

BETWEEN: Public Prosecutor

AND: Sabrina Iaput
Defendant

Coram: Justice Aru
Counsel: Mr. T. Karae for the Public Prosecutor
Mrs. M. G. Nari for the Defendant

SENTENCE

Introduction

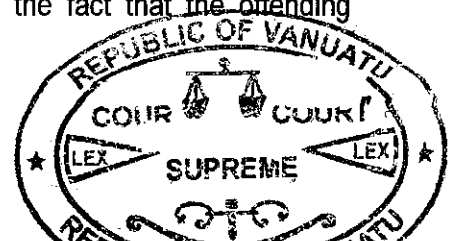
1. The defendant pleaded guilty to one count of intentional homicide contrary to s106 1) (a) of the Penal Code [CAP 135] and now appears for sentencing.

The Facts

2. On 17 June 2024 around 9.00 pm Mr Lesly Silas and Mrs Angelo Nako heard the defendant crying outside her house. Mrs Nako went outside and saw the defendant on the ground crying. Mr Silas went outside with a flash light and saw the defendant with her hands covered in blood. Mr Silas ran into the house. In the first room he saw the kids sitting on the bed and the eldest was on the floor crying. Mr Silas moved to the next room and saw the deceased lying on the bed naked and covered in blood. The deceased was lying at an angle facing the wall of the bedroom. Mr Silas went outside and after speaking with the defendant went back inside with Mrs Nako. They got a blanket and covered the body of the deceased. The defendant told them she assaulted the deceased three times on the head with a piece of timber.
3. The timber used to assault the deceased was recovered by the Police.
4. On the 19 June 2024 the defendant was cautioned and interviewed and admitted assaulting the deceased with a piece of wood.

Sentence start point

5. The maximum penalty for intentional homicide without premeditation is 20 years imprisonment. The offending in this case is aggravated by the fact that the offending

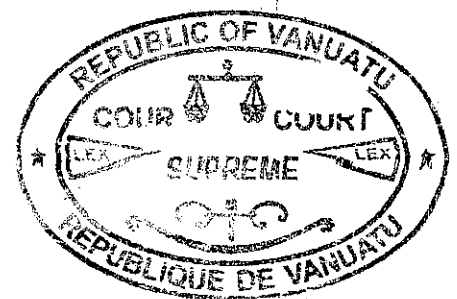


occurred in the home and in the presence of children. A weapon was used to assault the deceased and the assault was repeated. There is also a breach trust. The only mitigating factor of the offending is that the defendant alerted her neighbours to what she did.

6. In his submissions in relation to the sentence start point, the Public Prosecutor referred to the following cases as cases of similar nature: PP v Paul Ware [2009] VUSC 183, PP v Molu [2021] VUSC 232 and PP v Weman [2021] VUSC 92. It was submitted that the relevant sentencing guideline judgment is PP v Sawan & Ors Criminal Case No 199 of 2022 which was considered by the Court of Appeal in PP v Nof [2008] VUCA 24.
7. It was submitted that with the presence of aggravating factors the starting point should be between 10 to 13 years imprisonment.
8. Mrs Nari on the other hand referred to other cases which she submits are of similar type offending namely: PP v Mavun [2024] VUSC 25, PP v Harry [2022] VUSC 62, PP v Namuly [2011] VUSC 5 and PP v Weman. She submits that in *Weman* the starting point of sentence was 11 years imprisonment. The aggravating factors of the offending included the use of a weapon, breach of trust and the offending occurred in the home. In *Harry* she submits the starting point of sentence was 12 years 6 months. The aggravating factors included the use of a weapon and breach of trust. In *Mavun* the starting point of sentence was 15 years imprisonment. The aggravating factors included the use of a weapon and breach of trust
9. Mrs Nari submitted that the starting point should be 10 years imprisonment
10. The factual circumstances of the cases referred to are not the same as the current case. Noting the submissions made by Counsel I set the starting point of sentence at 10 years imprisonment.

Personal factors

11. The defendant pleaded guilty at the first available opportunity there fore the starting point of sentence is discounted by 33%.
12. A pre-sentence Report was filed as directed and gives the following personal details about the defendant. She is 25 years old and is a first-time offender. She was living in a de facto relationship with the deceased since 2014. And they have two daughters and two sons Her chief speaks highly of her as a faithful wife and committed member of her community. She completed her education at the secondary level at year 8 and could not continue due to her relationship with the deceased. She aspires to complete her studies at the Teachers College and become a teacher. She was previously employed by Digicel Vanuatu for seven years. During this time, she assisted the deceased pay for their daily living expenses and food for the family.
13. The sentence start point is further reduced by 12 months taking into account the these personal factors and time spent in custody on remand.



End sentence

14. The defendant is sentenced to an end sentence of 5 years imprisonment. I then consider whether the sentence should be suspended. Section 57 (1) a) of the Penal Code states:

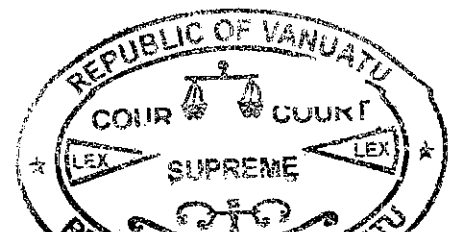
“(1)

- (a) If the court which has convicted a person of an offence considers that
- i) In view of the circumstances; and
 - ii) In particular the nature of the crime; and
 - iii) The character of the offender,

It is not appropriate to make him or her suffer an immediate imprisonment, it may in its discretion order the suspension of the execution of imprisonment sentence it has imposed upon him or her, on condition that the person sentenced commits no further offence against any Act, Regulation, Rule or Order within a period fixed by the Court which must not exceed 3 years;

.....”

15. The Prosecution submitted that the sentence should not be suspended as there are no extenuating circumstances relating to the circumstances and the nature of the offending or the character of the defendant to warrant a suspension or partial suspension of the sentence.
16. Mrs Nari submitted that the sentence should be suspended. She submits that at the time of the offending the defendant had endured 10 years of physical, emotional and psychological abuse at the hands of the deceased leaving the defendant in a state of constant fear intimidation and degradation. That over the course of the relationship the deceased used violence and threats to control and dominate the defendant isolating her from families and friends despite her repeated efforts to leave. That she was trapped in a cycle of abuse exacerbated by financial dependence, fear of retaliation and a deep sense of powerlessness. It was further submitted that on the day of the offending the defendant was subjected to another violent episode of abuse. In response she acted out of fear for her children's life and her own life and safety. It was submitted that the offending did not occur in a vacuum but in the context of a Battered Woman Syndrome (BWS).
17. Counsel referred to two cases where the Courts have considered and taken into account the context of BWS and acquitted the defendants in both cases. The case of Secretary v the Queen [1998] IndiglawB57 (Australia) and R v Lavallee [1990] 1SCR 852 (Canada).
18. The defendant is a young mother of 25 years and is a first-time offender. It is obvious she acted on the spur of the moment out of fear for her and her children's lives as recorded in her record of interview with the Police and later by the Probation Officer in the pre-sentence report in interviews he conducted in relation to the offending. The defendant now has to take care of four (4) young children on her own. It was submitted that the two girls are 10 and 7 years respectively and the two boys one is 5 years old and the youngest is 1 year 5 months.



19. Taking these factors into account, I am inclined to suspend the sentence for a period of 3 years. During this period if the defendant reoffends, she will be remanded in custody to serve her sentence.
20. In addition to the suspended sentence, I impose a supervision order for the period of her suspended sentence and direct that the defendant undertake the Niufala Rod program.
21. The defendant has 14 days to appeal if she disagrees with this decision.

DATED at Port Vila this 4th day of December, 2024

BY THE COURT

Dudley A.
Judge

