

PUBLIC PROSECUTOR

V

ANDRE THOMAS

CHARGE

Intentional assault - S 107(c)

SENTENCE

Imprisonment for 2 years and 6 months - suspended for 3 years.

REASONS FOR SENTENCE

The accused pleaded guilty to one count of Intentional Assault. The charge was brought under Section 107(c) Penal code Act CAP 135. This sub paragraph relates to assaults causing damage of a permanent nature and provides a maximum penalty of 5 years imprisonment. Permanent harm was caused in this case, which will mean that the victim, the wife of the accused will have for the rest of her life a deformed leg, which will cause her to walk with difficulty and with a limp.

On 31 May 1994, the wife of the accused was in the kitchen of her home. Her 15 year old son was with her. The accused saw them in the kitchen together and thought to himself that there was something wrong with the two of them being together. I find that there is no reason at all for the accused to have come to this view. Some time later, the accused spoke to his wife about the son and understandably, she had no idea what he was talking about. During the talk, the accused picked up a coffee stick and began to beat his wife with it.

He struck her on the back at least twice and she tried to run out of the kitchen. He then struck her on the leg. He again hit her to the leg and this time did so with such force that the leg broke. She told him that her leg was broken but he hit her two or three times more. She was crying and afraid. She then called for help and another man came to her assistance and she was taken to the Northern District Hospital. The fracture of the leg was complicated and she was transferred to Vila Hospital. After she went to Vila her husband came to Vila to help look after her.

Mrs Thomas has accepted her husband back and they are presently living together with their children. The accused is 52 years old and they have 5 children. Three of the children are still attending school. They are paying off a loan for their house. The wife

does not work and so the only income of the family is that of the accused. He works as a cook at the Northern District Hospital.

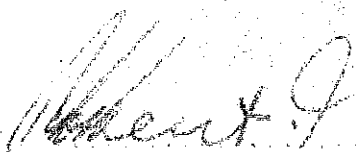
Mrs Thomas has signed a letter which was tendered to the Court. In that letter she says that she does not wish the case to proceed against her husband. She says that since the time she went to hospital her husband has been good to her. She also points out that her husband is her only means of financial support and she concludes by saying that it is not in her heart to report her husband for what he has done to her.

The attitude and position of Mrs Thomas and her children makes the sentencing task a most difficult one. In the end I think that it is impossible to do justice in this situation. The decision I have made is made because if I were to send the accused to prison now, the victims of his crime would be the ones who suffered again. On the other hand, by not sending him to gaol, the message may not be given to the community, that it is a grave crime for a husband to beat his wife. As I have pointed out in other cases, domestic violence seems to be prevalent in the community. By imposing a sentence of 2 and a half years imprisonment, I hope that people will realise that the law treats domestic violence seriously. The sentence that I have imposed is half the maximum available sentence for this crime.

The accused is a first offender and he has pleaded guilty. Any sentence imposed on such a man, must be reduced because of these factors. Therefore, I regard the sentence fixed as being a high sentence for a first offender. The particular circumstances of the victim and the children are in this case of such a compelling nature, that I have decided to suspend the sentence. I have selected the maximum time for suspension of a sentence of 3 years. If the accused commits any crime within this time, he will be required to serve the sentence I have imposed upon him. He will not get a second chance.

It is to be hoped that the accused realises that what he has done is both morally and legally unacceptable. Women must not be treated in the way that he has treated his wife. It is to be hoped that his time in this Court, where he has heard a number of other serious matters dealt with as well as his own, will ensure that he does not offend again.

The accused has the right to appeal against the decision of this Court. Should he wish to do so, he must do so in writing within 14 days of this date.


Judge
4 November, 1994

