

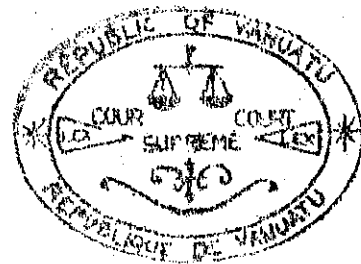
(Criminal Jurisdiction)

**PUBLIC PROSECUTOR V.      BERNARD MALSOKLEI  
MICHEL MALSOKLEI  
TIMOTHY MALSOKLEI  
NORBERT MALSOKLEI  
RAYMOND W. PIERRE  
TIMOTHY SOVRINMAL  
SOTER MALSOKLEI**

**Coram: Mr Justice Oliver A. Saksak  
Ms Cynthia Thomas – Clerk**

**Mrs Heather Lini-Leo -- Public Prosecutor  
Mr Hillary Toa for the Defendants**

## **JUDGEMENT**



### **Charges**

The Defendants were charged with four counts of witchcraft contrary to section 151 of the Penal Code Act [CAP.135] (the Act). Count 2 was for intentional homicide contrary to section 106(1) of the PCA against Soter Malsoklei only. Count 3 was for complicity to intentional homicide contrary to sections 30 and 106(1)(b) of the PCA against all the defendants. And Count 4 was for rape contrary to section 90 against all the defendants.

### **Pleas**

All the defendants except Soter Malsoklei pleaded not-guilty to all charges on 8<sup>th</sup> August 2000.

### **History And Chronology of Case**

All the defendants except Soter Malsoklei were committed by the Senior Magistrate's Court at Lakatoro to appear in this Court in July

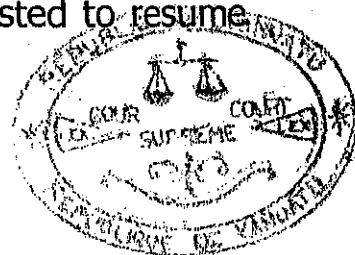
2000. They appeared for further remand in this Court on 25<sup>th</sup> July, 2000 when the Court fixed the plea date for 7<sup>th</sup> August, 2000.

Pleas were actually entered on 8<sup>th</sup> August, 2000. The six defendants were further remanded in custody until 16<sup>th</sup> August, 2000 on which date the defendants made their first application for bail. Bail was refused but a trial date was fixed for a period of one week from Monday 18<sup>th</sup> September 2000 until Friday 22<sup>nd</sup> September. Counsel for the defendants was not available in Luganville on 18<sup>th</sup> and 19<sup>th</sup> September. The trial actually commenced on 20<sup>th</sup> September and continued until 28<sup>th</sup> September 2000.

As for Soter Malsoklei, he was committed by the Senior Magistrate's Court on 14<sup>th</sup> September 2000. He was remanded in custody and he entered not-guilty pleas at the commencement of trial on 20<sup>th</sup> September 2000.

On 28<sup>th</sup> September 2000 the trial was adjourned to 16<sup>th</sup> October 2000 to continue until 30<sup>th</sup> October. On 16<sup>th</sup> October the trial was adjourned to 10<sup>th</sup> November due to ill-health of the Public Prosecutor. The trial was however resumed on 7<sup>th</sup> November, 2000 until 10<sup>th</sup> November 2000. It was adjourned to 30<sup>th</sup> November 2000 because the Public Prosecutor was attending a meeting overseas. Then on 4<sup>th</sup> December 2000 Inspector Wilson Garae in applying for further remand applied for further adjournment to early February 2001. It was then that the defendants expressed their wishes to be heard in relation to a second application for bail. The defendants were allowed bail on conditions. Amongst others, that the defendants were required to attend Court on Tuesday 27<sup>th</sup> February 2001.

On 27<sup>th</sup> February 2001 the defendants did not attend Court. They had breached a condition of their bail and therefore a warrant of arrest was issued on 7<sup>th</sup> March, 2001. By 20<sup>th</sup> April 2001 four of the seven defendants had been arrested. They appeared on the same day and applied further for bail. Bail was refused and the defendants were further remanded in custody to continue until a date was fixed for the continuation of their trial. The remaining defendants were subsequently arrested and detained. The trial was listed to resume



on 9<sup>th</sup> July 2001. The trial however resumed at 2 O'clock on 10<sup>th</sup> July 2001 and continue until Friday 13<sup>th</sup> July 2001. On 16<sup>th</sup> July 2001 the defendants made application for no-case submissions. On 10<sup>th</sup> August 2001 the Court ruled that on the evidence presented there was a case to answer by the defendants. The Court fixed the continuation of the trial for 10<sup>th</sup> September 2001 and remanded the defendants further in custody. The trial did not resume on 10<sup>th</sup> September but was adjourned to 20<sup>th</sup> through to 25<sup>th</sup> September 2001. The defendants gave evidence in their defence and called alibis. The Public Prosecutor sought leave of the Court to call evidence in rebuttal by virtue of section 169 of the Criminal Procedure Code Act [CAP.136] (the CPC Act). Leave was granted and the matter was adjourned to 12<sup>th</sup> October 2001. The defendants applied for bail and were granted conditional bail.

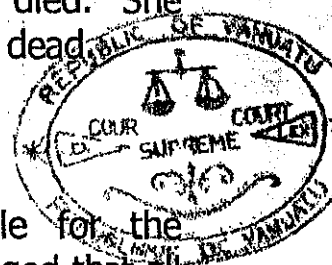
On 12<sup>th</sup> October 2001 the Public Prosecutor informed the Court that she would not call further evidence in rebuttal but sought an adjournment to 19<sup>th</sup> October 2001 to make final written submissions. On 19<sup>th</sup> October 2001 final submissions were received from both Counsel. The Court reserved its verdict to Wednesday 7<sup>th</sup> November 2001. This did not take place due to the Judge being away on an orientation programme in New Zealand. The matter was adjourned to 19<sup>th</sup> November for decision however on that date the Public Prosecutor and Counsel for the Defendants were not available in Court. The Court adjourned the matter to 23<sup>rd</sup> November 2001 for judgement.

### Facts

On the night of 22 December 1995 Michel Malsoklei accompanied Roslyn Bangus (the deceased) and Josephine Bangus to a dance at Lolmasing Night Club. There the deceased fell down and died. She was taken to Norsup Hospital where she was pronounced dead.

### Allegations

It was alleged that the defendants were responsible for the deceased's death through witchcraft practices. It was alleged that all



the defendants had been meeting together during the nights of 18<sup>th</sup> December 1995 through 22<sup>nd</sup> December in a little house belonging to the Malsoklei family. That on the night of 18<sup>th</sup> December 1995 the defendants had lit a fire and were dancing and chanting around it. That they were dressed in traditional dress. That a black pussycat was hanging over the fire while the defendants were dancing and chanting around it. That on the night of 18<sup>th</sup> December 1995 there was an initiation ceremony during which the name of the deceased was submitted and agreed that she was to be the victim of the witchcraft practice.

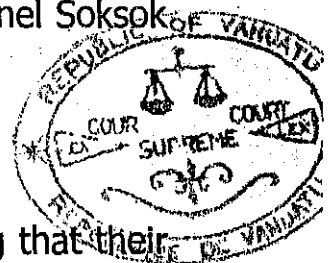
That on the night of 20<sup>th</sup> December 1995 in a garden near Lolmasing Nigh Club all the defendants had had sexual intercourse with the deceased. That after the inter-course Soter Malsoklei hit her head with a piece of wood knocking her unconscious. That Michel Malsoklei then removed her intestines by a pandanus leaf pushed up her anus. That Michel Malsoklei had severed the deceased's liver or heart and given it to Channel Soksok to eat which he did. Finally it was alleged that all the defendants had taken part in and aided each other in the act of witchcraft and to the homicidal killing of the deceased.

### Denials

All the allegations were denied by the defendants. At least three of the defendants told the Court they were not on Malekula during the relevant period. These were Bernard Malsoklei, Michel Malsoklei and Timothy Sovrinmal. The remaining four defendants denied the allegations on the basis that they did not know who Channel Soksok was.

### Evidence

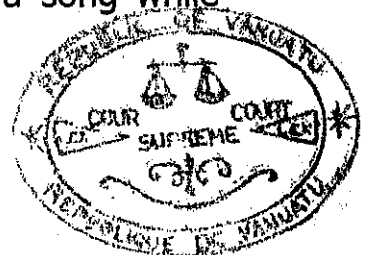
During the voire dire the defendants succeeded in proving that their confession statements taken by the Police were involuntary on the basis that they were taken through threats, force or intimidation. Their admission statements were ruled inadmissible by the Court.



### A. From the Prosecutions

The prosecutions evidence came from Channel Soksok, Rosali Soksok, PC David Bong and Josephine Bangus. Channel Soksok became the main witness in that he was involved in the activities performed by the other defendants. He was invited to join the group by Raymond Peirre on 16<sup>th</sup> December 1995. On 18<sup>th</sup> December 1995 after having some kava he was taken by Raymond Pierre at about 10 O'clock at night to a house in the bush. He followed Raymond Pierre into the house. All was quite but he saw all the defendants in the house. There was no talking, just sign language. Michel Malsoklei appeared to be in command. In this first meeting Channel Soksok was required to nominate a member of his family to be put to death in order that he could be initiated into the group. After some hesitation Channel Soksok nominated Roslyn Bangus, the deceased when it appeared to him that he was himself going to be killed by the group. After such nomination the defendants then danced and chanted the deceased's name around a fire over which a black pussycat was hanging. The cat appeared to be dead in its body but its head appeared to be still moving. Then the group dispersed and instructed to regroup on Wednesday night. They met on Tuesday night as well but the witness was not with them. The witness was kept under serveillance by Raymond Pierre and Bernard Malsoklei.

On Wednesday night being 20<sup>th</sup> December 1995 the witness was accompanied by his guards to a garden near Lolmasing Night Club where they joined the other defendants. They waited for Michel Malsoklei who went to the video show at Notre Dame in order to fetch the deceased and bring her to the garden. When she arrived with Michel Malsoklei she was told to remove her clothes and to lie down. She did and Michel Malsoklei first had sex with her. All the other defendants had their turns. The witness was the last person to have sex with deceased. Then Soter Malsoklei took a piece of wood and hit the deceased's head once killing her. Then Michel Malsoklei took a pandanus leaf, inserted it through the deceased's anus and twisting it outwards, removed the intestines of the deceased. Then Michel Malsoklei cut of a piece of the deceased's heart and gave it to the witness to eat. And he did. Then Michel sang a song while



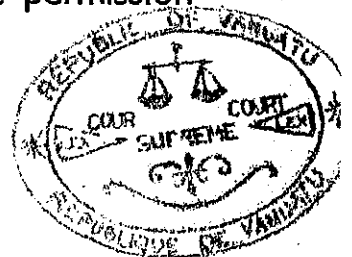
holding a leaf over Soter's body. That changed Soter's face into the deceased face down to the abdomen. The lower parts remained the same. Soter Malsoklei was told to go to the deceased's house to fill in her place. Then they dispersed.

Their next meeting was on Friday night the 22<sup>nd</sup> December 1995 at the Lolmasing Night Club. The witness saw Michel and Bernard Malsoklei come to the Night Club with the deceased's dead body. Soter was dancing disguised as the deceased. He joined Michel and Bernard Malsoklei and at Soter's signal, they threw the deceased's body down on the floor and then immediately disappeared from the scene.

Fear over whelmed the witness so that he left Walarano and returned to his home village at Lamap. But then guilt and the horrifying thoughts of eating a raw human heart overcame him that in april 1996 he voluntarily made a report to the Police bringing the matter into light.

Rosali Soksok is the wife of Videl Soksok. They are the owners of Lolmasing Night Club where the deceased fell down and died on 22<sup>nd</sup> December, 1995. She was at the entrance of the night club collecting fees. She saw Josephine and another girl who appeared to be the deceased enter the night club between 10 and 11 O'clock at night. She took note of the deceased's clothes and hair to be tidy and well kept. She saw them dancing immediately upon entering the night club. The dancing hall was not full but there were about 30 people dancing. As she watched, the witness saw someone falling to the floor. She went along and saw that it was Roslyn Bangus, the deceased. She immediately saw changes in her clothes and hair. That they were not in the same state they were in a short time after she had come into the night club. Her body looked dirty with grass and dirt. Her body was very cold. Her hair was no longer in a tidy condition. There were no hair clips on her hair and her Zipper was undone.

Josephine Bangus told the Court that on the night of 22<sup>nd</sup> December 1995 Michel Malsoklei came to their house and sought permission

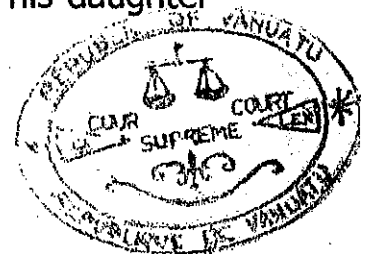


from her father to take her and the deceased out to the dance at Lolmasing Night Club. They left the house about 10 O'clock in the night after watching video show. At the entrance of the night club the two girls paid for their own entrance fees. Michel Malsoklei did not go in with them. He did not even dance or keep company with them. They had danced to two or three songs when the deceased complained of head pains and she fell to the floor and stopped breathing immediately. She was washed with some water but she was dead. They carried her outside where Michel Malsoklei came back on the scene. He organised a truck and accompanied the deceased and the others to the hospital. While others were crying She observed that Michel Malsoklei did not cry. In hospital a Japanese doctor had confirmed that Roslyn had died a long time ago.

#### B. From The Defence

All the defendants gave evidence in their defences. The defence also called evidence from Chief Anthony Malkon and Pierre Sewen. Michel Malsoklei said he was in Vila in 1994 working for Atingting Construction Company until 1995. On Thursday 21<sup>st</sup> December 1995 he travelled to Aulua on the MV Veronique where they unloaded building materials including bricks for a school there. Later he went to his home on a truck arriving at sun down. On 22<sup>nd</sup> December 1995 Roslyn's father went to his house and invited him to their house where he spent the day. They had kava and then he took Josephine and Roslyn to the dance at Lolmasing Night Club. It was Roslyn who wanted to go to the dance so her father asked Michel Malsoklei to accompany them. The defendant paid his own entrance fee and went in and sat down watching them dancing. Someone told him Roslyn had fallen down. He went to see what was happening but other people had surrounded her. He went to fetch a truck and assisted to bring the deceased to hospital. She was confirmed dead by the doctor and was taken to her home village. He was sorry and shed tears for her because the deceased was her 'smol mama' (aunt).

Bernard Malsoklei said he was on Santo since 2<sup>nd</sup> December 1995 to visit his daughter Roslyn who is married to Pierre Sewen of Malo. He lived with one Jean Bernard at Chapuis. He waited for his daughter

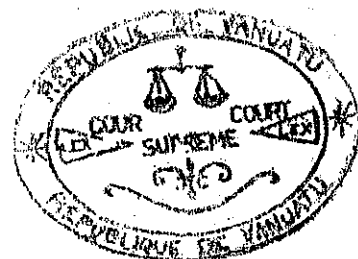


to come and talk to him. He left Santo to return to Malekula on 22<sup>nd</sup> December, 1995 after he had talked with his daughter. He travelled on the MV St Joseph and was dropped off at Vao after dark. He took a truck to his house. His son Philip and his wife were at home. Michel Malsoklei was in Vila and Sorter was not in the house. Then he boiled tea with his wife and they drunk tea with bread with the two boys Masio and Marko. He learned only of Roslyn's death on Saturday and went to share his sympathy with relatives. He did not know that Michel Malsoklei had returned and was with Joseph Jacob. He said there was a chiefs meeting held during which Michel Malsoklei was ordered to pay VT10.000 with a well-rounded tusk pig in fine to the deceased's family. He said that a group of people led by Vidal Soksok had burned down their three houses and they were left with nothing. They were taken by Timothy Malsoklei and lived at his home. His sons were assaulted by the group.

Pierre Sewen is Bernard Malsoklei's son-in-law. He is principal of the Santo East Primary School. He said that in December 1995 Bernard Malsoklei had travelled a lot between Malekula and Santo. He saw Bernard Malsoklei on 18<sup>th</sup> December 1995 standing by Wong Store. He had gone to check on his house at Bombua School and was returning to Malo. He did not stop. He returned with his wife Roslyn and met Bernard at Wong Store. They went along to Ah Pow Store and bought rice, sugar, wine and beer. They walked to Unity Park and sat down to drink the beer. At midday they went to chapuis to pick up Bernard Malsoklei's belongings and dropped him off at the ship. Then they returned to Malo.

Timothy Malsoklei said that in December 1995 he was at Walarano but that during the week when Roslyn died he was at Vao with his uncle. He went there on Wednesday 20<sup>th</sup> December. On his return he learned of Roslyn's death and confirmed it from Bernard Malsoklei's house.

Norbert Malsoklei from 1<sup>st</sup> to 31<sup>st</sup> December 1995 was living at Jaillie's house. He returned to his village on 21<sup>st</sup> December 1995. On 22<sup>nd</sup> December, 1995 he was involved in the preparations for his





cousin's marriage. A boy had told him about Roslyn's death and that he was one of those involved in her death.

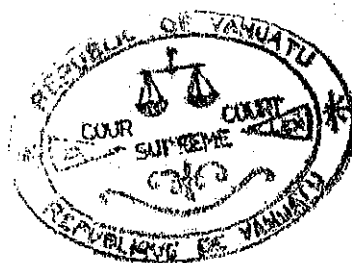
Sorter Malsoklei said he was at Walarano in December 1995 looking after their home and their livestock. His father, Bernard Malsoklei, mother and two brothers Masio, and Marko were in Santo. They returned home on the night of 22 December 1995 on a truck. They were dropped off at Vao. They went to share sympathy with Roslyn's family the following day being Saturday.

Raymond Pierre said that the period between 16<sup>th</sup> to 31<sup>st</sup> December 1995 he was with his family in his village at all times. He did not know Channel Soksok but knew he was from Lamap, North East Malekula. His relatives never knew Channel Soksok because he never came to their home. He never saw the man. He denied that there is a house in the bush where they had practiced witchcraft.

Timothy Sovrinmal said he was living with his father at Natawa village, Shark Bay in 1995. He went to Malekula only after 26<sup>th</sup> January 1996 on the Ship Tiare. He lived with his grandpa at Bethel. He never knew or saw the other defendants previously. He only knew and saw them when the Police arrested them and detained them in prison at Lakatoro.

Chief Antony Malkon said he was at Walarano working his gardens in December 1995. He attended the Chiefs meeting which sat to hear the case between Vidal Soksok and Michel Malsoklei. The chiefs made a decision that Michel Malsoklei pay Vt10,000 and a pig to the Bangus family. The pig was killed and shared. The meeting concluded with kava drinking until 8 O'clock in the night. There was no evidence at the meeting that Michel Malsoklei had killed Roslyn Bangus. There was allegations that it was Vidal Soksok who killed Roslyn but the Chiefs who presided had concealed it favouring Vidal Soksok as their relative.

### Burden of Proof



Pursuant to section 8 of the PCA the burden of proof rests with the prosecution to prove guilt beyond reasonable doubt by means of evidence properly admitted. In relation to the defendant's alibis the defendants have a duty to prove certain facts on the balance of probabilities. That is provided for in section 10 of the PCA.

## The Law

### **1. Witchcraft – Section 151 PCA –**

"No person shall practise witchcraft or sorcery with intent to cause harm or detriment to any other person.

Penalty: Imprisonment for 2 years."

#### **The legal elements of this offence to be proved are –**

- (i) a person or persons who practices witchcraft
- (ii) with intent to cause harm or detriment
- (iii) on another person or persons.

### **2. Rape – Section 90 PCA –**

"Any person who has sexual intercourse with a woman or a girl without her consent, or with her consent if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representation as to the nature of the act, or, in the case of a married woman by impersonating her husband, commits the offence of rape. The offence is complete upon penetration."

#### **Punishment of Rape – Section 91 PCA –**

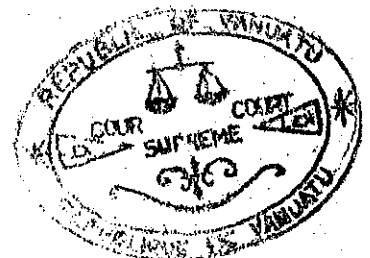
"No person shall commit rape.

Penalty: Imprisonment for life."

#### **The elements to be proved are –**

- (i) sexual intercourse by a man or men;
- (ii) on a woman or a girl,
- (iii) without her consent;
- (iv) if with consent which was obtained by –  
force; or  
fear of bodily harm;
- (v) impersonating the woman's husband.

### **3. Intentional Homicide – Section 106 PCA –**



- "(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."

The elements to be proved are –

- (i) a decision made by a person or persons;
- (ii) before committing the act causing death;
- (iii) actually causing an unlawful act or omission on a particular person causing his/her death.

4. Complicity – Section 30 PCA –

" Any person who aids, counsels or procures the commission of a criminal offence shall be guilty as an accomplice and may be charged and convicted as a principal offender."

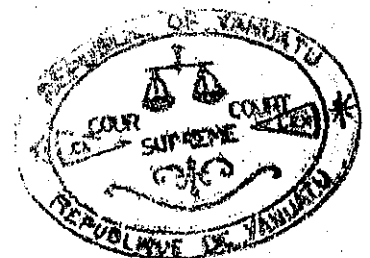
The elements to be proven are –

- (i) a person or persons
- (ii) aiding, counselling or procuring the commission of an offence.

### Corroboration

The evidence of Channel Soksok stands alone without any corroborative evidence from other independent witnesses. But I accept him as a credible witness. He was involved, he participated in the commission of the offences for which the defendants have been charged.

And with all boldness he has packed up enough courage to come out into the light, into the Public to tell of what for centuries have been kept sacred not only in our traditional societies but also in this new millenium. The defence have not raised any defence about insanity against Channel Soksok. And there is no evidence of any mental disability against him. And I accept that where the witness is giving credible evidence there is no requirement of corroboration. That was



the principle enunciated by Lord Hailsham in the English Case of DPP v. Kilbourne (1973) AC 729 Cr.App.R 381 HL at p.402.

### Judicial Notice

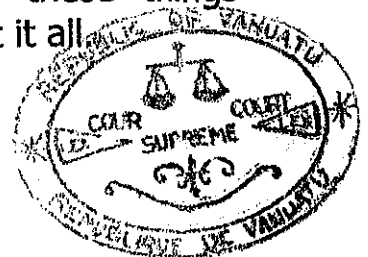
I take judicial notice of the reality that in all cases involving witchcraft and sorcery the persons or persons involved have and will categorically deny all allegations although it appears clear from facts and evidence that they committed the offence. There is a distinguishing feature of this case that makes the case different from all other past cases: the fact that a person who was actually involved in the activities performed with or in connection with the witchcraft or sorcery has come out public on the matter. This has to be a hallmark case on witchcraft and sorcery in Vanuatu.

And the reasons for denials of these practices are not surprising. We are dealing here with spiritual powers of darkness. The mastermind behind these activities is Satan who the Bible refers to as the father of lies. More than 2,000 years ago Jesus Christ rebuked some Jews who claimed to be children of Abraham but were not. And Jesus called them children of the devil. It is recorded in the Gospel of St John Chapter 8, verse 44 as follows:-

"You belong to your father the devil, and you want to carry out your father's desire. He was a murderer from the beginning, not holding to the truth, for there is no truth in him. When he lies, he speaks his native language, for he is a liar and the father of lies."

(NIV).

In this case we see the clear evidence of the ritual that becomes a covenant initiating a person into the covenant relationship with the mastermind. Channel Soksok described it clearly in his evidence that in a garden after Michel Malsoklei had removed the deceased's intestines, he also cut off a piece of the deceased's heart and gave it to Channel to eat. He had difficulty chewing it but he hesitantly and finally swallowed it down. I take Judicial notice of the evidence to imply that a covenant relationship was entered into so that whatever happens Channel Soksok would always deny that these things happened. But he did and that is the good thing about it all.



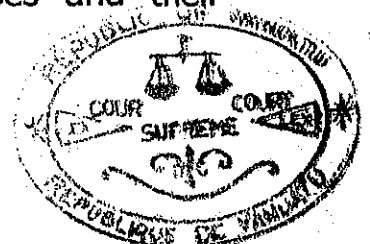
### Circumstantial Evidence

The evidence from Rosalie Soksook and Josephine Bangus reveal some circumstantial evidence which the Court relies upon to infer that the defendants committed the offences for which they have been charged. These are as follows:-

1. A dead person, a girl by name of Roslyn Bangus. The defendants have not made this an issue and is therefore unchallenged.
2. According to Josephine Bangus, it was Michel Malsoklei who sought permission from her father to take the girls to the dance. That never happened before so why this time?
3. At the entrance to the dance hall Michele asked the girls to pay for their own entrance fee. That is not usual for someone who is the invitee and also for someone who says he had just returned from Vila after working for Atingting Construction.
4. Inside the night club Michel Malsoklei left their company and did not even dance with them. That again is not usual as an invitee. Rosalie Soksook confirmed that evidence.
5. Only after Roslyn had been on the floor that Michel Malsoklei came back on the scene trying to arrange for a truck. And he was on the truck with the deceased to the Norsup Hospital.
6. He did not shed any tears. That is unusual for a person who said that he was related to the deceased and her relatives.
7. According to Rosalie Soksook's evidence there was a sharp contrast in the appearance of the deceased first when she entered the night club and after she had fallen to the floor. Upon entry the deceased was dressed nicely in both her clothes and her hair. After she had fallen she was untidy and dirty, with no hair pins and her zipper was undone.



8. The deceased body was very cold immediately after she had fallen. That is very unusual.
9. During the voire dire Police Officer David Bong gave unrebutted evidence that Timothy Sovrinmal and Norbert Malsoklei were arrested in 1996 for this same offence which they admitted. They both escaped from lawful custody.
10. Michel Malsoklei's evidence during the voire dire was that he had lived with his uncle at Olal, North Ambrym in 1983. That confirmed the evidence that his mother is from Ambrym married to Bernard Malsoklei of Walarano, Malekula.
11. There was evidence from Rosalie Soksok that some houses belonging to the Malsoklei family were burned down by a group of people. This was confirmed by the defendants evidence from Michel Malsoklei, Soter and Timothy Malsoklei. The unusual feature of this burning of houses is that the Malsoklei family did not or appeared not to be concerned. Arson is of a criminal nature and especially when the houses burned were all three houses owned by the Malsoklei's, they did nothing about it. There is no evidence of a criminal report lodged with the Police. And there is no evidence showing a claim for compensation against those responsible by the defendants.
12. There was evidence from Rosalie Soksok that the chiefs had held three meetings with Michel Malsoklei. This is confirmed by evidence from Michel, Soter, Timothy Malsoklei and Chief Anthony Malkon. Their evidence was that Michel was ordered to pay a fine of VT10,000 and a pig. The fine was not a penalty for causing the death of Roslyn Bangus. It was an act of reconciliation with the Bangus family because it was Michel Malsoklei who had taken the deceased and Josephine Bangus to the dance where Roslyn fell down and died. That also confirms the evidence of Josephine Bangus that Michel Malsoklei had sought permission to take them to the dance. It was her evidence also that Michel Malsoklei had returned to Walarano from Vila a week or two earlier. Josephine Bangus and Rosalie Soksok are credible witnesses and their



evidences are accepted as the truth. Similarly I accept Police Officer Bong's evidence as evidence of truth.

### Credibility of Defendants' evidence

I find that the defendants' evidence lack credibility on the basis earlier advanced in this judgment. Further, on the basis of inconsistencies of the defendants' evidence. I state below a few examples only:-

1. Bernard Malsoklei never said he came to Santo with his wife and two sons. He did not know his age or date of birth and was not educated and how he could remember very well going back to Walarano on 22<sup>nd</sup> December 1995 is beyond comprehension. He told the Court that when he arrived at home there was no one at home except Philip and his wife. The first time he mentioned his wife was that night on arrival when he boiled tea with her.
2. Soter Malsoklei told the Court that he was the only son left at home to look after the home and the livestock. If he was, his father Bernard Malsoklei did not see him on arrival and yet he said he saw them arrive at night in a truck.
3. Pierre Sewen told the Court that he saw Bernard Malsoklei waiting by Wong Store as he usually did. He did not stop but went all the way to Malo and brought back his wife to meet her father. That is not a usual thing to do to a father-in-law. Malo is some good distance away from Luganville and to just leave a father-in-law standing there without any indication as to when he would be back with his wife is beyond me. He is not a credible witness.
4. Chief Anthony Malkon's evidence relates mainly to customary issues and his views about them. He did not sit on the Chiefs panel that dealt with the case of Michel Malsoklei. No chiefs who sat gave evidence to clarify what the Vt10.000 and a pig imposed on Michel Malsoklei was. The evidence of Chief Malkon is therefore irrelevant.



5. Most of the defendants said they never knew who Channel Soksok was but they did know that he is from Lamap.
6. Timothy Sovrinmal said he did not know Roslyn Bangus but said he felt sorry when he learned about her death. He said he was in Shark Bay on Santo in 1995 and returned to Walarano only in January 1996. Then he said he first heard of Roslyn's death in 1995.

### Credibility of Channel Soksok's evidence

Having heard evidence from this man and the defendants and observing their demeanours in court, it is highly unlikely that Channel Soksok could have made up the story. He voluntarily approached the Police and brought the story to light. And he stood by it in Court without any suggestion that he could be lying. I must conclude that Channel Soksok was a credible witness and his evidence have to be accepted as the truth.

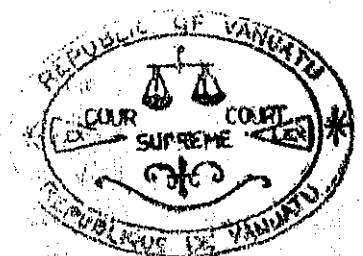
### Applying The Law To The Facts

Applying the law in relation to the four offences committed herein to the facts and evidence before me, I find the facts proved by the Prosecution against the defendants herein. The Prosecution had proved the elements of each offences to the required standard of proof. And they have discharged that burden.

### Verdict

Accordingly I find as follows:

1. In respect of Count 1 - Witchcraft - Bernard Malsoklei, Michel Malsoklei, Timothy Malsoklei, Norbert Malsoklei, Raymond W. Pierre, Timothy Mathew Sovrinmal and Soter Malsoklei are guilty as charged.





2. In respect of Count 2 – Intentional Homicide - Soter Malsoklei is guilty as charged.
3. In respect of Count 3 – Complicity to Intentional Homicide, Bernard Malsoklei, Michel Malsoklei, Timothy Malsoklei, Norbert Malsoklei, Raymond W. Pierre and Timothy Matthew Sovrinmal are guilty as charged.
4. In respect of Count 4 – Rape, Bernard Malsoklei, Michel Malsoklei, Timothy Malsoklei, Norbert Malsoklei, Raymond W. Pierre, Timothy Matthew Sovrinmal and Soter Malsoklei are guilty as charged.

### Conviction

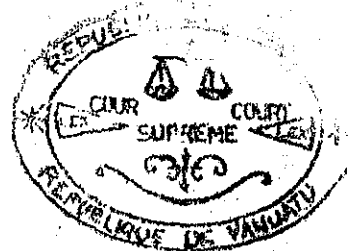
Accordingly, I enter convictions against each of the defendants in respect of the offences for which they have been charged.

### **SENTENCE**

Pursuant to my powers under section 187(1) of the CPC Act I wish to consider sentence immediately due to the circumstances of the case. Mr Joel and Mr Sciba do not object to this course.

These defendants have already spent more than 12 months in custody. They have requested bail on two occasions. On one occasion the only breach of condition against them is the fact that they did not appear on 27<sup>th</sup> February 2001. Apart from that they have remain faithfully to their conditions. Credit goes to them for that.

Channel Soksook was one of them but he has not faced the same treatment as these others have. Taking this into account and the fact that the defendants have already spent more than 12 months in jail, I consider the most appropriate way to deal with the defendants is under section 43(4) of the PCA.



Accordingly I convict each defendant as charged but discharge them.

Costs

There will be no costs order in favour of the prosecution but the defendants will be responsible for their own way back to their home island.

Right of Appeal

Under Section 201(1) of the PCA the defendants have a right to appeal within 14 days from today.

**DATED at Luganville this 23<sup>rd</sup> day of November, 2001.**

BY THE COURT



**OLIVER A. SAKSAK**  
Judge

