

PUBLIC PROSECUTOR

-v-

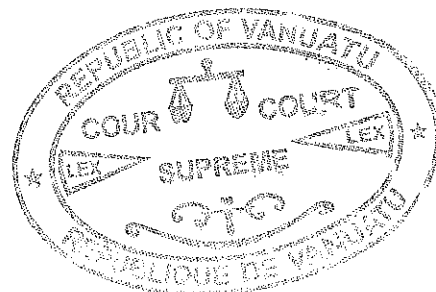
**ALLAN BASIL
ALBERT BASIL
BASIL ALLAN
PADJO KORTY**

Coram: V. Lunabek – CJ

Counsel: Mr Lenry Young for the Public Prosecutor
Ms Linda Bakokoto and Mr Henzler Vira for Defendants

SENTENCE

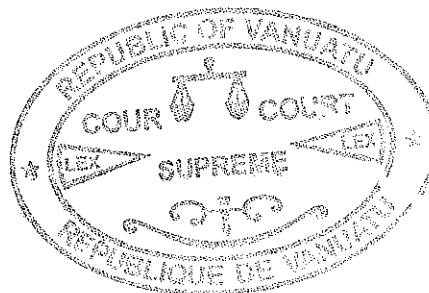
1. This is the sentence of following named Defendants: Allan Basil, Albert Basil, and Padjo Korty: Defendant Basil Allan was not present in Court for plea. He is a student at the Vanuatu Institute of Technology (VIT). He will be dealt with separately.
2. Defendants Allan Basil, Albert Basil and Padjo Korty, you are all from Unua 1 village. On 28 August 2017, you entered guilty pleas for the offences charged against each of you in the information dated 18 August 2017. Allan Basil and Albert Basil, you pleaded guilty for complicity to arson, contrary to sections 30 and 134 (1) of Penal Code. Padjo Korty, you pleaded guilty for arson contrary to s.134 (1) of Penal Code.
3. The brief facts of the offences are these -Stephen Shem, Philimon Shem, Philimon Shem, Samuel Shem, Michael Shem are the five complainants in this case. They are also from Unua 1 Village, South East of Malekula.
4. At the time of the offending Allan Basil you were a Chief of the village and were 45 years old. Albert Basil you were 30 years old; Also Padjo Korty was 17 years old and a student at Lakatoro Secondary School.



5. On the night before the incident happened Chief Allan Basil called one Jonah Belbong; his son Basil Allan and Padjo Korty to see you. You then instructs them to go burn the houses. You gave them an empty bag of rice and a plastic container containing benzene.

History of offending

6. The offending occurred on the 9th of December 2015 at Unua Village 1 at around 9:00 – 10.00pm at night. The offending was believed to have occurred due to the tension between the two families, Family Basil and family Shem. There were recent death within the Basil family and they believe that the death was caused by family Shem through witchcraft. The issue was dealt with within the village court and the outcome was in favour of the Shem family. The Basil family was still not happy with the result thus decided to take matters into their own hands by setting fire on the complainant's houses.
7. According to Jonah Belbong who is 13 years old, the incident was wholly dictated by Chief Allan Basil. On the night of the incident you Chief Allan Basil, told Jonah Belbong to go and set fire on the houses that belongs to family Shem. Jonah Belbong was scared to do so, and Chief called Padjo Korty and his son Basil Allan and insisted Jonah Belbong to follow the two boys so that they will carry out the work together.
8. Chief Allan Basil was to pay them after they had done the job. At that time Albert Basil you were with Chief Allan Basil when you were giving instruction about burning the houses. Chief Allan Basil you gave 2 litre plastic of Benzene to Basil Allan and two matches to the boys. Your instructions were that they should wait, as soon as you left to drink kava then they should ran quickly and set fire on the buildings. Albert Basil and Jonah were responsible to sprinkle Benzene around and on the houses and then they all set fire on the houses with the matches.
9. Albert Basil also contributed in the discussion by telling the boys to set fire on only one house so that it will be easier for them to compensate the victim if you were caught. You also told the boys that after they set fire on the house they must run quickly and hide in the bush. The next day, Chief Allan Basil you told the boys not to tell anyone about their involvement in burning down the houses.

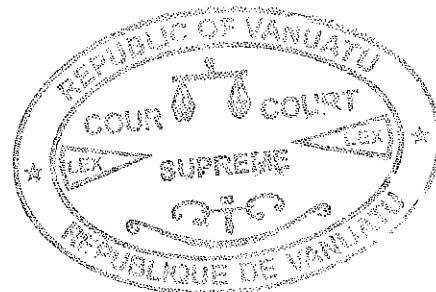


10. The complainant's houses that were burnt down include one dining house and bathroom that belongs to Stephen Shem, the rough estimated cost of his value properties that were burned together with the house is equal to a monetary value of VT141,000. One of his houses that were destroyed by the fire has cement floor.
11. The complainant Philemon Shem, he had 1 sleeping house and one kitchen house burnt down. The houses are made of local materials such as Bamboo and Natangura leaves. Other personal belongings were also destroyed; the rough estimated cost of the properties is equal to a monetary value of VT174,100.
12. The complainant Samuel Shem, he lost one of his sleeping houses, he was in Australia at the time of the offending and all his belongings (personal, beddings, tools etc.) that were locked in the house were burned to the ground, value roughly about 901,250 Vatu. He was in Australia when the incident happened.
13. The complainant Michael Shem lost 1 sleeping house and 1 kitchen house. His personal belongings such kitchen wares, beddings, tools were also destroyed by the fire. The houses were made of Natangura, timbers and bamboo materials.
14. The complainants Setak Shem lost two sleeping houses made of Bamboo and Natangura materials. Two cloths for decoration worth VT 1,000 were destroyed also.
15. According to the Prosecution witnesses even though the houses were used for human dwellings, no person in the house was injured by the fire.

You were arrested, cautioned and interviewed by the police officers, all of you three (Allan Basil, Albert Basil and Padjo Korty) made admissions to the allegations made against each of you.

16. The relevant law is the Penal Code Act [Cap 135].

Complicity



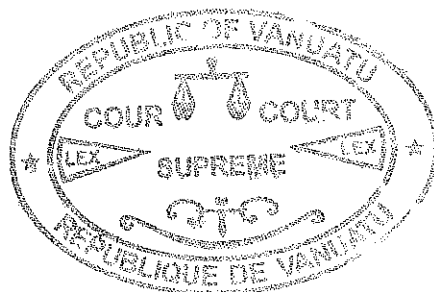
Section 30 says: "Any person who aids, counsels or procures the commission of a criminal offence shall be guilty as an accomplice and may be charged and convicted as a principal offender."

Arson

Section 134 (1) says: " 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"

17. The above offences are serious. The law reflects the seriousness of this offending by imposing a maximum penalty of 10 years imprisonment.
18. The next question is what is the appropriate starting point sentence.
19. The prosecution refers the Court to some case authorities as to what and how the Court should pass sentence on this type of offending. That will depend on the circumstances of your offending. Following are cases referred to by the Prosecutions:
 - Worahese –v- Public Prosecutor [2010] VUCA
 - Public Prosecutor –v- Tuku [2014] VUSC 16
 - Jackson –v- Public Prosecutor [2011] VUCA 11
 - Public Prosecutor –v- Natuman [2014] VUSC 114
20. Your defence counsel also refers to following Supreme Court Judgments:
 - PP –v- Tuku [2014] VUSC 161;
 - PP –v- Molsir [2017] VUSC 74;
 - PP –v- Japhet [2014] VUSC
21. In the present case, not only you break the law by committing these offences but the circumstances under which you commit those offences make them aggravated by the following:
 - a) There is a breach of trust between the complainants and you defendants as one of you Defendant Allan Basil you are Chief of the village and also the ring leader of the Defendants at the time of the commission of these offences.



b) There was a degree of planning and pre-meditation. You planned to commit the offences. You Defendant Chief Allan Basil being the ring leader. You instructed Basil Allan and Padjo Korty to burn the houses. You also facilitate the crime by giving them the matches and the Benzene. You Defendant Chief Allan Basil told all other defendant after the offending not to tell anyone.

c) Retaliation and taking the law into your own hands. You committed the crime in retaliation of a suspension that the complainants murdered one of your relatives using witch craft.

You cannot take the law into your own hands and do justice as you like. They are other peaceful ways to solve problems in the community.

d) A total of houses were burnt down, these comprising of dwelling and kitchen houses. The houses were made of traditional materials such as timbers, bamboo and thatch roofs. One of these houses has a cement floor.

e) Damages and destroyed Properties – all belongings kept in those houses were destroyed and damaged by the fire.

f) The estimated costs and less value of the lost properties are:

- Complainant Philmon Shem – VT 174,100
- Complainant Samuel Shem – VT 901,250
- Complainant Setak Shem – VT 1000

The total estimated costs and loss is over 1 Million Vatu.

g) Criminal joint enterprise – you committed the offences together.

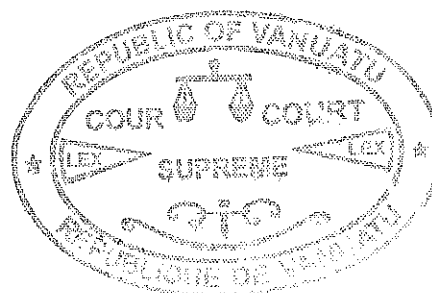
h) Discomfort that the complainants faced with since the offending. (The Court does not receive and no application for a compensation order is made and a report is made to that effect). That is some extras that the complainants must endure to seek from the Courts in the future).

i) The offences are committing at night.

22. I accept the prosecution submission that a starting point sentence of 4 years imprisonment is appropriate based on the case authorities provided to the court.



23. 4 years sentence of imprisonment is your starting point sentence inclusive of the above aggravating factors.
24. In mitigation, you are all first time offenders. You do not have any previous convictions. You are willing to perform custom reconciliation ceremonies to the complainants but the complainants refuse. You plead guilty at the first opportunity given to you by the Court. Your total 4 years imprisonment be reduced by one third to reflect your early guilty plea.
25. You remaining sentence now is 3 years imprisonment.
26. I reduce your 3 years imprisonment further by 3 months to reflect your other mitigating factors.
27. Your end sentence is 2 years and 9 months imprisonment.
28. The next question I need to consider is whether in respect to your personnel circumstances and participation in the crime and other factors, whether they justify that I suspend your imprisonment term of 2 years and 9 months.
29. Defendant Chief Allan Basil – I take it that you are the ring leader in the commission of the crime in the planning of the crime, the direction taken, the advices and the facilitation of the crime by given to others the matches and the benzene. I cannot suspend your imprisonment term of 2 years and 9 months. You are a Chief in your village and community. You are a leader. You cannot take into your hands and push your people break the law. Your punishment is 2 years and 9 months with immediate imprisonment. The circumstances of your offending do not justify a suspension.
30. Defendants, Albert Basil and Padjo Korty – I take it that your received orders from Chief Allan Basil in the commission of the offences in December 2015. I consider your involvement in the crime, the circumstances, I decide to suspend your term of 2 years and 9 months imprisonment for a period of 2 years. During the 2 years period of suspension of your sentence of 2 years and 9 month you must not reoffend. If you re-offend, your sentence of 2 years and 9 months will be re-activated in addition to the new offence you have committed.



31. The sentence order of the Court in this case is this:-

1. Defendant Chief Allan Basil is sentenced to an immediate imprisonment term of 2 years and 9 months
2. Defendants, Albert Basil and Padjo Korty each of you is sentenced to 2 years and 9 months imprisonment suspended for a period of 2 years. In addition, I order you to perform 6 months probation.
3. You have each 14 days to appeal this sentence if you are unsatisfied with it. The 14 days start today.

Dated at Lakatoro, Malekula this 1st day of September 2017

BY THE COURT

Vincent LUNABEK
Chief Justice

