

PUBLIC PROSECUTOR

V

ANDREW COMBE

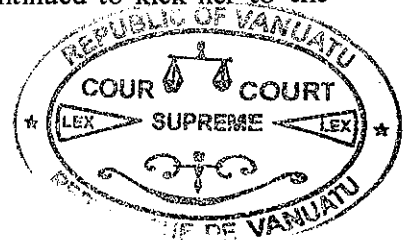
*Hearing: Thursday 16 June 2016 at 9:00 am*  
*Before: Justice JP Geoghegan*  
*Appearances: Damien Boe for the Public Prosecutor*  
*Britain Yosef for the Defendant*

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SENTENCE

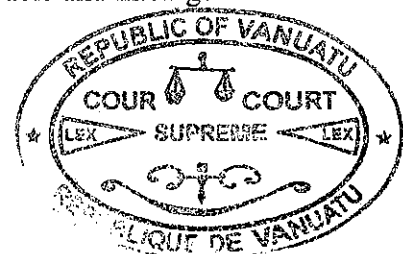
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1. Mr Combe, you appear for sentence this morning in respect of 2 charges arising out of an incident on February 6<sup>th</sup> 2016. Those charges are one of threatening to kill pursuant to section 115 of the Penal Code a charge which carries a maximum sentence of 15 years imprisonment and 1 of intentional assault causing temporary injury pursuant to section 107 (b) of the Penal Code which carries a maximum term of 1 year imprisonment.
2. The facts here are not in dispute and it is important for me to just briefly record those facts. The facts provided tell me that on February 6<sup>th</sup> you told the victim of your offending who is your partner or de facto wife to meet you at your place of work so that you could go home together. She went to your place of work but found that it was locked and thought that you had already gone home and therefore returned home herself. At about 6 pm she was lying on her bed when you came home and it was apparent that you were intoxicated. You were angry. You pulled her from her bed and you began assaulting her. Before you began your assault you said to her "Today I will kill you, today I agree to eat government rice". You then punched the victim and she has fallen to the floor. But you have continued to kick her to the



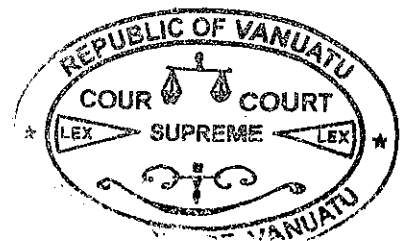
head, back and stomach. The victim was crying but that did not prevent you from continuing your assault. You punched her on her forehead, a blow which subsequently had to be treated by the insertion of stitches to her forehead and while she was still lying on the floor on her stomach you have climbed onto the bed and you had then jumped on top of her back. She has tried to talk to you and has endeavoured to get you to stop your assault but you have then taken a small knife and you have cut her on her back, her right leg and her left hand causing bleeding. You continued your assault on her. The victim has tried to run out of the house, and she ran to your neighbour's house to hide. You have tried to stop her from getting away but when she did get away you followed and notwithstanding the fact that she was hiding behind her neighbour, you have continued to advance towards her. You dragged both the victim and your neighbour outside causing significant levels of distress. Your neighbour has managed to take the victim from you and provide her with some protection and security and the police were called. The victim was taken to the hospital.

3. Yet even then would not return to your home. You got another knife and you stood at the gate waiting for the victim to come outside to you. You were arrested by the police and to your credit you have cooperated with them.
4. Your victim has suffered a fracture to her face. She has had to have stitches to the wound in her forehead and as I have said she suffered injuries to her stomach, back and right leg, and while those physical injuries have been temporary, one has to wonder about the psychological scars that are inflicted on a victim of this sort of violence. This in summary was a vicious assault on your partner fuelled by alcohol and involving the use of a weapon.
5. Your counsel Mr Yosef has provided very helpful submissions as has counsel for the prosecution. I have read your pre-sentence report. That places you in a very positive light. You have, it appears, positive relationships with your family and the community. You appear to be spoken highly of. You have completed an accounting course and you are clearly able and intelligent. You



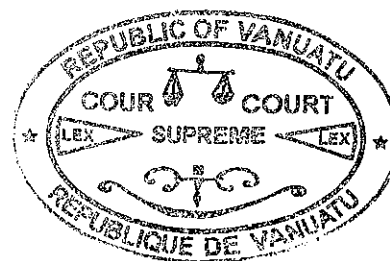
have expressed considerable remorse and you have engaged in a reconciliation ceremony with the victim and her family. By any measure however, this was a serious assault. I would add that the pre-sentence report tells me that you have indicated that you are prepared to engage in any community based sentence that the Court may see fit to impose.

6. The prosecution have referred me to a number of cases involving sentencing for this type of offending and that is helpful but each case has to be determined on its own facts. In terms of this offending it is artificial in terms of sentencing to separate the two offences and the lead offence in terms of sentencing; that is the most serious offence, is that of threatening to kill. In that regard the prosecution suggests a starting point of 3 to 4 years imprisonment as an appropriate starting point.
7. Mr Boe has referred me to a number of aggravating features and I will comment on those briefly. I accept that the use of a weapon in this offending, namely a knife, is an aggravating feature. The prosecution submissions have referred to an alleged history of violence and threats against the victim. I do not take those matters into account in your sentencing today, let alone treat them as an aggravating feature and I don't take them into account because you have never been charged in respect of those alleged offence and to take those into account would be unfair to you and in breach of natural justice. What is an aggravating feature I accept however is that you have endeavoured to continue with the assault notwithstanding that the victim has left the house and ran to the protection of a neighbour's home. Your assault has continued in the presence of that neighbour. I would add that your assault had also continued despite the pleas on the part of the victim that you stop.
8. While Mr Boe has referred to your consumption of alcohol as an aggravating feature of your offending I do not agree that it is an aggravating feature. It is simply a fact around the offending which needs to be taken into account in some way. I would add a further aggravating feature which is the fact that

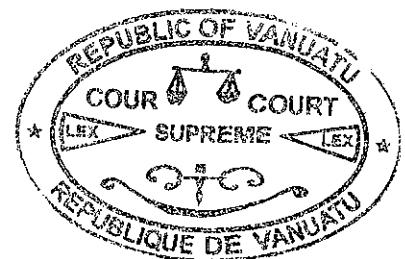


the assault involved an attack to the head of the victim, something which could involve, even with one blow, very serious potential injury.

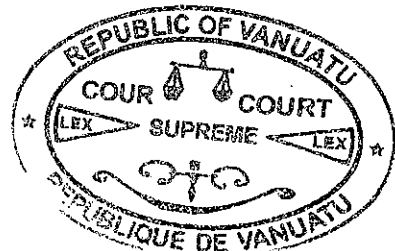
9. The threats here were serious and in this case have been acted upon. Your victim had every reason to believe that she was in danger of losing her life. Your threats were followed up by a vicious and cowardly assault against someone who was entitled to look to you for protection.
  
10. As I have said, I have been referred to a number of other cases involving offending of this kind. The case of Kalatei involves threats involving the brandishing of weapons but not the use of those weapons. Mr Kalatei assaulted several individuals although the assaults were not as serious as in this case. There were a number of threats and resulting charges. An end sentence of 16 months imprisonment was imposed. The case of Kaloran involved two threats to kill and an intentional assault. That case involved numerous serious threats to the victim and on one occasion assault of the victim by Mr Kaloran biting the victim's mouth. The Chief Justice in that case considered a starting point of 3 years imprisonment on the threats to kill and 11 months for the intentional assault. Mr Kaloran was sentenced to 15 months imprisonment which took into account his plea of guilty at the first opportunity and his clear record. The case of Kell Walker involved sentencing in respect of one charge of threatening to kill. An end sentence of 2 years imprisonment was imposed with half of that suspended. No weapon was involved and no assault was involved. The offender in that case was a 60 year old first time offender who had pleaded not guilty was not entitled to reduction in respect of plea. The case of Batick involves a threat to kill involving the use of a weapon and injury to the victim. The starting point of 4 years was adopted in that case.
  
11. As I have said in terms of sentencing it is somewhat artificial to separate the two offences. The sentence to be imposed must take into account what occurred in respect of both matters.



12. Accordingly I adopt a starting point in respect of the lead offence of threatening to kill after taking into account the aggravating features I have referred to and that starting point is one of 4 years imprisonment. There are no personal aggravating features which would justify an uplift of that starting point. In respect of the charge of threatening to kill, you did not change your plea to a guilty plea until the day of your defended hearing which reduces the discount which would otherwise be available for such a plea. I am prepared to make a discount for an allowance for your guilty plea of five months in those circumstances. I acknowledge that you are a first time offender and that you are relatively young at 24 years of age. You appear genuinely remorseful and have engaged in a reconciliation ceremony. I would comment however that your expressed remorse is somewhat clouded in my assessment by the fact that you only entered your guilty plea in respect of the charge of threatening to kill at the last minute.
13. I note that you are now living with the victim. I note that she has now referred to seeing positive changes in you. The fact that she is back living with you is in many respects a rather grim feature of domestic violence of this kind. So I don't draw too much from the fact that the two of you have reconciled and are continuing to live together.
14. In respect of the personal factors that I have referred to though, I deduct a further 9 months for those factors. In addition I deduct a further month for the time that you have spent in custody. That leaves an end sentence taking into account all of those matters including the entry of a late guilty plea of 2 years and 9 months imprisonment on the charge of threatening to kill. On the charge of intentional assault an end sentence taking into account your guilty plea and other personal factors referred to, is 6 months. I am satisfied that it is appropriate that that sentence be served concurrently as I am satisfied that an overall sentence of 2 years and 9 months appropriately reflects the seriousness overall of your offending.



15. Having set that sentence the issue is then whether that sentence should be suspended. In determining that issue I need to take into account the provisions of the Suspension of Sentences' Act [Chapter 67] which provides that if the Court considers that in view of the circumstances and in particular the nature of the crime and the character of the offender that it is not appropriate to sentence an offender to imprisonment it may suspend the sentence. That sentence may be suspended in whole or in part.
16. In considering the matters referred to in Chapter 67, I consider that I also need to take into account the interest of the victim, the need for rehabilitation in your case, the provisions of section 37 of the Penal Code regarding the need for people to be held in the community if that is appropriate, the need to hold you accountable for your offending and the need very significantly in this case to deter you and others from offending of this kind. In that regard I refer to the decision of Kell Walker which refers to the fact that cases of this nature must always warrant imprisonment and that a suspension of imprisonment must only be granted if the circumstances of the case justified.
17. In that regard this was as I have said a serious and cowardly attack on a vulnerable victim. She was a vulnerable victim because she was your partner, she was living with you and she was alone in your home at the time of this attack. Regrettably this is a community wracked by violence, by men against women. I think the community has registered its clear concern about this and the Courts must impose sentences which reflect that concern and emphasizes to the community that violence of this kind will not be tolerated. Men in particular must know that women must be treated with respect and not as punching bags because they are angry for some reason or they are intoxicated. Women must know that the legal system will do what it can to protect them from violence.
18. Accordingly the need for deterrent sentences in situations like this is high. That taken together with the seriousness of this particular incident outweighs in my assessment the personal factors which apply to you and leads me to the



view that a suspended sentence should not be imposed. I am therefore not prepared to suspend any part of this sentence.

19. Accordingly on the charge of threatening to kill you are sentenced to 2 years and 9 months imprisonment. On the charge of intentional assault you are sentenced to 6 months imprisonment concurrent with the sentence on the charge of threatening to kill. The sentence will take effect immediately and you have 14 days to appeal.

**Dated at Port Vila this 16<sup>th</sup> day of June 2016**

**BY THE COURT**

**JP GROGHEGAN**

**JUDGE**

