

PUBLIC PROSECUTOR - v - PETER JIMMY

Coram: V. Lunabek CJ

Counsel: Ms Kayleen Tavoia, Public Prosecutor
Mr Lent Tevi for the Defendant

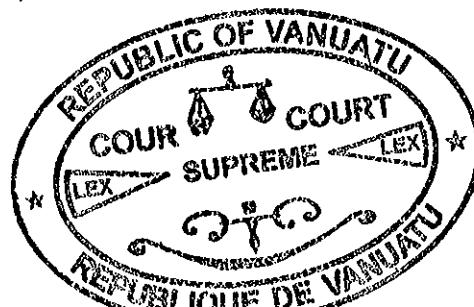
ORAL SENTENCE

Peter Jimmy, you appear today for sentence. On 4 September 2012, you entered a not guilty plea on one count of intentional assault on the body of one Christian Manz Edward of New Zealand causing his death, contrary to section 107(d) of the Penal Code Act [CAP.135]. During the management of your trial process on that count, the prosecution amended the initial charge to that of unintentional harm causing death, contrary to section 108(c) of the Penal Code Act [CAP.135] to which you then entered a guilty plea on the charge as amended.

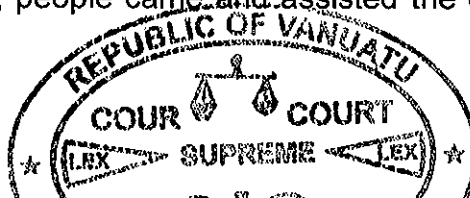
The prosecution and your lawyer, Mr Lent Tevi, provided a statement of agreed facts upon which you entered a guilty plea for unintentional harm causing the death of Hanz Edward on 28 June 2012. They are set out as follows:

AGREED FACTS

- On 28 June 2012, the deceased and some of his female friends were together all day and night until when the deceased died.
- During the day at about noon the deceased and some of his female friends drove around on the deceased's truck. In the evening they have some kava shells together then went to Au Bon Marché at No.2 area, where the deceased bought some food and a bottle vodka. They brought the food to the deceased's place a Ifira point, then eat and the women drunk the vodka and a half bottle of wine.



- After that they went and had two (2) jars of tusker at Shakers Night Club and then decided to go to Planet 107 at Tagabe area.
- While your (de facto) wife, the deceased and the other women were enjoying themselves, you looked for your wife everywhere you knew of. You drove a bus service, went and searched for your wife at her place of work, but she was not there. Then you went to Manples area, but she was not there. You drove home and checked her but she was not there. Then in the evening, you went and drop off the bus and returned home. At home, you thought of your wife so much that you decided to go to a nakamal near Sato Kilman's residence at Prima area, and drunk kava.
- After having some shells of kava with one of your brother-in-law, you went to Planet 107 to search for your wife. You search but could not find her. You came and stayed outside planet 107.
- Not long afterward, the deceased, your wife and the other women arrived on the deceased's truck and parked next to ex-Cellovilla building, next to Planet 107. The deceased and three other women came out of the truck and went inside Planet 107 while your wife and another woman remained in the truck. At that time your wife knew that you would be there and would assault her if your saw her.
- You saw the truck, looked crossly and saw your wife in the truck with another woman. You approached the truck, you argued and then assaulted your wife for some minutes when the deceased approached you and punched you on your chest without you noticing him coming.
- You then turned around, saw the deceased and blocked the deceased's hands that were around your neck and then you also punched the deceased. When the deceased saw this, he hold onto you and then you and the deceased struggled until you fell on to the cement floor. You left the deceased on the floor and went back to assault your wife and took her back to your home.
- The deceased was on the cement floor unconscious – without you knowing this. After you left the deceased, people came and assisted the deceased



and they took him to the hospital where he was pronounced dead upon arrival.

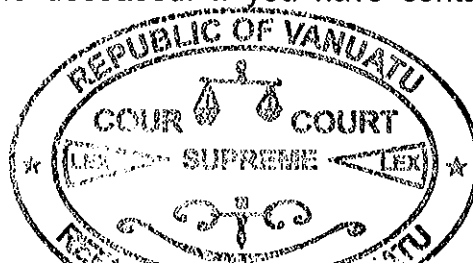
- The Medical Report dated 2 July 2012 stated that he had no wounds, no abdominal deformities or fractures, no obvious wounds of bleeding sites, small traces of blood around the right and left ear and no blood in the ear canals. The Medical Examiner's impression is that the death was due to the severe head injury (secondary to the assault).

In respect to the offence of unintentional harm causing death, contrary to s.108(c) of the Penal Code Act, you are liable to 5 years imprisonment as the maximum penalty imposed by law. It is a serious offence. Sentencing in such cases is a difficult task for Courts. This difficulty is recognised by the Court of Appeal in *Newell v. Public Prosecutor* [1998] VUCA 2; Criminal Appeal Case 05 of 1997 (9 January 1998) when it was stated (at p.3):

"Dealing with cases of this sort creates more of the most difficult task in any Court. This is a matter which in general conversation would be described as an accident. In the laws term it is a situation where death result from an unlawful act. That in law is not an accident but is unintentional harm causing death. A criminal court in determining sentences on this sort of charge cannot possibly put a value or an appreciation of the life which has been lost. It is unfortunate (particularly when people are grieving and hurt) that sometimes there is a suggestion that the Court minimise the value of the life which was taken what the court is concerned to do is to assess the criminal culpability of the wrong doer. In a case such as this a Court cannot ignore the reality that David as a teenager faces a life time in which he lives with the knowledge that as a consequence of his careless act a life was taken."

In the present case, the Court cannot ignore the reality that you Peter Jimmy, you face a life time in which you live with the knowledge that as a consequence of your act a life was taken.

Although the death of the deceased was not intended by you, the death occurred as a consequence of your violent act. The Court condemns in the strongest terms your acts resulting in the death of the deceased. If you have contained your



frustrations over your wife and you kept control of your own acts, Mr Hanz Edward will be still alive.

A sentence of 3 years imprisonment is an appropriate starting point in the circumstance of your case.

The Court is informed by the Probation Office by written correspondence that you refused to cooperate with that office as a result the Court does not have the benefit of a pre-sentence report for your sentencing. Your lawyer provides the information relating to your personal history to assist the Court in your sentencing consideration exercise.

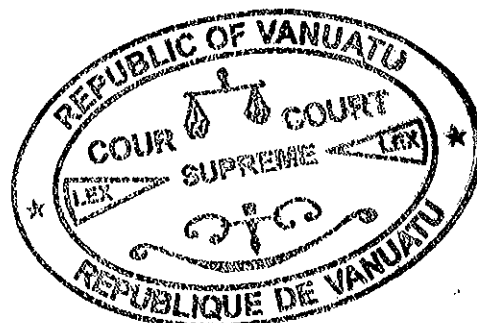
You are 23 years of age. You live in a de facto relationship with a woman you consider as your wife. You have two (2) children of your own before you live with your current wife. The two children are looked after by their grand parents on the Island of Tanna. One is 7 and attends primary school. The other is 3 and is in the kindy. Your current wife has a child of her own. That child is now 6, lives with you and your partner and attends school at Mele village.

You are a bus driver since year 2000. Your wife works for a company selling Tamanu Oil but after this incident she stops working.

She is now in her 4 months pregnancy. You are starting a project on your wife's land on the Island of Erromango of planting sandle wood seedlings. You pay an old man to look after your young sandle wood seedlings.

In mitigation, the Court takes into consideration your remorsefulness expressed by and through your lawyer to the Court; your guilty plea and the fact that you are a first time offender and you do not have previous conviction.

On balance, the Court reduces your sentence to 18 months imprisonment. You have already served a period of 3 months during your pre-custody detention. This will be accounted for in your favour.



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The next question is whether the circumstance of your case warrants a suspension of your 18 months imprisonment sentence. The agreed facts show act of violence from you towards your wife; you responded to a punch given to you by the deceased person by punching him before you and the deceased struggled and fell on the cement floor as a result Mr Hanz Edward was unconscious and then died due to the severe head injury he had sustained.

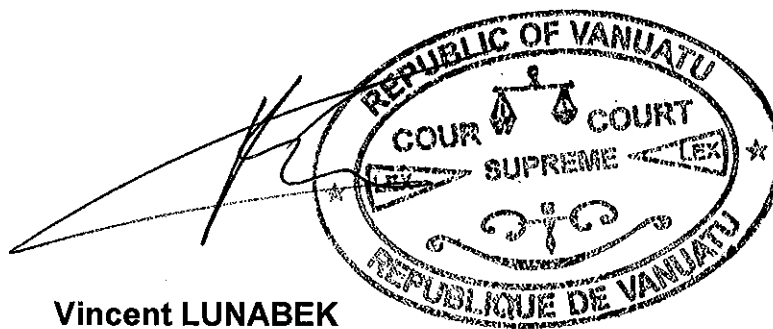
The Court considers that your term of 18 months will be partly suspended.

ORDER

1. You are sentenced to 18 months imprisonment to be partly suspended in this way:
 - (a) you shall serve $\frac{2}{3}$ of your 18 months in custody starting from the day of your arrest and detainment on 28 June 2012.
 - (b) the balance of $\frac{1}{3}$ of your 18 months imprisonment shall be suspended.
2. You are deemed to be detained starting from 28 June 2012.
3. You have 14 days to appeal this sentence if you are unsatisfied with it.

DATED at Port-Vila this 27th day of September 2012

BY THE COURT



**Vincent LUNABEK
Chief Justice**