

**IN THE MAGISTRATES COURT
OF THE REPUBLIC OF VANUATU**
(Criminal Jurisdiction)

**Criminal
Case No. 20/2043 MC/CRML**

BETWEEN: Public Prosecutor

**AND: Francisco Batick
Defendant**

**Date of Plea and
Sentence:** *19th August 2020*

Before: *Trevor NAIEU*

Appearances: *Terry Toas for Public Prosecutor*
Accused in Person (Self Represented)

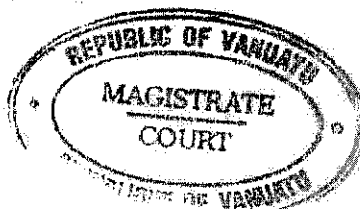
SENTENCE

Introduction

1. On the 19 day of August 2020 the defendant *Francisco Batick* pleaded guilty to one Count of Domestic Violence contrary to Section 4 and 10 of the Family Protection Act AND one count of Intentional Assault contrary to Section 107 (b) of the Penal Code Act Cap 135.

Brief Background

2. On or about the month of February 2020, the Defendant with anger forcefully pushed the victim's head inside a 20 litter bucket full of water then assaulted her resulting her to be unconscious for few minutes then later gain back her conscious. The reason behind the Defendant's anger and assault was because the victim delayed and or refused doing his dirty laundry because the weather was very hot on that particular time of the day.



3. Few months later in the month of July 2020, the victim decided she'd had enough with the Defendant's violent behavior therefore decided to move out and away from their place of residence to reside with her cousin so her cousin can assist her seek help. Upon discovering that the victim moved out of their residential home with their child, the Defendant approached her at her cousin's place of residence and uttered words of life threatening to her and commanded her to return to their home with their child or face the consequences. He even sends threatening messages to the victim via text messaging causing the victim to be emotionally unstable and in great fear for her safety and her child.

The Law

4. Section 4 and 10 of the *Family Protection Act* states:

"4 meaning of domestic violence

(1) A person commits an act of domestic violence if he or she intentionally does any of the following acts against a member of his or her family:

- (a) assaults the family member (whether or not there is evidence of a physical injury);*
- (b) psychologically abuses, harasses or intimidates the family member;*
- (c) sexually abuses the family member;*
- (d) stalks the family member so as to cause him or her apprehension or fear;*
- (e) behaves in an indecent or offensive manner to the family member;*
- (f) damages or causes damage to the family member's property;*
- (g) threatens to do any of the acts in paragraphs (a) to (f).*

(2) Without limiting paragraph (1)(d), a person may stalk another person by:

- (a) following the person; or*
- (b) watching the person; or*
- (c) loitering outside premises where the person lives, works or frequents for the purposes of any social or leisure activity; or*
- (d) making persistent telephone calls to the person or to premises where the person lives or works.*

(3) For the purposes of this Act, if a person (in this subsection called "the instigator") counsels or procures another person to commit an act that, if done by the instigator, would be an act of domestic violence, then the instigator is taken to have committed the act."



(4) To avoid doubt:

(a) a single act may amount to an act of domestic violence; and

(b) a number of acts that form part of a pattern of behaviour may amount to domestic violence even though some or all of those acts when viewed in isolation may appear to be minor or trivial.

"10 Domestic Violence Offence

(1) A person who commits an act of domestic violence is guilty of an offence punishable on conviction by a term of imprisonment not exceeding 5 years or a fine not exceeding 100,000Vatu, or both."

5. Section 107 (b) of the Penal Code Act Cap 135 states;

"107. Intentional assault

No person shall commit intentional assault on the body of another person.

(b) if damage of a temporary nature is caused, imprisonment for 5 years;"

Mitigating Factors

6. The following are the mitigating factors relevant to the accused;

- Early guilty plea
- First time Offender
- Remorseful (for the offending)

Aggravating Factors

7. The following are the aggravating factors relevant to the accused and the offending;

- Intention to commit the assault and threats showing no remorse
- Past repeated history of violence against the victim
- No respect to the victim as a woman who is already regarded vulnerable in the society and even she is the mother of his child
- Breach and betrayal of trust, love and care towards the victim

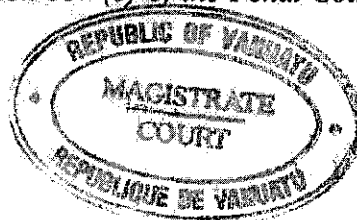


Aggravating history of violence

8. Sometimes on or about the month of December 2016, the Defendant was intoxicated with alcohol liquor while holding a piece branch of wood approached the victim who was at that time pregnant with their child. The Defendant with intend aimed to hit the victim's stomach with the piece branch of wood. The victim was so frightened that she blocked her stomach with her hands but the Defendant fiercely commands her to move away her hands for him to hit the baby in her belly. His intention was to murder the baby inside the victim's belly but luckily the victim escaped with the help of family members.
9. On a number of occasions in the month of January 2017 till March 2017 while the victim was still pregnant with their child, the Defendant assaulted the victim with no care or remorse that she was pregnant.
10. On or about the month of July 2018, the Defendant intentionally holds a machete and search for the victim to slaughter her merely because the victim did not bake him laplap (traditional food). Luckily the victim in fear for her safety carefully hideaway from the Defendant but the Defendant still assaulted her later that day when she returns home.

Verdict

11. Having heard from the Prosecutor and the Defendant AND giving careful consideration in weighing the aggravating and the mitigating factors personal to the accused and of the offending AND deciding whether or not the elements of the offences committed are met;
12. I AM SATISFIED that the aggravating factors of the offending outweigh the mitigating factors AND that all the elements of the offence committed are met therefore pronounce **Conviction** against the Defendant *Francisco Batick* for the offences of;
 - *Domestic Violence – Contrary to Section 4 & 10 of the Family Protection Act;*
 - *Intentional Assault – Contrary to Section 107 (b) of the Penal Code Act Cap 135.*



Sentence

13. I have decided to adopt the starting point of 18 (Eighteen) months imprisonment sentence for both offences.

14. I then reduced the adopted starting point sentence for the Defendant's *early guilty plea* AND a *first time offender* leaving the end sentence of 12 (Twelve) Months.

End Sentence

15. I THEREFORE HEREBY Sentence the Defendant *Francisco Batick* to 12 (Twelve) Months imprisonment for both offences.

Suspension of Sentence

16. I consider the following before deciding whether or not to suspend part or the whole sentence;

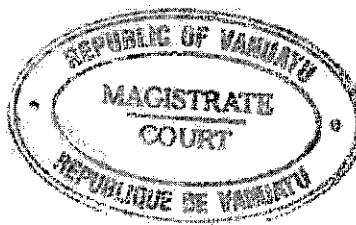
A). Domestic Violence is seen by the perpetrators who are usually men as a justifiable behavior when the woman they marry or living in a de-facto relationship with treats them or behaves in a disrespectful manner. Some of the common reasons raised by men to cause violence are;

1). She uttered an abusive word towards him while other family members were present, OR

2). She behaves or dresses in a certain way that was deemed disrespectful by the perpetrator or his family members, OR

3). She did not cook the food on time or do the dirty dishes or laundry as commanded by the perpetrator, OR

4). She did not ask permission before going out for few drinks or kava with friends OR permission was not granted and she did not listen, AND



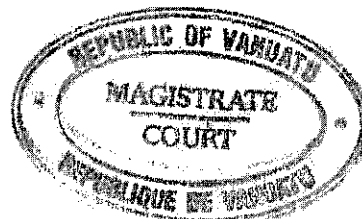
5). Many other reasons seen by men as justifiable causing domestic violence.

B). Perpetrators of domestic violence *must* know that the above common reasons are merely **excuses** and **not causes** of domestic violence because such excuses will never be justified and accepted by the Court to be the causes of domestic violence.

C). Men should appreciate the fact that women leave their own caring and loving homes with their parents to live with them which is a very big decision to make in life. She did not intend to take this decision because she wanted to be assaulted and to live in an abusive and violent home. Men should not take advantage of this decision taken by women to move out of their parents' home and live with them thinking they now own the woman therefore she is subjected under his authority and control whereby failure to obey him will result in violence.

D). The victim in this present matter remained silent all this time since 2016 to date although she frequently suffers from the violent behavior of the Defendant. Women cannot be blamed for remaining silent because this is a sign of her loyalty and love to her man believing in her heart that her man will figure it out and will eventually refrain from resorting all their disagreements to violence. This is a mental and physical suffering that no one even the perpetrators will never understand. Should the victim kept silent for much longer, her life might end up in a different scenario since the violence is getting worse and life threatening.

17. With the above considerations, I see proper not to suspend part or the whole sentence with intention that this be a clear deterrence message to other like-minded men that domestic violence is not tolerated by the Court and that the above common reasons raised by men to be the causes of violence are merely unreasonable excuses and not causes of domestic violence.

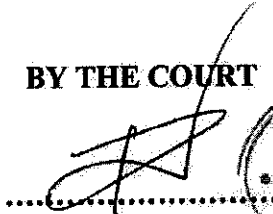


Right to Appeal

18. The Defendant has 14 days to appeal.

DATED at Lakatoro this 24th day of August 2020.

BY THE COURT



Trevor NAIEU

Magistrate

