

**PUBLIC PROSECUTOR**

**v.**

- 1. SAEPUL MANAP**
- 2. ANDI RIYADI**
- 3. RIVA PRANGGA KLISWANRIO**
- 4. ABDUL HASAN SIDIK**
- 5. SUHERI MEIVAN**
- 6. ADE MARWADI**

**Coram:** Justice D. V. Fatiaki

**Counsel:** T. Karae for the State  
E. Nalyal for the Defendants

**Date of Sentence:** 11 August 2017

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**SENTENCE**

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1. On 27 June 2017 the defendants were jointly charged in an Information with an offence of Intentional Homicide contrary to Section 106(1)(b) and 31 of the Penal Code. The particulars of offence charged the defendants with intentionally causing the death of **XIE DINGRONG** by the commission of unlawful acts on the high seas on board a Vanuatu registered fishing vessel the "**Tunago No. 61**".
2. Section 1(1) of the Penal Code applies the criminal law of Vanuatu to any act done "*within its territory*" and subsection (2) provides that for the purposes of the Penal Code the territory of Vanuatu includes "... *all civil vessels ... registered in the Republic*". By a Permanent Certificate of Registry No. 02-0286 issued by the Vanuatu Maritime Authority, the "**Tunago No. 61**" was registered as a long liner domiciled in Port Vila, Vanuatu with an International Authorisation to Fish Certificate issued by the Vanuatu Fisheries Department valid for the period 26 August 2014 to 25 August 2017.
3. On 4 July 2017 after the charge was translated to them in the Bahasa language, all the defendants were convicted after each pleaded guilty to the charge. The facts were then outlined to the defendants in the Bahasa language and they all agreed with it. The defendants were accordingly convicted and are now before the Court for sentence.



4. The facts of the case begins in the port city of Kaoshing in Taiwan from where the **Tunago No. 6** (*"the vessel"*) set sail on 7 May 2016 heading for fishing grounds in the Pacific. On board the vessel were its Chinese Captain **Xie Dingrong** and his Chinese Chief Engineer **Zhang Dapeng**. The remaining 26 crew members were comprised of 6 Vietnamese, 7 Phillipinos and 13 Indonesians including the 6 defendants.
5. On the night of 7 September 2016 between 9 and 10p.m. while the vessel was on the high seas between Easter Island and Fiji, the defendants armed with a variety of dangerous weapons including fish gutting knives, a scissor and a hammer, entered the cabin of **Xie Dingrong** (*"the deceased"*) whilst he was asleep and killed him using the weapons they had. After the killing was discovered the deceased body was placed in the ship's freezer and the vessel headed for Suva, Fiji.
6. On 8 September 2016 the Chief Engineer **Zhang Dapeng** reported the killing to the owners of the vessels in Taiwan. The company's shipping agent in Fiji was subsequently informed and a report was lodged with the Fiji Police on 19 September 2016.
7. On 23 September 2016 the vessel arrived in the port of Suva in Fiji and police investigations commenced. On 27 September 2016 **Suheri Meivan** and **Ade Marwadi** were interviewed under caution and the remaining 4 defendants were later interviewed on 29 December 2016. All defendants frankly admitted their respective roles in the killing of the deceased.
8. On 29 September 2016 the deceased body was identified by his brother-in-law and wife who had flown in from Fujian Province in China. The Post Mortem Examination report recorded the cause of death as "**exsanguination**" (bleeding to death) as a result of traumatic neck slash injuries and multiple traumatic slash and stab injuries caused by sharp force trauma and assault.
9. The particular injuries noted in the Post Mortem report were:
  - **Scalp** – 5 incised (caused by a sharp-edged object like a knife) wounds of varying lengths and depths with evidence of boney injury;
  - **Face** – 10 slash wounds on the forehead, right eyebrow, nose, left cheek, chin to left jaw and 2 wounds around the left ear and 2 on the right side of the face and mouth;
  - **Neck** – Multiple slash and stab wounds including a deep incised wound with complete transection of the left common carotid artery and the left internal and external jugular veins. A similar transecting wound was noted to the right common carotid artery, the right internal vein and external jugular vein.
10. The deceased also had multiple incised wounds to the upper right arm and shoulder and the right hand showed a slash wound over the right index finger.

Similar "defensive wounds" were noted to the left forearm and over the third and middle fingers of the left hand. He also had stab wounds to the abdomen with "an obvious extrusion of 200mm of loops of the small bowel". Finally multiple incised stab wounds were noted over the left thigh, left knee and left foreleg.

11. After the completion of the Fiji police investigations which was assisted by 2 officers from Vanuatu, the defendants were extradited at the request of the Vanuatu Government and escorted to Port Vila where they were remanded in custody on 30 April 2017. A preliminary inquiry was subsequently conducted and the defendants were committed by a senior magistrate on 20 June 2017 for trial in the Supreme Court on a charge of Intentional Homicide.
12. The Court acknowledges the valuable contribution of the Bahasa language interpreter **Mr. Chris Triyanto** who assisted in the arraignment of the defendants and in the preparation of the defendants' pre-sentence reports.
13. Article 5 of the Constitution which is the supreme law of Vanuatu recognises an individual's fundamental "right to life" and "security of the person". This is reinforced by the Penal Code which imposes the maximum sentence known to the criminal law of "life imprisonment" for only five (5) offences including; Intentional Premeditated Homicide (Section 106(1)(b); and Aiding Suicide (Section 116).
14. The sanctity of life is clear and must be valued and protected at all times. As was said by the Court of Appeal in Sapir v Public Prosecutor [1996] VUCA 7:

*"Every civilised community has a right, if not a duty, to condemn those who are prepared to rob another of their life. A sentence must convey the community's condemnation of such behaviour. The Court has a duty to impose penalties which hopefully act to deter others who are similarly minded to act in such an outrageous manner".*

And furthermore:

*"... the Courts have a duty to clearly and unequivocally signal that the introduction of knives into any sort of dispute ... is totally unacceptable and where it leads to death the person (wielding the knife) will forfeit the right to remain in the community. A court must always have regard to the circumstances of the offender but equally it needs to weigh the public interest in condemning gratuitous violence, seeking to deter those who act in violent ways and punishing those who take the life of another human being".*

(**see:** Public Prosecutor v Toa [2003] VUCA 13.

15. The offending in this case was brutal, premeditated, and merciless. It was perpetrated late at night by at least 4 armed defendants acting at the same time, against their unarmed defenceless captain sleeping in his cabin. It involved the



premeditated use of lethal weapons such as fish gutting knives, a scissor and a hammer.

16. The attack was indiscriminate and sustained even when the victim called out and unsuccessfully tried to get away from his attackers and defend himself. The ferocity and frenzied nature of the attack is evidenced by the location, nature, and number of injuries that were inflicted on the deceased's body. In total there were approximately 41 slash and stab wounds to the deceased's scalp, face, neck, upper torso, both his arms and hands and his abdomen and left thigh and leg. There can be no doubting the homicidal intentions of the deceased's attackers nor has this court ever had to deal with a case such as this of wanton uncontrolled, violence with such a disdain for human life.

17. Before considering the starting point I set out some personal details of the deceased:

- **Xie Dingrong** was born on 25 October 1969 in a small rural town in Dongshan Country, Fujian Province in China;
- He was married to **Bai Yuchua** on 25 October 2003 and they have an only daughter **Xie Xiagoi** who was born on 29 July 2004;
- **Bai Yuchua** is unemployed and their daughter is beginning middle school. The deceased was the sole-bread winner of the family.

18. Nothing this Court says today will bring back the life of Xie Dingrong the father of a young girl who is now orphaned and the husband of Bai Yuchua who is now a widow. No sentence this Court passes will reverse the tragic personal consequences that have been inflicted on his family and relatives. This is a heavy burden that each of you must personally bear for the rest of your life knowing that you willingly and knowingly participated in the taking of Xie Dingrong's life. Fortunately for you, Vanuatu unlike your own country, does not have the death penalty.

19. I turn next to consider the appropriate starting point for this offence bearing in mind how the offending arose, what happened during the offending and the effects on the victim's family and relatives viewed within the context of the maximum penalty that can be imposed for the offence.

20. In this later regard I am mindful of the provisions of Section 51(3) of the Correctional Services Act No. 10 of 2006 which states:

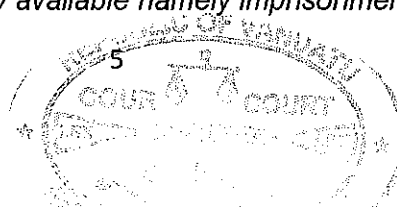
*"If an offender is sentenced to life imprisonment the offender will be eligible for consideration by a community parole board for release on parole after serving 8 years of his sentence".*

This may be contrasted with subsection (1) which provides that:

*"... a detainee is eligible for consideration by a community parole board for release on parole upon the expiry of a half of his or her sentence".*

21. The meaning and effect of the above provisions is that if the Court imposes a "term of years" which is less than the maximum but more than 16 years, say 20 years, then the defendants would not be eligible for parole until after they had served half of the sentence ie. 10 years, but, if the Court imposed the maximum sentence possible, namely, "life imprisonment", then the defendants would be eligible for parole after serving exactly 8 years.
22. Even accepting that a "term of years" has a finite duration as opposed to a sentence of "life imprisonment", the difference in the minimum length of incarceration between the sentences before parole eligibility, is significant and, in my view, constitutes an incongruous result and may well be contrary to the purpose and objects of the Correctional Services Act No. 10 of 2006 to ensure that sentences are administered in a fair and effective manner and that offenders detained in correctional centres receive "fair treatment".
23. Be that as it may, in its sentencing submissions the prosecution submits that the killing in the present case must be "*treated as belonging to the worst category of intentional homicide ... such that the need for the maximum sentence of life imprisonment ... is compelling*" and counsel refers to Public Prosecutor v Iakis Posan and Nerep [1994] VUSC 14 and Public Prosecutor v Kalopat [1997] VUSC 7 where sentences of life imprisonment were imposed with a recommended minimum incarceration period of 20 years and 12 years imprisonment respectively to be served before release.
24. I accept that the minimum incarceration terms in the above cases are described as "recommendations" to the responsible minister, nevertheless, such recommendations had no statutory basis and since the coming into force of the Correctional Services Act on 7 August 2006, is of doubtful validity given the provisions of Section 51(3).
25. In its sentencing submission the prosecution eschews any reference to possible mitigating factors nor does it clearly refer to the possibility of the Court imposing a finite "terms of years" as an alternative to life imprisonment.
26. In Public Prosecutor v Jack Nalau [2010] VUSC 183 where the defendant had tortured and then battered his two victims skulls with a hammer the Chief Justice said:

*"It is difficult to contemplate a more serious example of premeditated intentional homicide ... the starting point for the offences of premeditated intentional homicide should be the maximum penalty available namely imprisonment for life ...".*



And later in imposing a finite sentence of 23 years imprisonment, he said:

*"The only appropriate starting point for this offending is imprisonment for life. As you are still a young man (aged 24 years), a fixed term of imprisonment may be more appropriate".*

**(see also: Public Prosecutor v Pascal Tabi [2010] VUSC 161)**

27. The Chief Justice had earlier recognised that:

*"... the only factor which could be legitimately raised in mitigation is your age ... you were 18 years old when you committed these crimes and you are now aged 24 years. There is some prospect that you may develop some insight into your offending and may embrace rehabilitation at some stage when you mature".*

28. The present case is equally heinous and deserving of condign punishment but given the relative youth of the defendants whose ages range from 21 years (**Riva Kliswanrio**) to 25 years (**Suheri Meivan**) and the fact that they are all foreign citizens being sentenced in a country thousands of kilometres distant from their homeland of Indonesia, I too accept that a fixed "term of years" is to be preferred to a sentence of life imprisonment.

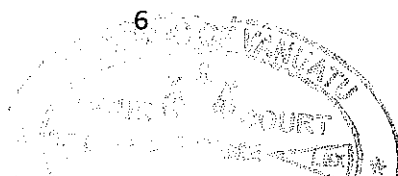
29. The starting point I adopt for all defendants is a term of 30 years imprisonment from which I deduct two (2) years in recognition of each defendant's unblemished past, the remorse each expressed to the probation officer, and their cooperation with police inquiries. Furthermore, although not amounting to a defence of "provocation" in terms of Section 27 of the Penal Code, I accept that the defendants had been subjected to discrimination, mistreatment and verbal and physical abuse by the deceased over an extended period leading up to and including on the fateful day.

30. All defendants made this clear to the probation officer who prepared their pre-sentence reports. Suffice for present purposes to set out extracts from 3 of the defendants namely, Andi Riyadi, Riva Kliswanrio, and Suheri Meivan as follows:

- **Andi Riyadi**

*"When questioned about his offending, Mr. Andi Riyadi stated that before boarding the MV Tuago (Fishing Boat/Vessel) they were told by the agency that everything will be provided such as medication if sick and salary on the vessel, but when he arrived at the ship it was different. He stated that they were treated differently from other nationalities on the ship. He said he and his co-offenders were often discriminated by the Captain and other crews also as there were limited food and most of these food like cans of pork was against their religion and belief in Muslim but they had no choice but to consume the food.*

*Mr. Riyadi stated at time they had to eat the fishing baits in order to stay alive, they work twenty two (22) hours and rest only four (4) to six (6) hours. He continued to state that they were not allowed to use the phone to talk to their family or even to request advance*



for money and that for over a year and four (4) months they had not received any wages also every time they asked for this, the Captain would say that it was going to come soon.

He told the writer that on the day of the offending, he was working at his station, cleaning the catch and accidentally cut his hand then went to the Captain and asked for a band aid or medication to stop the bleeding but he scoffed at him, then when Mr. Riyadi asked the second time, the Captain slapped him on the face and sent him out. With anger he went to his fellow Indonesians and told them what had happened, so they all approached the Captain threatening him to give the medication or they will kill him but he laughed at them and said that he does not care whether Mr. Riyadi lives or die, so they killed him."

- **Riva Kliswanrio**

"Mr Riva stated to the writer that the treatment they received from the deceased was inhumane compared to how he (deceased) treat Philippians and Vietnamese crew. He added that they (Indonesians) work 22 hours and only rest for less than five (5) hours before working again. In addition, Mr Riva stated that the deceased who is the captain of the boat never gave them any salaries since day one of working and even they are not allowed to borrow from the Captain. He also stated that eating pork is against their religious belief however, the deceased gave them pork to eat during meals.

Mr Riva stated that their anger towards the deceased developed for about one year and four months and caused them to commit the offence. He added that they all realised that their offence was serious and did not throw the deceased body to the ocean instead they kept him inside the fish refrigerators."

- **Suheri Meivan**

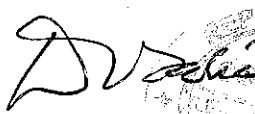
"He told the writer that the treatment they receive from the deceased was inhumane compared to how he (deceased) treat Philippine's and Vietnamese (crews). He added that they (Indonesians) work 22 hours and only rest for less than five (5) hours before working again. In addition, Mr Suheri stated that the deceased who is the Captain of the ship never gave them salaries since day one of working and even they are not allowed to borrow from the Captain. He also stated that eating pork is against their religious belief however, the deceased gave them pork to eat during meals."

31. The defendants had previously mentioned the deceased's ill-treatment and discrimination against them in their police caution interviews in September/December 2016 and it is unfortunate that police investigations did not extend to verifying the complaints from other crew members but, whatever the truth, the defendants clearly resented their treatment and harboured a deep sense of anger and hatred against the deceased. That does not excuse the taking of a human life but it does provide an explanation for what occurred on the fateful night.
32. For this factor I deduct a further one (1) year leaving a sentence of 27 years imprisonment. As a final deduction the sentences are reduced by a further one third (9 years) in recognition of the defendants' guilty pleas leaving an end sentence for each defendant of 18 years imprisonment with effect from 30 April 2017 the date when they were first remanded into custody.

33. The Public Prosecutor also sought a monetary compensation order in a supplementary sentencing submission on the basis that the defendants caused the death of Xie Dingrong thereby victimising his wife and daughter who were financially dependant on him.
34. I accept that the Court is obliged to consider a sentence of compensation ("*must*") in terms of Section 40 of the Penal Code but the sentence remains discretionary ("*may impose*"). The Court is also required to take into account the right of the deceased's dependant family and relatives to bring civil proceedings in relation to the loss they have suffered as well as the offenders sources of income [see: Subsections (3), (4) and (5)].
35. As to the deceased family's right of action, Section 1 the Fatal Accidents Act 1976 (UK) which applies in Vanuatu gives a deceased person's dependants a right to bring a claim for damages where death is caused by any wrongful act. As for the defendants "*sources of income*", other than an unhelpful statement that the defendants salaries are "*... handled by agents who hired them in-country ... and that the balance of their salaries would be deposited in their bank accounts in their homeland (Indonesia)*", nothing is known of the amount(s) involved and how any such extra-territorial sums would be accessible by a compensation order granted by this Court.
36. In all the circumstances I do not consider that a compensation sentence should be imposed in this case.
37. The Court also recommends to the relevant authorities that consideration be given to deporting the defendants to Indonesia when they become eligible for parole ie. after the expiry of 9 years imprisonment.
38. The defendants are advised of their right to appeal within 14 days to the Court of Appeal against this sentence imposed if they do not agree with it.

**DATED at Port Vila, this 11<sup>th</sup> day of August, 2017.**

**BY THE COURT**

  
**D. V. FATIAKI**  
**JUDGE.**

