

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

Criminal Case No 17/2060 SC/CRML

**PUBLIC PROSECUTOR**

**V**

**PHILIP JIMMY**

**Before: Chetwynd J**

**Counsel: Ms Mackenzie and Ms Taiki for the Public Prosecutor**  
**Mr Kausiama for the Defendant**

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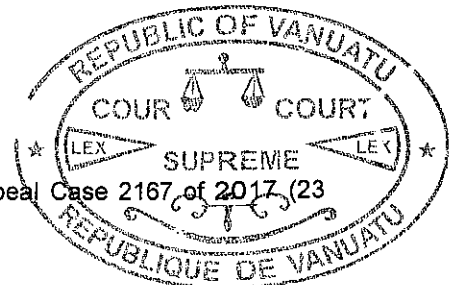
**SENTENCE**

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1. The defendant Philip Jimmy was, following trial, convicted of the premeditated homicide or murder of the late Alice Karris. The judgment as to verdict published on 12<sup>th</sup> March detailed how the medical evidence revealed that Ms Karris had died following a vicious, prolonged and deliberate attack on her by the defendant. A post mortem examination described extensive bleeding and blood clots under the covering of the skull (subgaleal haemorrhage and hematoma) and extensive bleeding and blood clots under the outer covering of the brain (subdural haemorrhage and hematoma). There was also haemorrhage and hematoma to the external surface of the thyroid gland and the front muscles of the neck. Those injuries could only have been caused by the brutal attack carried out by the defendant.
2. The maximum penalty in respect of the offence of intentional premeditated homicide is life imprisonment.
3. The nature of such a sentence was discussed in the recent Court of Appeal case *PP v Manap and Others*<sup>1</sup>. The Court in that case said:-

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<sup>1</sup> *Public Prosecutor v Manap and Others* [2018] VUCA 7; Criminal Appeal Case 2167 of 2017 (23 February 2018)



*"We are therefore satisfied that the sentence of life imprisonment in the Penal Code is a maximum and a judge may impose a lesser finite term of imprisonment or other penalty"*

4. Later in its judgment the Court stated:-

*"The sentencing judge 's function is to sentence based on the facts of the crime, the maximum penalty, any appellate guideline judgments and the aggravating or mitigating circumstances of the offender."*

5. The Court added:-

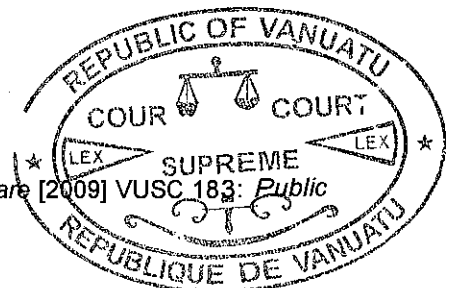
*"After conviction for premeditated homicide if the sentencing judge concludes a finite sentence of imprisonment is appropriate then we consider the start sentence should generally be at least 20 years imprisonment. This will reflect the maximum sentence in unpremeditated homicide (s.106(1)(a))."*

6. Bearing in mind those comments and the fact that offences carrying a maximum penalty of "imprisonment for life" in this jurisdiction are generally dealt with by the imposition of finite sentences, it would be appropriate in this case to impose a finite sentence. Of course, the start sentence, in accordance with the comments in *Manap* can be no less than 20 years.

7. It has been often said, in this jurisdiction and others, that there are many considerations to be borne in mind when sentencing and that it is not an exercise in mathematics or the application of prescribed formulae. The approach to sentencing was comprehensively discussed by Justice Sey in the *Kalosil*<sup>2</sup> case. The sentences imposed by Her Ladyship were appealed and when the Court of Appeal dismissed the appeals it made no criticism of what she set out as the proper approach to sentencing. That was not surprising as the Australian and New Zealand cases referred to in *Kalosil* have been adopted in other cases<sup>3</sup> and have for some time now been accepted as part of the sentencing practice in Vanuatu. I adopt the approach to sentencing as set out in *Kalosil*.

<sup>2</sup> *Public Prosecutor v Kalosil and Others* [2015] VUSC 149.

<sup>3</sup> *Ben Morris v Public Prosecutor* [1993] VUCA 3; *Public Prosecutor v Ware* [2009] VUSC 183; *Public Prosecutor v Nalau* [2010] VUSC 183;



8. There is a need to adequately punish the defendant for what he has done. The taking of another's life is the most serious offence in the criminal law and a sentence should reflect that. There is also the need to deter other men from using violence against women and to reinforce the need to respect the equal and human rights of women particularly in the context of a domestic relationship.

9. First, looking at the seriousness of the offence and the culpability of the actual offending <sup>4</sup> the medical evidence overwhelmingly points to a prolonged and brutal attack by the defendant. The evidence confirms the intensity and duration of the violence and points to the possibility of stomping and strangulation. The defendant denies any stomping or strangulation but also says he has no clear recollection of what happened after he struck the first few blows.

10. There are a number of aggravating factors apparent in the offending. This was undoubtedly domestic violence against a partner who was not only smaller but also affected by drink. Ms Karris was vulnerable and to all intents and purposes defenceless. The defendant's reasoning seems to have been she (and her children) were a drain on his finances and she had disagreed with him. He was a man who was used to imposing his will through violence. There was a history of violence in the relationship and on occasion the violence was directed at others. As was said by the then Chief Justice in *PP v Iakis* <sup>5</sup>:

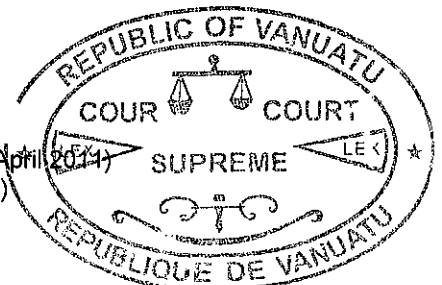
*"Men must at all cost be discouraged from using violence against women"*

11. The callous disregard the defendant had for his partner was further emphasised by his treatment of her after the attack. He made absolutely no effort to seek medical assistance until it was too late. He could have asked the bus driver who picked them up at Tana Russet to take them to the hospital. Alternatively he could have called for medical assistance before the bus even stopped because he gave evidence of how he had ProMedical's number on his 'phone following his work for the Van 2017 Mini games.

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<sup>4</sup> *Public Prosecutor v Andy* [2011] VUCA 14; Criminal Appeal 09 of 2010 (8 April 2011)

<sup>5</sup> *Public Prosecutor v Iakis* [1994] VUSC 14; CRC 042 1994 (19 August 1994)



12. When he got on the bus with Ms Karris he sat on her body during the journey from Tana Russet to Malapoa. During that journey he made it clear to witnesses just how little he thought of Ms Karris and how he wanted to get rid of her. When they arrived at their home at Malapoa he dragged Ms Karris from the bus by her legs causing her head to hit first the bus floor, then the step and finally the ground. He lied to paramedics to hide his guilt and also to the police to try and diminish what he had done.

13. Without taking these aggravating factors into account the appropriate sentence would be one of 23 years imprisonment. Taking the aggravating factors into account the start sentence is one of 28 years.

14. Turning now to the factors personal to the defendant, it is accepted that he has no previous convictions. A modest deduction of 1 year can be made for that factor. Unfortunately very little else can be said to mitigate the sentence. He says that he loved Ms Karris and is remorseful following her death. He is an intelligent man, well educated, and has contributed to development in Vanuatu. Against that he has an admitted history of violence and in particular against Ms Karris. He does seem to be worse when in drink and as mentioned earlier, he is a jealous man who sometimes directed the anger he felt toward Ms Karris against other people. Sadly then he cannot be said to be a man of upstanding and outstanding character. A further modest deduction of 1 year is appropriate for his remorse. That leaves a sentence of 26 years.

15. The defendant is not entitled to any deduction for a timely guilty plea.

16. The defendant shall be deemed to have started to serve his sentence of 26 years on the 16<sup>th</sup> June 2017 when he is said to have first been taken into custody.

17. The defendant is entitled to lodge an appeal against this sentence if he is dissatisfied with it. He has 14 days to do so. Time to appeal will start to run from today.

DATED at Port Vila this 5<sup>th</sup> day of April 2018

  
D. CHETWYND

Judge

