

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

Criminal
Case No. 20/2673 SC/CRML

BETWEEN: Public Prosecutor

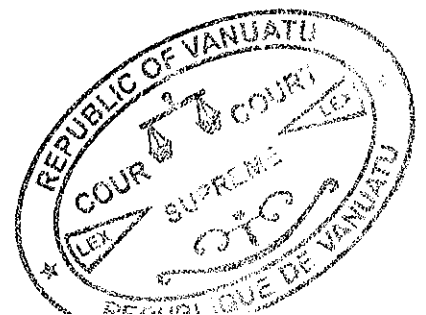
AND: Louris Boihilan
Defendant

Before: Justice Oliver A Saksak
Counsel: Mr Tristan Karae for Public Prosecutor
Mrs Pauline Mailles and Mrs Jane Tari Anu for Defendant
Date of Trial: 24 and 26th March 2021, 13th April 2021, 16th June 2021 and 1st October 2021
Date of Decision: 4th November 2021

VERDICT

Background

1. On the morning of 3rd January 2020, Elina Vira, deceased, a mother of 2 young children was last seen walking to the main road to catch a service bus with the defendant. They intended to go to the hospital for antinatal or dental checks. Elina Vira never returned home to her parents after that hospital visit. Her decomposed body was discovered by a former high ranking police officer on 28th January 2020, some 25 days later. The terrain of the discovery was the rough and bushy edge of the cliff above the Computer World Premises, beneath the TVL Towers on the Joint Court Hill in Port Vila. Her body was discovered covered with dead leaves, rocks and wooden logs.
2. The decaying corps was identified as Elina Vira. The only suspect was the defendant. He was apprehended by the Police back at his home village on Mota Lava after leaving Port Vila on 9th January 2020. He was brought back to Vila and charged with intentional homicide under section 106 1 (b) of the Penal Code Act [Cap135]
3. He denied the charge.



The Trial

4. The Court read and explained the presumption of innocence statement in section 81 of the Criminal Procedure Code Act [Cap.136].
5. The Prosecutions had the high duty of proof beyond reasonable doubt the guilt of the defendant. This is the legal and evidential burden required by section 8 of the Penal Code Act.
6. The defendant was charged under section 106 1 (b) of the Penal Code Act which states:

“106. Intentional homicide

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

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

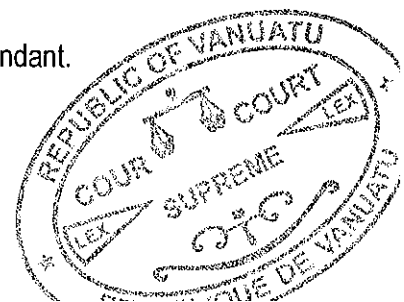
(b) if the homicide is premeditated, imprisonment for life.

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

7. The Prosecution had to prove beyond reasonable doubt the following elements-
 - a) That the defendant caused the death of Elina Vira.
 - b) That he did so by an unlawful act or omission
 - c) That he acted intentionally.
 - d) That he planned the unlawful act or omission.
8. In an attempt to prove these elements the Prosecutions called evidence from 15 prosecution witnesses. Of these three were Police Officers namely PC Alan Moah, PC Jimmy Nimisa and Sgt Tony Berry. The other witnesses were Arthur Caulton Edmanley, Isaac Vira, Winnie Lae, Ben Vira, Patricia Vira, Alice Simon Ken, Betty Sam, Caulton Edmanley Jnr, Meriam Veronica Seo, Wendy Godwin, Hendry Standa, and Jimmy Tasaua.

After the Prosecutions closed its case, defence Counsel made a no-case submission. The Court ruled there was a prima facie case made out by the Prosecution requiring the defendant to make a defence.

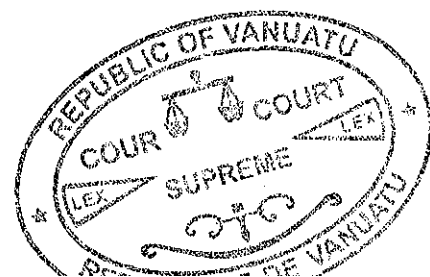
9. Section 88 of the Criminal Procedure Act was read and explained to the defendant.



10. When trial resumed on 1st October 2021 for the defence case, Mrs Aru indicated to the Court the defendant wished to remain silent and not give evidence.
11. The Court issued directions for the filing of submissions as to whether or not the defendant is guilty as charged.

Discussion

12. First, the last date Elina Vira deceased was seen. The evidence of Vira Isaac or Isaac Vira (Father), Winnie Lae (Mother) and Ben Vira (brother) show they all saw Elina Vira last on 3rd January 2020. That she accompanied the defendant to the main road by the Vanuatu Beverage to catch a bus to the hospital.
13. Second, the plan to attend hospital. Vira Isaac's evidence was that Elina had told him she was to accompany the defendant to attend to the dentist to check the defendant's teeth. Winnie Lae in her evidence also confirmed Elina had told her the same story that they were to go to hospital for the defendant to attend to the dentist.
14. Vira Isaac said in evidence Elina had asked that he drop them at the hospital but he could not as he had to pick up the bus driver at the Melemaat, they had to catch another bus. The timing given was around 7 o'clock in the morning.
15. Winnie Lae said she saw Elina and the defendant early morning of Friday 3rd January 2020. She had got up early to fry " kato". Elina asked her for 5 which she took along with her. That Elina told her they were going to the hospital for the defendant's teeth. After they had left she saw the defendant return by himself to the house. She thought it was 4:00pm or 2:30pm. He then packed his bag and left. That they searched for him later that night, found him and brought him back. He spent the rest of the night with them and left again the following day.
16. Ben Vira saw Elina and the defendant walking together to the main road on 3rd January 2020 at 6:45am. He left the house at 6:30am. He arrived first on the road and waited for his father's bus, who had gone to Melemaat to collect his driver. Elina and the defendant came past the witness. He saw them arguing. He thought this was unusual as a sister. He heard them saying



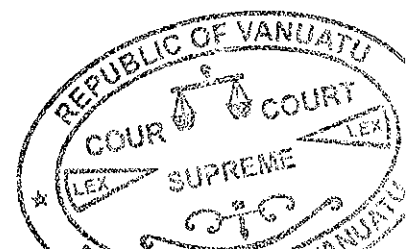
they would go to the hospital. He said his father told them to wait for him but they got on another bus and left earlier.

17. Patricia Vira (sister) told the Court about the defendant's telephone call made to her by the defendant on 2nd January 2020. She was at Paungisu, North Efate on that date. The defendant called her and asked her whether she knew of the man who had affairs with Elina. The witness said she did not know any boy who had had affairs with Elina. This call was made after the group had returned to Port Vila after spending the New Year (No.1) at Paunagisu.
18. Isaac Vira, Winnie Lae and Ben Vira's evidence also confirm that on the evening of 3rd January 2020 the defendant was seen at home in their house alone, without Elina. Then Isaac Vira told the Court about the defendant giving him information he was to travel to the Island on 18th January 2020 but how it became a surprise to him that the defendant left Port Vila on 9th January 2020 instead.
19. Isaac Vira 's evidence went further to show that the defendant rang him by telephone between 4-5pm to tell him that Elina had jumped on a blue bus she stopped opposite the Carrie Shopping. The witness invited the defendant back to the house and assured him that if that is the case that she would return. However upon arriving home at 7:00pm on the night of 3/1/2020, the defendant was not at home. He was informed the defendant had packed his bag and left the house. They then went looking for him at a neighbour's house and took him back at about 9:00pm without Elina. The defendant slept with them that night but he left the house again on 4th January 2020 without telling them where he was going to stay. He rang up the witness again to ask if Elina had returned home yet. He was given a negative response.
20. Isaac Vira's evidence also showed Elina had complained to him about her mistreatments by the defendant and his relatives on the Island resulting in her asking her father to pay for her air ticket to return to Port Vila.
21. Then there is the evidence of identity of the deceased confirming her to be Elina Vira. The evidence of Isaac Vira, Winnie Lae and Patricia Vira confirmed the deceased found by Arthur Caulton Edmandley and the Police on 28th January 2020 was indeed Elina Vira, deceased.
22. In relation to foul play, the Court heard evidence from Sgt Tony Berry, crime scene officer. His evidence was that the body of Elina Vira was covered with dried leaves with three wooden logs.

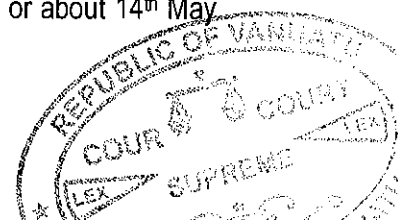


and rocks placed on top of it. The body was laid in a cliff, in a bush well away from any human dwelling, a very secluded area with no access. The body had broken wrist bones and teeth and a torn t-shirt.

23. These evidence establish a degree of foul play.
24. Then there was the evidence showing the defendant's violent behaviour. Meriam Veronica told the Court her assaults by the defendant when she previously co-habited with him. There was a time when the defendant used a knife and an iron chair to assault her. Wendy Godwin and Henry Standa confirmed these violent assaults by the defendant.
25. Then the question of whether the defendant was familiar with the Joint Court Area, Betty Sam, the defendant's sister who lives next to Arthur Caulton Edmandley confirmed in her evidence her brother had lived with her in August 2019 before he left for seasonal work in New Zealand in September 2019. And Arthur Caulton Edmanley confirmed he had seen the defendant in the area at the time.
26. Alice Simon Ken said in evidence she saw the defendant on 8th January 2020 at night. He approached her and asked to spend the night with them. It was strange that he had gone to her house at night as previously he only went during day time. He told the witness he had an argument with his wife (Elina). Then she prepared his bed. She noticed the defendant was restless, he was not free. She said the defendant had gone with his bag. Not long afterwards the defendant's mother-in-law and father-in -law (Isaac Vira and Winnie Lae) arrived and asked to take the defendant back to their house. That was the last time she saw the defendant.
27. Claude Wore made a witness statement on 6/02/2020 but was not called to testify. He did not say specifically the night the defendant came to Alice Simon's house was 8th January 2020. He simply says it was around the first week of January. His evidence if at all, could not support the date given by the Alice Simon being 8th January 2020.
28. Alice Simon said she was certain of the date being 8 January 2020 because she counted backwards from 6th January 2020 when her small brother had arrived from Paama by ship. However she did not name her brother so the police could get his statement to confirm the date to show certainty with the date. Absent confirmations, the correct date the Court accepts is 3rd January 2020 and not 8th January 2020 as stated by Alice Simon Ken.

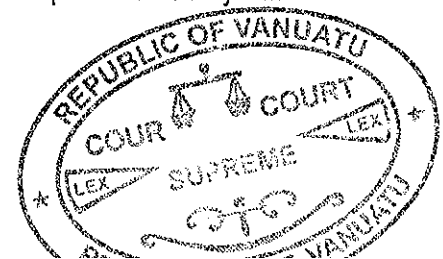


29. Jimmy Tasava said in evidence he saw Elina Vira in January 2020. He was afraid and ran off to tell her parents. They told him she was dead. He agreed that what he saw as only the spirit of Elina. His evidence could not support any suggestion that Elina Vira was still alive after 3rd January 2020.
30. Bresila Tau, sister of Elina Vira testified. She last saw Elina on 26th December 2019. She told of how the defendant had called her over the telephone and told her about how they got to the hospital. Then later they walked to Tropical Market and how her sister (deceased) wanted to eat "Nem". That they walked over to Litchee Store. It was there the defendant crossed the road at the Bus stop. He looked back and saw a bus stop and that Elina Vira got on the bus and it drove away. That the defendant did not recognise the number of the bus. She could not remember the date. In cross she denied any suggestion put to her that Elina had been meeting another boy. Her evidence shows the defendant had suspicions about Elina's affairs that resulted in arguments they had in the morning of 3rd January 2020 on their way to the main road.
31. Corporal Caulton Edmandley Junior gave evidence about how the defendant went to the Police station on 9th January 2020 between 8:00-8:30am and requested assistance of the Police in finding Elina. The defendant provided information that Elina went missing after she got on a Hyndai bus at Litchee store. He looked worried and unsettled. He requested a photograph of Elina from the defendant. The defendant never provided the photograph and the witness never saw the defendant again. This evidence shows a serious omission on the defendant's part to assist the Police find his missing defacto partner. It poses the question why?
32. It was the evidence of Isaac Vira that the defendant had told him he was to fly to the Banks on 18th January 2020. However despite that plan, the defendant flew out of Port Vila on 9th January 2020, some 9 days earlier. This explains why he omitted to furnish a photograph to the police to assist them in their search for Elina. The defendant left suddenly without informing the Police or Isaac Vira. These behaviour raised the question why?
33. If the defendant's going suddenly to the Banks was to bring back the 2 children, so as to provoke Elina to return home, as submitted by defence, the question is : why the defendant did not bring the children back immediately? The evidence by the arresting officer, Alan Moah and Jimmy Nimisa was that they arrested the defendant on Mota Lava Island on or about 14th May



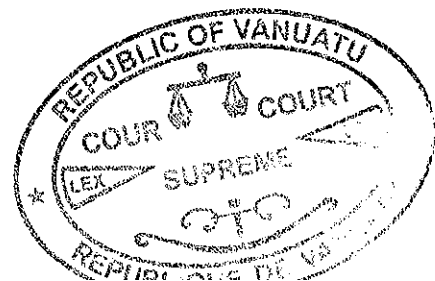
2020. That was almost 5 months after the defendant had gone to Mota Lava on 9th January 2020. That omission to return to Port Vila with the 2 children shows the defendant never intended to return to Port Vila. The reason is obvious as submitted by the Prosecution that the defendant knew Elina's body was hidden away in the bush at Joint Court Hill, under dirt rocks, and logs, dead.

34. Next, the evidence by Isaac Vira that the defendant rang him after he had arrived on Mota Lava asking whether Elina had returned home. Isaac Vira was surprised because earlier he had been told by the defendant he would travel on 18th January 2020. However he travelled on 9th January. The question raised is: How could the defendant ask such a question when he omitted to respond to the Police request to provide a photograph to assist the Police in their search? The only inference the Court can safely draw from this behaviour and omissions is that the defendant was directly responsible for the death of Elina Vira.
35. Next, the evidence was that the defendant had returned from seasonal work in December 2019 prematurely. He had only been there from September 2019 and he returned because he told witnesses he had problems with his defacto partner Elina. That "problem" was his suspicion that Elina was having affairs with another man. That is the reason why he questioned Patricia on 2nd January 2020 over the phone and also why on his instructions, defence counsel asked Bresila Tau in cross-examination questions in relation to any known relationships with any other men. Those suspicions gave rise to clear motive and intention of the defendant's action on 3 January 2020.
36. Further his Record of Interview recorded by Police Officer Jimmy Nimisa shows the date the defendant and Elina visited the hospital (Q4) was 6th January 2020. But this date is inconsistent with the date 3rd January 2020 given by Isaac, Winnie and Patricia. Further it shows that the purpose of the hospital visit was for Elina to get a pregnancy test (Q6) because the defendant stated Elina was pregnant(Q7). This is inconsistent with the evidence of Isaac, Winnie, Patricia, Ben and Bresila who all said the purpose of their going to hospital on 3rd January 2020 was for the defendant to have a dental check or appointment.
37. Then there was the evidence of what and where they went after the hospital visit. The defendant's evidence to Isaac Vira was that they followed York Street to Carrie Store because Elina was hungry and wanted to eat, "Nem". But he told Bresila over the phone that they had



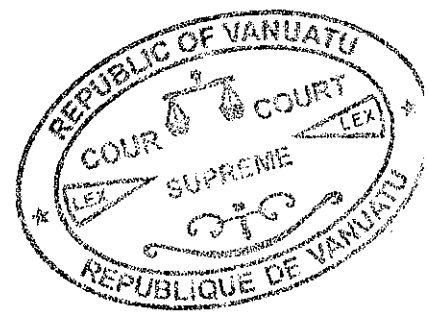
gone past the Tropical Store before going up to the Litchee Store for Elina to have "Nem". There are inconsistencies in these stories raising the credibility of the defendant.

38. In his Record of Interview Q9 the defendant stated they were returning to the house but Elina wanted them to go and have lunch at LitcheeTake Away. The defendant described the route they took in answer to Q11. In doing so the defendant had crossed the road and upon looking back he saw Elina jump on a bus which drove away with her.
39. The Record of Interview was not tested because the defendant exercised his right to remain silent. But assuming his statement about Elina being pregnant was the truth, then that reinforces the suspicion that created his plan and intention. Then having done so, he created a story or stories that covered up his involvement.
40. The evidence of Betty Sam confirmed the defendant had lived with her at Joint Court Hill. As such there can be no doubt he was well familiar with the area.
41. If indeed the defendant and Elina reached Litchee Store, directly opposite the Ecole Ambassade, is the truth, then the defendant's story in his ROI that a Blue Hyndai Bus stopped and picked Elina up is not the truth. One possible scenario is that they bought "Nem" at the Litchee Store and kept, walking up the road. Then having reached the turn off to the Joint Court Hill either they followed that road up and went past Arthur Caulton's residence and followed the bush trail into to the bushes by the TVL towers, or they kept walking down the "dark corner" road to the Tassiriki Round A bout but took the bush trail up the bushes to the TVL towers.
42. The scenario that they went up to Arthur Caulton's house and then followed the bus trail to the crime scene is ruled out because (a) they would have easily been seen, (b) Arthur Caulton's dogs would have barked at them to bring attention to others and (c) it was difficult to follow the bus trail.
43. That left the only scenario remaining is that they took the bush trail to the TVL towers where there are no houses close by. It is a bushy and secluded area. It was here the defendant took the opportunity in light of his suspicions giving rise to arguments that he himself admitted to Alice Simon Ken, the torn t-shirt seen by the Crime-Scene Officer and the broken wrist bone. No other explanations could have been possible.

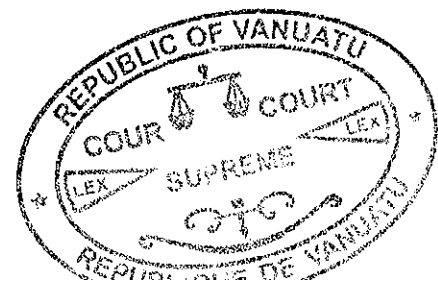


Site Visit

44. The Court had an opportunity to visit the scene. The party comprised of the Judge, Ms Donald, the Prosecutor (Mr Karae), Defence Counsel, Mrs Malites and Ms Kalsakau, the Sheriff of Court and Mr Arthur Caulton Edmanley as witness.
45. The visit started at Mr Edmanley's residence where Mr Edmanley showed us the place where he dragged his dead dog to dispose off over the slopping area above the Computer World Premises.
46. The place where the body was found was about 50-100 metres away from the house. We attempted to have access with Mr Edmanley leading but as it is a sloppy terrain, it was slippery and we therefore retreated.
47. Mr Edmanley then showed us another access passing by and along the TVL fence from Mr Edmanley's compound. We were unable to follow that access pass as it was blocked by bushes and fallen trees and branches.
48. We gained access therefore through the main gate into the TVL compound, squeezing our way past the narrow access way between concrete walls of the building, past the metal tower and over the fence through a small hole in the fence. We followed the TVL fence by another 10-12 metres then stopped.
49. Mr Edmanley then showed us where the dead body was found, some 5-10 metres down the thick and bushy slope. The terrain is covered with bush ropes, trees grass and shrubs. It is a dark and isolated area not accessible by the public.
50. The above inferences were drawn as a result of the site visit.
51. In addition, the body of Elina was covered with dirt, leaves, rocks and logs indicating a clear intent of concealing the body permanently.
52. There was no evidence from the defendant consistent with innocence.



53. It is conceded by the Prosecution there were no direct eye witnesses to the act of homicide committed by the defendant on the body of Elina Vira. But the circumstantial evidence produced by the witnesses for the Prosecution, in particular Isaac, Winnie, Patricia, Ben, Bresila, and Police Officers Caulton Edmanley Jnr and Jimmy Nimisa are such that no other person but the defendant was responsible for the death of Elina Vira.
54. There were some dispute about the date being 3rd January or 8th January 2020. I do not accept the date given by Alice Simon as 8th January 2020 as the truth. I find the exact date Elina went missing or was strangled to death was 3rd January 2020.
55. The timing between 7:00am and 4:00pm when the defendant rang to inform his father-in-law (Isaac Vira) about Elina going missing was some 9 hours. And between lunch time and a take-away at Litchee Store (12:00pm) to 4:00pm it was some 3 hours. That was ample time for the events to have occurred.
56. Why the defendant waited that long before calling his father-in-law is the essential question? And why he went to the town without going straight to the Police to report the incident is another answered question? The defendant waited until 9th January 2020, 6 days later to report and asking for a round table meeting. Why was he crying when he talked with Police Officer Caulton Jnr? And why he left suddenly on 9th January 2020 without telling anyone he was leaving? And why he went to Mota Lava to bring up the 2 children but never did so until his arrest in May 2020, almost 5 months later? These are essential questions that remain unanswered.
57. These circumstances lead the Court to draw one only inference. And that is that the defendant strangled Elina Vira to death on 3rd January 2020. In the course of the strangling, be it over the suspicions of extramarital affairs or in an attempt to have sexual connections, Elina being of epileptic condition might have had fits and died as a result of the struggles. Having found himself in that situation, the only course was to conceal the body in the way it was discovered on 28th January 2020, some 25 days later. The body was decaying and decomposed as witnessed by Arthur Caulton Edmanley and Sgt Berry.

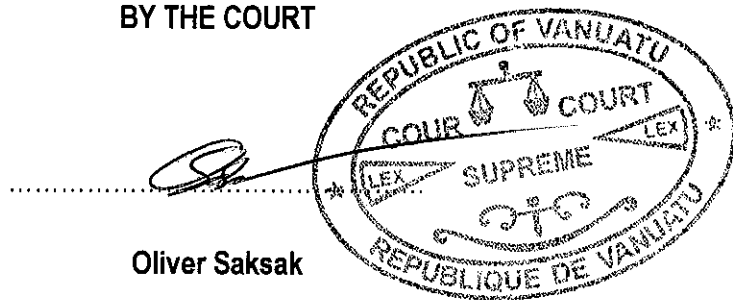


Propensity Evidence

58. Finally for the propensity evidence of previous violent behaviour, Prosecutions adduced clear evidence from Meriam Veronica Seo, Wendy Godwin and Hendry Standa, unchallenged and undiscrediited by the defendant. The Court accepts the propensity evidence to infer guilt on the defendant.
59. I am left in no doubt as to the guilt of the defendant. The cases of **PP vs Tugu** [2012] VUSC 128 and **PP v Hortial** [2004] VUSC 27 referred to by defence Counsel in the defence submissions are distinguished and do not assist the defendant's case.
60. I am satisfied the Prosecutions have proven the charge of intentional homicide against the defendant beyond reasonable doubt. However I have my doubts that it was a planned act by the defendant in the circumstances of the victim.
61. I therefore return the verdict of guilty on the defendant but reduce it to the lesser charge under section 106 (1) (a) instead of section 106 (1) (b) as charged. He is accordingly convicted. He will be sentenced accordingly.

DATED at Port Vila this 4th day of November 2021

BY THE COURT



Oliver Saksak

Judge