

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**

CRIMINAL CASE No. 04 OF 1999

(Criminal Jurisdiction)

PUBLIC PROSECUTOR -v- SHEDDRACK JOSEPH

Coram: Acting Chief Justice Vincent Lunabek J

Mr. Willie Daniel for the Public Prosecutor

Mr. Hillary Toa for the Defendant

Date of Sentencing: 17 December 1999

SENTENCE

This is the trial of Sheddrack Joseph of Enamahu Village, Tanna, who was found guilty of the offence of intentional assault causing death, contrary to section 107(d) of the *Penal Code Act* [CAP 135]. The offence carries a maximum penalty of 10 years' imprisonment.

As the unchallenged evidence before this court shows, on 26 December 1998, you lived with Betty Willie as husband and wife. Your counsel told the court that you had lived with Betty Willie since 1998 until she died on 31 December 1998.

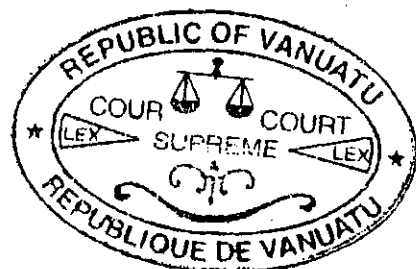
She was pregnant at the time.

On 26 December 1998, you viciously kicked her in her right abdomen. She was then taken to Lenakel Hospital where she died on 31 December 1998 as a result of that assault on her abdomen.

This is a very serious offence indeed. Although your counsel told this court that you did not intend to cause Betty's death, let me remind you again that it is a very serious offence to kick the abdomen of a pregnant woman as you did to the deceased Betty Willie.

You must now understand that Betty Willie, as a woman, is a human being like you. A human being, whether a man or woman, is not an animal to be assaulted as you did to your wife.

Your counsel told this court that you had performed a custom payment to take Betty Willie as your wife by paying for her with one pig and one head of kava.



If, so, Betty Willie was your wife and as such, you must understand that she deserved your love, care, affection and protection. She did not deserve the sort of treatment you gave her, as a result of which, she died.

I have considered with care Mr Hilary Toa's submissions on behalf of the defendant. I take very much into consideration that the defendant is a man of good character and he has no previous convictions.

But I cannot help but think that the evidence in this case against him was compelling in respect to the offence of intentional assault causing death that he was convicted of.

I am told that the defendant was always close to Betty Willie when she was sick.

I am told that Betty's death caused her husband mental distress. His heart was broken. The defendant was very sad and sorry about his wife's death.

I am told that he buried his wife in his village.

In sentencing the defendant, I bear all that in mind and everything that I have heard from his counsel.

However, the stress which the defendant is facing as a result of his wife's death is of little value as a mitigating favour, being the effect, not the cause of the offence.

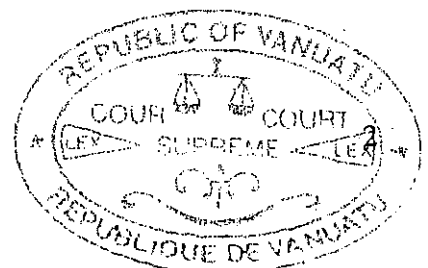
In this trial, the defendant was convicted of the offence of intentional assault. This type of offence is becoming common now in Vanuatu society. This will not be tolerated.

In sentencing the defendant, I must bear in mind that it is in the community's interests that I make sure that the sentence I impose on the defendant will have a deterrent effect on him, so that he will not re-offend.

I also bear in mind that the kind of sentence to be imposed will serve as a deterrent for others in the community who might be tempted to act violently against women as the offender has.

As such, I am of the view that the offence of intentional assault causing death warrants an immediate term of imprisonment. The maximum penalty imposed by law is 10 years imprisonment. I will now determine the appropriate sentence to be imposed on the offence as charged. In order to do so, I must ask myself, "how long?"

I am told by counsel that in Vanuatu, in cases such as this, the court has imposed a sentence of 2 years and 8 months. Although I have no details of these other cases, I feel bound to differ taking into account that, in this case, the defendant kicked a pregnant woman in her abdomen as a result of which she died. This constitutes an aggravating factor that I must consider in sentencing the defendant.



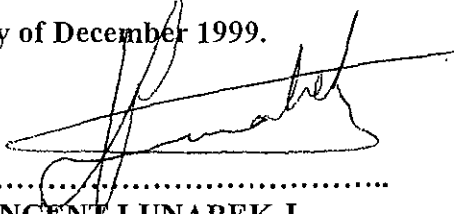
In this case, the lowest sentence that I feel able to pass on the defendant is 5 years' imprisonment.

I take into account that the defendant Sheddrack Joseph has spent some time in jail prior to his trial, as from 1 January 1999 until 17 December 1999, a total of 11 months and 17 days. I will deduct that period of 11 months and 17 days from the 5 years above, and I therefore make the following order:

Count 1: 48 months and 2 weeks' imprisonment.

14 days to appeal.

Dated at Port Vila this 17th day of December 1999.


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VINCENT LUNABEK J.
CHIEF JUSTICE (Acting)

