

PUBLIC PROSECUTOR

-V-

SAM ALLAN

*Mr. Molbaleh for the State
Mr. Bal for the Defendant*

SENTENCE

Sam Allan, you appear for sentence. You having pleaded guilty once the indictment was amended to Intentional Assault Causing Death an offence against section 107 (d). The maximum term of imprisonment available is that of 10 years.

At the time you pleaded guilty you accepted the summary of facts which I noted with your signature and that of your counsel and I read that summary which is signed in that way into the record.

"The Defendant namely, Sam Allain is charged with "Intentional causing death contrary to section 106(a) of the penal code Act [CAP135].

Late Tatau Jessie was 20 year of age. He comes from the island of Ambrym.

The incident happened after an argument over dry palm. Late Tatua Jessie, his brother and some other guys were in their plantation drinking alcohol. Jessie Obed was sent to the house to get a cup. On his way to the house he met Sam. Sam had a knife with him and used to cut Jessie Obed. He jumped and Sam missed him. Sam Allain went to the plantation where the boys were drinking alcohol and started arguing with late Tatau Jessie. Sam left the boys and told the boys that he will be back. When he left for the house late Tatau Jessie followed behind him. Jessie Obed knew that Sam was going to get the knife so he ran behind his brother Tatau Jessie. On his way he heard a noise. He ran passed Sam and saw his brother, late Tatau Jessie's body lying down dead. Late Tatau Jessie dies on the 17th July 2009. The next day in the morning, a guy by the name of Tony went to Sam's house and asks him whether or not he had stoned late Tatau Jessie to death and he admitted that he did.

This matter was reported to the Police. The defendant was then arrested on 19th July, 2009, in Ambrym and was taken to Port Vila Police station on 21st July, 2009."

I record that I have read the submissions of the counsel for the State and that of your solicitor and I've read the pre-sentence report which canvasses the background and

independently confirms the exchange that though there has not been a custom ceremony that you immediately contributed by the provision of funds of VT12,000 for the transportation costs of the deceased body from the hospital back to his village which must have been of assistance to the deceased's family. In addition a cow, 3 pigs, 3 bags of rice and the money which I've mentioned. I treat that as compensation and the report writer comments that he made independent inquiries of your brother which confirm that situation though there is cynicism expressed by the Prosecution about that payment, but I treat it as a mitigating feature in respect of the sentencing.

The circumstances make it clear that alcohol was involved but it also appears despite there not being an independent expert report about the amount of force that is required to show the depression in the head of the deceased it seems that it's accepted that it comes from the throwing of one stone with the very sad result of the impact in the dark upon that person causing him to lose his life. It's not for me to consider at too much length the independent report from the nurse that endeavored to do her best to save the life of the deceased but it is clear from the medical report that he was immediately in difficulties.

It's necessary to note that there is some contribution in that to the situation claimed by your counsel in that both were affected by homebrew and the comment in the medical report that from the smell of homebrew believed he must have been drunk. The note then proceeds to indicate the extent of the wound and the poor state of health that continued to deteriorate till he passed away.

I treat the circumstances which are emphasized by your counsel as a matter to be considered within the prescribed sentencing regime indicated by the Chief Justice in his decision when he set the sentencing tariffs that are applicable in this particular area.

Paragraph 4 of the Public Prosecutor's submissions is as follows:-

"4. The Court of Appeal in the case of Public Prosecutor v. Ierogen [2002] VUCA34 stated

We are grateful to counsel for the Public Prosecutor who place before us the decisions in Public Prosecutor v. Sheddrack Joseph and Public Prosecutor v. Joseph Malesu where, in somewhat similar circumstances, the court considered the appropriate starting point for an uncontested case of an Intentional Assault Causing Death was 5 years imprisonment.

In the latter case the Chief Justice laid down the appropriate sentencing guideline in the following terms:

'The sentence to be imposed by the Court, under section 107 (d) of the Penal Code Act, in disputed cases, depends on the particular circumstances and situations of each cases.

In situation where the defendant had a weapon (such as a gun, a knife or other dangerous objects) and use it to cause bodily harm to the body of another person and as a result of which the victim died, the sentence to be imposed in a disputed case ranges from 8 to 10 years.

In situations where the defendant uses his fist and legs to cause serious injuries to the body of another person and causes the victim's

death as the result of the injury, the sentence to be imposed is around four (4) to seven (7) years."

Your defence counsel contends here that consideration should be given to that starting point. The circumstances of the case, your plea of guilty, your cooperation with the police and your immediate admissions as to guilt. The defence says that a reduction of at least one third in respect of penalty is appropriate and then in addition I should take into account the remorse you have shown, the amount of compensation and the time you have spent in custody.

The prosecution for its part contends that by mentioning the possession of a knife that it is an aggravating feature but at the end of the day your counsel's submissions as to an end result of 3 ½ to 4 years is not very far from that of the prosecution which contends for a position of 4 years and 7 months. The prosecution making it clear that such conduct is unacceptable taking up a stone and hurling it with a force that must have been used to cause the impact upon the skull of the deceased as depicted in the photograph indicates a major application of force with a dangerous and in this case deadly weapon. The prosecution emphasized that it was at night which was less chance for the deceased to avoid the stone and at the time it was thrown the deceased was defenceless.

It is common ground of course that it was at night so there must be in my view some elements of chance that the throwing and the unfortunate impact on possibly the most vulnerable portion of the deceased body.

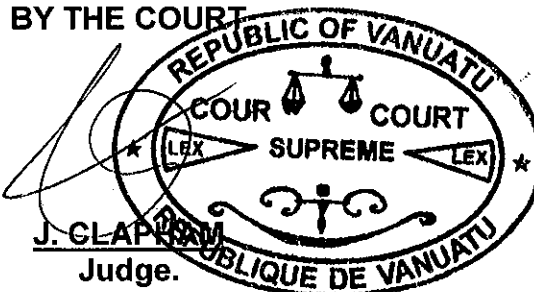
So bearing in mind the circumstance of the case the nature of the crime and your character, it was submitted that a lesser penalty should be imposed, indentifying the previous sentencing cases to which they have referred.

It's important to denounce such conduct, young men affected by liquor behaving in conduct that may take the life of another person is unacceptable. There should be deterrence and denunciation of that and of course there should be a decision which reflects the seriousness of the crime for the protection of the community and others who may be affected by your conduct.

So bearing in mind the mitigating features particularly emphasizing that not being before the Court previously you are convicted and sentenced to 4 years imprisonment. I note that you have served 2 months imprisonment. This is translated to 3 years 10 months imprisonment from now.

You have 14 days to appeal this decision.

DATED at Port Vila, this 22nd day of September, 2009.

BY THE COURT

J. GLAP...
Judge.