

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

**Criminal**  
**Case No. 23/2447 SC/CRML**

**PUBLIC PROSECUTOR**

**v**

**JUNIOR CLINTON BORENGA  
RUSIATE MALAS  
DANSTAN VUTI**  
Defendants

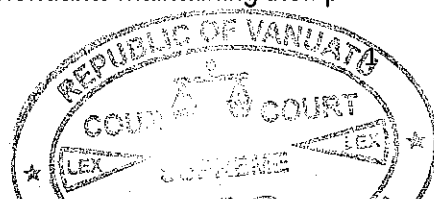
*Date of Hearing:* 12, 13, 16 December 2024, 20, 25 February 2025 and 26 March 2025  
*Date of decision:* 15 May 2025  
*Before:* Justice E P Goldsbrough  
*In Attendance:* Karae, T - Public Prosecutor  
Karu, K - Rusiate Malas  
Kaukare, J - Junior Clinton Borenga  
Nari, M, G - Danstan Vuti

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**VERDICT**

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1. On an amended information filed on 9 September 2024 the three accused Junior Clinton Borenga, Rusiate Malas and Danstan Vuti are charged with two offences. Those two offences are intentional assault causing death, contrary to s 107 (d) of the Penal Code and failing to provide for the necessities of life, contrary to s 104 (2) of the same Code.
2. On 26<sup>th</sup> March 2025 this Court delivered its decision following a submission of no case to answer on the charge of intentional assault. That charge was dismissed as against all three accused and is the subject of a separate published decision. Following delivery of that decision, and after a brief adjournment, the trial continued with all three defendants maintaining their plea



of not guilty and electing, after compliance with s. 88 of the Criminal Procedure Code, not to give evidence themselves or to call witnesses. Submissions were invited from counsel thereafter. This is the decision following the completion of that trial.

3. It need not be repeated that the burden rests on the prosecution to prove beyond reasonable doubt any criminal charge and that remains true in relation to each, and every separate element of an offence charged. In this case, s 104 provides: -

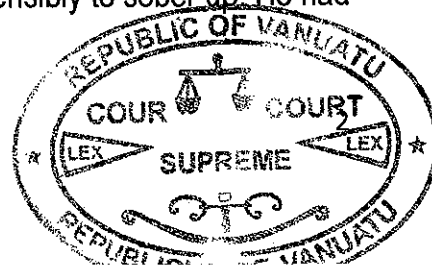
104 Duty to provide the necessities of life

(1) Every person who has charge of any other person unable, by reason of detention, age, sickness, insanity or other cause whatever to provide himself with the necessities of life, is (howsoever such charge arises) under a legal duty to supply that person with the necessities of life and is criminally responsible for omitting without lawful excuse to perform such duty if the death of that person is caused, or if his life is endangered or his health permanently injured, by such omission.

(2) No person shall without lawful excuse neglect the duty specified in subsection (1) so that the life of the person under his charge is endangered, or his health permanently injured by such neglect.

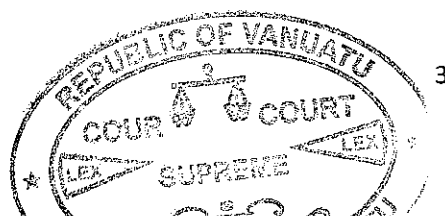
Penalty: Imprisonment for 7 years.

4. This case arises from the arrest and detention of the late Robsen Malulu William in late August 2023 from a nightclub in the outskirts of Port Vila, Les Baton. After his arrest by these three accused, all serving police officers, he was conveyed in a police vehicle to a police post in the centre of Port Vila known as Centrepont. There, rather than being presented and handed over to a custody officer, he was left in an outbuilding, ostensibly to sober up. He had



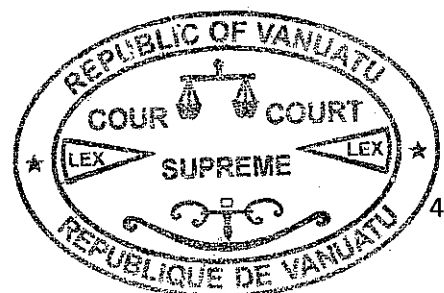
been drinking, displaying drunken and aggressive behaviour earlier immediately prior to his arrest.

5. He remained unattended for some time, a sufficient time for the officers to end their shift. He was eventually, following the intervention of another officer, conveyed to Vila Central hospital where he received medical treatment, leading the following day to an operation to repair what had been a bleeding internal wound. He died in the early hours of Monday 28 August 2023.
6. There is filed in this case a memorandum of agreed facts. That document demonstrates that several issues are not contested issues within this trial. The arrest and detention by these police officers is not an issue in this trial, nor the circumstances of his being left in an outbuilding to sober up, nor the time or manner in which he was conveyed to the hospital for medical treatment.
7. Turning to the elements of this offence, it is not then an issue that the deceased was under the care of these three police officers following his detention and that they were, until he was handed over to another, perhaps the proper custody officer, responsible for his welfare. In terms of the section, they were under a legal duty to supply that person with the necessities of life
8. There is nothing within the submissions of counsel addressing what amounts to the 'necessaries of life' but there is ample authority from other cases that this includes sufficient nutrition, shelter and required medical attention. There is some suggestion from the prosecution that in this case food and water might be relevant as necessities of life, as indeed they can be, but the evidence does not support the contention that lack of food or water had any significant effect on the circumstances of the death of the prisoner.
9. Suffice to say that this case turns on whether the failure of the arresting officers to take the accused for medical attention following that arrest rather than leave him to sober up in an outbuilding was such that his life was endangered or his health permanently affected by that failure. Clearly, with hindsight, the health



of the detainee was indeed in danger to the extent that his life came to an end within a short time following his arrest. The question to be answered in relation to this charge is whether the officers could reasonably be expected to have known of the extent of the injury and the need for medical intervention.

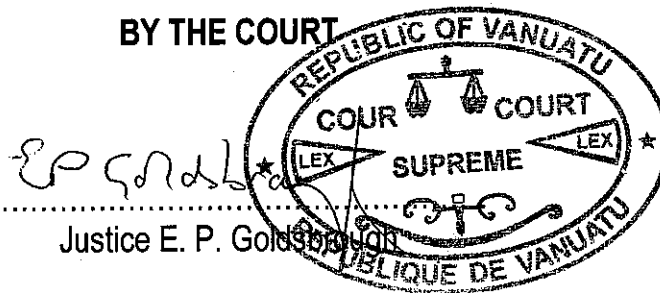
10. There is no definition of failure in this context and therefore it is necessary to determine, in the circumstances of the case, whether there has indeed, been a failure which requires the intervention of the criminal law. A parent who fails to take a child for medical treatment after observing symptoms is a useful example of a failure, but it is unlikely in most circumstances that the parent will be criminally liable for such behaviour.
11. In this case, again with hindsight, it is clear that the deceased required medical treatment. But there is no evidence, perhaps for obvious reasons, that the deceased raised any complaint to any of these three officers that he was in need of medical treatment. He, as the officers admit, was not in a good state, hence the need to be left to improve, but that was through, in their assessment and the assessment of those who reported his behaviour in and around the nightclub, through excessive consumption of alcohol.
12. Nor is there any evidence from the medical profession in this case that the delay in attending the hospital for treatment had any effect on the outcome. The doctor who gave evidence was not asked if, had the patient been brought in earlier than he was, the outcome may have been different. It is perhaps significant that the eventually operation performed on the patient was not performed immediately on his reception into the hospital but after a number of hours of observation and gradual deterioration in his condition. There is evidence of his appearance immediately following his reception into hospital from relatives, none of which pointed to anything other than a man who was no longer in perfect health but none the less able to converse, even smile, with family and friends.



13. This Court can therefore find that there was a failure to take the detainee to hospital immediately, and also a failure to hand over the detainee to the proper authority within the police force, i.e. a custody officer, but that does not indicate that this criminal charge is made out. Lacking here is the element of whether the failure is a culpable failure. Did the delay in taking the prisoner for medical attention endanger his life or result in permanent injury to his health.
14. There is no evidence presented in this case sufficient, in my view, to prove beyond reasonable doubt that this element of the charge has been made out, and for that reason the three defendants are entitled to be acquitted and discharged. The court so orders.

**DATED at Port Vila this 15<sup>th</sup> day of May 2025**

**BY THE COURT**



Justice E. P. Goldson