

**IN THE SUPREME COURT  
OF THE REPUBLIC OF VANUATU**  
*(Criminal Jurisdiction)*

**Criminal Case No. 119 / 2011**

**PUBLIC PROSECUTOR**

**V**

**ANDERSON R NORI  
ABET NORI**

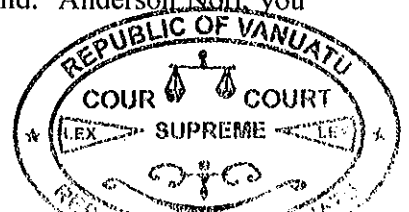
*Hearing: 16 December 2011*  
*Before: Justice Robert Spear*  
*Appearances: Gregory Takau for the Public Prosecutor*  
*Tom Joe Botleng for the Accused*

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**SENTENCE  
(16 December 2011)**

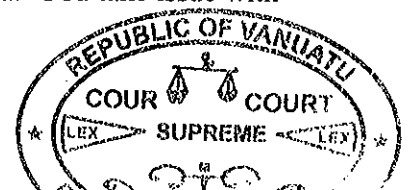
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1. Anderson Nori and Abet Nori you are for sentence having pleaded guilty to one count of intentional assault causing death under section 107 (d) of the Penal Code. This is an offence that carries with it a maximum term of imprisonment of 10 years.
2. This is a tragic case, it is tragic, on a number of scores; as cases which involve the death of a loved one invariably are.
3. A summary of facts has been presented to the Court and no issue is taken with it on your behalf. It explains that on 13 July 2011 a dispute arose between you Anderson Nori and your wife. She is the sister of the deceased. It is clear that your conduct was influenced significantly because even in these early stages you were drunk.
4. The dispute really had 2 stages however it was when you returned after drinking kava that matters got completely out of hand. Anderson Nori you



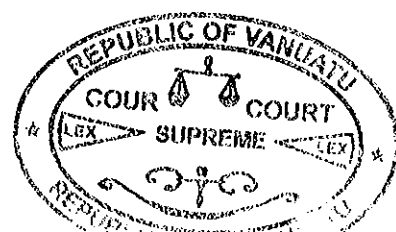
asked your wife what was for dinner and when you found out that it was mince you became angry and abusive. You asserted that you did not eat mince and posed the question, *why couldn't we buy some other beef*. It is of more than passing significance that you arrived home at about 6 pm that night drunk. Your wife had only just returned home having been at work. While she was dealing with the children and getting the meal, you managed to scrounge money from your mother to go off to the nakamal to drink kava. After you returned from the nakamal, you were completely intolerant of the fact that your wife only had a meal of mince for you.

5. However, that is a matter in the end between you and your wife and I say wife because I understand that is really a long term de facto relationship. If matters had been left there then it will be really just be a matter between the two of you as to how your relationship progressed. However, you became more abusive and ordered your wife to leave the house. This was all played out in front of your children. It is clear that they did not want their mother to go. But in the end, she told you that if you wanted her to leave then that is what will happen.
6. About this time, the deceased arrived and he of course is the brother of your wife, Anderson Nori. The deceased was known to you and known very well. He tried to calm matters down but he was met with a very angry man indeed. You thought he was challenging you to a fight which of course is ridiculous because you knew his frailties. In the end, you lost your temper and started to punch him and a fight then erupted between the two of you which, the summary of facts says, lasted for about an hour.
7. That is when you Abet Nori arrived and the summary of facts confirmed that you indeed separated the two of them. By this stage however the deceased had become very angry at finding himself involved in such a confrontation and he started swearing and punching part of the house for reasons that are not explained and remain something of a mystery. You Abet Nori then went up to the accused and pulled him to the ground. The summary of facts says that you kicked him around the rib and upper torso area. You take issue with

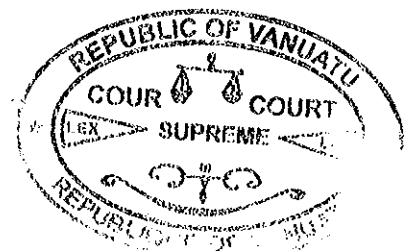


that according to the probation officer. Normally I would require a disputed facts' hearing to settle those facts as to whether you in fact did kick or punch him. However, I do not consider it necessary now.

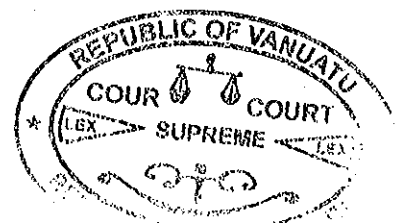
8. The deceased then collapsed but it does not appear as if that was a direct result of the punches and kicks that were delivered by the two of you or at least certainly you Anderson Nori. The deceased had a chronic heart condition, that he had been having difficulty managing and the sheer physical exertion of the fight and conflict caused him to suffer some form of coronary incident which saw him collapse and eventually die. Once he collapsed you realise that he was in bad shape and so you called for a van and took him to a hospital. He died within half an hour of his arrival to the hospital.
9. The autopsy revealed that the accused had died from a heart attack due principally to his ischaemic condition but brought on by the stress and increased heart rate involved in the altercation. So, the deceased was not a well man at the start of this confrontation and it might well be that he could have had a heart attack and died the following day, week or year irrespective of whether he had been in a fight or been assaulted. Be that as it may, the undisputed medical report establishes that the death can be attributed to the altercation that took place between him and the two of you.
10. Legally, you cause his death and that is something that you will have to live with for the rest of your life. Of particular significance, however, is the realisation identified again by this case that life is a fragile commodity. As we say in the law, however, you take your victim as you find him and that is why fighting and the use of violence is so risky. Even even a healthy and fit individual can end up dying from the damage caused by one relatively modest punch and the courts have seen that time and time again.
11. This is not a case where you have lodged an attack upon a stranger or where you have gone after somebody for reasons such as long held grudges or such like. In the background, of course, is that you were intoxicated and kava'd to the hilt but that is no excuse.



12. You initially pleaded not guilty to these charges and only changed your plea to guilty on the first day of the trial. No witnesses were required to be called to prove the charges. I suspect that you wondered whether the deceased's widow would actually turn up in Court. However, you pleaded guilty and you saved the State the cost for the trial equally you have expressed your deep remorse for what has occurred.
13. A custom reconciliation ceremony was undertaken with the assistance of your chiefs and also the probation officer. It was clearly a custom reconciliation ceremony that got to the heart of the issues between the deceased and his family and you and your family. No one disputes that you are genuinely remorseful. Of even greater significance is that you have been forgiven by the deceased's family and that is a charitable act indeed on their part. They recognised your remorse by exchanging mats after the reconciliation ceremony where gifts were presented by you.
14. So that all brings me to the point of how you should be sentenced. The charge, of course, is one that can cover a very large range of criminal offending. When the aspect of the death is put aside for the moment, your offending is relatively modest as I have said it is not an attack on a stranger not that you have gone out after somebody with a weapon or such like. It was a drunken family confrontation which reflects poorly on the two of you and is revealing of an unpleasant side to your character. It was all been played out in front of all the family.
15. So the criminality must focus upon the level of assault involved and it is significance Anderson Nori that while you started the fight, it continued for quite some time. It does appear as if the deceased stood up to you and the fight then occurred. There is also the uncertainty as to exactly how extensive your attack on the deceased was Abet Nori. So that is the degree of criminality involved against an offence which carries a maximum term of imprisonment of 10 years.



16. If this had been a case where you had deliberately gone after somebody and beaten him with sticks or knives or such like then you would be going to prison for how many years. But this is certainly not this case.
17. This is not as serious a case as where someone who gets behind a wheel of a car when they are drunk or kava'd up and kills somebody. This is just an unfortunate outcome to a family squabble but which got completely out of hand. It arose principally because of the appalling way in which you conducted yourself Anderson Nori in respect of your wife.
18. You are 35 and 36 years of age respectively. You are both in work, you both support families and indeed they are all victims of this case as much as the deceased and his family. The family of the deceased and in particular his widow has forgiven you and I consider that that reflects the sincerity with which you have expressed your remorse and the way you conducted yourselves when you realised that the deceased had collapsed. That is perhaps evidence from the fact that you immediately assisted with transporting the deceased to the hospital in the hope that you could find help for him. You certainly realised that matters had gone too far.
19. For all these reasons I am not going to sent you back to prison. I note that you have been in custody on remand now for about 2 months and I have taken account of that when I have come to assess the sentence. I have the benefit of the pre-sentence reports and the excellent submissions from both the prosecution and the defence. What is required now is for you to attend to your families and realise that you need to do an awful lot of work from this point with your conduct to repay their confidence and the faith that they have shown in you.
20. There is a need, however, to place some restrictions on you and I will do so with a sentence of supervision and that will come with the prohibition about consuming either alcohol or kava for a period of 12 months. That seems to be behind a lot of this. In fact, clearly you cannot handle your alcohol or



your kava and I think you need to stay off them for the next 12 months to understand that life is not dependent upon stimulants such as this.

21. So I am giving you something of a break today but I realise it is a tragedy all around for all your families and the important thing now is for you two to show that you deserve the confidence and the respect that you have been shown.
22. You will each carry out 200 hours community work. You are each placed under supervision for a term of 12 months with these special conditions: (1) that you undertake the niufala rod programme; (2) that you undertake counselling with a chief or a pastor as directed by your probation officer; (3) that you abstain from alcohol and kava throughout that 12 month period.
23. You have 14 days to appeal this sentence if you do not accept it. Please go to the Court office at after this and wait there for the service of your orders.

BY THE COURT

