

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

Criminal Case No. 09 of 2009

**PUBLIC PROSECUTOR
V.
SORCIE NOAL**

Coram: Justice N. R. Dawson
Counsel: Mrs. V. Laumae for the prosecution
Mr. J. Kausiama for the Defence
Date of Hearing: 3rd – 4th May 2010
Date of Decision: 5th May 2010

VERDICT

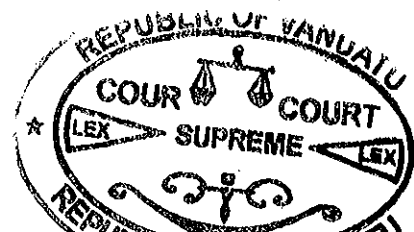
1. Mr. Noal, we have just completed a trial where you have been charged with one count of Intentional Homicide contrary to section 106 (1) (a) of the Penal Code Act [Cap.135]. The count alleges that you caused the death of Kerry Kalo by an unlawful act, on 20th December, 2008. Section 106 (1) (a) says:-

"Intentional Homicide

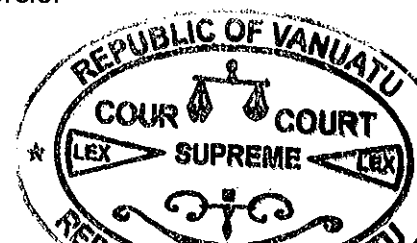
106 (1) No person shall by any unlawful act or omission intentionally cause the death of another person.

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

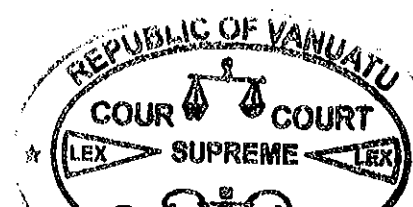
2. In every trial the burden of proof or the onus of proving the charge rests on the Prosecution. That onus remains on the Prosecution from the beginning to end. An accused person is not required to give or call evidence. In this case the defence chose not to call evidence which is your right. The onus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



4. The essential elements the prosecution must prove for the charge are:-
 - (1) That Kerry Kalo died on the 20th December 2008.
 - (2) That the accused committed an unlawful act that caused the death of Kerry Kalo.
 - (3) That the accused intentionally caused the death of Kerry Kalo.
5. During the trial the Court had submitted to it an "Agreed Facts" statement. That statement agrees that Kerry Kalo died on 20th December 2009, that the cause of death is severe multiple injuries to the body and head of the late Kerry Kalo and that the report of Dr. Sarah Parson , a qualified Pathologist is tendered to the Court as evidence by consent of both counsel.
6. A Ruling on Vira Dire by Justice Butler dated 13th May 2009 ruled that the Police statement dated 21st December 2008 by the Defendant Sorcie Noal was admissible evidence in this trial. That Police statement was admitted as evidence during the trial by Corporal David Hilton.
7. Evidence was given during the trial by Mr. Obed Kalo and Mrs. Ruth Kalo, the parents of the deceased, Kerry Kalo. Their evidence established that Kerry Kalo was 14 years old as at 20th December 2008, that he left home at approximately 4.30 am that morning wearing army shorts and a polo shirt, carrying a black bag with his Daily Post newspaper uniform in it. He also had with him his red I-pod and VT 2,000 in cash. Both parents when called to see the body of a young lad that had been found near some banana trees recognised him as their son, recognised the army shorts he was wearing, the polo shirt that was wrapped around his head, and the black bag with the Daily Post uniform in it.
8. Mr. Ben Kasuly gave evidence and said that on the morning of 20th December 2008 he arose at about 6.00 am and while getting ready for work said "good morning" to Sorcie Noal as he walked past. He said that Sorcie Noal told him that he had forgotten something in the stand of banana trees and he went to get it. He said Sorcie Noal came back 2 or 3 minutes later and said he had found the body of a young boy there.
9. Mr. David Nalauas said in evidence that he returned to his home in Blacksands at approximately 6.00 am 20th December 2008, after finishing a night shift at work. He says he put his things down in his house and then went straight to the shop to buy bread. On the way to the shop, he saw Sorcie whom he knows as he is related to him. He thought Sorcie looked drunk, and was frightened as when Sorcie is like that he "talks too much". He hid in a nakamal and saw Sorcie from a distance at 3 to 5 metres, go past holding on to the arm of a young boy, He said that the young boy was crying. He recognised the young boy but did not know his name. Later when he heard that a body of a young boy had been found, he went to see it, and recognised the body as the same young boy he had earlier seen with Sorcie.



10. Mr. Miriam Jack said in evidence that she worked in the Accounts Section of the Daily Post. She said she saw and spoke with Kerry Kalo on 19th December 2008 and he showed her his small, square, red-coloured I-pod. He said that he would bring it with him the next day to record songs upon it.
11. Inspector Jack Tallis was part of the investigating team of detectives concerning the death of Kerry Kalo whose body was found at Black sands. He assisted in interviewing a number of witnesses and was present during the police interview with the Defendant. He said that he received a red I-pod from a witness who said he had got it from Sorcie Noal. He also said that during the police interview Sorcie Noal admitted to killing the young lad. He said that although the Defendant had used the word "killem" which in the Bislama language means hit or strike, in the context in which the Defendant used the word, he took the Defendant to mean "killem ded", which means to murder.
12. Corporal David Hilton who gave evidence was the case officer regarding the death of Kerry Kalo. He also took the statement from the Defendant.
13. The Defendant statement says that he went to a dance and went home about 4.30 am on 20th December 2008. While walking he met a young boy at the ready-made kava bar. The young boy went with him only because the Defendant was holding his hand firmly. They followed the path past the nakamal and went into the grass, where he killed the young boy. The Defendant said he hit the young boy on the back of the head with a manioc branch then when he fell, the Defendant took the young boys shirt and tied it to block his mouth. The Defendant bent over, grabbed the young boys head tightly and twisted it, breaking his neck. The Defendant heard the young boys neck crack and saw his eyes roll back. The Defendant says he then carried the body of the young boy and put it near the trunk of a benoa tree close to a stand of banana trees. The Defendant noticed that the young boy was wearing short army trousers, and placed him lying down on his back. The Defendant gathered some grass, covered the body and placed a stone on top of him. He then went home to sleep. The Defendant said he did not know why he killed the young boy.
14. Mr. Imo Teeta said in his evidence that he had known the Defendant for a long time. On the morning of 20th December 2008 he went to see the Defendant and found him asleep. He talked to the Defendant later when he was awake. The Defendant told him that he wanted to see about an I-pod and went to the banana trees to get it, and came back with it. Mr. Teeta took the I-pod from the Defendant and took it home. Later Mr. Teeta handed the I-pod to a C.I.D officer. Inspector Tallis said in evidence that he had shown that I-pod to Miriam Jack who identified it as belonging to Kerry Kalo.
15. The Pathologist report notes various cuts and bruising to the head, body and neck of the victim. In particular it notes fractures to ribs 3 to 6, haemorrhage with in the central sternum and says section of the mid brain and cerebellum showed focal subarachnoid haemorrhage. The cause of death is due to multiple injuries. It says that the mechanism of death may include neck




compression, abnormal cardiac arrhythmia following a blow to the chest or head injuries.

16. The Defendant chose not to give or call evidence and therefore he has not denied the content of his Police Statement.
17. I find that the Prosecution witnesses were all credible and reliable. The only area where they were imprecise was in their evidence relating to the times of certain events. It must be noted that none of them wore watches and all made their own estimates of the times they referred to in evidence.
18. The evidence the witnesses gave wove a consistent story of what happened on the morning of 20th December 2008. The Defendant's Police statement was also consistent with the evidence of other witnesses. His description of how he caused the death of the victim correlates with the report from the Pathologist. The stone referred to by the Defendant that he placed upon the chest of the victim was produced as an exhibit in the trial. It is a large, heavy hunk of concrete that could easily have caused the injuries to the chest area of the victim referred to in the Pathologists report.
19. I am satisfied to a standard of proof of beyond reasonable doubt that the prosecution has proved all of the elements of the charge against Mr. Noal and I therefore find him guilty as charged.
20. You have the right to appeal this verdict. For any appeal you must lodge a notice of appeal within 14 days of today's date. A pre-sentence report is ordered to be prepared by the Probation Service prior to sentencing. You are remanded in custody until 10.00 am, 18th June 2010 when you will be sentenced in this Court.

DATED at Port Vila, this 5th day of May, 2010.

BY THE COURT


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N. R. DAWSON
Judge.

