

PUBLIC PROSECUTOR – V – HENRY LAKA

Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Sgt Rexton Langon, State Prosecutor for Public Prosecutor*
Miss Jane Tari for the Defendant

Date of Sentence: *8th March 2013*

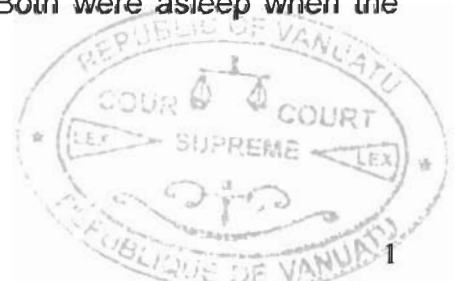
SENTENCE

1. Henry Laka, you were charged with one count of Intentional Homicide contrary to section 106(1)(b) of the Penal Code Act Cap. 135. This is a very serious offence because the maximum penalty is life imprisonment.

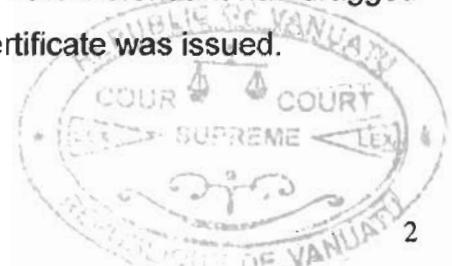
2. On 5th February 2013, you pleaded guilty to the charge. The facts of your offendings were presented to the Court by Mr Wirrick on 5th February 2013. They are as follows:
 - (a) The Defendant was at all material times 36 years of age. The Victim was at all material times 14 years of age and was the nephew of the Defendant. Both reside in the same house at Lolosori, North Ambae.

 - (b) On Christmas night in December 2012, the Victim attended a church program at Lolopuepue, North Ambae and did not return to his home until around 11.00 P.M that night. During that night the Defendant was at another village drinking kava and getting his mobile phone charged.

 - (c) The Defendant returned home with a plastic bottle of kava and some laplap he was given to eat. The other occupants of the house were the Defendant's sisters Amanda and Theresina. Both were asleep when the Defendant arrived home.



- (d) At around midnight the victim arrived home. At this time the Defendant was still finishing off the bottle of kava he had brought. The victim asked the Complainant if there was any food to eat. The Defendant responded with words to the effect that there was nothing to eat as he had not cooked and that he had only brought some laplap for himself.
- (e) The victim took the Defendant's laplap from the food safe without the Defendant knowing and ate half of it before putting the uneaten half onto the floor of their sleeping room. The victim then cleaned his bed before lying down on his bed to sleep. At all material times the victim was lying on his side with his face to the wall next to the bed and his back to the rest of the room.
- (f) Angered by what his nephew had done and compounded by what the Defendant describes as constant disrespect and disobedience, the Defendant decided to kill the victim dead.
- (g) The Defendant took a long metal tool he use for planting banana which was kept under his bed and proceeded to strike the backside of the victim's neck two times. The Defendant then struck the victim a third time near his ear. The blows inflicted were forceful and resulted in bleeding. The victim died instantly as a result of those blows to his head.
- (h) The Defendant dragged the victim's body face down out of the house and into a bushy area near the house. The Defendant cleaned up some blood from where the offence was committed and on the following morning surrendered himself to the Police at Saratamata. The Defendant was arrested and detained. He admitted the offending under caution. The metal tool used in the offending was found in the bush kitchen near where the offence was committed.
- (i) The victim's body was found face down where the Defendant had dragged him and was photographed before a death certificate was issued.



3. You have agreed to all those facts which show the following aggravating features –
- (a) The killing involved the use of a long metal garden tool as a weapon.
 - (b) The assaults occurred while the deceased was helplessly asleep and so vulnerable and defenceless.
 - (c) The number of blows inflicted three times to the head and neck of the deceased.
 - (d) The deceased was your nephew, a close family member.
 - (e) The deceased was only 14 years old whose life was brutally cut short for what can be seen only as a disproportionate and unreasonable reaction.
4. For these aggravating features and based on the ruling of the Court of Appeal in the case of Public Prosecutor v. Pascal Tabi [2010] VUCA 5 the appropriate penalty the Court will impose is a custodial Sentence of 25 years imprisonment but with no further uplift.
5. The facts of your offending made your case fall in the same category as the cases of Public Prosecutor v. Edwin Nof [2008] VUCA 16, Public Prosecutor v. Pascal Tabi [2010] VUCA 5, Public Prosecutor v. Tenake [2012] VUSC 35 and Saipir v. Public Prosecutor [1996] VUCA 7. The Court notes however that the case of Edwin Nof is very much on the lower side of the scale in relation to the offence under section 106(1)(b) of the Act.
6. The Court further notes that after Pascal Tabi, the Supreme Court has adopted a more consistent approach in sentencing offenders for premeditated homicide. This Court will therefore adopt that same approach in sentencing you today.
7. You are therefore convicted and sentenced to imprisonment for a starting term of 25 years. This sentence is to –
- (a) Act as a deterrence for you and other men from committing the same offence.
 - (b) Mark public condemnation for your unlawful actions; and



(c) Punish you appropriately and adequately for a very serious offence.

8. The Court will however consider whether you are entitled to some reductions due to your mitigating factors as submitted by defence Counsel. The answer is obviously "yes".

9. On 5th February 2013, you pleaded guilty to the charge at the earliest opportunity. According to Public Prosecutor v. Gideon [2002] VUCA 7, you are entitled to 1/3 reduction for this factor. Therefore, from the starting point of 25 years, 8 years are deducted leaving the balance of 17 years. However, I consider that there should be a further reduction for the following three factors-

(a) Your voluntary surrender to the Police on 26th December 2012.

(b) Your cooperation with the Police during investigation and interviews making admissions on 26th December 2012.

(c) Being of previous good character with no previous convictions.


For these I allow a further reduction of 1 year and 4 months (16 months) leaving the balance of the sentence at 15 years and 8 months.

10. Henry Laka, your total sentence after those deductions are therefore 15 years and 5 months imprisonment. Your sentence is deemed to have commenced on 26th December 2012 when you were first kept in custody after your voluntary surrender to the Police at Saratamata, East Ambae.

11. You have a right of appeal within 14 days from the date of this sentence, if you so choose.

DATED at Luganville this 8th day of March 2013.

BY THE COURT


OLIVER A. SAKSAK

Judge

