

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU

(Criminal Jurisdiction)

Criminal Case No. 24 of 2013

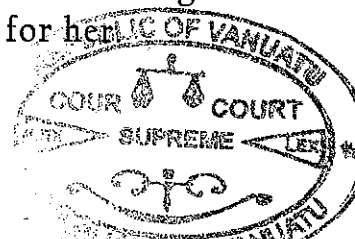
PUBLIC PROSECUTOR vs. PAKOA AMOS TOBBY

Coram: Judge Aru

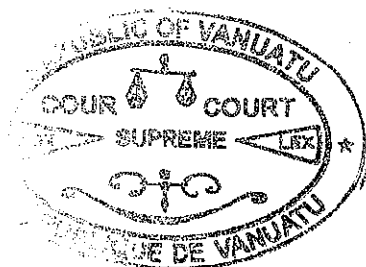
Counsels: Mrs. T. Harrison for the Public Prosecutor
Mr. C. Leo for the Defendant

SENTENCE

1. The defendant was charged on 4 May 2013 within two counts of intentional assault contrary to section 107 (b) of the Penal Code which states that no person shall commit intentional assault on the body of another person. If damage of a temporary nature is caused the penalty is imprisonment for 1 year.
2. On the 7 May 2013 a nolle prosequi was entered by the Public Prosecutor in respect of count 1. The defendant pleaded guilty to count 2.
3. The brief of facts as given by the Public Prosecutor are not disputed. The offending occurred at around 8.00 pm at night on the 14 December 2012 at the Tongoa Seaside Area. The complainant went to see his client, Alexandra Toby who is the defendant's sister to pick up 5,000vt as payment for the work he did for her since early 2012. When the complainant approached Alexandra she advised him to wait for her outside the house. As the complainant waited he noticed a group of people gathered under the Natapoa tree outside Grem Toby's house. Grem Toby is the defendant's brother.
4. The complainant wished them goodnight and also shook hands with them. The complainant saw Joel Jack, Fred Reuben, Pakoa Hendri, Leisongi Pakoa but there were other people there whom the complainant did not recognize who were present at the time of the offending. The complainant spoke to a Joel Jack and later a woman brought a plate of food to him. At the same time Alexandra brought the 5000vt as payment for the work the complainant did for her.



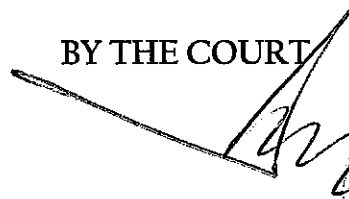
5. The plate was filled with bunia, kumala and pork. The complainant had just started on the pork when Joel Jack told him that Pakoa Amos Toby shaved his beard for his late father's passing. As Joel Jack continued to converse, Fred Reuben joined them and shared a cigarette with the complainant when suddenly the defendant appeared with an axe from his house which is about 3 meters away from where everyone were sitting.
6. The complainant smelled blood and also felt blood dripping down from his head and covered his whole face and clothes. Another woman yelled in Tongoan dilect "Lukaot Naore Amaing" and in bislama Lukaot long back blong yu" as the complainant turned he saw a piece of wood hit the man holding the axe but the man holding axe continued trying to cut up the complainant. The complainant did not know which woman was yelling out and when the axe fell, the complainant picked up the axe and at the same time he felt something hit his head hard. Another person stoned the complainant's head.
7. The complainant managed to run away from the crowd and took the axe which the defendant used to try and cut him. He walked towards the Tongoa community toilet block at sea Side Area. The complainant handed the axe to Willie Songi from Tongoa village who was sitting with Obed Morris. The complainant informed Willie Songi "AXE IA NA OLI KATEM MI LONG HEM" and the complainant went to the hospital for treatment with a group of people including Obed Morris, Leimala Obed, Leimal Joel, Timothy Morris, Toara Malchi and his son. The defendant was later arrested and cautioned by the police and signed a suspect statement form.
8. In considering what sentence I should impose I have taken into account the submissions of both the Prosecutions and defence counsel. I have also considered the pre-sentence report filed by the Probation office.
9. Although the Defendant is charged under section 107(b) it is nevertheless a serious offence as it could have resulted in instant death as an axe was used to cut the defendant on the head. As a starting point I sentence you to 6 months imprisonment which I then increase to 8 months given that you used an axe as a weapon to assault the complainant.



10. The pre-sentence report states that you are a Chief within your community and you are the sole breadwinner in the family having been employed by Air Vanuatu for over 25 years. You are remorseful for your actions given your status within your community and you are willing to perform a custom reconciliation though none has taken place as yet. I therefore reduce your sentence to 7 months imprisonment. For your early guilty plea you are entitled to a one third reduction of your sentence which is reduce to 5 months imprisonment.
11. As you are a first time offender with no previous convictions, your sentence is further reduced leaving you with an end sentence of 4 months imprisonment which I suspend for a period of 12 months. Should you re-offend during this period of time, your sentence will be reactivated and you will be required to serve the full sentence of 4 months in prison. In addition you are also ordered to do 100 hours community work.
12. You have 14 days to appeal this decision if you are not happy with it.

DATED at Port Vila this 6 day of August 2013

BY THE COURT



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D. Aru
Judge

