

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

Criminal
Case No. 19/2380 C/CRML

BETWEEN: Public Prosecutor

AND: Tabawa lawak
Defendant

Date of Plea: 4th October 2019
Date of Sentence: 19th November 2019
Before: Justice Oliver Saksak
In Attendance: Marie Taiki for Public Prosecutor
Henzler Vira for the Defendant

SENTENCE

1. The defendant Tabawa lawak pleaded guilty to one charge of Intentional Homicide on 4th October 2019. Under section 106 (1) of the Penal Code this is a very serious offence with a penalty of life imprisonment. This section states-

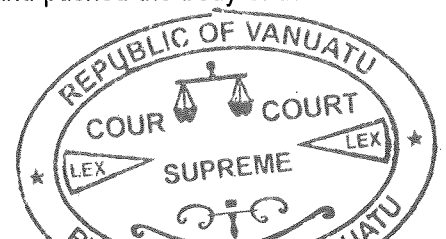
"106. Intentional homicide

- (1) No person shall by any unlawful act or omission intentionally cause the death of another person.

Penalty: (a) if the homicide is not premeditated, imprisonment for 20 years;
(b) if the homicide is premeditated, imprisonment for life.

- (2) For the purpose of subsection (1), premeditation consists of a decision made before the act to make a homicidal attack on a particular person or on any person who may be found or encountered."

2. Relevantly the facts are that on 7th June 2019 at an area on the way to Erakor Village the defendant and the deceased were walking to their garden. Along the way they had arguments over some loaned moneys which the defendant had not repaid. The deceased started abusing the defendant. This made him angry so that he punched the deceased on her head causing her to fall down. She got up again and abused the defendant some more. He hit her again two times and the deceased fell to the ground. Whilst on the ground the defendant cut a piece of wood and hit her 2 times on the back of her head. He saw her eyes flickering and her heart beating. He became scared and so he dug a hole up to his knees and pushed the body of the

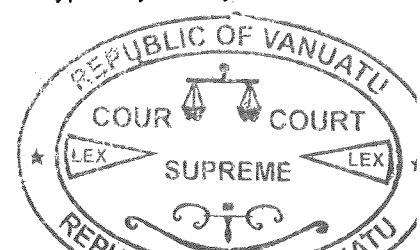


deceased into it while she was still breathing. He then buried the deceased and covered up the earth with bushes.

3. The defendant then returned to his house. His brother Tom lawak met him and asked about Mary. He told him Mary had returned to her ex-husband. Later that morning he packed up some belongings and travelled with his brother Tom to Rentapau.
4. Between 7th to 11th June 2019 when several relatives enquired of him about the whereabouts of Mary, the defendant told them she had left to return to her former husband after their arguments.
5. Suspicious arose and so on Tuesday 11 June 2019 family members went back to the garden of the deceased and inspected the adjacent areas. It was then they noticed the burial site and smelt an odor and saw blue flies everywhere. They alerted the Chief who called the Police who attended the scene and dug up the body and took it to the Hospital for forensic examination. It was confirmed to be the corpse of Mary Jimmy.
6. The Police arrested the defendant on 12 June 2019 and questioned him about the incident. The defendant admitted assaulting Mary Jimmy with a piece of wood twice on the head. He also admitted digging a hole and burying the deceased while she was still alive and breathing.

Aggravating Features

7. Clearly the defendant's actions were unlawful and the action of burying the deceased while she was still breathing and alive was intentional to ensure that her life ended there and then. The action of digging up a hole not only revealed the defendant's plan to end the deceased's life, but also to conceal it from relatives and the public at large. Then there were the lies the defendant told his relatives immediately after the killing that the deceased had returned to her ex-husband after their arguments. The defendant had assaulted her with his hand more than twice. When she fell down and was helpless on the ground he cut a piece of wood and struck her twice to the back of her head. His actions were violent, ruthless, unmerciful and a complete disregard for a human life who was none other than his defacto partner, to whom he owed a duty of trust. There was a serious breach of that trust. His constant lies and hypocrisy clearly revealed any lack of remorse and insight into his actions and offending.



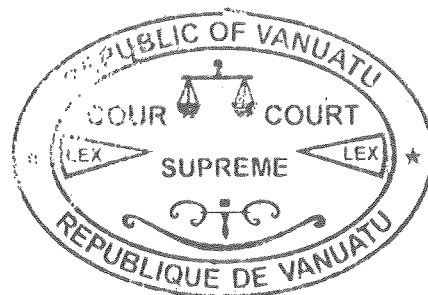
Submissions

8. The Prosecution submitted that based on the case of PP.v. Raymond Pakoa [2018] VUSC 131, PP.v. Manap and others [2018] VUCA 7, Pascal Tabi.v. PP [2010] VUCA 40 and PP.v. Iakis [1994] VUSC 14 the Court should adopt a starting sentence of more than 25 years imprisonment.
9. The Court of Appeal in Tabi's case considered a sentencing range of between 25 to 30 years imprisonment as adequate for this type of ferocious attack and offending. This was reinforced and confirmed in Manap's case but Manap's case was a case involving multiple offenders. The facts and circumstances are different in those cases, but the principle is of significance.
10. Mr Vira submitted that based on Tabi's case the starting sentence should be 25 years imprisonment.

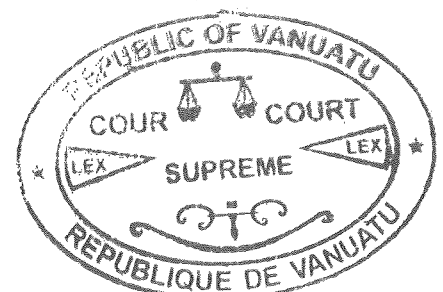
Consideration

11. The Court endorses the comments and views of the learned Chief Justice in PP.v. Iakis where he said:

“ Women in Vanuatu need all the protection they can get from the Courts. Men must at all costs be discouraged from using violence against women. They must learn that under the law of this country women are their equals and are entitled to the same protection under the law.”
12. The Court must continue to impose sentences that are to protect women and the vulnerable members of the society and sentences that will deter men from committing this and similar offences.
13. Having made those analysis, it is my view that taking all the aggravating features of this case in light of the seriousness of the offence committed, that a finite sentence of imprisonment is appropriate. And the starting sentence the Court will impose shall be 26 years imprisonment. I accordingly convict you and sentence you to a starting sentence of 26 years imprisonment.
14. Due to the seriousness of the offence, there will be no suspension of sentence.



15. In mitigation I note the character and personal history of the defendant in his pre-sentence report. He is married but divorced with 6 children. The deceased was only his defacto partner who had a child of her own from another relationship. He grew up in a difficult life with only his father raising them up after the mother died. He is a man of very little education up to class 4 with no qualifications except for gardening with no ambition. He complains of chest and back pains but with no medical certificate to confirm. He consumes kava and smokes tabacco. He attends the Mormon Church.
16. Mr Vira submitted the Court should reduce his sentence for unblemished record and his readiness to do a reconciliation ceremony. A period of 12 months or 1 year is accordingly deducted from the 26 years starting sentence.
17. Next, whether there should be a further reduction of 1/3 for guilty plea. Both the prosecution and defence counsel submit there should be. I disagree.
18. This was a man who was prepared to hide the body of the deceased by burying it alive. In addition he was prepared to lie to his close relatives and family about it all for 5 days from 7th June 2019 until the corpse was discovered on 11th June. Then he admitted to the police on 12th June. Had it not been discovered, he would never have admitted the offending to anyone. For those reasons I am not prepared to give him the full 1/3 allowance.
19. For guilty plea I allow a reduction of only 2 years from his balance of 25 years, leaving his end sentence to be 23 years imprisonment.
20. Accordingly I sentence the defendant to an end sentence of 23 years effective from 12 June 2019 when he was first remanded into custody.
21. That is the sentence of the Court.
22. The defendant has a right of appeal against the sentence within 14 days if he does not agree with it.



DATED at Port Vila this 19th day of November 2019

BY THE COURT


OLIVER.A.SAKSAK

Judge

