

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

**CRIMINAL CASE No. 04 OF 1999**

**PUBLIC PROSECUTOR -v- SHEDDRACK JOSEPH**

**Coram:** Acting Chief Justice Vincent Lunabek J  
Mr. Willie Daniel for the Public Prosecutor  
Mr. Hillary Toa for the Defendant

**Date of trial:** 30 November to 2 December 1999

**Place:** Isangel, Tanna

**Date of Judgment:** 15 December 1999

**JUDGMENT**

**I Introduction**

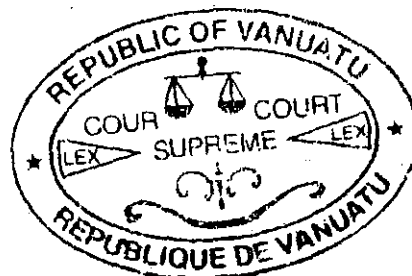
**1. Choice of language**

This is the judgment of the Court in this case. The trial took place at Isangel, Tanna and the proceedings were conducted in Bislama. Many witnesses of the prosecution do not speak fluently in Bislama so the Court used the assistance of a translator. The judgment is written in English.

**2. Nature of the charge**

The accused Sheddrack Joseph was committed to this Court, charged with the offence of intentional assault causing death, contrary to section 107(d) of the Penal Code Act CAP 135. The charge is particularised as follows:

That on or about 26 December 1998, Sheddrack Joseph intentionally assaulted Betty Willie at Enamahu Village, White Sands, Tanna, as a result of which, Betty Willie died at Lenakel Hospital on 31<sup>st</sup> December 1998.



### 3. Pleas

The accused pleaded "not guilty" to that count. The plea was noted and the trial proceeded on that count at Isangel, Tanna.

4. Statement of Presumption of Innocence was read out to the accused under section 81 of the *Criminal Procedure Code Act* [CAP 136] and explained to Accused.

## II Standard of proof and Essential Elements of offences to be proved by the Prosecution

This is a criminal trial and as in every criminal trial, it is for the prosecution who brings the charges to prove them. It is for the prosecution to prove each and every allegation of fact in this case. There is no burden on the defence whatsoever. The prosecution must prove all the essential elements of the offence charged against the accused beyond reasonable doubt. Before I can convict the defendant Sheddrack Joseph of the charge of intentional assault causing death, contrary to section 107(d) of the Penal Code, I must be sure of his guilt, nothing less will do. That is the same as saying that the prosecution must prove the defendant's guilt beyond reasonable doubt. If at the end of the day, I am left with a reasonable doubt as to the defendant's guilt, then the defendant will be entitled to the benefit of that doubt and be acquitted.

In this case, the defendant Sheddrack Joseph is charged with:

1 count for intentional assault causing death, contrary to section 107(d) of the Penal Code Act CAP 135.

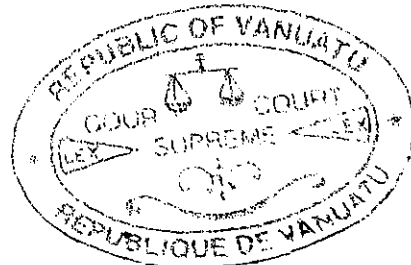
Section 107(d) reads:

"No person shall commit intentional assault on the body of another person-

- Penalty:
- (a) ...
  - (b) ...
  - (c) ...
  - (d) if the damage caused results in death, although the offender did not intend to cause such death, imprisonment for 10 years."

The essential elements of the offence charged in count 1 for intentional assault causing death, the matters which the prosecution must prove beyond reasonable doubt before the accused can be convicted on that charge, are:

1. That the accused, Sheddrack Joseph, intentionally assaulted the victim, Betty Willie;
2. That the assault caused damage/injury to the victim's body, Betty Willie;
3. That the damage caused resulted in the death of the victim, Betty Willie.



### III Summary of the evidence

#### I. THE PROSECUTION CASE

The prosecution called 10 witnesses.

The first prosecution witness was Sam Nimisa, the father of the deceased victim Betty Willie. He is from Lausinganu village, Middle Bush Tanna. He gave evidence that his daughter Betty Willie died in December 1998. Before she died, she lived with Sheddrack Joseph, the accused. He was afraid because he knew that Sheddrack Joseph had lived with another woman who died.

Meetings were planned for this witness and his Chief to talk and arrange the relationships of Sheddrack and Betty. But they were not successful, because Sheddrack and his family did not attend. He said he knew Sheddrack assaulted his daughter resulting in her death. He paid Vatu 10.000 to get Betty back into his village.

Under cross-examination, he said he was not happy that Betty lived with Sheddrack. He said he had authority to whip his daughter. He told the police of the village Chief to go and get Betty back from Sheddrack's village to his village. Betty refused to go with the police of the Chief. They took her back to the village.

It was put to him that in December 1998, this witness and the police of the Chief of the village assaulted Betty and fastened her hands. He said he did not know because he was not with the police of the village Chief when they went to get Betty back in the village.

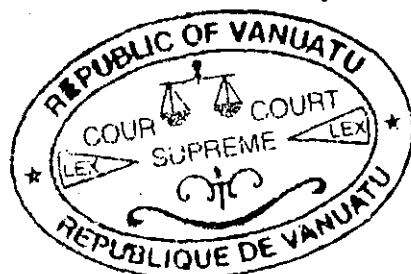
Under re-examination he that confirmed he was not there with the police of the Chief when they took Betty back to her village and this happened sometime in mid-December 1998.

He confirmed he did not assault Betty and he knew Betty was pregnant because he did ask her about it.

The second prosecution witness was Iatehe Nalau. She gave evidence that on 26 December 1998, she was at home at Enamahu village, White Sands, Tanna. On that date, she fed 2 of her children and she saw Betty Willie, who came to her house. She said Sheddrack assaulted Betty so she came to her house.

She said she saw Sheddrack assault Betty. She said Sheddrack assaulted Betty and she ran into her house and she was laying on the ground. When Betty lay down on the ground, she saw a scratch mark on the left side of Betty's chest. Then Betty went inside this witness's house and lay down.

Then Sheddrack came and took Betty back to his house. She did not talk to Betty.



She said that when Sheddrack took Betty back home, Betty was suffering and bent over while walking.

The witness's husband was in the nakamal when Betty came in but before Sheddrack came and took Betty back home, her husband came and saw Betty. She also said that Sheddrack was very concerned.

Under cross-examination, she said she did not see that Sheddrack assaulted Betty. She was guessing.

She denied making a statement to police on 31 December 1998. She was then asked:

Q. "Who I talem toktok ia long yu blong yu kam talem long kot?"

A. Police."

Under re-examination, she was then asked:

Q. "Yu save clearem long kot, taem yu talem ol toktok long kot, ol toktok ia oli blong yu, o oli blong police?"

A. Olgeta toktok we mi talem oli blong mi, not blong police."

The third prosecution witness was Siaka Nalau who is the husband of Iatehe Nalau, the second prosecution witness of Enamahu village, White Sands, Tanna. He said on 26 December 1998, he was at the nakamal which is 20 metres from his house. He heard a woman was crying in his house. He went to his house and he saw Betty was crying there. His wife was in the kitchen and Betty was lying underneath the banian tree.

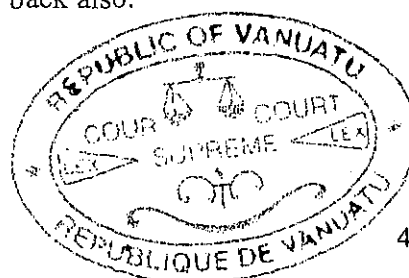
He asked Betty what happened to her and Betty said Sheddrack assaulted her. He said he saw the left side of Betty's chest was swollen and he said he saw also that Betty's back was swollen. He then went back to the nakamal. He said when he saw Betty lying on the ground, she held on to her belly. He repeated that Betty talked to him and said Sheddrack assaulted her.

He confirmed he made a statement to police on 31 December 1998.

Under cross-examination, he said, he knew Sam Nimisa and he heard that Betty's family came and took her back to her father's village.

He said when he saw Betty on 26 December 1998, it was after that her family took her and forced her to go back to her father's village. He denied the police of the Chief fastened Betty's hands. He said they just came and took her back to her father's village.

He stressed that he saw Betty's chest was swollen and her back also.



When he was re-examined, he said on 26 December 1998, he saw Betty was crying in his home and he said he knew Sheddrack assaulted her. He confirmed he saw Betty's family come and take her back to her father's village but that was at a different time.

The next prosecution witness was Tommy Kwanpiken of Enamahu village, White Sands, Tanna. He is 31 years old, he is a gardener. He said that on 26 December, 1998 he was in the nakamal with Joel, Natap and others. They were discussing community work. He said they heard that Sheddrack assaulted Betty. They went to Sheddrack's house and he saw Betty lying down. Sheddrack sat near Betty's head. He asked Sheddrack whether he assaulted his wife, Sheddrack said "no". He then asked Betty whether Sheddrack assaulted her and Betty told him that Sheddrack did assault her. Betty showed him her chest which is where Sheddrack hit her. Betty was lying down, she could not walk. He stressed that when Betty told him that Sheddrack assaulted her, Sheddrack stayed quiet and said nothing.

This witness mentioned that when he went to see Betty, Joel Niawia, Naruasap Natap, Marie Harry were there with him.

He said when he saw the scratch on Betty's chest, he thought Sheddrack hit her with a stick. But he said Betty did not mention to him how Sheddrack assaulted her.

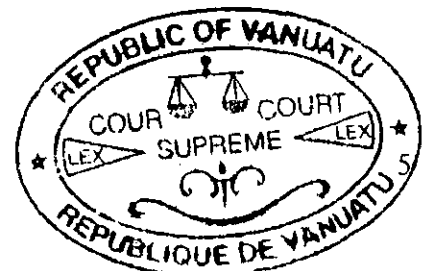
Under cross-examination, he said he knew that on various occasions, Betty's family took Betty back to her father's village. One occasion was on December 1998. He denied the police of the Chief whipped her. He did not know.

Joel Niawia was the next prosecution witness. This witness confirmed that on 26 December 1998, he was in the nakamal with others while they discussed the community work. He mentioned about Tommy, Naruasap, Marie Harry, who were there also.

He said that in the nakamal, they heard Betty crying and shouting so they went to see her at Sheddrack's house. At Sheddrack's house he saw Betty was lying down and crying. He said there was scratch on her chest. He said Tommy asked what happened to her and Betty said that Sheddrack assaulted her. Sheddrack sat next to Betty's head. He repeated that when Betty said that Sheddrack assaulted her, Sheddrack stayed very quiet. He said he knows Sheddrack very well.

Under cross-examination, this witness said, he knew also that Betty's family did not want Betty to live with Sheddrack as husband and wife. He knew also that Betty's family came and took her back to her father's village and Betty came back to Sheddrack's house. He did not know that the police of the Chief took Betty back to her father's village.

He remembered he went to see Betty at Sheddrack's house in December 1998. It was put to this witness that on 26 December 1998, he heard that Betty fell over a coconut tree. He then said he heard but he did not see this happen, but he saw the mark on Betty's chest.



The next witness was Marie Harry of Enamahu village. She is a gardener. She said on 26 December 1998, she was at home and she was told to go and stay with Betty at Sheddrack's house. Betty was lying down. She said she heard Tommy asking Sheddrack whether he assaulted Betty and Sheddrack denying it. And then she said Tommy asked Betty and she said Sheddrack assaulted her. She said she did not see on which part of Betty's body, Sheddrack hit her.

Under cross-examination, this witness said she did not know what happened to Betty. She did not know whether Betty's family came and took her back to her father's village. She did not hear either that Betty felt over a coconut tree. She said Betty was very sick.

Naruasap Natap was the next witness called. She is from Enamahu village. On 26 December 1998, she was at home. She knew Betty Willie. She gave custom medicine to Betty. She gave traditional medicine to her to facilitate the circulation of blood in Betty's body. The traditional medicine was to heal the part of the body which was assaulted.

Under cross-examination, this witness said she heard that Betty was pregnant. She denied the traditional medicine was to take away the foetal blood.

She did not know that Betty felt over a coconut tree. She denied she heard that her family wanted to kill her because she lived with Sheddrack.

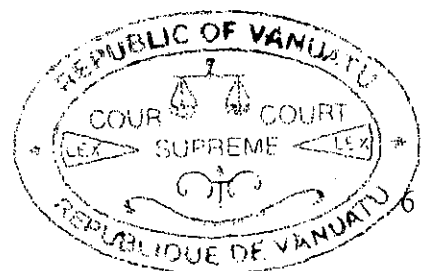
The next witness was Natap Iawia of Enamahu village, White Sands, Tanna. On 26 December 1998, he said he saw Sheddrack and Betty at Sheddrack's house. Betty was very sick. He assisted others who treated Betty with traditional medicine.

He mentioned that Sheddrack, Mary, Tommy, Joel, Nalau and himself held on to Betty while she was treated with traditional medicine.

He said he heard Tommy ask Sheddrack whether he assaulted Betty but Sheddrack did not answer. Then he said Tommy asked Betty if Sheddrack hit her and Betty said Sheddrack did hit her and Sheddrack stayed very quiet. He said he saw a scratch mark on Betty's chest.

He was then cross-examined. He said he knew Betty's family took her back to her father's village. Then Betty fled and returned to Sheddrack's house and stayed with him. He saw Betty's family take her back. But he did not know whether they assaulted her. He said the swollen mark on Betty's chest was similar to the one on the chest of a person who felt over a coconut tree.

He was then re-examined. He confirmed that he was in the village in December 1998, when Betty's family came and took her back to her father's village. He denied he heard Betty's family wanted to kill Betty.



The next witness was Isso Kapum of Middle Bush, Tanna. He is a police officer – Constable. He works with Police Force Service in the general duty section and also in the investigation section.

He said that according to a report they received from the doctor, Betty fell over a coconut tree but he said there was also another version of the report. So he said they went to investigate further about the incident. During the investigation at White Sands, he mentioned that a little girl showed her the coconut tree which was mentioned in the report. The coconut tree was short. Its height was less than 2 metres from the fruits to the ground.

He said the little girl told him that Betty did climb the coconut tree, then the defendant arrived and talked angrily to Betty who came down but did not fall. Then the accused and Betty started to row and the little girl ran away.

He then said he and other police officers interviewed witnesses who testified before the Court. On the same date, the defendant was arrested after being cautioned and detained in jail on 31 December 1998. He said the defendant's hands were shaking when he was arrested.

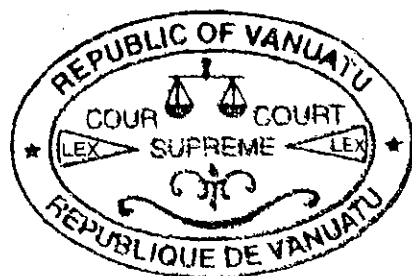
The last prosecution witness was Esau Nakat. He has been a nurse practitioner for 14 years.

On 28 December 1998, he was on duty at Lenakel Hospital. He got information through the teleradio to get a patient to Lenakel Hospital. The information came from Nurse Nitel of Kito dispensary, Tanna.

This witness testified that he then went with the hospital truck driver to Kito dispensary. There he found the patient inside a room. He went inside the room where the patient Betty Willie was and got the referral note from Nurse Nitel. He looked at the referral note and read it. He explained that the referral note is the history of the patient taken when she came into the dispensary. After examination, the nurse made that note to the hospital before sending the patient to Lenakel Hospital.

He said he read the referral note and asked the patient questions. He said he found that the condition of the patient was very serious. At that time, he asked Betty Willie what happened to her to bring her to the dispensary. Betty told him that she did skip up on a coconut tree and come down and then Sheddrack Joseph kicked her on her right abdomen. He then decided to take her to Lenakel Hospital because her condition was very serious. Betty was taken to Lenakel Hospital at 4.00pm on 28 December 1998.

This witness testified that when he observed Betty he saw that her belly was already swollen up. Betty could not lie down on her back. She had to be held in bed so that proper treatment could be administered to her. She had great difficulty breathing.



At Lenakel Hospital, he referred the patient to the nurse practitioner on call, who referred Betty to the doctor.

He said he did not see the patient again but on the following Monday, he was informed by the doctor that Betty was dead. It was not possible to transfer her to Vila Central Hospital.

This witness said that he had certified Betty's death based on the information collected from Lenakel Hospital and discharged her from Hospital on 31 December 1998.

He was shown a document (Exh. P1). He identified his signature on the document. He said he got the information from the doctor.

The document is the death certificate of Betty Willie dated 31 December 1998 at Lenakel Hospital at 3.00am with a diagnosis of/or cause of death was internal abdominal hemorrhage.

The document (Exh.P1) was tendered as evidence of the fact that this witness was the maker of that document but not about the truth of its content.

Under cross-examination, this witness said he did not know Betty was pregnant but nurse Nitel recorded that Betty was pregnant in the referral note.

He did not see the accused kicked Betty. He confirmed that what he wrote in the document (Exh.P1) was what the doctor told him.

That is the end of the prosecution case.

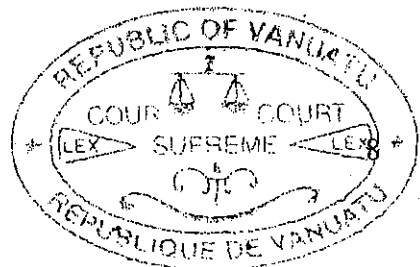
## 2. "NO CASE" SUBMISSION

The defence counsel made a submission of no case to answer. Upon hearing both counsels, I formed the view that the prosecution evidence was such that its strength or weakness depended on the view to be taken of prosecution witnesses, and in particular the evidence of the Nurse Practitioner Esau Nakat, and their reliability, and where on one possible view of the facts, there is evidence that the defendant is guilty, then I, as the judge of law, should allow the matter to be tried as a judge of facts.

I therefore held that there was a case for the accused Sheddreck Joseph to answer and I then called upon him to put forward his defence.

## 3. THE DEFENCE CASE

Before the defence began, section 88 of the *Criminal Procedure Code* [CAP 136] was read and explained to the accused.





Section 88 reads:

*"In making your defence in this trial, you are entitled, in addition to calling other persons as witnesses, to give evidence yourself on your own behalf, upon oath or affirmation and subject to cross-examination by the prosecution. However you are not obliged to give evidence and may elect instead to remain silent. If you do not choose to give evidence, this will not of itself lead to an inference of guilt against you."*

The defence decided then to call no evidence.

That was the end of the defence case.

**4. DISCUSSION ON THE EVIDENCE: ADMISSIBILITY, CREDIBILITY OF WITNESS, FINDING OF FACTS**

**1. Admissibility of evidence: Oral statement or conversation of the deceased Betty with prosecution witnesses**

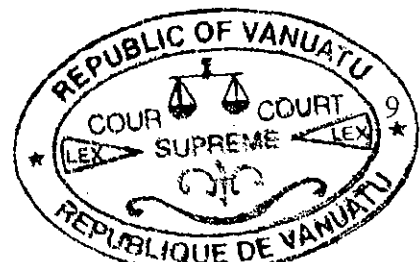
**(a) Statement of the deceased Betty to Siaka Nalau and Tommy Kwanpiken**

On 26 December 1998, Siaka Nalau was at the nakamal and heard a woman crying in his house. He went to his house and saw Betty was crying and she was lying underneath the banian tree. He asked Betty what happened to her and Betty said Sheddrack assaulted her.

Again on the same date, Tommy Kwanpiken said that on 26 December 1998, while discussing about community work at the nakamal, with other people of the community, they heard that Sheddrack assaulted Betty and he and others went to Sheddrack's house and found that Betty was lying down and Sheddrack was sitting next to Betty's head. He then asked Sheddrack whether he assaulted Betty and Sheddrack denied it, and he asked Betty what happened to her and Betty told him that Sheddrack assaulted her.

The primary question which I, as the judge of law must ask myself is 'can the possibility of concoction or distortion be disregarded?' To answer that question I must first consider the circumstances in which the particular statement was made, in order to satisfy myself that the event was so unusual or startling or dramatic as to dominate the thoughts of the victim, Betty so that her utterance was an instinctive reaction of that event, thus giving no real opportunity for reasoned reflection.

As the evidence shows, on 26 December 1998, Betty Willie, ran to Nalau's house and lay there on the ground and she was crying. A few minutes after, on the same day, Siaka Nalau, while in his nakamal, heard a woman crying in his house, arrived and saw Betty lying there. He asked Betty what happened to her and Betty told him that the defendant Sheddrack Joseph assaulted her. On the same day, 26



December 1998, Sheddrack Joseph came to Nalau's house and took Betty back to his house. Thereafter, on the same day Tommy and others went to see Betty at Sheddrack's house. It was on that occasion that Betty told Tommy K. that Sheddrack Joseph assaulted her. The evidence of the circumstances surrounding this is that Betty was sick and Tommy, Joel, and others assisted in holding Betty so that Naruasap Natap could treat Betty with traditional medicine.

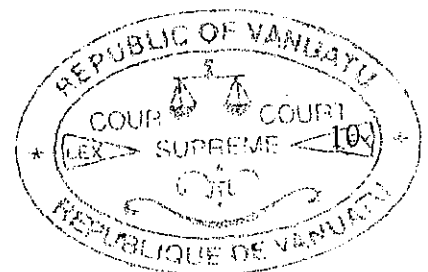
In the particular situation of this case, I am satisfied that the oral statements made by Betty to Siaka Nalau, and Tommy Kwanpiken are closely associated with the event which has excited the statement, that I am satisfied that it can be fairly stated that the mind of Betty (declarant) was still dominated by the event and that the event that she told Nalau Siaka and Tommy Kwanpiken about was still operative in her mind. I am therefore satisfied to conclude that the involvement or the pressure of the event exclude the possibility of concoction or distortion and the statement made by Betty to Nalau Siaka and Tommy was sufficiently "spontaneous" in the circumstances of this case.

I therefore hold, as the judge of law in this case, that oral statements made by Betty to Siaka Nalau and Tommy on 26 December 1998, are admissible as an exception to the hearsay rule under the *res gestae* doctrine to admit evidence of statements, with a view to establishing the truth of some facts thus narrated. I am guided by two English cases [*Ratten v the Queen* (1972) AC 378; *Andrews* (1987) AC, 281] and I adopt and apply them in the present case.

**(b) Statement made by Betty Willie to Nurse practitioner Esau Nakat at Kito dispensary.**

On 28 December 1998, Esau Nakat, nurse practitioner at Lenakel Hospital, attended the patient Betty Willie at Kito dispensary. He asked Betty what happened to her that brought her to the dispensary. Betty told him that she did skip up on a coconut tree and after she came down, Sheddrack Joseph kicked her on her right abdomen. Betty's health condition was very serious. Her belly had already swollen up. She could not lie down on her back. She had to be held on the bed so that proper treatment could be administered to her.

The fact is that Betty, when making this statement, was in a very serious condition, her belly was already swollen up, she had great difficulty breathing, she could not lie down on the bed, she had to be held in order for her to get proper treatment. Betty knew about the dire state of her condition which, in this case, amounts to a hopeless expectation of life for her. An expectation of death can be inferred from Betty's knowledge of the dire state of her condition. It is not the case that the defendant must expect to die immediately, but within a short period of time. The incident as described occurred on 26 December 1998. She made the statement to Esau Nakat on 28 December 1998 before she was transferred to Lenakel Hospital. She passed away on 31 December 1998 at 3:00pm.



I therefore come to the conclusion that the statement in question can be admitted as an exception to the Hearsay Rule under the dying declarations. This statement is therefore admissible.

(c) The tendering of death certificate of the deceased, Betty Willie

Nurse Practitioner Esau Nakat gave evidence that Betty Willie died on 31 December 1998. He had issued a death certificate to this effect.

The document was admitted to establish the fact the he was the maker of the said document but not of the truth of its content.

The document which was undated, reads:

*“HEALTH DEPARTMENT  
MEDICAL CERTIFICATE 1927*

*Lenakel Hospital  
Tanna*

*Re Betty Willie*

*I hereby certify that the above woman died at Lenakel Hospital at 3.00pm – 31December 1998 with a diagnosis of/or cause of her dead (sic) was internal abdominal hemorrhage.*

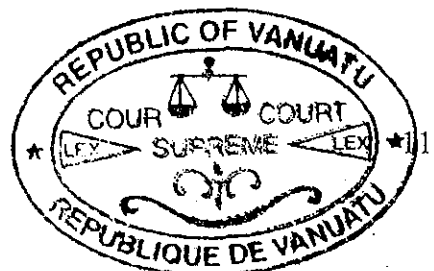
*Thanks*

*N/Practitioner*

*Esau”*

Upon considering the document, I form the view that the document can now be accepted and admitted as such. The reason being that the nurse practitioner issued the document as part of his duty in the normal course of the business of the hospital. By admitting the document as such, I have regard to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement and in particular, I am satisfied that the nurse practitioner who made the statement, made it contemporaneously with the occurrence or existence of the facts stated and that there is no incentive for the nurse practitioner to conceal or misrepresent the facts.

Further the document is a public document of the Lenakel Hospital and can be inspected by members of the public.



The necessary conditions, it seems to me, were fulfilled for that document to have been admissible and I so rule.

2. Discussion on the evidence: credibility of witnesses

The evidence of Sam Nimisa, the father of the deceased Betty Willie, shows that on 26 December 1998, Betty Willie lived with Sheddrack Joseph. The police of the Chief of his village got Betty back to his village after Sheddrack and his family did not attend a meeting he and his village Chief had planned in order to discuss and arrange the relationships of Betty and the accused. He did not go with the police of the Chief when they got Betty back into the village. This was sometime in mid-December 1998 and he did not know whether the police of the Chief assaulted Betty and fastened her hands. He testified that his daughter died in December 1998.

I find some credit in what this witness said.

Witness Iatehe Nalau's evidence shows that on 26 December 1998, when she was at home with her 2 children, Betty Willie ran into her house and was lying on the ground. Betty told her that the accused Sheddrack Joseph assaulted her. She saw a scratch mark on the chest of Betty. Her evidence shows also that when Sheddrack took Betty back to his house, Betty was suffering and bent over while walking. She did not see Sheddrack assault Betty.

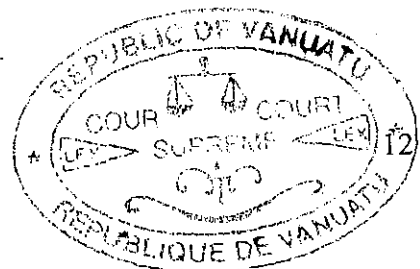
This witness is an ordinary and simple Tanna woman. She is very shy and does not speak Bislama. This is the reason why she got confused when she denied making a statement to the police on 31 December 1998 and it was the police who told her to give evidence in Court. But under re-examination she said everything she testified in Court was her own evidence but not from the police.

I have no reason to disbelieve her and her testimony has some weight before this Court.

Siaka Nalau's evidence confirmed his wife's evidence that on 26 December 1998, Betty went to their house and was lying on the ground. His evidence is that he asked Betty what happened to her and Betty told him that Sheddrack assaulted her. He saw Betty's left chest and back were swollen up. Betty was crying and holding her belly. He also saw Betty's family come and take Betty back to her father's village but that was during a different period of time.

This witness also is an ordinary Tanna man and there is some truth in his evidence and I have no reason to disbelieve him.

The evidence of Tommy Kwanpiken, Joel Niawia, Marry Harry, Naruasap Natap, Natap Iawia shows that on 26 December 1998, they went to Sheddrack's house to see Betty. This was after Sheddrack came to Nalau's house and took Betty back to his house as testified by Iatehe Nalau.



Tommy's evidence which was confirmed by other witnesses (Joel Niawia, Marry Harry, Naruasap Natap and Natap Iawia) was that he did ask Sheddrack whether he assaulted Betty and Sheddrack denied it. But when he asked Betty, she told him that Sheddrack assaulted her.

Their evidence is also that Betty was lying there, she could not walk, and she was crying. They confirm the evidence of other witnesses that there was a scratch mark on the Betty's chest.

Naruasap gave traditional medicine to Betty to facilitate the circulation of blood in Betty's body but not to spoil the foetal blood. Betty was very sick.

The evidence of these witnesses is consistent and is corroborated. This Court can rely on it.

The evidence of police officer Isso Kapum, to the extent that it was relevant, is that when he and other police officers arrested the accused, after they cautioned him, the accused's hands were very shaky.

The evidence of the last prosecution witness, Nurse Practitioner Esau Nakat of Lenakel Hospital is that when on 28 December 1998 he attended Betty at Kito dispensary, he found that the condition of the patient was very serious. Further after he read the referral note given to him by Nurse Nitel, he asked Betty what happened to her which brought to the dispensary. Betty told him that she did skip up on a coconut tree and then Sheddrack Joseph kicked her on her right abdomen.

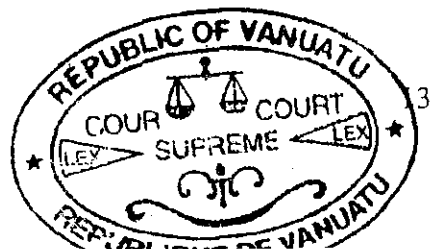
He also testified that he had certified Betty's death based on the information collected from Lenakel Hospital and discharged her from the hospital on 31 December 1998.

I am satisfied by the testimony of this witness as a reliable witness.

### 3. Finding of facts

The facts as found by the Court are as follows:

- In mid-December 1998, Sam Nimisa, the father of the deceased Betty Willie, told the police of the Chief to get Betty back to her father's village. This occurred on several occasions but did not happen on 26 December 1998 as suggested by the defence.
- On 26 December 1998, Betty Willie lived with the accused Sheddrack Joseph in his house and Betty Willie was pregnant.
- On 26 December 1998, Betty Willie climbed a coconut tree and skipped up and came down of the coconut tree. She was then assaulted by the accused Sheddrack Joseph, by kicking her on her right abdomen.
- She suffered pain, cried and was lying down on the ground at Nalau's house. She held onto her belly and bent herself over while walking to Sheddrack Joseph's house.



- She was treated with traditional medicine at Sheddrack's house on 26 December 1998.
- She then was admitted to Kito dispensary, her condition worsened on 28 December 1998, she was transferred to Lenakel Hospital. Her belly was already swollen up. She could not lie down on her back. She had to be held when she received medical treatment. She had great difficulty in breathing.

I find as a matter of fact that as a result of Betty skipping up the coconut tree, and after being kicked in her abdomen by the accused Sheddrack Joseph, she was sent to Kito dispensary and transferred thereafter to Lenakel Hospital and she died on 31 December 1998 as a result of the combination of both events.

#### **4. Direction of the law**

In this trial, the defendant exercised his right not to give evidence and to remain silent. I must say that this is his right and I, as the trial judge, must not criticize him for doing so and I say so.

Some 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 beyond reasonable doubt. In situations similar to this one 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, may, when taken together operate so as to justify an inference beyond reasonable doubt of an assault causing death.

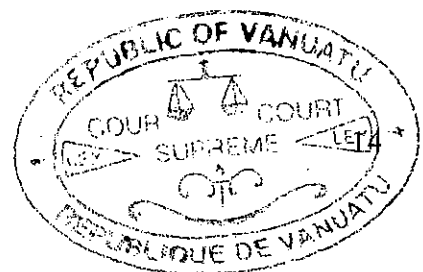
The prosecution is not required to disprove any inference that the ingenuity of counsel might devise. It must exclude any reasonable hypothesis based on the evidence which is consistent with innocence but no more. *R v Longalis (1993) 10 LRNZ 350 at p. 359.*

Section 8 of the *Penal Code* [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 any explanation from him 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 his lack of any explanation. [*Swanson v Public Prosecutor*, Criminal Appeal Case No 6 of 1997, Appeal Court of Vanuatu, unreported]

In this case, the accused is charged with the offence of intentional assault causing death under s.107(d) of the *Penal Code* [CAP 135].

Section 109 provides 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) if he inflicts bodily injury on another person in consequence of which that other person undergoes surgical or medical treatment which causes death. In this case it is immaterial whether the treatment was proper or mistaken, if it was employed in good faith and with common knowledge and skill; but the person inflicting the injury is not deemed to have caused the death if the treatment which was its immediate cause was not employed in good faith or was so employed without common knowledge or skill;
- (b) ...
- (c) ...
- (d) if by any act or omission he hastened the death of a person suffering under any disease or injury which apart from such act or omission would have caused death;
- (e) if his act or mission would not have caused death unless it had been accompanied by an act or omission of the person killed or of other person.

I will now apply the law to facts as found.

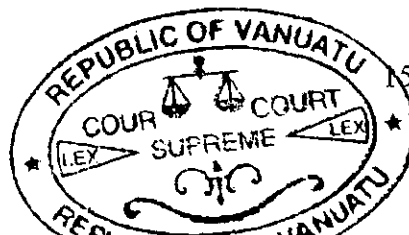
## VI Application of the law to the facts

The accused, Sheddrack Joseph, was charged with the offence of Intentional Assault Causing Death, contrary to s. 107(d) of the *Penal Code Act* [CAP 135].

The prosecution alleges that on 26 December 1998, the defendant intentionally assaulted Betty Willie at Enamahu village, White Sands, Tanna and as a result of which Betty Willie died at Lenakel Hospital on 31 December 1998.

For the defendant, Sheddrack Joseph, to be found guilty as charged, the prosecution must prove the essential elements which I set out below:

1. that the accused, Sheddrack Joseph, intentionally assaulted Betty Willie on 26 December 1996.
2. That the assault caused damage/injury to the body of Betty Willie.
3. That the damage caused to Betty Willie's body resulted in her death.



I will now deal with each element of the offence as charged.

**1 That the accused, Sheddrack Joseph, intentionally assaulted Betty Willie on 26 December 1996 at Enamahu village, White Sands, Tanna.**

The evidence is overwhelming. On 26 December 1998, Iatehe Nalau, while feeding her two children at her house at Enamahu village, saw Betty running to her house. Betty came to Nalau's house and she lay down on the ground.

Her husband came from the nakamal and saw Betty lying on the ground underneath the banian tree. Betty told him that Sheddrack Joseph assaulted her.

Tommy Kwanpiken testified that on 26 December 1998, at Sheddrack Joseph's house, Betty Willie told him that Sheddrack Joseph assaulted her.

This was confirmed and corroborated by the evidence of Joel, Mary, and other prosecution witnesses. Further Nurse Practitioner Esau Nakate gave evidence about a conversation he had with Betty at Kito Dispensary that on 26 December 1998, after she skipped up a coconut tree, Sheddrack Joseph kicked her in the right abdomen.

I am satisfied beyond reasonable doubt that this element has been proved on the required standard.

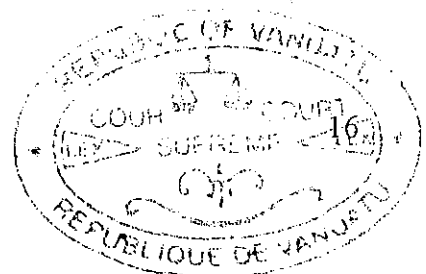
**2. That the assault caused damage/injury to the body of Betty Willie**

Witness Iatehe Nalau's evidence is that after Betty Willie came to her house, Sheddrack Joseph came and took her back to his house. Her evidence is that on their way home, she saw Betty was suffering and had bent herself over in pain while walking. Sheddrack was very concerned. Siaka Nalau's evidence is that when he went to his house, he saw Betty lying on the ground underneath the banian tree. He was crying and holding on to her belly.

The evidence of Joel Niawia which is confirmed by Natap Iawia, is that when Betty told them that Sheddrack assaulted her, Sheddrack Joseph stayed very quiet.

There is an inference to be drawn from those facts that Sheddrack Joseph assaulted Betty Willie by assaulting her on her belly. The evidence established that she was lying on the ground, crying and holding her belly. She was suffering and she was in great pain and she bent herself over while Sheddrack Joseph took her back to his house.

This was confirmed by the evidence of Esau Nakate, the Nurse Practitioner when Betty told him at Kito Hospital that Sheddrack Joseph assaulted her by kicking her in her right abdomen.





Before he transferred the patient from Kito Dispensary to Lenakel Hospital, he said Betty's belly was already swollen up. Betty could not lie down on her back. She had great difficulty in breathing. She had to be held on the bed while receiving treatment.

There is an inference that she was assaulted by the accused, Sheddrack Joseph, on her belly and was injured by the kick on her belly by the accused and sustained internal damage to her body.

This element is established beyond a reasonable doubt.

**3: That the damage caused to Betty Willie's body resulted in her death on 31 December 1998**

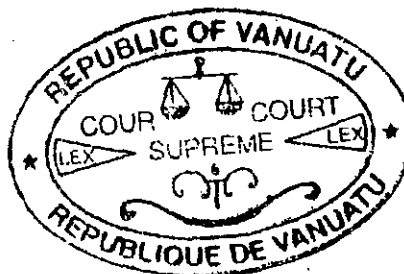
Betty died at Lenakel Hospital on 31 December 1998. There is no dispute over this.

There is evidence that Betty was pregnant on 26 December 1998.

There is evidence that Betty skipped up a coconut tree before the defendant Sheddrack Joseph kicked her in her right abdomen. Although this may be an explanation of the internal injury Betty sustained, as the defendant suggested during cross-examination, submissions, and arguments, the defendant cannot escape his involvement in the internal damage caused to the abdomen of the deceased Betty Willie, as a result of which she died on 31 December 1998 at Lenakel Hospital at 3.00pm.

Section 109 of the *Penal Code Act* [135] provides:

- 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) if he inflicts bodily injury on another person in consequence of which that other person undergoes surgical or medical treatment which causes death. In this case it is immaterial whether the treatment was proper or mistaken, if it was employed in good faith and with common knowledge and skill; but the person inflicting the injury is not deemed to have caused the death if the treatment which was its immediate cause was not employed in good faith or was so employed without common knowledge or skill;
  - (b) ...
  - (c) ...
  - (d) if by any act or omission he hastened the death of a person suffering under any disease or injury which apart from such act or omission would have caused death;
  - (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.



Applying s. 109(a),(d) and (e), I am of the view that although Betty's internal injury to the abdomen could have been caused by the fact that, as a pregnant woman skipping up a coconut tree could also have caused internal abdominal damage, the defendant's act of kicking Betty in her right abdomen after she had skipped up the coconut tree hastened her death.

This element is proved beyond a reasonable doubt.

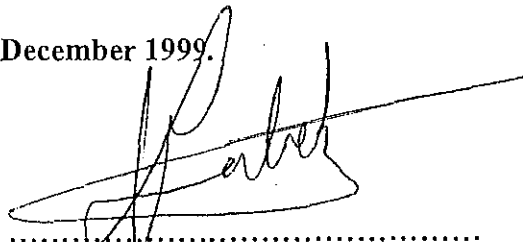
I, accordingly, believe that the evidence taken as a whole compels the following finding which I now make:

1. that I can be satisfied beyond a reasonable doubt that the defendant, Sheddrack Joseph, assaulted Betty Willie on 26 December 1998 at Enamahu village, White Sands, Tanna, as a result of which she died on 31 December 1998 at Lenakel Hospital at 3:00pm.

## VII VERDICT

I find the defendant, Sheddrick Joseph, guilty of the offence as charged.

Dated at Port Vila, this 16<sup>th</sup> day of December 1999.



VINCENT LUNABEK  
CHIEF JUSTICE (Acting)

