

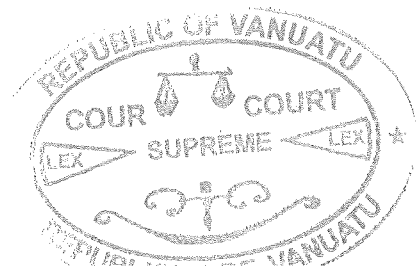
BETWEEN: The Public Prosecutor

AND: Andfalo Vemboe
Defendant

Date of Verdict: *11th day of August, 2020 at 9:00 AM*
Date of Sentence: *19th August 2020*
Before: *Justice Oliver Saksak*
In Attendance: *Mr Damien Boe for Public Prosecutor*
Mr Rollanson Willie for the Defendant

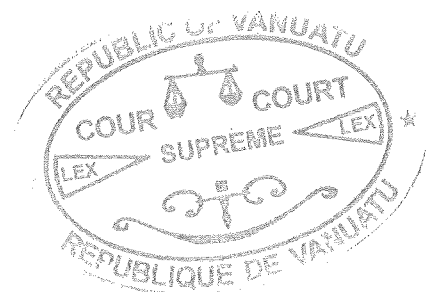
SENTENCE

1. The defendant is here for sentence today upon the Court finding her guilty of attempted intentional premeditated homicide contrary to section 106 (1) (b) and section 28 of the Penal Code Act [CAP.135] (the Act).
2. The maximum penalty for intentional homicide is life imprisonment. An attempted offence is punishable in the same manner as the offence of intentional homicide pursuant to section 28 (4) of the Act.
3. The criminal responsibility of a person committing an attempted offence who voluntarily withdraws from the attempt before the offence is committed shall be diminished-section 28 (5).
4. The facts from the evidence led by the Prosecution at trial are that the defendant was one of the four defendants who made the plan kill the victim Sandrine by witchcraft on 18th October 2019. That was a Saturday. They agreed to the plan to be executed on Tuesday 22 October 2019. On that day at about 2:00am, the four defendants including the defendant flew to the victim's house where they landed on a Blue water tree and a Nangai tree. They then approached the victim's house. This defendant and another accused waited outside. Meletau Trief whom the Court convicted and sentenced to an end of 6 years and 10 months for his leading role in this offending went into the victim's house with another accused person. They applied some custom leaves over



the victim and were in the process of removing her from her house. The plan was to take her into the bush and remove her intestines. This plan failed when the victim's son intervened by grabbing his mother's clothes and a struggle took place, breaking the spell. In the struggle, the victim was assaulted leaving her with serious injuries for which she was hospitalized for treatment. The defendants then withdrew from accomplishing their plan to put Sandrine to death by witchcraft.

5. In assessing the appropriate punishment for the defendant I have considered her involvement in the plan made on 18th October 2019, her involvement in the execution of the plan on 22nd October 2019 and her remaining outside the house waiting for the victim's body to be removed from her house by other defendants, and her withdrawing from the plan after intervention by the victim's 6 year old son.
6. The principle of proportionate culpability established in PP v Kalosil is applicable to her. I have seen the case law of PP v Peter Holi Varasmaite [2011] VUSC 64 and PP v Jean Marc Tamata [2010] VUCA B referred to by defence counsel Mr Willie. But these cases are distinguished in that the charges were possession of firearms with intent to injure and attempted intentional homicide. The Court will use as a guide the earlier sentence of Meletau Trief in PP v Trief [2020] VUSC 62 in sentencing this defendant as co-defendant.
7. Taking her degree of involvement in the attempted offending, which had it been fully implemented would amount to a very serious offending, I consider that a custodial sentence is appropriate to act as a deterrence, to mark the serious offending and to mark public condemnation of the defendant's actions. I therefore set the starting sentence for the defendant at 5 years imprisonment.
8. For personal circumstances, the defendant is now 71 years old and single from Narango Village, South Santo. She is the eighth of 9 children in her family. She resides with her nephew. She left school from class 3. She was a kindergarten teacher for 4 years and a nurse for some 15 years. She held the position of a deaconess in the Presbyterian church and a Sunday school teacher and a member of the PWMU.
9. Medically she is confirmed with high blood pressure. A recent medical report dated 17th August 2020 confirms her condition and the medication she is currently receiving. She has no previous convictions.



10. For these personal circumstances, I allow a further reduction of 1 year from the starting sentence of 5 years. Her end sentence is therefore 4 years imprisonment.
11. There are no mitigating factors. She is unremorseful. There has been no reconciliation ceremony and she is unprepared to perform one. She is not entitled to any reduction for guilty plea. There was never one.
12. I note from her submissions that she has spent 243 in custody on remand since 27 November 2019 until she was released on bail on 25 February 2020 and remanded again on 11th March 2020 to date.
13. I treat the 243 days as part of her 4 years end sentence.
14. I consider whether her sentence should be suspended. I take into account the circumstances surrounding the defendant's case, the particular nature of the crime involved (as only an attempt for which her part in the execution was minimal and her withdrawal when there was intervention and her previous clean past. It is my view that her sentence should be suspended.
15. Accordingly, I suspend her sentence of 4 years imprisonment for a period of 2 years from today's date, under section 57 of the Act on condition she does not reoffend in any way for which she would be charged and convicted. If she does, she will go to prison to serve the balance of her sentence of 3 years 4 months and 8 days.
16. That is the sentence of the Court. You have a right of appeal against this sentence within 14 days if you do not agree with it.

**DATED at Luganville this 19th day of August 2020
BY THE COURT**

OLIVER.A.SAKSAK
Judge

