

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

Criminal Case No 17/2060 SC/CRML

**PUBLIC PROSECUTOR**

**V**

**PHILIP JIMMY**

**Before:** *Chetwynd J*  
**Hearing:** *26<sup>th</sup> to 28<sup>th</sup> February and 1<sup>st</sup> 2<sup>nd</sup> 6<sup>th</sup> and 8<sup>th</sup> March 2018*  
**Counsel:** *Ms Mackenzie and Ms Taiki for the Public Prosecutor*  
*Mr Kausiama for the Defendant*

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**JUDGMENT**

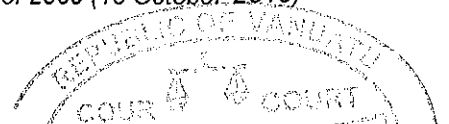
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1. The defendant Philip Jimmy is charged with intentional homicide contrary to section 106(1)(b) of the Penal Code [Cap 136]. The particulars allege that on 16<sup>th</sup> June 2017 he unlawfully assaulted his partner Alice Karris with the intention of causing her death. The penalty for such an offence is 20 years if the homicide or murder is not premeditated or life imprisonment in the murder is premeditated. The defendant is charged with the premeditated murder of Alice Karris. Section 106(2) defines premeditation as a decision made before the unlawful act, "to make a homicidal attack on a particular person or on any person who may be found or encountered".

2. There is no dispute that the prosecution must prove, and prove beyond reasonable doubt, the defendant committed an unlawful act, that the unlawful act was done with the intention of causing the death of Ms Karris (or that he was reckless as to whether the act would cause her death), that the unlawful act did cause her death and that prior to the unlawful act he had decided to make a homicidal attack on Ms Karris. This four part test was formulated by the Chief Justice in the case of *PP v Jack Nalau*<sup>1</sup>.

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<sup>1</sup> *Public Prosecutor v Nalau* [2010] VUSC 181; Criminal Case 143 of 2009 (18 October 2010)



3. The defendant entered a plea of not guilty and was tried over a number of days. Evidence was taken from over 20 witnesses. However, it became clear the defendant admitted assaulting Ms Karris that night. There was no formal admission that she died but the fact of her death did not appear to be disputed. What was contested was what the defendant did or did not intend and whether his assault on Ms Karris was a premeditated "homicidal attack".

4. Rather unusually then it would make sense to look first at what the defendant admitted. In his evidence he said that on 15<sup>th</sup> June last year he finished work and went to pick up his partner Ms Karris from her workplace. Before he picked her up he had taken some kava with a work colleague and then went to Club 21 where he had a beer. He was not sure when he arrived at Club 21, he thought it might be about 8:30 or 9 o' clock. He then went to the Blue Marlin Club where Ms Karris worked.

5. His evidence was that he talked to Ms Karris and they went to the Grand Casino. When they got there the defendant and Ms Karris were drinking beer and Ms Karris was also playing on the pokie machines. They met Dr Mera who was with two friends. Dr Mera calls the defendant his small brother. The defendant and Ms Karris were sometimes in that group sometimes on their own. The defendant does not know how much Ms Karris had to drink. His evidence was that he had 6 or maybe more beers that night. He says he was drunk. At some stage the staff at the Grand Casino called time and the defendant left with Ms Karris. He says he intended to get on a bus to go home. He was tired. He was therefore surprised when he realised the bus stopped at Club Planet 107 out near Tagabe roundabout. He thinks he must have gone to sleep when he got on the bus. He agrees that Ms Karris, Dr Mera and the two others were at Club 107 too. He says that he did not go into the club but he doesn't know if any of the others did. The defendant's evidence was that he argued with Ms Karris. He thought Club Planet 107 was not the place for them as they spending too much money. The defendant cannot remember how long they were there outside of the club but he and Ms Karris got on another bus to go home. He says he went to sleep again and the bus stopped at the Tana Russet centre. According to the defendant the bus driver told them to get out because he was sick.

6. Ms Karris is then said to have asked for the defendant's ATM card which he handed over. He then sat down on the ground by the WWW Store Takeaway. Ms Karris went somewhere and then came back. She wanted to go to the toilet and so

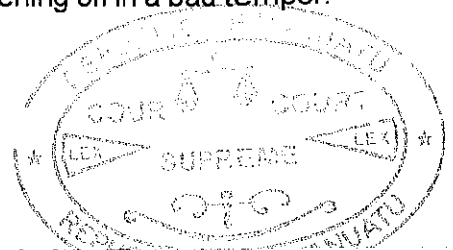


went to look for somewhere quiet at the side of WWW Store. When she next returned the defendant says they rowed. He slapped her once and punched her twice to the neck and head. She fell down and blood came out of her mouth. After she fell down the defendant called to her and "tapped" her cheeks to try and revive her. He thought she was drunk and had passed out. He could not recollect how long they were there but she did not speak or move. He stopped a bus and got the driver and a passenger to help him put her in the bus. They then drove home. Outside the gate to the apartments the bus stopped. He asked the driver to turn off the lights so people could not see they were drunk. He lifted Ms Karris out of the bus and sat her next to one of the gate posts. He expected her to wake up. She did not do so and as it started to rain he left her there and went to unlock their apartment. He then returned to the gate and carried her in. He remembers seeing a neighbour and explained that Ms Karris was drunk.

7. He put Ms Karris to bed and she was sick. The vomit contained blood. She said she was cold and asked for a blanket. Her voice was rough or raspy. The defendant then went to sleep. When he later woke up Ms Karris did not respond when he spoke to her and so he put her in the recovery position and called ProMedical. He remembers some of the conversation with the ProMedical staff and being told Ms Karris was dead.

8. The defendant therefore admits assaulting Ms Karris outside of the WWW store and takeaway. It is the assault which the prosecution say is the unlawful act which resulted in the death of Ms Karris. The defendant does not accept the assault resulted in death and denies any intention to cause the death of Ms Karris or any premeditation. His version of events is of a lover's tiff where there was limited violence.

9. A vastly different complexion is put on the events of that night and early morning by other evidence. When cross examined the defendant agreed he spoke first to a security guard at the Blue Marlin. He was told Ms Karris would be coming out when she finished work. Instead of waiting the defendant telephoned her and complained that she should have finished work at 9:30 and was it now close to 10 pm. He admitted he swore at her over the telephone. He admitted he was cross because Ms Karris was late and he did not like the attitude of the staff she worked with. He felt they were disrespectful to him. The defendant accepts he started the evening off in a bad temper.



10. Under cross examination the defendant said he apologised to Ms Karris for swearing as they walked down to the Grand Casino. They maybe took 5 to 10 minutes to walk from the Blue Marlin to the Grand Casino. The defendant agreed they arrived there between 10 and 10:30.

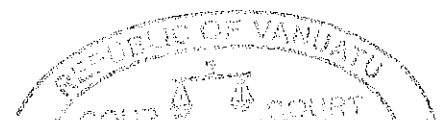
11. Dr Mera gave evidence. He said he arrived with his friends at the Grand Casino between 12 and 12:30 am. He saw the defendant and as they hadn't seen each other for a while he thought it would be good to spend some time together. They sat and made small talk whilst drinking beer. Sometime later the defendant and Ms Karris moved away from the group and were talking to each other. Dr Mera left with everyone else when the staff at the Grand casino called time. As he was leaving he became aware of the defendant speaking in a loud voice to the security staff. He was concerned there was going to be a fight and so spoke to the defendant and told him to "cool down".

12. Other witnesses gave evidence about the defendant's behaviour at the Grand Casino. Security guard Philip Seresa said he had to ask the defendant and Ms Karris to keep quiet as they were rowing. The defendant exhibited an aggressive manner. He seemed to want to leave but others wanted to stay. The witness confirms that a still taken from security cameras shows the defendant and others leaving. The time was then 2:24 am on the morning of Friday 16<sup>th</sup> June. The exact time is known because the image from the security camera is date and time stamped.

13. Esther Kalsakau is a VIP hostess from the Grand Casino. She knew Ms Karris as they had worked together in the late 1990's. She also knew the defendant. She heard the defendant swearing at Ms Karris during the early hours of the morning. There was an argument about buying more drinks and when "last orders" was called and so the witness spoke to the security guard Mr Seresa. She heard the defendant swearing at Mr Seresa but she did not hear exactly what was said.

14. From this evidence it is clear that the defendant was in an agitated and belligerent state of mind whilst at the Grand Casino. He was also clearly affected by alcohol.

15. Dr Mera's evidence also dealt with what happened after the group left the Grand Casino. He says that the defendant appeared to calm down and Ms Karris suggested



they go to Club Planet 107. He said in cross examination that he saw the defendant was affected by alcohol but he didn't think he was so drunk as to be out of control. Dr Mera thought it was probably the first time he had seen the defendant act the way he did, speaking in a loud voice and shouting.

16. Dr Mera then tells how the party got on a bus and went to Club Planet 107. When they arrived he saw the defendant and Ms Karris were slow to follow the others over the road to the night club. He saw that Ms Karris was trying to pay with a VT5,000 note and the driver did not have sufficient change. Dr Mera paid the fare. They then crossed the road and went towards the entrance. He saw someone he knew standing on the side of the road. This was Mr Aaron John. At that time he heard the defendant shouting again. He was saying he did not want to go into the night club, he didn't want to go into such a place and he was not that kind of man. He said he did not want to listen to loud music he wanted a quiet drink. Dr Mera then approached him and again told him to calm down and lower his voice. Ms Karris spoke to the defendant too and then moved behind Mr John. The defendant then shouted at Mr John saying words to the effect that's my wife let her go.

17. Mr John confirmed some of this evidence. He was standing on the road side trying to get a bus. He heard the defendant say to Ms Karris that if she wanted to go to the nightclub then she was a prostitute. Mr John was concerned at what was happening and asked Ms Karris if she was the defendant's wife. She answered no but said he was her boyfriend. Mr John said that she had better go and see him then. The witness then got on a bus.

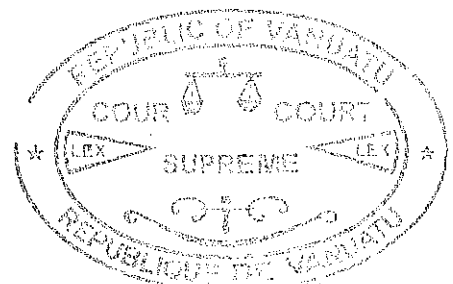
18. Dr Mera's evidence covered what happened next. He went and spoke to the defendant yet again. The defendant appeared to calm down and said something like "*Bro it is all straight*". He then said they were going to go home. Dr Mera told the defendant he should stay quiet at home. The witness then turned to go into the nightclub and was walking away from the defendant and Ms Karris. He heard her cry out "*Daddy Roddy*" and turned to see what was going on. He saw both of them in a bus and he heard the door slam. He ran to the bus and saw the defendant standing in the doorway. He could not see Ms Karris but the defendant appeared to be pushing her or fighting with her.



19. There is no independent evidence as to what went on in that bus. There is no explanation as to why the defendant and Ms Karris ended up at the WWW Store close to Tana Russet. The couple's home was at Kawenu which is on the Malapoa sea side. Driving from the Tagabe direction, the bus should have turned off the main road into Port Vila centre long before it reached Tana Russet. The only proffered explanation is that from the defendant when he says he went to sleep. However even that explanation does not assist as to why, if the driver was asked to take them home to Kawenu, he drove past the Malapoa junction.

20. The Court heard from Monsieur D'Somerville. He lives behind the WWW Store and Takeaway. He told the court that he was woken between 3:30 am and 4 am by someone saying "stop". He then heard dogs barking and then a woman screaming. He heard two screams, the first very loud and the second weaker. The dogs were continuing to bark and he heard a male voice trying to quieten them. He shone a light outside but could not see anything. He got up at about half past 5 or 6 o'clock. He went to get some bread from the bakery in Tana Russet. As he was passing WWW store he saw a large pool (about a ½ metre in diameter) of thickened blood on the concrete forecourt.

21. An important prosecution witness was Mr Anthony Misak. He was driving his bus from the Voodoo bar to First Bucket. He had picked up a passenger who was a security guard at the Voodoo Bar. He was driving past Tana Russet Plaza when something caught his eye. He saw a man in the bus headlights. The man looked surprised and he thought something was wrong. He said as much to his passenger, who was sitting next to him on the front passenger seat. He turned the bus around and drove to the Moorings area and turned around again. As he approached WWW Store (on his left) he saw the man again. The man approached the bus and said someone was down there. He asked for their help to get his wife home. He said he had hurt her. He had hit her once. Mr Misak got down from the bus with the security guard and followed the man to where someone was lying. He saw it was a woman lying on her back. He could see her face was swollen. She did not move or make a noise. He couldn't hear her breathing. Mr Misak saw blood on her face and clothes. When the woman was lifted up he heard a gurgling noise and he saw more blood coming out of her mouth or nose.



22. The man was carrying the woman with the assistance of the security guard. The man had her head and the guard her feet. They placed her in the bus laying full length along the first row of seats. Her head was towards the offside or driver's side and her feet were at the passenger side. The man got in and sat on the same seat as the woman and Mr Misak was sure that the man was actually sitting on the woman. He smelt faeces.

23. The man was talking to him and the security guard but he didn't hear everything that was said. He did hear the man say he had a licence to kill. He sounded angry. When the security guard got out at First Bucket Mr Misak drove the bus towards Kawenu. The man said he wanted to get out to see if he had killed the woman. He also pointed out a tree and said stop so he could hang her from it. He sounded very angry. Mr Misak said that he shouldn't do that but just go home and sort it out. The man complained that the woman and her children were a heavy financial burden and that she spoke to white men at the saloon.

24. When they arrived a Kawenu the man told Mr Misak to turn off the lights. The woman had not said anything during the whole journey, had not asked for help, had not uttered a sound and Mr Misak thought she was dead. He became scared of what the man might do. The man got out and took hold of the woman's legs and pulled her from the bus. Her head hit the bus floor, then the step and then the ground. She did not make any sound. The man told Mr Misak to drive off and come back the next day to collect his fare.

25. Mr Misak was closely cross examined but did not vary his evidence. He repeated that the woman's face was full up with blood and swollen. He said she was in a sorry state and had been badly beaten.

26. The security guard passenger, Mr Avock, was called to give evidence. He confirmed what the bus driver had said in evidence. He heard the driver say that there was a man or a dog on the grass and he turned the bus around. They pulled up outside a store. He could not remember the new name of the store. The driver asked the man if he was alright. He said, "I'm OK I have hit my wife" and that she was unconscious. The man asked for help and he and the driver got out. He followed the man to where a woman was lying on the grass. She was face up and saw her face was very swollen, her eyes were shut and she was unrecognisable. Blood was coming from her nose.



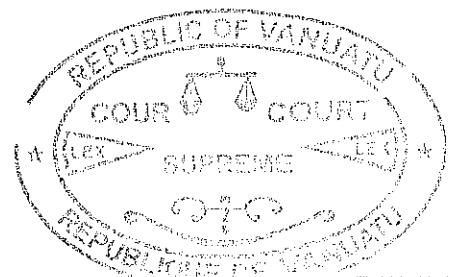
The woman made no sounds at all and she wasn't breathing. The man said he had beaten her but she was unconscious through drink. The woman was placed in the bus as described by the driver. When in the bus he could smell faeces. He did not say the man sat on the woman.

27. The man told them he had had enough of his wife. He was fed up of her and her 3 children. He was the only one working and he had to get rid of her. He was talking loudly and harshly or aggressively. Mr Avock was scared because of the man's attitude. Mr Avock too was cross examined. The only deviation from his evidence in chief was on the question of whether the man had said today I will kill her or one day I will kill her. He thought he told the police the man said one day I will kill her. He agreed the man appeared drunk.

28. Other witnesses were called by the prosecution but they did not add a great deal to the case and their evidence generally went unchallenged. Some of the evidence concerned the defendant's previous violence towards Ms Karris. There is no need to consider that evidence because the defendant admits that there had been other incidents and that he once hit Ms Karris with a metal bar.

29. The next controversial evidence was from the ambulance driver, Mr Georges Jack, who responded to the telephone call from the defendant. He attended with another paramedic Julie Willie. He described several telephone calls from the defendant. The first one was at 8:33 on the morning of 16<sup>th</sup> June. The caller said that his wife was having problems breathing. Mr Jack sought further information from the caller and was given an address. The caller said he and his wife had been out in a night club drinking and that they had been attacked by a group of men. He was also told by the caller that the caller had put his fingers in her mouth. Mr Jack told him not to as that would not help her breathe. He asked if the patient was breathing and was told that she was but not very well. Mr Jack then got into the ambulance and drove to the address given.

30. On the way some 13 minutes later another call came in. The caller said his wife was getting worse. Mr Jack told the caller he was only minutes away. There was a third call 7minutes later at 8:53.



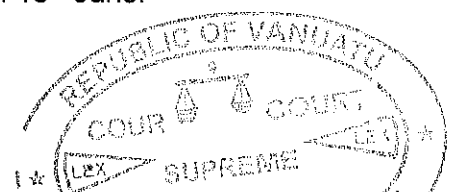


31. On arrival both Mr Jack and his colleague got out of the ambulance. He carried the medical kit and she carried a monitor. They were met by various people and shown where their patient was. Mr Jack later learnt the patient was Ms Karris. The man who had been calling was in the same room and he was crying. It was the defendant. The defendant was asked to leave so that the two paramedics could examine and treat Ms Karris.

32. She was lying on a mattress on her left side. Her face was swollen and there was dried blood on it. There was a plastic bottle in her mouth. Mr Jack rubbed her sternum and spoke to her to see if there was any response. There was none. Ms Karris felt cold to the touch. Mr Jack has several years experience working as a paramedic and in his view Ms Karris had been dead some time. He said that if she had only just stopped breathing she would have been warm. When the heart monitor was attached to Ms Karris it showed the cardiac rhythm was asystole, that is, there were no ventricular contractions, no heartbeat. He told the defendant that there was nothing they could do for Ms Karris. He then contacted the police. At the police officers request the body of Ms Karris was conveyed to hospital. In cross examination Mr Jack confirmed that as there was no bleeding, part of his examination of Ms Karris was with bare hands. He also said there was swelling but no other injuries to the back of Ms Karris's head. He was unable to say exactly how long she had been dead.

33. Dr Trevor Cullwick gave evidence. He is a consultant at Central Hospital Vila and has some 14 years experience. He examined Ms Karris on 16<sup>th</sup> June. It was an external examination only. In his view the injuries apparent on Ms Karris's body were not likely to have been caused by a single blow. He accepted that similar injuries could have been caused by, for example, walking into a door or falling. He was of the opinion that the injuries were caused by multiple applications of force but was unable to say whether they were caused by punching or kicking. Kicking would be more forceful than punching.

34. Evidence also came from Dr James Kalougivaki. He is a forensic pathologist and is the Chief Pathologist from Fiji. He is very experienced in his field. Dr Kalougivaki was asked to provide an opinion based on the autopsy report prepared by Dr Crystal Garae. Dr Garae was, for reasons which are not relevant, unable to present her report in person. Dr Garae had carried out the autopsy at 7 pm on 18<sup>th</sup> June.



35. Based on his reading and consideration of the report and looking at Dr Garae's descriptions following her external examination, Dr Kalougivaki was of the opinion the blunt force injuries found to the face and neck of Ms Karris had been caused by multiple high energy blows. His opinion was reinforced by Dr Garae's findings following her internal examination. Dr Kalougivaki was shown photographs taken during the autopsy and whilst some were not of very high quality he was with them, and in conjunction with the written descriptions, able to be confident about his opinion.

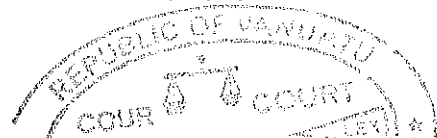
36. He was of the firm opinion that the widespread and severe injuries were the result of severe blunt force trauma over the skull. The blows extended from the front to the back of the skull. He pointed to the findings in the report :

*"The internal examination showed there was extensive bleeding and blood clots under the covering of the skull (subgaleal haemorrhage and hematoma). There was extensive bleeding and blood clots under the outer covering of the brain (subdural haemorrhage and hematoma). There was haemorrhage and hematoma on the external surface of the thyroid gland and the muscles of the front (anterior) part of the neck. The left lung was collapsed."*

In Dr Kalougivaki's opinion the injuries described could only have been caused by high energy multiple blows, stomping or even severe manual strangulation. He was less certain about his opinion of the likely time of death that would result if such injuries were left untreated. With so many possible variables the doctor was only able to say death could have occurred within an hour or within 2 to 3 hours of the assault. He was asked about the smell of faeces mentioned by earlier witnesses and said that loss of bowel control would occur with severe unconsciousness or death. Loss of bowel control would occur peri mortem (very close to death) or post mortem (after death).

37. In cross examination the doctor confirmed that the blows inflicted were not restricted to a frontal attack. There was evidence of multiple blows from front and rear. He agreed injuries could have been caused by falling but that the person would have to fall several times and would have to fall on their front, back and side to cause the injuries visible on Ms Kariss's body.

38. It is clear the evidence available in this case, and in particular the medical evidence, shows that the defendant's portrayal of events as a mere lover's tiff is



untenable and is rejected. The evidence shows, without a shadow of a doubt, that the defendant embarked upon a sustained, brutal and deliberate assault on Ms Karris. There is no doubt in my mind that I am entitled to make such inferences "from proved facts if they follow logically from them" <sup>2</sup>. The proven medical facts very strongly support the inference of a sustained, brutal and deliberate assault.

39. There is no doubt in my mind the injuries caused by the beating inflicted by the defendant on Ms Karris resulted in her death.

40. As to the defendant's intention in respect of the assault, it is of course difficult to establish that from direct evidence. It is difficult to say exactly what was in someone's mind when they do or do not do something. However, there is strong circumstantial evidence available which enables me to reach a conclusion about what the defendant intended.

41. The defendant has put forward several different versions of what happened on the 15<sup>th</sup> and 16<sup>th</sup> of June last year. He told the paramedics that he and Ms Karris had been attacked by a group of men. That was not true. He said (to Messrs Avock and Misak) that he had slapped Ms Karris only once, then he said he had slapped and punched her, but only one slap and two punches. Under cross examination he said he might have punched Ms Karris more than twice but he was drunk so he couldn't remember.

42. Dealing with the drunkenness first, the defendant has used it as a convenient excuse for not recalling what went on. His evidence is that between 8:30 pm on 15<sup>th</sup> June and 2:20 am on 16<sup>th</sup> he drank 6 or more beers. It is unlikely than 6 or even 10 beers drunk over a period of 6 hours would render someone insensible through drink or cause them to forget what had happened. There was also a period between 2:20 am and 3:30 or 4 am when the defendant had nothing to drink. It is accepted that the defendant was affected by alcohol but Dr Mera's unchallenged evidence is that he was not out of control. If he was not so badly affected by alcohol as to be out of control at 2:30 am it is highly unlikely he would be even more affected an hour or hour and a half later.

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<sup>2</sup> *Swanson v Public Prosecutor* [1998] VUCA 9; Criminal Appeal Case 06 & 11 of 1997 (26 June 1998) and *Sokomanu v Public Prosecutor* [1989] VUCA 3; [1980-1994] Van LR 440 (14 April 1989)



43. The defendant also lied to the police about what happened at Club Planet 107. He lied to another police officer when he told that officer Ms Karris had spoken to him during the morning.

44. In the case of Nalau <sup>3</sup> His Lordship the Chief Justice said:

*"Evidence relating to a 'consciousness of guilt' is a form of circumstantial evidence recognised in common law jurisdictions throughout the world. Such evidence can take the form of lies told out of a consciousness of guilt or evidence of flight from the jurisdiction or, as in this case, an attempt to create a false alibi. In England in R v Lucas [1981] QB 720, Lord Lane CJ held that certain lies amounted to corroboration of the prosecution case. His Lordship stated (at 724):*

*"To be capable of amounting to corroboration the lie told out of court must first of all be deliberate. Secondly it must relate to a material issue. Thirdly the motive for the lie must be a realisation of guilt and a fear of the truth. The jury should in appropriate cases be reminded that people sometimes lie, for example, in an attempt to bolster up a just cause, or out of shame or out of a wish to conceal disgraceful behaviour from their family. Fourthly the statement must be clearly shown to be a lie by evidence other than that of the accomplice who is to be corroborated, that is to say by admission or by evidence from an independent witness."*

45. Finally we return to the medical evidence and the inferences properly drawn from it. There is, as I have said, no doubt the defendant viciously punched, slapped, and possibly kicked Ms Karris about the head and neck in a prolonged and deliberate attack. There is even a possibility he strangled her. Of such assaults it was said <sup>4</sup>:

*"The violent attacks and multiples serious injuries on the body of the deceased and the manner as to how they were carried out would justify a more severe charge of premeditated intentional homicide under s.106(1)(b) with a maximum penalty of life imprisonment. I do not understand why you were charged with a lesser penalty by the prosecution."*

The nature of the attack in that case was described thus:

*"... the first defendant immediately swung his knife towards the deceased. The deceased sidestepped the first slash. The First Defendant threw his knife again and incised the left shoulder of the deceased with two of his fingers. Mr Numan told the*

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<sup>3</sup> *Public Prosecutor v Nalau* [2010] VUSC 181; Criminal Case 143 of 2009 (18 October 2010)

<sup>4</sup> *Public Prosecutor v Namuly* [2011] VUSC 5; Criminal Case 114 of 2010 (11 February 2011)



deceased to run but the deceased was unable to due to the injuries. The second defendant went up to the deceased to cut him but the first defendant told him that "yu lego bae me katem hemia fastaem ale bae me jes katem gud hemia". The First defendant walked towards Jackson Numan to cut him but he moved out. The first Defendant then cut the right side leg of Mr Nawio's horse which was standing at that time. The deceased then told Mr Numan to run for his life hence Mr Numan took flight. The second defendant gave chase after Mr Numan but he was unable to apprehend him. The deceased, with whatever life he had left, dragged himself towards bamboo trees. The first defendant went after him, cut his neck almost slitting the entire structure of his neckline and then he cut and sliced his backside and face. The deceased died instantly as a result of the defendant's merciless and hideous acts."

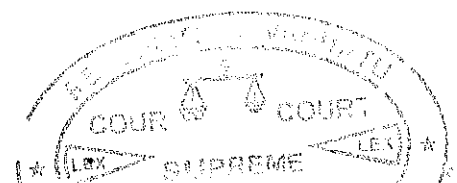
46. As is clear from the above, the defendant in Namuly was not charged with premeditated intentional homicide. His Lordship was dealing only with sentence. However, his comments are not mere obiter because when the matter went to appeal (on sentence) the Court of Appeal said <sup>5</sup>:

*"Without question, the attack on the deceased was brutal, frenzied and sustained. Furthermore, we consider that the circumstances of this case, as we apprehend them, would have well justified a lead charge of premeditated intentional homicide against Jerry Namuly. We express our surprise that Andrew Namuly was only charged with inciting or soliciting the intentional homicide directly undertaken by Jerry Namuly. The overall events of that day, and particularly the way in which Andrew Namuly conducted himself, would have indeed justified a joint lead charge against both Namuly brothers of premeditated intentional homicide."*

47. It is clear that in a brutal, frenzied and sustained attack an accused's intentions can change as the attack progresses. An accused in such an attack can pass from self-defence or instinctive reaction or even quick anger to deliberate and intended homicidal attack. The defendant may have acted out of anger to begin with but the nature and extent of the injuries he inflicted on Ms Karris are such that they show he quickly went to a state of mind where he intended to kill her.

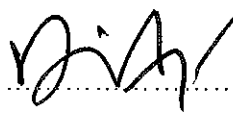
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<sup>5</sup> *Namuly v Public Prosecutor* [2011] VUCA 25; Criminal Appeal 01 of 2011 (22 July 2011)



48. It is not necessary to show pre-planning in order to establish premeditation. Planning would be compelling evidence of premeditation but there can be the latter without the former. What the prosecution need to establish and what they have established in this case is a transition from one state of mind to another. They have established without any doubt whatsoever that the defendant went from a state of mind involving a mere flash of anger or a defensive reaction to a deliberate escalation of violence. The fact that the premeditation may have occurred part way through the assault does not lessen the fact or the effect of premeditation. There is no doubt the defendant made a deliberate choice to continue the savage beating until Ms Kariss was dead or dying.

49. I find the defendant guilty of the intentional and premeditated homicide of Ms Alice Karris. I will adjourn to 22<sup>nd</sup> March at 9 am for sentence.

  
D. CHETWYND  
Judge

