

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

Criminal  
Case No. 21/2190 SC/CRML

**BETWEEN:** Public Prosecutor

**AND:** Melinda Shanley Sam  
*Defendant*

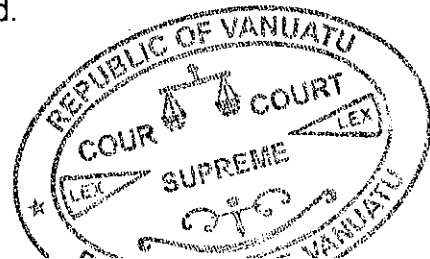
Before: Justice Oliver A Saksak  
Counsel: Mr Christopher Shem for Public Prosecutor  
Ms Kylie Karu for Defendant  
Date of Trial: 12<sup>th</sup> and 18<sup>th</sup> October 2021  
Date of Oral Decision: 18<sup>th</sup> October 2021  
Date Decision was issued: 22 October 2021

---

**VERDICT**

---

1. The defendant was charged with one count of arson, section 134 (1) of the Penal Code Act [ Cap.135]. she pleaded not-guilty and trial commenced on 12<sup>th</sup> October ending with the defence case on 18<sup>th</sup> October 2021.
2. The Prosecution has a high duty of proof beyond reasonable doubt to prove the defendant's guilt-section 8 of the Penal Code Act.
3. Section 134 of the Act for Arson:  
*"134. Arson  
(1) No person shall wilfully and unlawfully set fire to, or damage by means of any explosive, any building or other property whatsoever which to his knowledge belongs to another.  
  
Penalty: Imprisonment for 10 years."*
4. The elements the prosecutions had to prove beyond reasonable doubt are-
  - a) That the defendant set fire to a house and properties
  - b) That she did so wilfully and unlawfully.
  - c) That she knew the properties damaged and destroyed were Henry Willie's, Roy Michel and Willie Donald as co-tenants and the building belonging to Jacky David.



5. The particulars of the offence of arson as charged were”

*“ Melinda Shanely Sam, on the 21<sup>st</sup> of April 2021, at the Stade Area in Port Vila, you wilfully and unlawfully set fire to the properties of enry Willie your boy friend inside your bedroom knowing that they were his, which fire developed and destroyed your said bedroom and kitchen, and immediately thereafter spread through the entire building within which you were accommodated, destroying the said building which belonged to Jacky David along with his properties, as well as the properties of co-tenants Roger Roy Michel and Donald Willie respectively.”*

6. The Prosecutions adduced evidence from 7 witnesses relevantly summarised as follows-

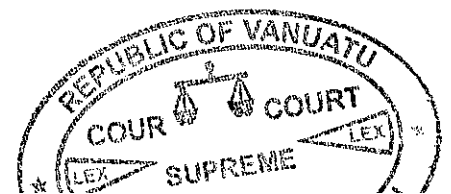
a) Jack David as owner of the house that was burned at Stade. He confirmed the defendant and her boyfriend Henry Willie were tenants in Unit/Room No. 2. The home was partly brick-walled with iron sheets and Masonite ceiling interior. He and his family occupied Unit No.4. He was away on Tongoa Island on 21<sup>st</sup> April 2021 when the house was burned down. He returned after the burning and upon cleaning up they found 2 laptops that were burned on Unit No.2. He did not know who burned the house

b) Skylee Emory- She is the defecto wife of Jack David. They have 2 young children of 7 and 2 years old. She was at home when the house burned down. At 5:15am she was still sleeping. The defendant knocked on their door. She could tell she was drunk. She sent her mother Carol to go and speak to her. After some 30 minutes the defendant returned to her room then she, her father Emory Alick and the 2 children drove to HXM Supermarket to buy bread. They also went to Au Bon Marche. She saw Melinda sitting outside the Veranda. Upon their return, she saw smoke coming out from the door of Unit No. 2. Melinda was crying and calling out from her room. Henry Willie and Emory Alick opened the door and she saw Melinda lying down on the Veranda. Henry Willie and Emory Alick pulled her out of the room. Melinda was calling out to her small brother. Melinda had no dress on except in her pantie. She told on-lookers off saying “ Yufala ikam lukluk wanem, mi gat insurance blong pem olgeta samting ia.” The Police came and took her away. Fire destroyed the whole house.

In cross, she accepted she did not know the cause of the fire or see the defendant set the fire. She only suspected that it was her since she was the only one in the house at the time.

c) Donald Willie- He is a VMF member. He is a carpenter. He made the plan of the house. He confirmed th house was partly bricks and iron roof with Masonite walling interior. He was not present when the house was burned on 21/04/2021. He was at North Efate but confirmed all his properties in Unit 3 were destroyed. He did not know who burned the house.

d) Carol David is Emory Alick’s wife and mother of Skylee. She was residing with Skylee at the time of the burning because Jacky David her son-in-law was away on Tongoa. She got up early on 21/04/21 to make her fruit juice. She heard Melinda calling out and knocking on their door. She opened the door for her. She was very drunk. She held a screw-driver in



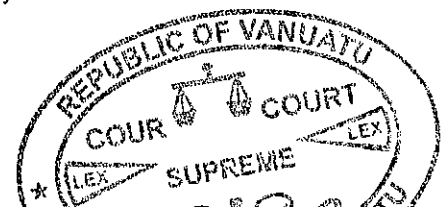
her hand. She was very angry saying " who woman I save kilim mi". she told her to go and sleep. She accompanied Melinda outside. She went into her room and locked the door. She went to make fruit juice in the kitchen. Then she saw Henry Willie ran outside and heard Melinda crying from the inside. She was calling out loudly. She saw smoke coming from the room.

In cross, she confirmed she did not know the cause of the fire and did not know who burned the house.

- e) Roger Roy Michel, a teacher. He was the tenant in Unit No.1. Between 5:00am – 6:00am he woke up and prepared himself for school. He heard arguments between his neighbours, Henry and Melinda but did not know what they were arguing over. He went out of the bedroom to go for a bath and saw Henry outside. While in the bath, he heard Skylee calling out that there was fire in Unit No.2 and he rushed out to see the fire. He saw Henry open the door to Unit No.2. He saw flames in the bedroom. He saw Henry trying to pull out Melinda. In cross, he confirmed he did not know the cause of the fire or who was responsible for setting it.
- f) Henry Willie, the defendant's boyfriend, an employee with the VNPF. He confirmed the house was burned on 21/04/2021. During the night of 20/04/2021 he and Melinda went to Club 21. They had just reconciled with Melinda's family over a previous incident when Melinda put him out of house with his belongings. In the club he drank beer and Melinda drank her favourite drink. They left to Planet 107. He talked with Alice, his sister. Melinda was angry and argued with them. This made them return to their house. He went to sleep around 3:00am. Melinda went to Skylee, the neighbour. She returned alter and punched him onto the bed. She took a laptop into the kitchen and returned to hussel him. He felt afraid and left her. He went outside. Melinda was singing and calling out her ex-boyfriend's. He sat down outside and heard the door close. He went to talk with Roy and called his sister to speak with her. Then he heard Emorey call out there was a fire inside. He ran back to the yard and forced the door to Unit No.2 open. Emorey Alick then entered the room with him. He saw Melinda lying down in the kitchen. He saw a pile of clothes at the bedroom door. Melinda was lying down in the kitchen facing the bedroom. He saw fire in the bedroom. It had lighted up the piece of hanging calico on the door and spreading into the kitchen. The flames were very hot. He pulled Melinda and took her out of the room. She was still drunk and wearing only a pantie.

In cross, he confirmed he did not know the cause of the fire but only suspected it was Melinda who was responsible for setting it.

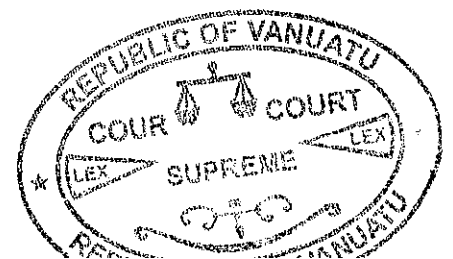
- g) Emory Alick, Father of Skylee and Father in law of Jacky David. He resided with Skylee at the time when Jacky David had gone to Tongoa. He confirmed at 5:00am he heard Melinda calling and knocking on the door. They were still sleeping. Melinda was drunk so they did not go outside. She heard her talking with Carol, his wife. After that she left and they all went outside, got on a bus and went off to HXM to buy bread with Skylee and the 2 grandchildren. When they were leaving he saw Melinda and Henry in their Unit. Their door



was open. Melinda wore a dress. On their return from HXM, he saw smoke from the house. He opened the door of the bus and ran to the house, he being the first to go in. He saw Melinda lying on the floor. He proceeded to the bedroom. He saw a pile of clothes by the mattresses and fire coming out of it. He tried to pull the clothes apart but the fire got out of control and get bigger. Melinda was on the floor and calling out to John Siro. Henry pulled her and dragged her out of the room. She had no dress on but only a pantie. He saw her outside with hands on the hips and saying "yufala i lukluk wanem, mi gat insurance blong lukluk long ol samting ia."

In cross, he accepted he did not know how the fire started.

7. The defendant called one witness Lyla Sam. Her evidence was objected to on the basis of **Brown v Dunne** and her evidence about an ice-box was rejected.
8. The defendant, Melinda Sam gave evidence herself. She was firm in her denial that she did not burn the properties of Henry Willie or the house of Jacky David. She told a more detail story of the reconciliation that occurred on 20<sup>th</sup> April 2021 and how their elders had stopped them from going to night clubs and drinking. She told in details how they entered Club 21 and how Henry Willie bought beers and how he threatened her by stopping her from dancing or talking with other people or even relatives. She told how they left her for Planet 107 and how Henry Willie left her and went to talk with Alice and how she felt angry and scolded them. She told of how Henry Willie deserted her and she had to return to Stade on a bus on her own. She told of how she met Henry back at the house. That was around 4:30-5:00am on 21/04/2021. She told of how she met Carol and poured her grievances over Henry's behaviour to her. That she cried and felt bad about it all. She explained the screw driver she held was to bold the door of their unit. He told of how she met Henry at the house who told her to go and sleep and agreed how she argued with him causing him to leave the room. She told of how tired she was after a long night and how she was hungry. She tried to eat some cold food but could not. She then undressed and laid down to sleep. She was only awake when she felt heat on her back. She looked at the fan and saw smoke and flames on the calico and the wall. She then felt Henry's hand grab her and she took one to two steps to go outside. She explained her experience on the cruise ship in rough seas when she was assured of being paid insurance. She explained it was in that context that she mentioned insurance when she told off on-lookers at the scene. She described the electricity wires and connection from Unit No. 2 to the other units and how she had experienced power cuts when works were performed in the garage.
9. The fire that razed Jacky David's house was a mysterious fire. There was no direct eye witness that Melinda had started the fire. All was based on suspicion that because it started in Unit No. 2 and Melinda was alone in the room of the time, that it was her. That is not sufficient. In a case of this nature circumstantial evidence alone is not enough to safely convict the defendant. There needed to have been an independent expert report from an expert witness to rule out the other possibility that the fire could not have started in other way other than by someone lighting a match or lighter to set papers or clothes on fire. There was no such expert report or witness. That makes it unsafe for me to convict this defendant.



10. There was no evidence by the Prosecution that Melinda was a smoker to have a match or lighter with her. In her evidence it was Henry Willie, her boyfriend who smoked that night in Club 21 and at Planet 107.
11. Henry Willie and Emory Alick gave inconsistent evidence about who entered the room first and where the fire was.
12. Their description of how the fire spread from the time smoke was seen was such that it could not have started by the burning of some clothes as suspected. The times given from 5:00-6:00pm suggest it was already daylight.
13. Emory, Skylee and the 2 children went off to HXM to buy bread. Only upon their return a short time later when Emory saw smoke and ran to the house to open the door and went into the room. It is not even clear whether Melinda was lying on the floor in the kitchen or in the bedroom.
14. Henry Willie was outside of their Unit at the time. Why he did not notice or see the smoke or even smelt it is a mystery. Could he have been the one who lit the fire to make it look like Melinda who did it? This is a question that put doubt in my mind as to the guilt of the defendant.
15. The law on doubt is trite. The defendant must be given the benefit of that doubt. I believe her detailed story to be the truth.
16. I find the Prosecution has not proved beyond reasonable doubt that it was Melinda Sam, the defendant who set Henry Willie's clothes on fire, eventually resulting in the burning of the whole house together with other tenant's properties.
17. I return the verdict of not-guilty. The defendant is acquitted of the charge of arson.

**Dated at Port Vila this 22<sup>nd</sup> day of October 2021**

**BY THE COURT**

  
**Oliver Saksak**

**Judge**

