

IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU  
(Criminal Jurisdiction)

Criminal  
Case No. 25/1161 SC/CRML

PUBLIC PROSECUTOR

v

DENVA AKA

Date of Plea: 19<sup>th</sup> May 2025  
Before: Justice Josaia Naigulevu  
Counsel: Acting Public Prosecutor – Ms. Josephine Tete  
Defence Counsel - Mr. Junior Garae

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## SENTENCE

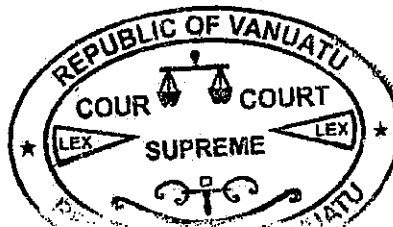
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### Introduction

1. Mr. Denva Aka, you appear for sentence today, having entered a guilty plea to a charge and accepted the summary of facts presented by the prosecution relating to a count of Intentional Assault contrary to section 107(d) of the Penal Code [Cap 135].
2. You were duly convicted on that plea.

### Facts

3. Several versions of the facts have been presented to the Court. The Court is concerned about the integrity of the final version after significant editing.
4. In the evening of the 14<sup>th</sup> March 2025, Rodney Aka (deceased), his younger brother Nicolas and two relatives Janol Garae and Jay Tari were drinking alcohol in a kava shed at Lovusibataghi village on Ambae island. At one point in the evening, the accused person Denva Aka, who was already drunk, joined them. After some time, Janol Garae and Jay Tari left the borthers to fetch more alcohol. The three brothers remained behind.
5. The accused person became agitated when he said that he wanted to drink more alcohol, and was told by his brother Nicolas that when he was asked to buy alcohol in



the past, the accused person would often tell them that his wallet was not with him, but in the possession of his wife. Nicolas also called him a woman. This infuriated the accused person. He lunged at Nicolas and struck him on the face. At this, the deceased approached the feuding brothers and hit the accused with a piece of timber. A tussle over a chair ensued between the brothers. The accused was able to wrench the metal legs of the chair. He hit the deceased on the head with it. This was after he saw the deceased approach him with the timber. Nicolas observed that the deceased was bleeding profusely on the face, and declared that he and the deceased would jointly fight the deceased.

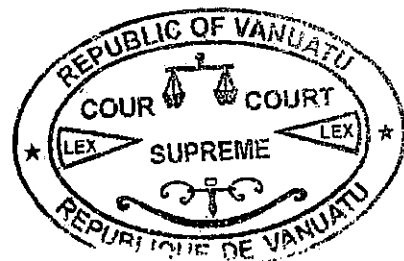
6. At this, the accused said that he would get his slingshot and ran to fetch it. As he did, Nicolas told the deceased to run away with him. They left the scene. But as they were running, the deceased fell on the ground. Nicolas and another boy Ritchie Koso attempted to lift the deceased. The deceased was however too heavy, so they left him on the road and ran to Nanivela village.
7. At some point during the night, the defendant's wife Etha Aka went to the scene to check what had come of the fight. On her way, she noticed the deceased lying on the ground, with his face facing down. She called his name, but there was no response. She tried touching his belly button and then under his nose with her fingers to check whether he was breathing. She turned the deceased on his back and attempted to check again for breathing.
8. The deceased was conveyed to the Lolowai Hospital on the same day where his body was examined. The report records as the cause of death: severe traumatic head injury (brain), leading to multiple organ obstruction and death.

### Sentencing Guidelines

9. There are several principles that guide the sentence to be imposed on you. They include the proposition that you must be held accountable and must take responsibility for your action. Additionally, your action is the kind that is denounced by society, and that similar future acts by you and others must be deterred.
10. Equally important is that you must be given ample opportunity to rehabilitate and reintegrate.
11. The approach taken in the presents case follows the guidance given by the Court of Appeal in the case *Philip v Public Prosecutor* [2020] VUCA 40.

### Statutory Sentence

12. The maximum sentence of the offence of Intentional Assault contrary to section 107 (d) of the Penal Code is a term of 14 years imprisonment.



## Aggravating Factors

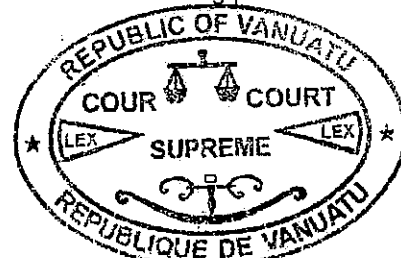
13. The following circumstances constitute the aggravating factors in the present case:
- a) A weapon, in the form of the metal legs of a chair was used to assault the deceased;
  - b) The assault was directed at the head of the deceased, a vulnerable part of the body of the deceased;
  - c) The familial relationship between the deceased and the accused person rendered it an aggravating situation. As brothers, each owed the other a duty of care;
  - d) You did not assist the deceased after you assaulted him;
  - e) The incident was fuelled by alcohol.

## Starting Point

14. The prosecuting counsel submits that the appropriate starting point is within the range of 4 to 6 years. Your counsel also submits that the starting point should be within the range of 4 to 6 years. Each counsel has referred to a number of cases to assist the Court in setting the starting point.
15. Both counsels helpfully referred this Court to the decisions of the Court of Appeal in *Public Prosecutor v Iarogen [2002] VUCA 34*. In that case, the Court endorsed the guidelines established by the Chief Justice in *Public Prosecutor v Malesu [2001] VUSC 37*. In situations where a weapon is used and it causes bodily harm which results in the death of the victim, the sentence to be imposed in disputed cases will fall within the range of 8 to 10 years.
16. Your counsel referred the Court to the case *Public Prosecutor v Rexley [2021] VUSC 99*. In that case the Court said the sentence of imprisonment was warranted to meet the need for accountability, deterrence and denunciation.
17. The Court in this case adopts a starting point of 5 years.

## Guilty Plea

18. You pleaded guilty before this Court at the earliest opportunity. As a result, you are entitled to a discount of 20 months. This period is deducted from the starting point.

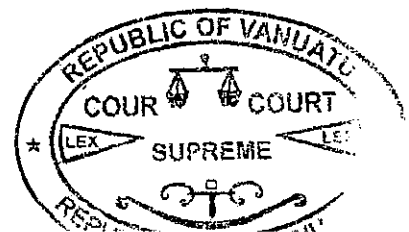


### Mitigating and Personal Factors

19. Your counsel submits that there are no mitigating circumstances in your favour. That might not be entirely correct. You never have been convicted by any Court in the past. Equally important is the fact of your guilty plea which you entered at the earliest opportunity.
20. Denva Aka, you are thirty-eight years old, you live with your defacto partner, and together have an eight-year-old son. You are the sole bread winner in your family and practice subsistence farming to support your family. It is suggested that you have a good relationship with members of your community.
21. You have performed two customary reconciliation ceremonies. The first one occurred on the 15<sup>th</sup> March 2025 on Ambae, the second on Santo on the 9<sup>th</sup> April. These were done to demonstrate how remorseful you are. The Court notes how you now experience a void in your life, and the guilt that you feel at being responsible for the loss of one of your brother's life. It is something that may linger for the rest of one's lifetime.
22. Whilst the Court is able to acknowledge this show of remorse, it is confused by the new narrative that you had only acted in self-defence. It compromises your otherwise good intention to demonstrate how sorry you are. Effectively, you now wish to blame your two brothers for what happened. Additionally, your act that caused the fatal injury does not qualify as self-defence in law. You instigated the altercation when you delivered the first blow that struck your younger brother, Nicolas. The fatal strike with the chair on the face occurred during the ensuing fight between yourselves. However, these will not outweigh your expression of remorse.
23. These factors reduce your sentence by further 7 months.

### End Sentence

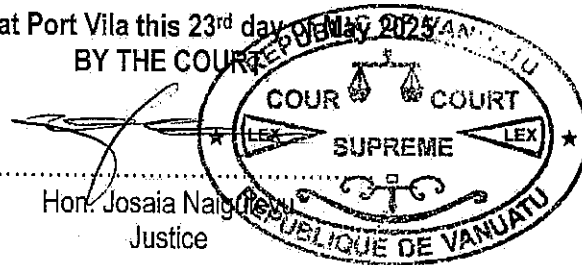
24. I have taken all these matter into consideration and impose an end sentence of 2 years 9 months imprisonment.
25. Your counsel informs the Court that you have served 71 days in custody. That period is deducted from your end sentence. The sentence to be served is 2 years, 6 months and 11 days.
26. Your counsel urges this Court to suspend your sentence. In considering your counsel's representation, this Court must take into account the nature and the circumstances of the offending, and your character. These are conditions that the



Court must consider before exercising its jurisdiction. This Court does so, and declines to suspend your sentence, either in part or in whole. In reaching that decision, the Court is supported by the statements made in the case *Public Prosecution v Rexley* [2021] VUSC 99 about how a sentence of imprisonment is warranted in this type of case.

27. Denva Aka, you are accordingly sentenced to serve a term of 2 years, 6 months and 11 days imprisonment from today.
28. You have 14 days to appeal this sentence.

DATED at Port Vila this 23<sup>rd</sup> day of May 2025  
BY THE COURT



Hon. Josaia Naigole  
Justice