

BETWEEN: Public Prosecutor

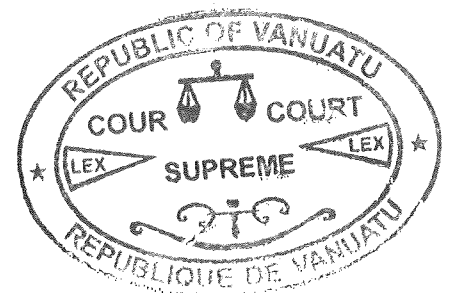
AND: 1. Ayong Philip
2. Kaltap Kalsaf
Defendants

Date: 15 May 2019
By: Justice G.A. Andrée Willens
Counsel: Mr S. Blessing for the Public Prosecutor
Mr H. Vire for the Second and Third Defendant

Sentence

A. Introduction

1. Mr Ayong Philip pleaded guilty to three charges of intentional assault, laid contrary to section 107(b) of the Penal Code [Cap 135] – charges #1, #5 and #6 of the Information. Mr Kaltap Kalsaf pleaded guilty to three different charges of intentional assault, laid contrary to section 107(b) of the Penal Code [Cap 135] – charges #4, #8 and #9 of the Information. The maximum sentence for each of these offences is a term of 12 months imprisonment.
2. I note that the maximum sentence was increased in 2016 (less than a year after the offending) to 5 years imprisonment. The defendants are very fortunate to be facing the much lesser maximum.
3. This sentencing has been much delayed. There is no Victim Impact Statement, nor Pre-Sentence Reports. Mr Vire now acts for both defendants and has provided written sentencing submissions. Both counsel were content, in the circumstances of delay, to deal with sentencing on the basis of the material available.

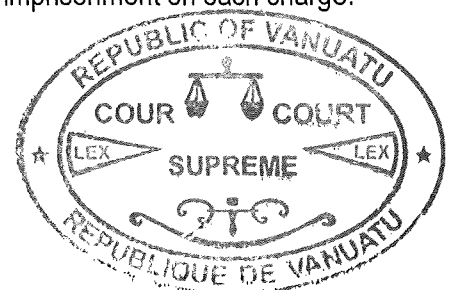


B. The Facts

4. The background to the offending is unexplained. A week prior to the offending now before the Court a third defendant, also a brother-in-law of the victim, attacked the victim at a night club and rendered him unconscious. That third defendant has been sentenced already.
5. In the first week of November 2015, the victim was travelling home by bus. His brothers-in-law, the First and Second Defendants were also on the bus. For reasons unexplained, they made the victim get off the bus and walk. They followed in the bus, with the lights off – no doubt to intimidate the victim.
6. When the victim arrived home, Ayong Philip approached and assaulted him repeatedly. The summary of facts does not indicate in what fashion that was done. The victim's wife attempted to intercede, but she was driven away by Ayong Philip. That constitutes charge #1.
7. Kaltap Kalsaf then went to the victim, who had already been felled to the floor. He kicked and stomped on the victim's body and head repeatedly with his feet. That is reflected in charge #4.
8. Both Ayong Philip and Kaltap Kalsaf then continued to kick the victim to his body and in the head, and to stomp on the victim's head, bashing his head against the ground. By-standers heard the victim's jaw break. That is reflected in charges #5 and #8.
9. During a lull in the attack, the victim attempted to crawl away to safety. Ayong Philip observed that and dragged the victim back and assaulted him some more, repeatedly. That is reflected in charge #6. Kaltap Kalsaf then joined in and punched the victim's head repeatedly, and tried to tear open his mouth and further break his jaw. That is reflected in charge #9.
10. A little later, Kaltap Kalsaf again assaulted the victim, but that is not the subject of a charge. The summary of facts also records that Ayong Philip had repeatedly assaulted the victim on some 6 occasions prior to the offending currently before the Court.
11. The victim suffered injuries: a bruised left eye socket, a swollen left jaw, cut and bleeding gums and a complete break of the jaw. He was hospitalised, but the length of that is unknown.
12. This was a prolonged and sustained attack, and I considered it appropriate to deal with the charges concurrently, but on a totality basis.

C. Starting Point

13. This was a vicious, unprovoked and cowardly attack, aggravated by a number of factors - the offending was perpetrated by multiple assailants, the offending was continuing or repeated, there was a breach of trust as the victim was a brother-in-law of both defendants, the victim's wife was chased from the scene to prevent her assisting her husband and to enable continued unhindered violence to be administered at will, and the assaults were aimed at the victim's head, the most vulnerable part of the human body.
14. The start point for the offending is accordingly set at 12 months imprisonment on each charge.



D. Personal Factors

15. I accept that both defendants have no previous criminal history. The custom reconciliation ceremony was but a token effort – involving just 2 mats, 1 fowl and VT 1,500. The mitigation available for such limited remorse is at a very low level.
16. I acknowledge that Ayong Philip is now 32 years of age, with 3 young children for whom he is responsible. Kaltap Kalsaf is only 22 years old, and single.

E. Plea

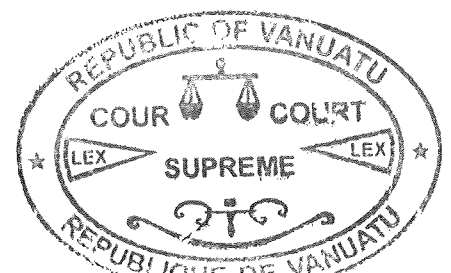
17. The defendants pleaded guilty, but not at the first available opportunity. The discount available to them for that is a maximum reduction of 20%.

F. Sentence

18. Adopting a start point of 12 months imprisonment on each charge concurrently, there has to be uplift for the numerous aggravating factors identified of 6 months imprisonment. From that I reduce the sentence by 3 months to take into account the lack of previous convictions, and a further 3 months to reflect the so-called remorse expressed and for taking part in the custom reconciliation ceremony. Lastly, I further reduce the sentence by 20% to reflect the fact that pleas were entered at a relatively late stage in the process. The end sentence I arrive at for each defendant is 9 months imprisonment, on all 3 charges they each face, concurrently.
19. I do not differentiate between these defendants as while Kaltap Kalsaf is much younger, he perpetrated the most egregious act in forcing open the victim's mouth after his jaw had been broken.

G. Suspension

20. Section 57(1) of the Penal Code requires the Court to consider whether the end sentence should be imposed immediately or suspended. The Court has jurisdiction to suspend the sentence if immediate incarceration is inappropriate:
 - In view of the circumstances,
 - In particular, the nature of the crime, and
 - The character of the offender.
21. The sentences are to be suspended. These are first offences to which guilty pleas were eventually entered, they occurred some 3 plus years ago, and there has been no subsequent violence since. To not suspend the sentence would be a condign punishment for what took place.
22. The sentences of 9 months imprisonment are accordingly suspended for 3 years. The defendants need to understand they each need to remain offence free for 3 years from today, or they will be liable to be incarcerated for 9 months.



23. Suspending a sentence is often accompanied by a direction that the offender be subject to a period of supervision by the Probation service, to ensure that re-offending risks are minimised. I do not consider that is required in this instance, given the lapse of time since the offending. However, to make good to the community for this offending, I direct that both defendants complete 120 hours of Community Work.
24. I also consider it appropriate for the defendants to make good the pain and humiliation suffered by Mr Kalmet by a financial compensation order – they are to each pay Mr Kalmet VT 50,000 within 4 months. The payments are to be made to Court, and they will then be passed on to the victim. The purpose of this direction is ensure that the defendants actually pay the compensation ordered.
25. Mr Vire submitted that it would be impossible for the defendants to complete both community work and pay compensation. Given the outrageous violence meted out, in my view the difficulties the defendants face in complying with this sentence are entirely merited when comparing their circumstances with what the victim was compelled to endure.
26. The defendants have 14 days to appeal this sentence if they disagree with it.

Dated at Port Vila this 15th day of May 2019
BY THE COURT

Gendrei Uil
Justice G.A. Andrée Wiltens

