

**IN THE COURT OF APPEAL OF
THE REPUBLIC OF VANUATU**
(Criminal Appellate Jurisdiction)

**Criminal Appeal
Case No. 20/536 CoA/CRMA**

BETWEEN: Hellen Hocten
Lolita Sumsum
Hellen Violet
Gloria Violet
Johnson Harry
Tom Violet

Appellants

AND: Public Prosecutor

Respondent

Coram: *Hon. Chief Justice Vincent Lunabek
Hon. Justice John von Doussa
Hon. Justice Raynor Asher
Hon Justice Oliver Saksak
Hon. Justice Dudley Aru
Hon. Justice Viran Molisa Trief*

Counsel: *Eric Molbaleh for the Appellants
Marie Taiki for the Respondent*

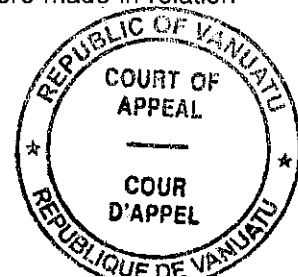
Date of Hearing: 12 May 2020

Date of Judgment: 15 May 2020

JUDGMENT

A. Introduction

1. The appellants carried out kidnappings which resulted in the detention of the complainants for several hours. The appellants, along with numerous others, then subjected the complainants to further offending, much of which was very humiliating and degrading. It involved repeated gratuitous violence with weapons, as well as sexual offending.
2. The appeal was advanced on the sole ground that the primary Judge erred by not suspending the appellants' sentences in full or in part. This was advanced for all the appellants except for Hellen Hocten. No submissions were made in relation to her.



B. Background

3. The facts were set out as follows by the primary Judge:

- *The background to the offending involves matrimonial discord. Mr Jean Luc Tevi was the de facto partner of Hellen Hocten. They have four children together. Shortly prior to this incident it was discovered that Mr Tevi was having an affair with another woman, Ms Florence Regenvanu. Hellen Hocten sought assistance from the Chiefs at Namba 2 Lagoon which resulted in a meeting at which the Chiefs instructed Mr. Tevi and Ms Regenvanu to stop seeing each other.*
- *However, Hellen Hocten remained dissatisfied and asked her brother Paul Hocten and his wife Janet Hocten to arrange for a further meeting not involving the Chiefs.*
- *As a result, on 18 October 2018, Ms Regenvanu went to work at Teouma as usual at around 5am. On arrival there she was kidnapped by Hellen Hocten, Lolita Sumsum, Gloria Violet and Tom Violet. Ms Regenvanu was ordered to get into a truck belonging to Paul Hocten and she was taken to Mr Tevi's home. (Charge 1)*
- *On the way there, Ms Regenvanu was assaulted by Hellen Hocten in the form of slaps to her face, and hits and kicks to her body. (Charge 5)*
- *In the meantime, another group went off in another of Paul Hocten's trucks to Mr Tevi's home. The group included Harry Johnson as the driver, Gloria Violet his wife, and four others from Tanna. They ordered Mr Tevi and numerous other Tevi relatives into the truck under threats of violence. One of those put into the truck was forced to take along a 1-month old baby. (Charge 2). Janet Hocten gave the orders, along with her husband, for this to occur. (Charge 3)*
- *The two vehicles went more or less in convoy from Mr Tevi's home firstly to Namba 2 Lagoon and then later to a property belonging to Paul and Hellen Hocten at Erakor Half Road. That meant that others were also involved in the kidnapping of Ms Regenvanu, for the latter part of the time – namely Hellen Hocten, Lolita Sumsum, Hellen Violet and Johnson Harry. (Charge 2)*
- *On arrival at Erakor Half Road, Ms Regenvanu and Mr Tevi were dragged from their respective vehicles. Mr Tevi and his relatives were made to initially sit and observe.*
- *Hellen Hocten then assaulted Ms Regenvanu with a stick, pushed her to the ground and sat on her squashing her against broken up coral. (Charge 6)*
- *Lolita Susum joined in and hit Ms Regenvanu in the face. (Charge 7)*
- *Shortly thereafter Paul and Janet Hocten arrived. They were offered chairs to sit in while they observed. Janet Hocten set about assaulting Ms Regenvanu, using a piece of timber until it broke. Ms Regenvanu was hit on the head and backside. (Charge 5). Janet Hocten then invited the other defendants and their associates to join in the general assault on Ms Regenvanu (Count 4).*
- *Janet Hocten then sought out a machete which she gave to Hellen Hocten. Hellen used it to cut Ms Regenvanu's hair (Charge 9), and to cut all her clothes off her so that Ms Regenvanu was left naked (Charges 14 and 16).*
- *Hellen Hocten took the belt of a kava grinder and used it to repeatedly assault Ms Regenvanu. At Hellen's invitation Janet Hocten joined in with that assault. (Charge 11)*

Ms Regenvanu was hit in the face, to the head, to her back and on her hands. Every time she attempted to run away she was dragged back by the defendants.

- *Shortly thereafter, again at Hellen Hocten's invitation, Tom Violet walked up to Mr Tevi and assaulted him. A relative of Mr Tevi was also assaulted. The four men from Tanna joined in with this attack. (Charge 12)*
- *Hellen Hocten and Janet Hocten joined in too. They assaulted Mr Tevi with a machete, a piece of wood and a belt. (Charge 11). Mr Tevi's resultant injuries were found to be:*
 - *3cm laceration at the top corner of his right eye;*
 - *Multiple abrasions on the back;*
 - *Ecchymosis (black eye);*
 - *Periorbital oedema and subconjunctival haemorrhage; and*
 - *Abrasion to the left shoulder.*
- *Hellen Hocten also used a piece of wood to assault A. Rolland and J. Runa, relatives of Mr Tevi. (Count 13).*
- *At one point, Hellen Hocten took Ms Regenvanu, who was naked, to sit on a chair. Hellen Hocten took a ripe papaya and attempted to insert it into Ms Regenvanu's vagina. (Charge 19). As she had no success with that endeavour, instead Hellen Hocten rubbed the ripe papaya on Ms Regenvanu's vagina, all over her body and then against her face (Charge 20).*
- *While in the chair Ms Regenvanu was also further assaulted by Janet Hocten and Hellen Hocten using an iron rod and the kava grinder belt to attempt to hit Ms Regenvanu's vagina. They held her legs apart in order to do so. (Charge 17).*
- *A medical report indicates that Ms Regenvanu's sustained bruising and laceration from head to toe, but mostly to her back. Her face and other parts of her body were swollen.*
- *The whole episode came to an end upon the arrival of the police. Mr Tevi and Florence were then taken, covered in blood, to hospital. There is no evidence as to how long either was detained there.*
- *A number of the defendants gave statement to the police, in which some of the offending was admitted. All the defendants were additionally charged with unlawful assembly (charge 21), apart from Johnson Harry.*

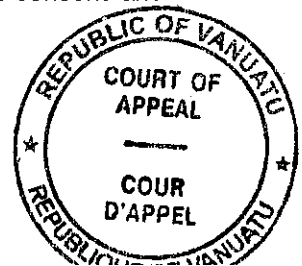
4. The appellants entered guilty pleas and were sentenced as follows:

Hellen Hocten

- 5 years imprisonment on the charges of kidnapping, attempted sexual intercourse without consent and acts of indecency without consent; and
- 12 months imprisonment on the remaining charges of intentional assault, malicious damage to property, acts of indecency without consent and unlawful assembly.

Lolita Sumsum

- 3 years imprisonment on the kidnapping charges; and



- 12 months imprisonment on the intentional assault and unlawful assembly charges.

Hellen Violet, Johnson Harry and Gloria Violet

- 2 years 8 months imprisonment on the kidnapping charges; and
- 12 months imprisonment on the unlawful assembly charge.

Tom Violet

- 3 years imprisonment on the kidnapping charges; and
- 12 months imprisonment on the intentional assault and unlawful assembly charges.

5. All sentences were ordered to be served concurrently.

C. Appeal and Grounds

6. This is an appeal against sentence only. At the hearing of the appeal, the appellants abandoned the grounds of appeal that the sentences were manifestly excessive and that the appellants were wrongly advised by their former counsel to plead not guilty. This left the sole ground of appeal that the primary Judge erred by not suspending the appellants' sentences in full or in part.
7. The other matters raised by the appellants are factual matters in support of the ground that the primary Judge should have suspended the whole or part of the appellants' sentences. These included that the primary Judge did not take into account the appellants' various health conditions nor information as to the appellants' personal factors, and that he erred by relying on a pre-sentence report that was not accurate and provided on the day of sentence. Further, that the primary Judge erred by relying on the allegedly limited information available to him.

D. Response

8. Ms Taiki submitted that the primary Judge had considered the matters set out in sections 57 and 58 of the *Penal Code* and properly exercised his discretion not to suspend the sentences. She submitted that the appellants had failed to identify any error by the primary Judge and that the appeal should be dismissed.

E. Discussion

9. The appellants filed sworn statements in the appeal. Mr Molbaleh relied on these for his submission that the primary Judge erred in not suspending the appellants'



sentences. It was said that the primary Judge should have taken into account the appellants' health conditions and information as to their personal factors.

10. It is clear that the primary Judge did take into account Hellen Violet's medical condition and that Lolita Sumsum was pregnant as set out in paragraphs 43 and 46 of his sentencing decision. No information as to Gloria Violet's medical condition was put to the primary Judge by way of a pre-sentence report or defence submissions. Accordingly the appellants have not demonstrated any error by the primary Judge of failing to take into account their health conditions.
11. As to information about the appellants' personal factors, the primary Judge called for pre-sentence reports on three separate occasions prior to sentencing. He received pre-sentence reports for the appellants and referred to them in his sentencing decision. He had extracted the relevant information from those reports. The appellants have not demonstrated that any pre-sentence report was inaccurate. Nor have they demonstrated that the primary Judge did not take into account information as to their personal factors.
12. Moreover, a comparison between each appellant's pre-sentence report and sworn statement showed that the only new information as to personal factors disclosed in the sworn statement had arisen after sentencing. For example, the conditions within the correctional centre and concerns about the impact of COVID-19. Mr Molbaleh accepted that these need to be raised with the responsible authorities as they do not give rise to any appealable ground in this Court.
13. Mr Molbaleh submitted too that the appellants have young children that require their care therefore the primary Judge erred in not suspending their sentences. He submitted that if not for both, the sentences of at least one of the appellant couples Gloria and Tom Violet, and Hellen Violet and Johnson Harry, should be suspended so that that appellant can take care of their young children. There was no evidence before the primary Judge that the situation of an appellant's young children amounted to exceptional circumstances justifying the suspension of one or other parent's sentences. Therefore the appellants have not identified any error by the Judge. No evidence on this that should have been before the primary judge, that was erroneously not placed before him, has been identified. Any difficulties now being experienced by the appellants in relation to their children need to be raised with the responsible authorities. They do not give rise to any appealable ground in this Court.
14. The appellants have also not demonstrated any error by the primary Judge in his reliance on the information available to him.
15. In the circumstances, the appellants have not made out any error by the primary Judge in not suspending the appellants' sentences in full or in part.
16. We concur and agree with the primary Judge's comments at paragraph 54 of the sentencing decision:



"54. I do not consider that suspended [sentences] are warranted in the circumstances of this case. To do so would undermine the important sentencing principles referred to earlier, namely (i) to hold the defendants responsible for their criminal conduct and the harm caused to the complainants; and (ii) the necessity to impose deterrent sentences."

17. We would add that the appellants' offending was far more serious than in the case cited to us of *Noal v PP* [2016] VUCA 57; *PP v Noal* [2016] VUSC 145. That is a further reason why in the circumstances of this case, suspension is not warranted.

F. Result

18. The appeal is dismissed.

DATED at Port Vila this 15th day of May 2020

BY THE COURT

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Hon. Chief Justice Vincent Lunabek

