

Vanuatu - Public Prosecutor v Mathias - Pacific Law Materials

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

(Criminal Jurisdiction)
Criminal Case No.27 of 2001

PUBLIC PROSECUTOR

-V-

KATHLEEN MATHIAS

Coram: R. Marum J. MBE

Ms. Miranda Forsyth for the Prosecution

Mr. Nigel G. Morrison for the Accused

SENTENCE

The defendant appear in Court for that in June 2000 at Port Vila she intended to kill Jimaco John and did killed him. An offence against Section 106 (1) (b) of the Penal Code. The defendant pleaded "guilty" to the charge.

In brief the defendant gave birth to Jimaco on the 28th May 1996 and Jimaco is her son. Jimaco was handicap and she looked after him. In June she arranged to marry John Talo, and then she moved to John's house. Around this period she went to her mother's house where Jimaco was. She washed him up and changed his clothes. After this, she went to her auntie's garden and dug a hole. After digging the hole she went back to her mother's house and carried Jimaco with a red blanket and a plastic bag and brought him to the place where she dug the hole. She then wrapped up Jimaco with the red blanket and then put him into the plastic bag and folded up the end of the plastic bag. She then put the plastic bag with Jimaco into the hole, took two stones and put it on top of the plastic bag with Jimaco's body. Jimaco was still alive. She than buried him

alive. She did not tell anyone of what she did until the where about of Jimaco was not known, and she was arrested by police for questioning and admitted killing.

She explained that her mother complained to her over the child disturbing their night sleep. The mother did not want Jimaco to stay with her. That time Jimaco was with her mother while she was with her new husband, John Talo. There was also a general feeling that the new husband will not accept Jimaco. She was in a cross-road as how she could look after the child, as rightfully the child can be with her mother or to go to her new home with the new husband.

The defendant in dealing with the problem before her took the left turn in doing the wrong thing, rather than the right turn in seeking assistance, as how she can solve the problem. By putting him into a bag and burring him alive was a very cruel act against a human life, and with no sense of feeling of the important of life. The child is a disable child and needs the care by the defendant's relatives including the new husband and his relatives, in his case the disable society too involved themselves. The society at large, must recognize, understand and accept disable people as group of unfortunate human beings in the society we live in, because of the nature of their respective disability. What they require from us the able society is love and care as the hope of surviving they can get from us to enjoy life as close as possible to the able society. And that's what Jimaco expected from her mother.

Section 106 (2) states: -

"Premeditation consists of decision made before the act to make an homicide attack on a particular person ..."

The defendant wanted to kill Jimaco. To dig the hole, wash him, taking him to the hole, wrapping him with blanket and putting him into the plastic was of characteristic of planning and executing the murder.

There was evidence called to suggest that the defendant was at time upset and needs employment. That evidence was not sufficient to persuade this Court to say she needed money to help Jimaco. Further more, this cannot be an excuse to take away his life. The problem arose, that I could see, resulted when the defendant got married to John. And that's where the driving force came to reality in dealing with Jimaco. For her to take that action was the only hope to live together with the new husband. The defendant's counsel submitted in sentence an appeal case; *Imiyo Wamela V The State, 1982, PNGLR, 269*. In that case the court, in sentencing, addressed the area of disparity of sentence, where the principal offender was sentenced to ten months imprisoned for infanticide and the counsellor to the principal offender was sentence to ten years for the murder executed by the principal offender. This case be distinguish as only the defendant is the offender and no others.

The act of murder could have been easily avoided if the defendant had sought counselling. At least we have a women centre in Vila who could have assisted by counselling. Women are to make use of the centre as it was created to serve

women to give hope to some of their problems.

The crime does not called for a short period of sentence as submitted, as the penalty under Section 106 (b) is life imprisonment.

In sentencing, I do not consider that life imprisonment will best serve as a penalty for her as first offender but a fix term of imprisonment should be imposed as a punishment. The sentence that I will impose on the defendant is eight years imprisonment. I do not see any better reasons in law to give a lower punishment to her as appropriate in her case and confirm that eight years is the appropriate level of penalty. And the defendant is therefore sentenced to eight years imprisonment. You have a right to appeal this sentence.

Dated at Port Vila, this 18th day of December 2001.

R. MARUM MBE
JUDGE.



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