

PUBLIC PROSECUTOR
v
RODNEY WARSAL

Coram: *Hon. Chief Justice V. Lunabek*

Counsel: *RG Simeon for the Public Prosecutor*
AE Bal for the Defendant

Date of Sentence: *13th October 2023*

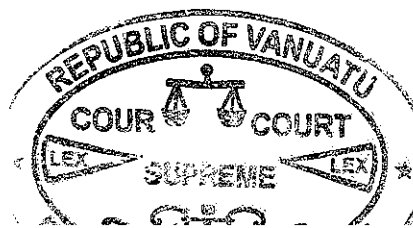
SENTENCE

A. Introduction

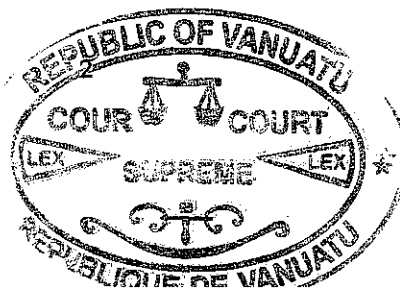
1. Mr Rodney Warsal ("*Mr Warsal*"), this is your sentence. You were charged and convicted of the following offences by this Court on 19 July 2023:
 - (i) Driving under the influence of alcohol drink contrary to Section 16 of the Road Traffic (Control) Act [CAP. 29] (Count 1);
 - (ii) Causing death by reckless driving contrary to Section 12 of the Road Traffic (Control) Act [CAP. 29] (Count 2);
 - (iii) In the alternative to Count 2, Unintentional harm causing death, contrary to Section 108(c) of the Penal Code Act [CAP. 135] (Count 3);
 - (iv) Unintentional harm causing temporary injury, contrary to Section 108(b) of the Penal Code Act [CAP. 135] (Count 4).

B. Facts

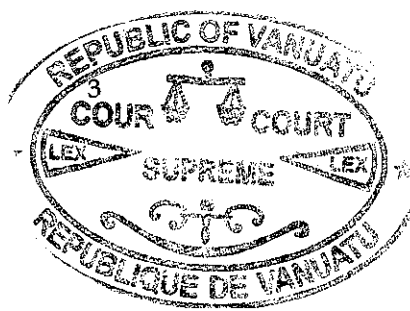
2. The detailed facts of this case are contained in the court file record and in the Verdict of this Court dated 19 July 2023. What follow are the summary of these facts as found by the Court.



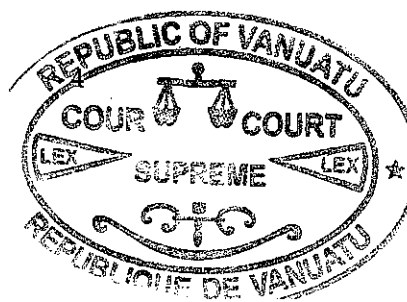
3. 30 July 2021 was the national independence celebration day in whole Vanuatu including Luganville, Santo.
4. In Luganville, Santo the Members of the Vanuatu Mobile Force (VMF) and police officers participated at a parade at Unity Park, Luganville.
5. Chilia Karet is the defendant's wife. She is a member of the Vanuatu Mobile Force stationed in Luganville, Santo, and she resides in the village of Hoggharbour, East Santo with her husband defendant Rodney Warsal.
6. In the early morning of 30 July 2021, defendant Rodney Warsal drove his wife in his Red Kia car Reg # 8692 from their village Hoggharbour, East Santo, to Luganville at the VMF Barrack Camp for Chilia to prepare herself for the exhibition parade of 30 July 2021 which will take place at 9:00am at the Unity Park, Luganville.
7. Individual people and members of families like Jerry Samson and his wife, their children and grandchildren left their village of Manioc Village, East Santo, and went to Luganville town to watch or participate in the various activities that were organized for that national day in Luganville. Jerry Samson drove his family there in his White Toyota Hilux Reg # 8799.
8. In Luganville, the activities of fireworks were the final activities that closed that special day of celebration before individuals and family returned home to their villages.
9. On their way home to the villages situated at the eastern coast of Santo, an accident occurred at the Matevulu area, Santo on 30 July 2021 at 9:15pm o'clock in the evening between the Red Kia car driven by Defendant Rodney Warsal and the White Toyota Hilux driven by Jerry Samson.
10. Before the accident that occurred in the evening of 30 July 2021 at 9:15pm at Matevulu area, Defendant Rodney Warsal was seen and observed by Michel Henderson and his old father that he was drunk while he was driving his red kia taxi, stopping on the road to take two drunken boys.
11. Henderson and his father stopped their truck behind the red kia taxi of the defendant Rodney Warsal, then they had to pass the red kia taxi on the right side of the road by turning on the left side before they passed the red kia taxi.
12. The second time that Michel Henderson and his father saw the red kia taxi of Defendant Rodney Warsal was on the road at Matevulu area, after the accident and they stopped and assisted to transport injured passengers to the Northern Hospital at Luganville.



13. Defendant Rodney Warsal was again seen and observed that he was drunk on that day of 30 July 2021 when Berry Simon saw him laying over the glass of his red kia taxi on the side of the road at Shell Company in Luganville, Santo. Mr Berry Simon (a VMF officer) saw Defendant Rodney Warsal again thereafter at the VMF Barracks camp while the defendant was there to take his wife Chilia Kalret. Mr Berry Simon was about 8 meters from defendant Rodney Warsal when he saw he was drunk.
14. Max Wesley also directly saw defendant Rodney Warsal dancing in front of Hotel Santo with a walk-taking speaker while he was drunk.
15. Mr Henry Shem (a VMF officer) who came down at Hotel Santo with a group of VMF officers, saw defendant Rodney Warsal who came out of a truck, Defendant Rodney Warsal was laying around as he was drunk. Henry Shem and other VMF officers were there with defendant Rodney Warsal waiting for Defendant's wife to arrive.
16. When the defendant's wife, Chilia Kalret, arrived Henry Shem, Brian lavro (a VMF officer), defendant Rodney Warsal, Chilia Kalret and others took Chilia Kalret's brother's truck to Chapuis area where Chilia's parents reside.
17. There, at Chapuis at the house of Chilia Kalret's house, the truck stopped. Defendant Rodney Warsal came out of the truck, he could not control himself, he had a can of Woodstock alcohol drink in his hand while he approached Henry Shem and hit him on his chest and a member of the defendant's wife intervned and took defendant Rodney Warsal out of Henry Shem. The defendant was too drunk.
18. Brian lavro was one of the VMF officers with who was with defendant Rodney Warsal from Hotel Santo to the defendant's wife's house at Chapuis. He was with the defendant at the beginning of the evening of that day of 30 July 2021. Brian lavro told defendant Rodney Warsal not to drive home at Hoggarbour that evening but to sleep and to drive home the next day as Defendant Rodney Warsal was under the influence of alcohol.
19. Defendant Rodney Warsal was drunk and under the influence of alcohol when he drove his red kia car on the public road at Matevulu area. Lulu Reeman saw green cans of beer and bottles of tusker in the red kia car of the defendant just after the accident when he opened the door of the red kia car and removed the keys of that car and gave the keys to the driver of the transport truck which transported Defendant Rodney Warsal and his wife to the hospital at Luganville.
20. Chilia Kalret also admitted she smelt alcohol on Defendant Rodney Warsal but she did not ask or stop defendant Rodney Warsal driving his red kia car that evening because she was afraid, he will assault her.

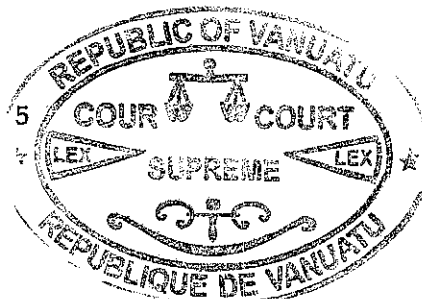


21. The single cabin White Toyota Hilux driven by Jerry Samson was running on the road on the right side of the road of Matevulu area at 60km per hour that evening. The Red Kia car driven by Defendant Rodney Warsal was running and coming behind the White Toyota Hilux on the Matevulu road that night.
22. The Red Kia car was in a high speed with high beam light and attempted to overtake the White Toyota Hilux but did not completely overtake and swung back to the right side of the road and hit the left front side bumper or wheel of the White Toyota Hilux causing the Toyota Hilux to hit the hip ground on the side of the road causing the Red Kia care to came back on the road (Exhibits P1 and P2 – see in particular photograph No. 8 showing the red paint of the Red Kia vehicle on the left bumper side of the White Toyota Hilux single cabin).
23. On 30 July 2021, defendant Rodney Warsal was grossly reckless when he caused the accident at Matevulu road, East Santo, at 9.15 PM, in that: - he was reckless when he drove the Red Kia vehicle on 30 July 2021 when he tried to overtake the White Toyota Hilux but did not complete the overtaking process of his red Kia vehicle and swung the Red Kia vehicle back to the right side of the road and collided with the left front side of the White Toyota Hilux causing the accident of 30 July 2021 at Matevulu road at about 9.15 PM.
24. Defendant Rodney Warsal's reckless actions were aggravated by the fact that he was not licensed to drive the vehicle of the categories of motor vehicle of the type of the Red Kia vehicle he drove on 30 July 2021 causing the accident (Exhibit P5); and further he was heavily under the influence of alcohol as found earlier (in count 1) when he drove his red Kia vehicle on Matevulu public road on 30 July 2021.
25. As a result of the accident, a girl (student) of 17 years old (Lavinia Joel) who travelled on the White Toyota Hilux of Jerry Samson was transported to the Northern Provincial Hospital (NPH) with other injured passengers. Lavinia Joel was declared dead due to (or as a consequence of) multiple internal solid organ injuries and fractured Pelus and (R) Femur.
26. Lavinia Joel was one of the unrestrained passengers in the White Toyota Hilux that drove off the road. In a report of 27th September 2021 attached to Exhibit P1, Dr Basil Leodoro MBBS DCH MMedSurg, a senior consultant general surgeon, provided the details of Lavinia's injuries, her treatment at the NPH Emergency on 30th July 2021 at 22:00 hrs and her death as sustained multiple solid internal organs injuries on 30th July 2021.
27. Other unrestrained passengers on the cart of the White Toyota Hilux single cabin also sustained serious injuries:
 - (a) **Dorothy Samson** is a female patient of 40 years old. She was medically examined on 30th July 2021. Her medical report (exhibit P7) was made on 25th October 2021). The findings were:



- Right eye Hematoma, Ecchymosis and subconjunctival haemorrhage;
 - Mild chest pain;
 - Pain on both hip joint when ambulating
 - Findings consistent with road traffic accident "Moving vehicle collusion"
- (b) **Jacklyn Samson** is a female patient of 22 years old. She was examined on 30th July 2021. A medical report (Exhibit P8) was made on 25 October 2021. The findings were:
- Generalized Musculo skeletal pain
 - Findings consistent with road traffic accident "Moving vehicle collusion"
- (c) **Sue Ansen** is a female patient of 17 years old. She was medically examined on 30 July 2021. A medical report (Exhibit p9) was provided. The findings were:
- Tenderness on Pelvic compression;
 - X- ray results on 2 August 2021 were-
 - Closed fracture through Antero- posterior right pelvic Rami and Subluxed right Sacro- IUAC joint;
 - Patient had several reviews at the Northern Provincial Hospital.
 - Findings consistent with road traffic accident "Moving vehicle collusion"
- (d) **Jethro Samson** is a male of 19 years old. He was medically examined and a medical report (Exhibit P10) was made on 30 July 2021. The findings were-
- Hematemesis;
 - Wound noted at base of nasal region;
 - Abrasion noted at occiput region;
 - Findings consistent with road traffic accident "Moving vehicle collusion"
- (e) **Celly Samson** is a female patient of 24 years old. She was admitted to the surgical ward on 31 July 2021 with the following conditions (Exhibit P11):
- Left closed ulnar and radial fracture with neurovascular intact;
 - Open book pelvic fracture. She underwent rehabilitation with physiotherapist and later discharged when feeling better and able to mobilize with aid from wheelchair. she was discharged o 20 August 2021.
 - Findings consistent with road traffic accident "Moving vehicle collusion"
- (f) **Sonia Ansen** is a female patient of 19 years old. She was medically examined on 30 July 2021. The findings were:

- Left leg abrasion'



- Findings consistent with road traffic accident "Moving vehicle collusion"

C. Sentence Start Point

28. The assessment of the sentence start point will be considered by looking at the maximum penalty provided by law on each offence, the aggravating and personal mitigating features, the appropriate similar case authorities (if any).

29. Driving under the influence of alcohol is prohibited under Section 16 of the Traffic (Control) Act [CAP. 29]. Section 16 says:

"Drinking when under influence of drink or drugs.

It is an offence for any person to drive on the public road when under the influence of alcoholic liquor or on drug to such an extent that a driver is incapable of properly controlling his vehicle. Police shall be empowered without warrant to arrest any person contravening this section"

30. Section 53(3) deals with the offences and penalties as follow:

"Any person convicted by a competent court of offences against Sections 16 ... shall be liable to a fine not exceeding VT100,000 or imprisonment not exceeding 1 year, or both such fine and imprisonment".

31. Causing death by reckless drinking is prohibited under section 12 of the Road (Control) Traffic Act [Cap 29]. Section 12 provides:

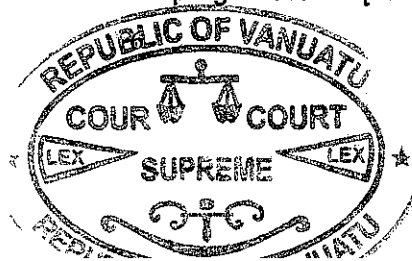
"12. Causing death by reckless driving

A person who causes the death of another person by driving a motor vehicle on the road recklessly shall be guilty of an offence and shall be liable on conviction to a fine not exceeding VT 500,000 or to imprisonment for a term not exceeding 5 years or to both."

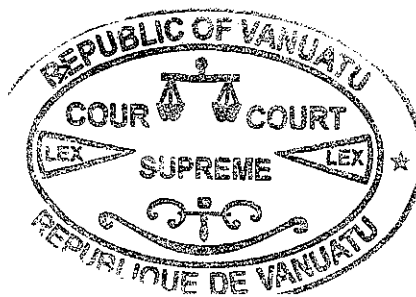
32. It is noted that the offence of unintentional harm causing death under Section 108(c) of the Penal Code [CAP. 135] (in Count 3), was advanced in the Information charge as an alternative count to Count 2 under Section 12 of causing death by reckless driving. Count 2 is the principal count and was proved on the criminal standard of beyond reasonable doubt. You will be sentenced, therefore, on that principal count 2. The alternative Count 3 of unintentional harm causing damage resulting in death will be abandoned.

33. The offence of unintentional arm causing temporary injury is dealt with under section 108 (b) of Penal Code with a maximum sentence of 2 years imprisonment.

34. In this case, there are more than one charge. I assess the overall culpability of the offending on a concurrent basis. I consider and adopt the two steps approach as set out in Philip v Public Prosecutor [2020] VUCA 490 adopting Moses v R [2020] NZCA 296.



35. In the present case, the maximum penalty available is a penalty of a fine not exceeding VT500,000 or a term of imprisonment not exceeding 5 years or to both such fine and imprisonment.
36. In this case, there are no personal mitigating factors but the following aggravating factors exist:
- (a) There was a high degree of recklessness on the part of Mr Warsal, although, you had no intention to cause injuries resulting in the death of the victim girl;
 - (b) There were serious injuries suffered by those passengers who survived in that each required hospitalization in order to recover;
 - (c) There was the impact of the offending on the victims and their families. The injuries on all the victims will affect them in doing their daily duties. The grief and hurt the victim's family will bear for the loss of the deceased;
 - (d) Driving at excessive speed while so incapacitated and ignored the advice not to drive as was grossly under the influence of alcohol liquor;
 - (e) The offending occurred at night with reduced visibility;
 - (f) Mr Warsal, you did not hold a valid driving licence and therefore, you should not have been driving that car.
37. The Prosecution relied on the case of Public Prosecutor v Yatipu [2018] VUSC 28, and submits that a reasonable sentence start point should be 3 years imprisonment. However, the conviction and sentence of Harriet Yatipu were quashed by the Court of Appeal in Yatipu v Public Prosecutor [2018] VUCA 25; Criminal Appeal Case 976 of 2018 (27 April 2018). Harriet Yatipu was retried by the Supreme Court on 8 February 2019, she was found not guilty on the charges of causing death by reckless driving and unintentional harm causing death as charged in the Information. The Prosecution submissions were erroneous as having no case authority in support.
38. The defence referred the Court to the case of Public Prosecutor v Wells [2018] VUSC 88 where the defendant was driving from East Coast Santo on the main road down to Luganville, Santo where without due care and diligence, struck the deceased on the middle of the road and the deceased immediately fell lying on the grass on the side of the road. The defendant drove the deceased to the hospital and the doctor pronounced the victim dead. The defendant did not hold a valid driver's licence at the time of offending. The Court sentenced the defendant to 22 months imprisonment suspended for a period of 2 years.



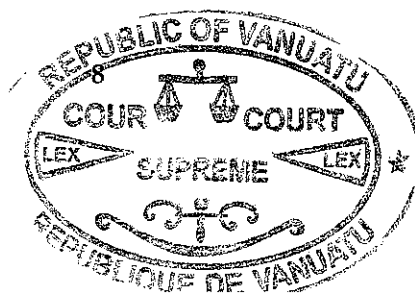
39. The defence submits that a reasonable sentence start point should be of 3 years imprisonment and an end sentence of 2 years imprisonment to be suspended for a period concurrently on all offences based on *Jenkinson v Public Prosecutor* [2000] VUCA 5.
40. In *Jenkinson v Public Prosecutor* [2000] VUCA 5, the defendant pleaded guilty in the Supreme Court on the basis of "*negligence*" and not "*recklessness ... or failure to observe any law*". The facts and principles in that case are distinguished from the present case. The facts of the present case are more serious than the facts in *Jenkinson's* case.
41. I take all the relevant matters referred to above into account, on a global basis taking into account all the offences, I set the appropriate sentence start point for you, Mr Warsal, at 3 years and 6 months imprisonment.

D. Personal Mitigating Factors

42. There are no personal mitigating factors to the offending as I mentioned earlier.
43. I sense you have no previous conviction and you are a first-time offender. I reduce your sentence by 6 months to reflect your previous clean record.
44. I take it that you were convicted on all the offences as charged in the Information after trial. You are not entitled to a full one third reduction.
45. Your sentence is reduced to 3 years imprisonment.

E. End Sentence

46. Your end sentence is 3 years imprisonment.
47. I consider the nature and circumstances of the offending and your character as the offender; I decline to suspend your terms of 3 years imprisonment. Given the degree of your culpability, the nature of the driving and the deliberate and willful disregard of the effects of drinking a considerable amount of alcohol; and the consequences of doing so, a sentence of 3 years imprisonment is necessary to deter you and others from such offending in the future.
48. Your sentences of 3 years imprisonment will be effective after 14 days from the date of your sentence in accordance with Section 50 of the Penal Code.
49. Your sentence of 3 years imprisonment shall be effective on Friday 27th October 2023. You may start serving your sentence today on Friday 13th October 2023, if you elect to do so.



50. The Correctional officers shall monitor, manage and coordinate the date you start serving your sentence.
51. If you fail to start serving your imprisonment sentence on Friday 27 October 2023, the Correctional officers may apply or request the Public Prosecutor's office to apply for a warrant to arrest you. Once arrested, you shall be brought directly to the Correctional Centre.
52. Any date after 27 October 2023, that you would spend outside of the Correctional Centre, shall not be counted in your favour.
53. I consider section 55 of the Road Traffic (Control) Act. It provides:

"55. Disqualification

- (1) *Where any person is convicted of an offence against section 12, 13, 14, 16, 41, 52 or this section, the court may, in addition to any punishment it may impose, disqualify that person from driving a motor vehicle for a period not exceeding 5 years.*
- (2) *Where a person is disqualified from driving under this section, the court shall endorse his driving licence accordingly.*
- (3) *Any person who drives his motor vehicle whilst disqualified from so doing under this section shall be guilty of an offence, and shall be liable to a fine not exceeding VT 100,000 or to imprisonment for a term not exceeding 1 year or to both."*

54. In addition to your punishment of 3 years imprisonment, you are disqualified from driving a motor vehicle for a period of 1 year from the date of this sentence. Any or all of your driving licence(s) is/are endorsed accordingly. (On a practical sense, you shall provide all your drivers' licences to the court).
55. You have 14 days to appeal this sentence if you are unsatisfied with it. The 14 days starts at the date of this sentence.

Dated at Port Vila, this 13th day of October 2023

BY THE COURT

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Hon. Chief Justice Vincent LUNABEK

