Diana were at Shirley's house with Stelio the taxi driver.



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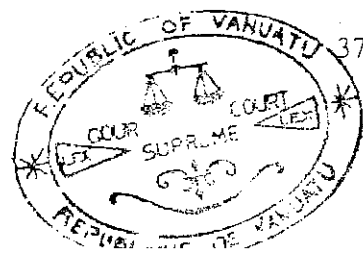
It was a fact that at the time of the incident, which was between 7.00PM and 7.30PM o'clock, Velina, Jean Pascal and Gerald heard the noises and cries at Esmie's house. Franco Warsal also heard the noises and cries at Esmie's house. Franco followed them down the street. Velina, Jean Pascal and Gerald walked toward Unity Shell and got a taxi and went to the hospital. Franco Warsal went to Nemo Nakamal. The agreed chart map showed that Unity Shell Store is on the main road of Luganville town. Esmie's house where the incident occurred was now behind them.

On the evidence which is accepted, Velina Tom, Jean Pascal Savoie, Gerald Savoie and Franco Warsal were not involved in the incident leading up to the death of Kathia Tom on 20 August 2006 at Esmie's house. They were indirectly witnessing part of the crime when they heard noises and cries at Esmie's house on 20 August 2006 at about 7.00PM o'clock.

This factual analysis of the evidence is supported and confirmed by the evidence of witness Ishmael Tabianga. It was a fact that on 20 August 2006, he was having diner with his family at home and his mother sent him to get the key of their shop to get a can of meat. He was walking on the veranda of their house. It was a fact that he heard noises and cries from the house down next to Jacques Tronquet's. The incident occurred at Esmie's house. It was a fact that he saw a woman chasing another woman from one room to the sitting room.

It was a fact that the light in the room was on. The security lights were on and cleared that part of the window of the sitting room he was observing. He saw the woman who was behind assaulted the one in front. Witness Ishmael described the way he saw the woman behind assaulted the one in front. The description of the witness of how he saw the woman assaulted the other is not by throwing direct fist on the body of the other. Tabianga showed the Court how the woman assaulted the other by lifting her hands and threw them on the body of the other who was in front. The one in front cried by calling her mother and then felt down.

It was a fact that from where he was at the veranda of his house on the hill and Esmie's window where he saw the incident, the distance is shorter than 50-60 meters as a matter of common sense if a direct measurement is taken



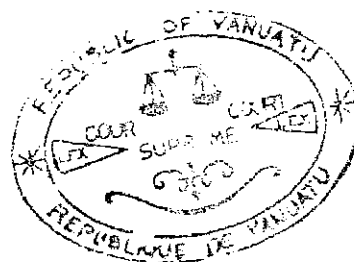
from the angle of his eyes. Further the lights in a room of the house was on. The security lights were on and cleared the windows of the sitting room and it was during the evening. He gave detailed description of the woman in front to be not too short and the woman behind who assaulted the one in front: "hemi shortfala smol nomo long narawan. Hemi no fatfat tumas. Hemi no tintin be hemi stret nomo." [when this witness gave that piece of evidence, the Defendant mumbled words toward the witness].

Witness Tabianga was cross-examined. He maintained his evidence in chief. The bush and the mango trees did not disturb what he saw that night. When asked if he saw the defendant he said no but maintained his description of the assaulting woman to be " shortfala smol nomo long narawan. Hemi no fatfat tumas. Hemi no tintin be hemi stret nomo". His evidence was not disturbed. It was a fact that the light inside Esmie's bedroom was on. This detail was confirmed and corroborated with Esmie's evidence. I have no reason to disbelieve Ishmael Tabianga's evidence. I accept his evidence. He is a trustworthy witness.

The description of the woman behind who assaulted the other in front, does not fit Velina, Esmie and Diana. In any event, the evidence as accepted showed that Velina, Esmie and Diana were not involved in the assault occurring at Esmie's house on 20 August 2006 between 7.00PM to 7.30PM o'clock. The description is not so dissimilar to the defendant's.

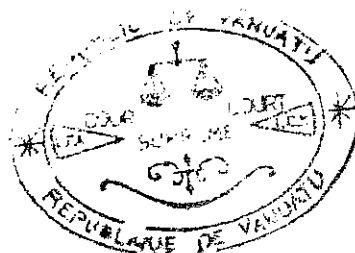
On 20 August 2006, Micah saw the Defendants twice that evening. The first time he saw her was at Unity Shell Store somewhere about 6.00PM. The second time was at his nakamal (Sokale) when she drunk water of the jag at the nakamal. Jimmy Bule confirmed Micah's evidence that the Defendant Nadege was at Sokale Nakamal on the night of the 20 August 2006. She was wearing a long sleeves cold shirt of black or dark blue colour.

It was a fact that the Defendant Nadege was at Sokale Nakamal on 20 August 2006 that night. This fact was admitted and confirmed by the Defendant's counsel, Mr Laumae, in his final submissions, when he conceded that:



"the piece of evidence that the accused was seen, by Jimmy and Micah at Sokale Nakamal as a matter of fact is true." (at p.9).

This admission by the defence counsel reinforces the credibility of witnesses Micah Bule and Jimmy Bule despite numerous challenges they have gone through during their cross-examination in the trial. I accept the evidence of Micah Bule and Jimmy Bule. They are both trustworthy witnesses. It was then a fact that on 20 August 2006, the Defendant was standing 5 seconds at the front door of Sokale Nakamal. She then got in and drunk water of the jag for 2 seconds. She sat for 2 minutes during which she asked about Velina. It is a fact that the Defendant's actions were not as usual as testified by Micah and Jimmy. Micah testified: "toktok blong Nadege hemi no olsem oltaem from mifala is save gud mifala. Mi meanim se from taem hemi kam olsem, mifala i laugh be hemia, hemi no even sakem wam toktok but hemi askem Velina stret". Micah was there in the nakamal when the Defendant told Jimmy: "sipos Velina I kam bae yu talem long hem blong go meetim mi (Nadege) long Nakamal blong Steven. From se mi no laekem nakamal ia. Micah described the Defendant's actions in these terms: "toktok blong hem I sharp tumas olsem se tingting blong hem I busy long was samting". Both witnesses know the Defendant. Jimmy said he observed her actions were not as usual. He said: Hemi olsem hemi busy long wan samting samples". He asked the Defendant: "yu kam where?" Jimmy described her actions when she asked Micah. Jimmy said she asked Micah but she did not mention completely the name of Micah. Jimmy got up and went towards the Defendant and asked her "you talem wanem ia? Micah? The Accused got up from where she sat and said "yes". Jimmy told her that Micah was behind the nakamal. The Defendant, then, went to the toilet room and left. The Defendant was wearing a long sleeves cold shirt of black or dark blue colour. He also said customers used the toilet of the nakamal but Jimmy saw the Defendant was the last person to use the toilet room of the nakamal that night. [When witness Jimmy gave that piece of evidence, the Defendant mumbled words toward him] then Jimmy added: "be ino gud blong pointern finger long wan person".



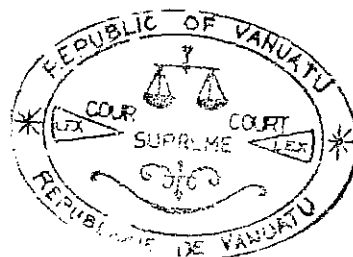
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There were not many customers at the Sokale Nakamal in the evening of 20 August 2006. It was a Sunday evening and very few customers came to the nakamal. When the Defendant arrived at Sokale Nakamal, there were three (3) persons there: Joseph, Pwatsy and Garae. Others came and went. There was no evidence of a female customer of the nakamal that night other than the Defendant. There was no evidence of a female customer whose actions were described as the actions of the Defendant that night. The Defendant was the only female customer seen to be standing at the front door for 5 seconds, drunk water for 2 seconds from the jag at the counter, sat for 2 minutes and went to the toilet room. She was the last person to use the toilet room that night. Micah and Jimmy saw the defendant at the Sokale Nakamal at about 7.00 pm o'clock on 20 August 2006.

It was a fact that on 21 August 2006 in the morning, blood stains like drops were found at the front door of the nakamal where the Defendant was standing for 5 seconds. At the nakamal, there was a toilet room. In that room there was also a sink to wash hands. There were also blood found at the bottom of the sink in the toilet room in the morning of 21 August 2006. When asked under cross-examination whether the blood he saw, was that of a woman or a dog, he stated he could not say but it was blood. There was no evidence of a dog at the nakamal Sokale on the night of 20 August 2006.

I accept the evidence of Jimmy that what he and his father Solomon saw at the front of the door and what he saw at the bottom of the sink in the morning of 21 August 2006 were blood. There was a bottom sink rubber at the bottom of the sink which held the blood at the bottom of the white sink.

It was also a fact that on 21 August 2006 at 2.30PM Patricia Joseph found a clam shell few meters from the crime scene. The shell has sharp edges. There were blood in the shell from its sharpen edge. There were tracks of human hands from the inside. The shell was also covered with blood outside and human hairs were stuck on it as a result of the drying process of the blood. The evidence of Patricia Joseph is accepted.



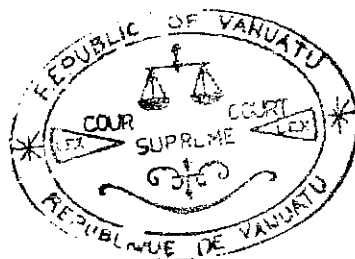
There was a lot of blood at the crime scene. The body of the deceased was covered with blood as testified by Police officer John Daniel who was the first police officer at the scene. I do accept his evidence which is also corroborated with the evidence of Esmie Roy.

Sergeant Police Officer George Alick visited the crime scene on 21 August 2006 at 6.00AM. He said he saw blood splashed on the wall and on the floor where the body of the deceased was. I accept Sergeant George Alick's evidence to this fact.

It is a fact which is accepted that the deceased, Kathia Tom, died on 20 August 2006 as a result of loss of blood and shock as testified by Doctor Santus Wari. There were stabbed wounds on the head of the deceased. The deceased had a complete left periorbital haematoma with intact skin. There was large haematoma over right mastoid bone with intact skin. There were bleeding from right ear canal. There were multiple stabbed wounds in the forearm, one in the snuffbox area. The stabbed wounds were irregular. They were rugged. The stabbed wounds inflicted by a knife were different. This is confirmed by the left periorbital haematoma with intact skin, the large haematoma over the right mastoid bone with intact skin and the multiple stabbed wounds on the left forearm, one of 2 centimeters wide in the snuffbox area.

There is a rational inference to be drawn that the stabbed wounds on the body of the deceased were inflicted by the use of the clam shell found few meters from the crime scene on the very next day of the incident. The clam shell has sharpened edges. It is a sharp object.

The stabbed wounds on the snuffbox area of the left forearm of the deceased girl, was inflicted by the sharpened edge of the shell. There was blood on that sharpened edge of the shell. It is a rational inference to make. Any suggestion of a knife stabbed wounds, is rejected.



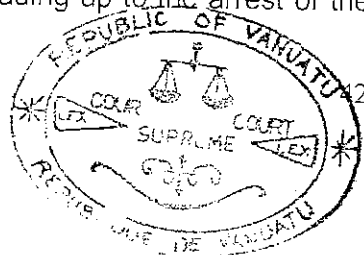
It was a fact that swabs were taken in the vagina of the deceased girl on three (3) occasions. After medical examinations, there was no evidence of spermatozoa deposit in the deceased girl's vagina. This piece of evidence excludes any suggestion or possibility of a rape committed on the victim girl before or during the assault causing her death. It was further a fact that there was no evidence of strangle on the deceased's cloth and there was no evidence of tear on the deceased's cloth. This evidence excludes any suggestion or possibility of an attempted rape committed on the victim girl before or during the assault causing her death. Finally, any suggestion or possibility of an organized crime committed by more than one (1) person is rejected as there was no evidence in support of such a suggestion. The evidence as found and accepted is that a woman assaulted Kathia Tom at Esmie Roy's house on the night of Sunday, 20th August 2006. Kathia Tom died on the same evening as a result of loss of blood and shock. That is the only rational and logical hypothesis based on the evidence before the court.

I have seen and observed witnesses Serah Moli and Elsie Michael. I accept their evidence that they were not at Steven Nakamal on the night of 20 August 2006. However, I do not believe that their evidence will assist the court.

It was a fact that on 25 September 2006, the Defendant was invited to the police station for questioning in relation to the death of the deceased girl after the police have reasonable grounds for suspecting that the Defendant had committed the offence.

It was a fact that police Sergeant Ronald Kalorib was involved in the investigation of the crime some two (2) months after the incident. Other police officers initiated the investigation during which they questioned other potential suspects, including Esmie Roy, Diana Keith Lopez, Velina Tom and Gerald Savoie, after which the police released them. That part of the evidence is accepted.

It was accepted that the investigation of the incident of the death of Kathia Tom was conducted by different police officers leading up to the arrest of the



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Defendant. Witness police Sergeant Ronald Kalorip was also involved in the investigation and he was the responsible officer for the records of interview of the Defendant.

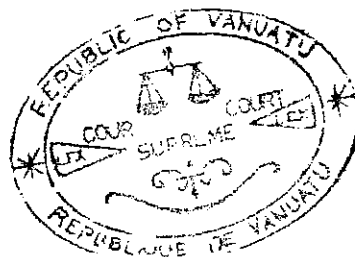
The interview occurred between 25 September 2006 and 10 October 2006. Sergeant Kalorip cautioned the Defendant before the interview began on 25 September 2006. He wrote down questions asked to the Defendant. He wrote down answers given by the Defendant. However, when cross-examined, he conceded that because of the lack of space on the paper sheet of the records of interview, in a situation in which he was required to refer the defendant to her previous answers to the questions asked, he said before he asked the defendant a new question, he read to the defendant her previous answers before he asked the Defendant a new question and recorded her answer but he did not write down the previous questions and the defendant's previous answers. The records of interview showed that the situation referred to was that of multiple questions and answers asked to the Defendant during the interview. An example of such a situation of multiple questions and answers is Question Q142, which reads:

"Q.142 – you agree wetem mifala se Q137, 138, 139 and Q 140 oli false or kiaman.

A: Yes".

On the face of the records of interview, the previous questions asked and the defendant's previous answers were not recorded in Q.142.

During the interview of the Defendant, this Sergeant witness asked the Defendant Nadege whether she saw him at the Steven Nakamal on 20 August 2006 at about 7.00PM o'clock. In his evidence he testified that he was at Steven Nakamal for half an hour (30 minutes) at Steven Nakamal on the night of 20 August 2006 at about 7.00PM. He did not see the Defendant. He was accompanying two(2) other police officers. He had two (2) shells of kava and got some kava back home in a plastic bottle. I would have had no reason to disbelieve that part of this witness evidence if it had been given by him as an independent witness of fact.



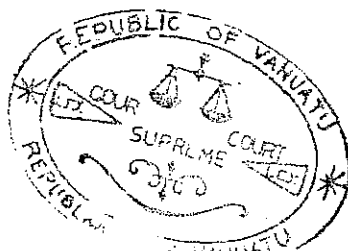
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In the exercise of my discretion, as the judge of fact, I, however, reject this part of Sergeant Kalorip's evidence and also the records of interview with the Defendant. The reason of the rejection is that witness Sergeant Ronald Kalorip was the responsible police officer for the records of interview of the Defendant. He was the officer who asked questions and recorded the answers from the Defendant. This officer gave evidence of the fact that he was also present at Steven Nakamal. He should not have taken part in the interviewing process of the defendant, but left it to a different police officer. This constitutes a serious breach of the process of interview which should have been conducted by an officer of independent mind. The circumstances, in which that piece of evidence was obtained, were improper. Its impropriety affects the probative value as it is outweighed by its prejudicial effect on the evidence. They must, then, be excluded. The purpose of the interview is to obtain information including admission or confession statements of an accused person. However, a statement of admission or confession by a defendant must be voluntarily obtained.

In the present case, I do not make a finding that witness Sergeant Ronald Kalorip did ask the question to the Defendant of him being present at Steven Nakamal on the night of Sunday 20 August 2006, in order to force, threaten or oppress the Defendant during the interview. The evidence of Sergeant George Alick confirmed this finding and there is no contrary evidence adduced. The difficulty, as demonstrated by the evidence, arises from the lack of competence and training skills and also support facilities to the interviewing process of the accused person by police officers. This was elucidated when Sergeant George Alick clarified to the Court that police have no support facilities to test the blood sample and shoeprints and to conduct a tape interview of the accused persons.

The following may constitute a useful guide in relation to the interview process of an accused person:

- Police can question a person, including a person in custody, until he has been charged or informed that he may be prosecuted;

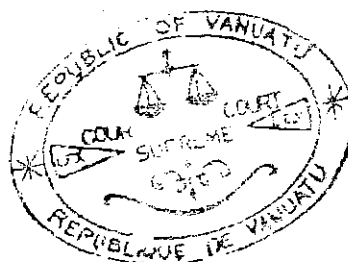


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- As soon as the police believe there are reasonable grounds to suspect that a person has committed an offence, the police should warn the suspect that he does not need to say anything, but if he does it will be taken down in writing and may be used in evidence in court;
- If the person does make a statement, his exact words shall be taken down in writing, and shall include details of the place and time and persons present;
- If a person is charged, the caution about making a statement shall be repeated;
- Once a person has been charged or informed that he will be prosecuted, he should be questioned only in exceptional cases;
- Any statement made after such caution should be made without prompting and the exact words recorded in writing, and signed by the person making it;
- Where a written statement was made to police by another person interviewing by them, that statement may be given to the person charged, but he should not be asked to comment on it. If the person charged wishes to comment, a further caution should be given to him before he makes a statement.
- Where a police officer is witnessing an incident or a particular circumstance leading to the investigation of a crime or where a police officer is arresting a person suspected of committing a serious crime, he should not take part in the interview process of the accused person as he could be a potential witness of fact.

In the present case, the record of interview of the accused and the evidence of Ronald Kalorip that he did not see the Defendant Nadege Koroka at Steven Nakamal on the evening of 20 August 2006 cannot be used in evidence. They are, thus, rejected.

It was a fact that on 20 August 2006, Kathia Tom, a student of year 8 at College de Santo, was found dead at Esmie's house at Fiberglass in Luganville, Santo.



At the final submissions of Counsel on the verdict, counsel for the Defendant, Mr Felix Laumae conceded that the prosecution has proved the two (2) other essential elements of the charge of the intentional homicide on the basis of the material evidence adduced in Court during the trial (at p.6 of defence closing submissions dated 6 December 2006). However, He submitted that there was no evidence to prove that the Defendant, Nadege Koroka, was the person who caused the death of the deceased, Kathia Tom, on 20 August 2006.

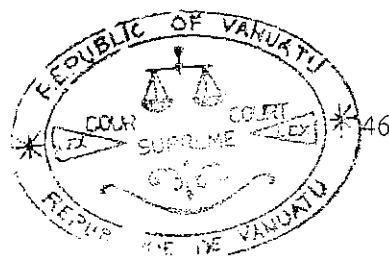
In this trial, the defence does not call any evidence and the Defendant exercises her right to remain silent. I therefore remind myself of that fact as the case is advanced on circumstantial evidence and I give myself the following direction as a matter of law:

VII - DIRECTION OF THE LAW

"In this trial, the Defendant exercises her right not to give evidence and to remain silent. I must say that this is her right and I, as the trial judge, must not criticize her for doing so and I say so in the present case.

Most part of the prosecution evidence was based on circumstantial evidence. The prosecution has the legal burden to prove the elements of the charge against the accused person beyond reasonable doubt. In situations similar to the present case and based on circumstantial evidence, each item of circumstantial evidence does not have to be independently proved beyond reasonable doubt. A number of facts, each of which alone is not proved beyond reasonable doubt, but, may, when taken together operate so as to justify an inference beyond reasonable doubt of an unlawful act causing death.

This was best illustrated in R v Exall (1866) 4 F & F 922 Pollock CB, employing the analogy of a rope, said, at page 929:



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"One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength. Thus, it may be in circumstantial evidence- there may be a combination of circumstances, no one of which would raise a reasonable conviction, or more than a mere suspicion; but the whole, taken together may create a strong conclusion of guilt, that is, with as much certainty as human affairs can require or admit of."

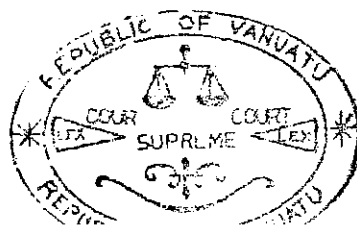
In Teper- v- R (1952) AC 480 (at p489) Lord Norman provided useful explanation of circumstantial cases in this way:

"Circumstantial evidence is receivable in criminal cases as well as civil cases; and indeed the necessity of admitting such evidence is more obvious in the former than in the latter; for in criminal cases, the possibility of proving the matter charged by direct and positive testimony of eye witnesses or by conclusive documents are more rare than in civil cases; and where testimony is not available, then, the jury are permitted to infer from the facts proved other facts necessary to complete the elements of guilt or establish innocence. It must always be narrowly examined, if only because evidence of this nature may be fabricated to cast suspicion on another. It is also necessary before drawing the inference of the accused guilt from the circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference..."

It has been said that circumstantial evidence is often the best evidence. It is evidence of surrounding circumstances which by undersigned coincidence is capable of proving a proposition with the accuracy of mathematics. It is not derogation to say that it is circumstantial".

The fact of death is also provable by circumstantial evidence notwithstanding that neither the body nor any trace of the body has been found. In R-v-Onufrejzyk (1955) 2 QB 388 Cr. App 1 CCA, it was held that:

"Before a person can be convicted the fact of death should be proved through circumstances as render the commission of the crime and leave no ground for reasonable doubt. The circumstantial evidence should be cogent and



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compelling as to convince a jury that no other hypothesis other than murder can the facts be accounted for."

The prosecution is not required to disprove any inference that the ingenuity of the defence counsel might devise. It must exclude any reasonable hypothesis based on the evidence which is consistent with innocence but no more. [R v Longalis (1993) 10 LRNZ 350 at p.359].

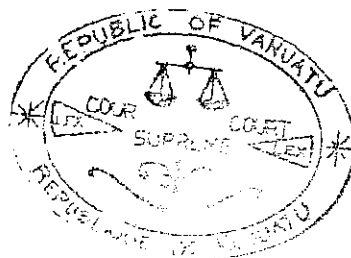
Section 8 of the Penal Code Act [CAP.135] indicates proof beyond reasonable doubt but states that "the determination of proof beyond reasonable doubt shall exclude consideration of any possibility which is merely fanciful or frivolous."

Inferences may be drawn from proven facts if they follow logically from them. If they do not, then the showing of any conclusion is speculation and not proof. In this case, based in great part on circumstantial evidence, the Defendant elected not to give evidence; inferences can be drawn from the absence of any explanation from her who has the unique knowledge of the complicated situation to which the charge relates.

In this case, since the inferences are available to be drawn from unchallenged evidence, inferences adverse to the accused can be drawn, stemming as a matter of common sense from her lack of any explanation." The above direction is adapted from the case of **Swanson v. Public Prosecutor of 1997** [Criminal Appeal Case No.6 of 1997, Court of Appeal of Vanuatu, unreported].

VIII. THE LAW AND ITS APPLICATION ON THE FACTS AS FOUND

The defendant, Nadege Koroka, is charged with the offence of intentional homicide causing death, contrary to **Section 106(1)(a) of the Penal Code Act [CAP.135]**. Section 106 (1) (a) reads:



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

Penalty:(a) If the homicide is not premeditated, imprisonment for 20 years.

..."

Before I can convict the defendant, Nadege Koroka, of the offence of intentional homicide causing death, contrary to section 106 (1) (a) of the Penal Code Act [Cap 135], the prosecution must prove each and all essential elements of the offence on the criminal standard of beyond reasonable doubt as I have defined these words at the beginning of this judgment. The following are the essential elements of the offence that the prosecution must prove on the required standard:

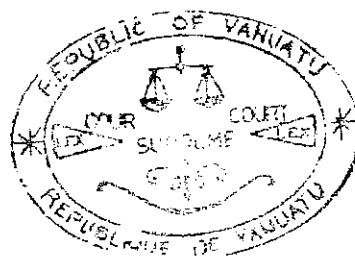
- (1). That the defendant, Nadege Koroka, caused an unlawful act on the deceased, Kathia Tom, on 20 August 2006;
- (2) That the unlawful act caused, was intentional;
- (3) That the unlawful act which was intentional, caused the death the victim girl, Kathia Tom, on 20 August 2006.

Section 109 of the Penal Code Act [Cap135] provides for the circumstances under which "causing death" are defined. It states:

"CAUSING DEATH DEFINED

S.109 *A person shall be deemed to have caused the death of another person although his act is not the immediate or sole cause of death in any of the following cases-*

(a) ...



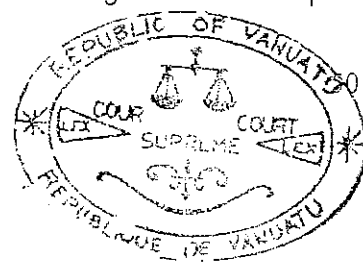
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- (b) *if he inflicts bodily injury on another which would not have caused death if the injured person had submitted to proper surgical or medical treatment...*
- (c) ...
- (d) ...
- (e) *if his act or omission would not have caused death unless it had been accompanied by an act or omission of the person killed or of other person."*

I now apply the law to the facts as found.

On 20 August 2006, a woman assaulted Kathia Tom in Esmie's house at Luganville, Santo. Kathia called her mother and fell on the floor. The assault occurred between 7.00 PM and 7.30 PM o'clock in the evening of Sunday 20th August 2006. Kathia sustained very serious stabbed wounds on her head and her left forearm, one in the snuffbox area of 2 centimeters (cm) cut as indicated by the evidence. That cut damaged the artery on the left forearm's snuffbox of Kathia Tom, as a result of which Kathia Tom lost plenty of blood because as a matter of common sense and logic, there is a rational inference to draw on the fact that once the artery on the left forearm was damaged with a cut of 2 cm deep, blood logically shot out " olsem we blood i pispis" as testified by Dr Sanctus Wari. Kathia was found dead as a result of loss of blood and shock between 10.30PM and 11.00PM o'clock on 20 August 2006.

The woman who assaulted Kathia on 20 August 2006 between 7.00PM and 7.30PM at Esmie's house was seen from a distance of less than 50-60 meters. The assaulting woman is described as: " Hemi shortfala smol nomo long narawan. Hemi no fattat tumas. Hemi no tintin tumas be hemi stret nomo." That description does not fit Velina Tom and Esmie Roy nor Diana Keith Lopez. Furthermore, each of these women were ruled out by the evidence. The only woman left on the evidence is the defendant, Nadege Koroka. On the basis of the evidence as found and accepted and on the basis of the court's observation of the defendant in the defendant's dock and her reactions toward Ishmael Tabianga and Jimmy Bule during some critical part



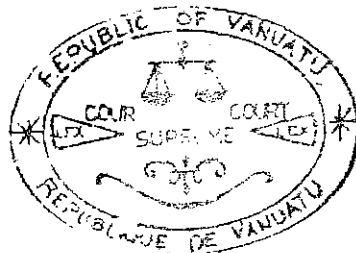
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of their respective testimonies, there is a rational inference to be drawn that the description of the woman behind who chased and assaulted the woman in front (Kathia Tom) is highly likely similar to the defendant's description.

The above inference is further supported by the following proven facts:

The defendant, Nadege Koroka, was seen at about 50-100 meters from the crime scene on Sunday 20th August 2006 at about 6.00PM o'clock at Unity Shell store. She told Micah Bule that she will go to the Steven Nakamal. At about the same time between 6.00PM and 6.30PM o'clock on 20 August 2006, Kathia Tom opened the door of the taxi at Diana's house and walked toward Diana's house. As shown by the evidence, Kathia Tom had never gone into Diana's house. Kathia was seen running toward Esmie's gate, opened the gate and went in Esmie's yard between 6.15PM and 6.30PM o'clock in the evening of Sunday 20 August 2006. On the agreed sketch plan (Map), Diana's house is next to Jeremy's House. Diana's house is not too far from the Unity Shell store and Esmie's house. It was 3 or 5 minutes walk to Esmie's house. The defendant knew Esmie's house. Esmie Roy showed the defendant her house and her bedroom in May-June 2006. In July 2006, Esmie and the defendant were no longer in good terms because of the defendant's boy friend, Jeremy, as confirmed by Esmie's evidence. Kathia Tom is the cousin sister of Esmie Roy. Kathia Tom had just come from Diana's house next to Jeremy's. It was not irrational to infer that the defendant had come across Kathia Tom that evening of Sunday 20th August 2006. As the agreed sketch Plan shows, to go to Steven Nakamal, the defendant must walk past Diana's house and also that of Jeremy at about 50-100 meters from Unity Shell store. Kathia Tom was seen running without a word toward Esmie's gate, opened the gate and went inside Esmie's yard. This was between 6.15PM and 6.30PM o'clock on 20th August, 2006.

At about 7.00PM o'clock, Kathia Tom was heard crying at Esmie's house. That was when the woman whose description is not so dissimilar to the defendant's, chased Kathia from a room in which the light was on into the sitting room. She assaulted Kathia. Kathia cried out by calling her mother and then fell on the floor. Kathia was found dead covered with blood. Blood were

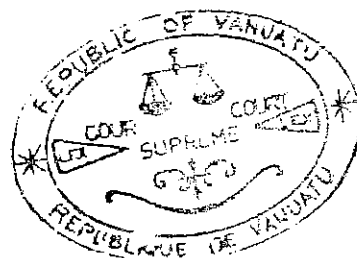


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found splashed on the wall and on the floor where Kathia's body was. There were very serious stabbed wounds found on the deceased's head and left forearm. There were stabbed wounds on the left side of the deceased's head. The deceased had a complete left periorbital haematoma with intact skin. There was large haematoma over the right mastoid bone with intact skin. There were bleeding from the deceased's right ear canal. There were multiple stabbed wounds in the left forearm of the deceased and one was of 2 cm cut in the snuffbox area. The stabbed wounds as described in the evidence were not regular. They were different from wounds inflicted by a knife. The stabbed wounds on the body of the deceased were rugged. The only rational inference that can be drawn on the evidence was that the woman whose description was not so dissimilar to the defendant's and who was seen assaulting Kathia by lifting her hands and then threw them on the body of Kathia, as if she was holding an object, used the clam shell to cause the serious stabbed wounds on the body of the deceased on 20th August 2006. This is the rational explanation of the evidence of Ishmael Tabianga when he described the chasing woman lifted her hands and then threw them on the woman in front from behind. The clam shell exhibited into the evidence has sharpened edges. There was blood on the sharpened edge of the shell from the inside. There was blood on the back of the shell from the outside and human hairs were sticking on the clam shell because of the drying process of the blood on the shell. This is a further piece of evidence showing that the clam shell was used in the unlawful act causing the death of Kathia Tom on 20th August 2006. The use of the clam shell with sharpened edges which caused serious and fatal injuries on the deceased's body reflected the type of force used and also the intention of the assaulting woman to kill the deceased girl.

In the final submissions by Counsel, the defence Counsel Mr. Felix Laumae, not only admitted that the defendant, Nadege Koroka, went at the Sokale Nakamal on 20 August 2006 in the evening as testified by Micah Bule and Jimmy Bule, but the defence council also admitted that on the evidence adduced by the prosecution in the trial, the prosecution have proved the two (2) other elements, namely:

- That the unlawful act caused, was intentional; and

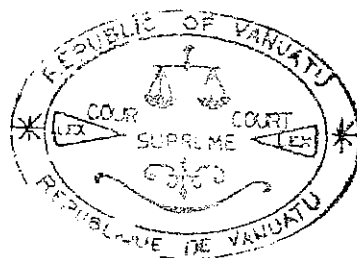


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- That the unlawful act caused which was intentional, caused the death of Katia Tom on 20 August 2006.

On 20th August 2006, between 7.00PM and 7.30PM o'clock, in the evening, the woman whose description was not so dissimilar to the defendant's inflicted very serious injuries on the head of the deceased girl including the cut on the snuffbox area of the left forearm of 2 cm wide deep. That cut damaged the artery. There was blood splashed on the wall and the floor and as a matter of common sense and logic, it is rational to infer that Kathia's blood from the cut on the snuffbox area coupled with the movement and actions during the assault would splash on the assaulting woman's part of the body which directly caused the cut at the moment of the impact. It is also rational to infer that that part of the assaulting woman's body if covered by part of the cloth she was wearing at the moment of the cut at the snuffbox area, Kathia's blood, as a matter of common sense, from that cut would shoot out and coupled with the movement and actions during the assault, would also splash on that part of the assaulting woman's cloth.

The defendant, Nadege Koroka, as admitted by her Counsel, Mr. Felix Laumae, went to Sokale Nakamal in the evening of that Sunday 20th August 2006. She was wearing a black or dark blue long sleeves cold shirt. She was standing for 5 seconds in front of a door at Sokale Nakamal. She was the only female person seen at the Sokale Nakamal that night of 20 August 2006. This was the second time the defendant was seen at the vicinity of the crime scene in the evening of 20th August 2006. The defendant's presence at the nakamal put her closer to the crime scene about 50-60 meters. Her actions were different from what she used to be. Jimmy and Micah knew the defendant, Nadege Koroka. She drunk kava at Sokale Nakamal three (3) times a week. Jimmy, Micah and the defendant, were friends and they used to joke together. She was a regular customer of Sokale Nakamal. It is a rational inference to draw on the evidence. On the evening of 20th August 2006, her actions were different. She seemed to be concerned about something. She was disturbed. She was moving quickly from one place to another. She was standing 5 seconds in front of a door at the nakamal before she entered the

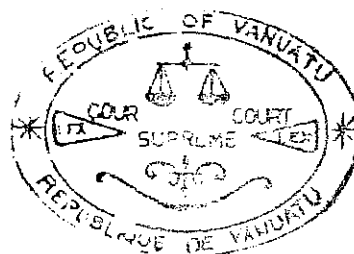


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Nakamal. She then went in the nakamal and drunk water from the jag for 2 seconds. She sat for 2 minutes. She asked Velina. She had difficulties in mentioning the name of Micah. She moved away when Jimmy came closer to where she was sitting in order to ask if she was asking for Micah. She did not want to drink kava at the nakamal (Sokale). She got up and went in the toilet room and left. She was in a hurry and this was notably recognized by Micah and Jimmy. She was the last person seen to use the toilet room at the Sokale Nakamal in the evening of 20th August 2006. When she arrived at the Sokale Nakamal, there were three (3) male customers at that time. There was no evidence of a male person standing in front of that door at the place the defendant was standing that night. There was no evidence of a woman other than the defendant who was standing in front of the door the defendant was standing before she entered the nakamal on 20th August 2006. There was no evidence of a male customer using the toilet room after the defendant had used it that night.

On 21st August 2006, in the morning, drops of blood were found at the front of the door where the defendant was standing for 5 seconds in the evening of Sunday 20 August 2006. Blood were also found at the sink in the toilet room in the morning of 21st August 2006. The defendant was the last person seen to use the toilet room on the night of 20th August 2006. She had spoken to Micah Bule at the Unity Shell store at about 6.00PM o'clock and then to Jimmy Bule at Sokale Nakamal later in the evening of Sunday 20th August 2006 and there was no evidence of her saying that she saw blood at the bottom of the sink in the toilet room that night. The ultimate question then is: where could the blood have come from?

The defence suggested that the blood drops seen at the front of the door and the blood stains seen at the sink in the toilet room of the Sokale Nakamal may have come from the monthly period of a woman. The only female person who was seen at the Sokale Nakamal on the night of 20th August 2006, was the defendant herself but she was dressed with a long sleeves cold shirt and a black trousers and was standing for 5 seconds in front of a door of the Nakamal. There was no evidence of her standing there undressed nor that



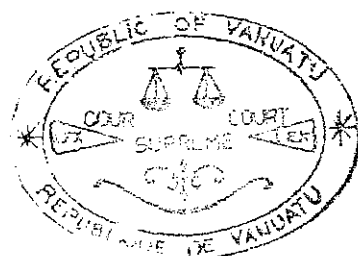
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she was standing there for many hours. Further, there was evidence that she sat on a stool in the Nakamal but there was no evidence of blood found from where she sat for 2 minutes in the Nakamal in the event that her monthly period arrived unexpectedly. As to the blood stains seen at the bottom of the sink, it is very unlikely that it was from a monthly period of a woman. The sink is commonly used to wash hands after the use of the toilet. The blood was not found in the toilet. It was found in the bottom of the sink. This suggestion is irrational and without factual basis. It is rejected.

The defence suggested also that the blood may have come from an animal like a dog. It is very unlikely that, on the evidence before the Court, the blood seen at the Nakamal was the blood of a dog for the following reasons: first, there was no evidence of a dog or any other animal seen at Sokale Nakamal on the night of 20 August 2006 standing at the place the defendant was standing for 5 seconds that night; second, as a matter of common sense, no animal be it a dog ever used the human toilet; third, it is difficult to apprehend how an animal like a dog will use a sink used by human beings to wash their hands in the human beings' toilet room. That suggestion is baseless and irrational. It is also rejected.

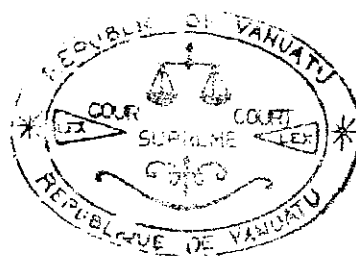
The defence Counsel further submitted that the prosecution failed to take blood sample of the victim to make a scientific analysis with the blood stains at Sokale Nakamal to the extent that without such analysis, it would be too risky to infer and accept that the blood stains found at Sokale Nakamal belongs to the deceased girl. In essence, the prosecution submitted in response that the court could convict the defendant even if the blood samples were not scientifically analyzed.

It must be said that scientific proof through the process of sample analysis of blood and fingerprint will certainly improve the criminal justice system. In some cases, scientific proof is the only way to secure the conviction of an accused person and in that sense it brings in more certainty. However, scientific methodology of proof cannot replace the legal requirements. In criminal trials, the law is that the prosecution must prove each and all the



essential elements of the offence charged against an accused person on the criminal standard of beyond reasonable doubt as I have defined those words in the early part of this Judgment. The standard is not of absolute certainty otherwise the criminal justice system will be inefficient as it will be impossible to secure a conviction on such a standard. In the present case, the evidence of blood stains at Sokale Nakamal, is a piece of evidence but it is not the only evidence in this trial. There are other pieces of material evidence adduced by the prosecution. This case is not the type of case where the failure by the police and the prosecution to analyze the blood sample and the fingerprint (whether or not the support facilities and resource exist) will be fatal to the prosecution case. This case is advanced by the prosecution on the basis that a murder had been committed. There is evidence of a dead body. There is no direct evidence of the murderer. Therefore, the prosecution case is essentially based on circumstantial evidence. The blood stains at the Nakamal is a strand of the cord if I may use the analogy of a rope used in the (English) case of R v Exall (1866) which was referred to the Court by the defence Counsel, Mr. Laumae, in his final submissions. In the circumstance of this case, the prosecution must prove that the blood stains at Sokale Nakamal was brought there by the defendant as alleged and whether the blood stains were associated with the killing of the deceased girl on 20th August 2006 based on the evidence taken together as a whole and if the judge, as the judge of fact, is satisfied that the defendant is proven guilty beyond reasonable doubt, it is his duty to convict the defendant without the scientific analysis of the blood sample.

The defence finally submitted that the prosecution failed to take fingerprint on the clam shell and the blood sample on the shell with that of the victim. But thereafter, the defence Counsel provided himself the answer when he acknowledges that this is not an issue to rule out the clam shell as it is a possible weapon used in the crime. This is consistent with the concession by the defence Counsel that on the evidence adduced, the prosecution has proved the two (2) other elements of the offence of Intentional homicide causing death on the required criminal standard, namely: that the act caused on the deceased girl on 20th August 2006, was unlawful and intentional and it



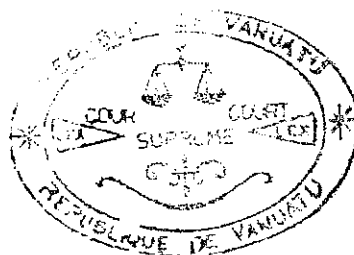
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caused her death but that the defendant is not the perpetrator of the unlawful act.

At the end of the trial, the evidence taken together as a whole, is overwhelmingly against the defendant, Nadege Koroka. On the basis of the proven facts upon which rational inferences were drawn, the only rational conclusion which is left to the Court is that the defendant, Nadege Koroka, was the woman who assaulted Kathia Tom with a clam shell, on the night of Sunday 20th August 2006 between 7.00PM and 7.30PM o'clock at Esmie Roy's house in Luganville, Santo. It was more probable than not that the defendant arrived at Sokale Nakamal after the assault. Jimmy and Micah gave evidence that the defendant arrived at the nakamal: "samples long 7.00PM o'clock." This approximation in terms of the time of the defendant's arrival at the nakamal could be explained on the evidence before the court. It was clear from the witnesses in Court that none of them had a watch on during the trial. They, however, referred to the defendant coming at the nakamal around this time based on their experience of how the nakamal operates on a Sunday evening in Luganville:

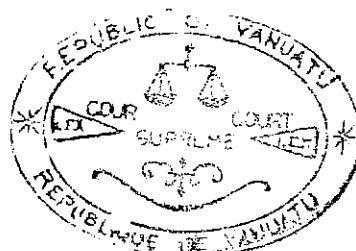
- It was a Sunday evening;
- It was quite;
- There were very few customers;
- One customer came and left; another came and left;
- When the defendant arrived there were about 3 customers;
- The first kava bucket had finished;
- Micah squeezed kava for the next bucket.

On the evidence, the defendant was seen at 6.00PM o'clock with a white T-shirt and black trousers; but when she arrived at Sokale Nakamal, she was wearing a black or dark blue long sleeves cold shirt. It was highly likely rational to infer that she was wearing her black or dark blue long sleeves cold shirt during the assault at Esmie's house on 20th August 2006 between 7.00PM and 7.30PM o'clock. On the evidence, the assaulting woman used the clam



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shell with her hands to cause the stabbed wounds on the head including the cut at the snuffbox area of the left forearm. It was not irrational, on the contrary, it was very highly likely, as a matter of common sense, that on the basis of the evidence of the cut of 2 cm deep in the snuffbox area of the left forearm, blood would splash on the sleeves of the cloth the assaulting woman was wearing at the time of the assault. The evidence is that the defendant, Nadege Koroka, was wearing a black or dark blue long sleeves when she stood for 5 seconds in the front of a door of Sokale Nakamal. This would rationally then explain the drops of blood at the front of the door as Kathia's blood splashed on the defendant's clothing as found during the infliction of the serious stabbed wounds (lacerations) on the head and more particularly, during the cut of 2 cm deep on the artery of the left forearm of the deceased. At the front of the door, the defendant was standing for 5 seconds. She was stationary. The blood which was splashed on her clothing, dripped downwards as gravity would pull excessive blood downward. This would rationally explain the finding that the blood that could have been on any part of her body, would have been on the sleeves of her cold shirt and dripped there as she was stationary. At the Sokale Nakamal, the defendant's actions showed that she was in a hurry. The defendant's next movement was that she walked from where she was standing to the door and into the nakamal's, drunk water from the jag for 2 seconds. There was no evidence of drops of blood from the concrete into the nakamal. This was because the defendant's body was not stationary but it was on the move. The defendant's next movement was that she sat down on the stool for 2 minutes. There was no evidence of blood where she sat. The blood could not have been on her back side. This is consistent with the evidence of Ishmael Tabianga that the chasing woman assaulted the other woman in front of her from her back. The chasing woman lifted her hands and threw them on the back of the one in front. The way Ishmael described the movement of her hands showed she was holding an object. This was also corroborated by the evidence of Dr Wari on the medical examination of the dead body. On the evidence, it is very highly likely that the defendant was facing the spurt of the blood. Blood would be more likely be on the sleeves of her black or dark blue cold shirt and other part of her clothing than the part of her trousers from her backside. Furthermore, when one sits

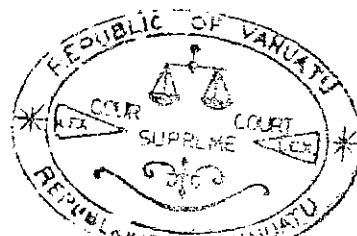


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down on the stool, it is part of the common sense, that one does not hang his or her hands but one puts the hands in front of him or her. This is more so for a woman. It was highly likely that that was what the defendant did when she sat on the stool in the nakamal. This was highly likely the reason why there was no evidence of blood at the place she was sitting at the nakamal on 20th August 2006.

This was just about 2 minutes during which she asked Jimmy about Velina and as the evidence showed Velina was at the hospital. The defendant did not want to drink kava at Sokale Nakamal. She asked Jimmy that if Velina came at the nakamal, Jimmy will tell Velina to follow her at Steven Nakamal; but on the evidence from Micah, she would have been already at Steven Nakamal. Steven Nakamal, on the evidence by the agreed sketch plan, is located on the road toward the Airport. She seemed to be concerned and disturbed about something. She could not mentioned the name of Micah in full. It was then that Jimmy approached her to query about what she wanted to say that she then got up from where she was sitting. After the query, Jimmy told her that Micah was behind. On the evidence, she was concerned about something and she was in a hurry. She then went in the toilet room. A sink was in that room. Others may have used the toilet room that night but she was the last person to go into the toilet room that night before she left. There was no evidence of her returning into the nakamal and said that she had seen something in the sink. The only rational inference that is left is to find that it was highly likely that the defendant may have used the sink that night to wash down the blood on her black or dark blue long sleeves cold shirt. As the evidence shows, she was in a hurry; her mind was disturbed and she seemed to be concerned about something. In this context, it was only rational to find that she did not check that whatever she washed down in the sink, the sink was not completely washed it down. Blood had been caught in the rubber at the bottom of the sink as alleged.

It is finally rational to find on the bases of the inferences drawn on proven facts that the blood found and seen at Sokale Nakamal in the morning of Monday 21st August 2006, was associated and connected with the assault, the serious stabbed wounds (lacerations) on the head, the multiple stabbed



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wounds on the left forearm and in particular, the cut of 2 cm deep in the snuffbox area of the left forearm of Kathia Tom., causing her death on 20th August 2006.

I am, therefore, satisfied beyond reasonable doubt on the basis of the unchallenged evidence, I have before me through out the process of this trial, that the prosecution has proved each and all the essential elements of the offence of Intentional Homicide, contrary to Section 106(1)(a) of the Penal Code Act [CAP.135] on the criminal standard of beyond reasonable doubt, against the defendant, Nadege Koroka.

I accordingly believe that the evidence taken together as a whole compels the following finding which I now make:

That on or about 20 August 2006, between 7.00PM to 7.30PM o'clock, Nadege Koroka caused the death of Kathia Tom, at Esmie Roy's house at Fiberglass in Luganville, Santo.

VERDICT

I find, the Defendant, Nadege Koroka, guilty of the offence of Intentional homicide, contrary to Section 106(1)(a) of the Penal Code Act [CAP.135].
The defendant, Nadege Koroka, is accordingly convicted of that offence.

DATED at Luganville, this 8th of December 2006

BY THE COURT

Vincent LUNABEK
Chief Justice

