

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
LUGANVILLE SANTO

PUBLIC PROSECUTOR

-V-

CLEMENT LEO

SENTENCE

Pursuant to the provisions of Sec 42(1) Penal code Act Cap 135, the defendant is ordered to appear for sentence if called upon, on the following conditions -

1. The defendant shall be of good behaviour for 3 years from this date.
2. The defendant shall keep the peace towards his wife Heather Lini Leo and in particular shall not harass, abuse threaten, intimidate or attempt to intimidate or assault her, nor permit or counsel or procure any other person to do so.
3. The defendant shall receive and undergo such counselling as is directed by Pastor Raynold Bori or his nominee and for such purpose shall receive or attend upon Pastor Bori or his nominee at such time and place and upon such occasions as Pastor Bori shall reasonably require.
4. The defendant shall notify Pastor Raynold Bori of any change of residence, within 24 hours of any such change.
5. The defendant shall sign a written undertaking acknowledging that he understands and consents to the conditions of this order and that he undertakes to be of good behaviour for the period of three years from this date.

If the defendant commits any offence within the period of 3 years from this date, a warrant may issue for his arrest or he shall by summons be called upon to appear for sentence for this offence.

REASONS FOR SENTENCE

THE OFFENCE

Clement Leo pleaded guilty to one count of intentional assault upon his wife, Heather Lini Leo. The charge was brought under section 107(c) Penal Code act CAP 135. Paragraph (c) of that section is the paragraph relating to damage of a permanent nature resulting from the intentional assault. The maximum penalty provided under that paragraph is 5 years imprisonment. As such, this offence is in the second highest category of seriousness of intentional assaults. The only higher category is where death results. It should be understood that proof of the offence under this section, does not require proof of an intention to cause the particular type of harm which is in fact caused. This section can produce strange results, such as for example, where a person may have a stated or proven intention of causing extremely serious injury, but fortuitously causes no physical damage. In such a case the maximum penalty available would only be 3 months. On the other hand, where there was no intention to cause actual harm at all, but damage of a permanent nature occurs, the latter offender will be liable to a higher penalty than the former, although the former be the more criminally and morally culpable. I do not think that considerations such as these actually arise in this case, in view of the conclusion that I have come to, as to the proper disposition of the matter.

The offence occurred on the 17th August 1994. The defendant and his wife were living together, with their three children, in a house situated close to the Court house in Luganville. Mrs Lini Leo is the financial provider for the family whilst Mr Leo attends to domestic duties, including a significant role in the care of the children. At approximately 8:00 am, on the 17th, after the children had been taken to school, the defendant and his wife were at home, sitting outside the house. The defendant accused his wife of having been involved with another man and ultimately, she made an equivocal remark, which could have been taken as an admission. The defendant says that he did so take the remark and whilst I would not necessarily find the remark to be an admission myself, I accept that the defendant thought that it was.

The defendant says that he had since the previous day, thought that his wife had been involved with another man and that it had played upon his mind. When she made the remark, he in a highly emotional state, lost control of himself and repeatedly punched his wife to the face. From the medical evidence and the evidence of Mrs Leo, I conclude that she was hit at least 4 forceful blows to the face. Mrs Leo suffered two lacerations to the face, considerable swelling, bruising, black eyes and a broken nose. The broken nose was not originally diagnosed by those attending her at the Hospital, and the fact of this having occurred is recorded in the second medical report included in the brief of evidence. Fortunately for Mrs Leo, the fracture was seen by a visiting medical team who were able to successfully reduce the fracture and therefore avoid significant permanent disfiguration. Following the attack, Mrs Leo, heavily bleeding,

ran to the nearby Court House for assistance. She was taken from there to the Hospital. She remained in the hospital for approximately 2 weeks.

Following the attack, the defendant says that he was shocked when he realised what he had done and this was highlighted by the sight of the extensive bleeding. He says that he offered to take her to the Hospital but that she refused and went for help. I have no doubt that this attack was a terrifying experience, causing great fear and pain. It will be something that will not be easily forgotten by the victim. The case must be regarded as a serious example of the all too prevalent offences of this nature. Whilst the defendant claims a reason for doing what he did, it cannot in any way be regarded as justification. I am not certain as to whether he fully understands this.

PERSONAL CIRCUMSTANCES OF THE OFFENDER

Mr Leo is 35 years old. He is an educated man, holding the degree of master of Public Administration. He was previously employed as Director of a division of the Ministry of Health and is a person capable of holding positions of responsibility. As I have previously stated, Mr Leo plays a significant role in caring for his children and it is not suggested that he is otherwise than a caring father to them. Significantly, he has no prior convictions.

Whatever the future course of the relationship between Mr Leo and his wife, I believe that he will continue to have an important role in the upbringing of the children.

SENTENCING FACTORS

The offence is a prevalent one in the community. More and more cases of brutal violence by husbands against their wives are being seen in the courts. It is likely that in this place as well as other parts of the world, the Courts only see but a few of the actual number of cases of this kind which occur. As I have observed, this case is a serious example of such cases. Every effort must be made to reduce and hopefully eliminate offences of this kind. It is not acceptable for men to violently abuse their wives. This was not a single spontaneous blow, but repeated forceful blows to the head of a person not offering any violence herself. All offences of violence must be regarded as serious and when they occur in the domestic situation, rather than be regarded as less serious than other assaults, they must be regarded as more serious.

The victim of this crime will carry scarring and the memory and fear of his offence for the rest of her life. Her personal dignity and right to be free from physical abuse has been violated, as is the case with all women who are attacked in this way. No man has the right to treat his wife or partner in this way, whatever they may think justifies it.

The criminal law is designed to protect the community. Sentences should endeavour to deter the individual offender from the repeating the offence and also be designed to deter others who may offend.

These considerations suggest that imprisonment will frequently be the only option in cases of this kind. In the sentencing process, however, I believe that sentencing principle requires the courts to consider whether a matter can be properly dealt with by means other than imprisonment, before resorting to gaol as the way of dealing with cases.

The defendant is a first offender. Modern statute law of many jurisdictions suggests that first offenders should not, unless the offence requires it, be sent to gaol. The defendant gets the benefit of this consideration, a benefit which is now of course lost, should he offend again. He is a man of maturity and I think that it is appropriate to refer to the comments of Starke J of the Supreme Court of Victoria in the Matter of Okutgen 8 A Crim R. 262. His honour said -

"The first and basic matter that affects my mind ... is the fact that the applicant has reached maturity . . . without any breach of the law at all, that he has lived a decent honourable life, that he has raised a family A man of this age, when first convicted, can I think call in aid his character and is entitled to ask the court to rely very strongly indeed on the fact that he is of exemplary character. . . . Indeed under old legislation provisions suggested a first offender should not be imprisoned unless there were special circumstances. . . it seems to me that to condemn a man of exemplary character to prison for a substantial period of time is an exercise of undue severity."

These considerations apply in this case. Since His Honour made those remarks, modern legislation has tended to enshrine those principles.

The defendant pleaded guilty. It is proper to give credit to a defendant for this. Edmund Davies L.J. observed -

"It is undoubtedly right that a confession of guilt should tell in favour of an accused person, for that is clearly in the public interest"¹

The community is saved the expense of a more extensive investigation and trial. The importantly, in cases of this nature, the victim is spared the traumatic experience of having to give evidence and be cross examined in public. She does not have to re live the horror of the offence.

In this case, the defendant admitted his offence from the beginning. He has been co-operative with the police and the court and has obeyed strict conditions of his release on bail.

¹R. v. de Haan [1967] 3 All E. R. 618, 619

Often, a plea of guilty will be an indication of real remorse. Even where it is not, the factors mentioned mean that the defendant must be given credit for the plea.


A telling factor here is the role which the defendant has in relation to his children. To imprison him would in all probability be harmful to them. It will not be all cases to which such a consideration will apply. Children being brought up in homes where violence occurs are suffering as a consequence of it. They too may be victims, even if they themselves are not being assaulted. In such cases, it would clearly be in the interest of the children that the offender be removed. I do not think that this is such a case.

Is there real remorse in this case? Where there is real remorse, this will often mean that a gaol term will not be imposed. The defendant expresses remorse and appears to demonstrate it by his demeanour. I am not certain as to the actual depth of it however and as to the understanding the defendant has as to his wrongdoing. I think that he feels that he has some justification for what he has done, but that he was in fact shocked by the extent of what he did. I do not think that in a calculated way he intended to produce severe injury. He must however come to the realisation that what he did is not justified and that if there was to be a repetition, it could have far more serious consequences. I am sure that many men express concern, soon after they have done something like the defendant did here, but I am equally sure that they soon forget it. The defendant here would do well not to forget the seriousness of what he has done. He will need to be conscious of it for the next three years, if he is to avoid gaol for this offence. He will need to be conscious of it for the rest of his life because he has used up his first chance.

In considering the question of remorse, it is helpful to consider whether a person has taken any steps designed to prevent a repetition of the offence since the time of the commission of the offence, until the matter comes to be dealt with. Although there has not been much delay in this case, the defendant has made an attempt to see if he can rehabilitate himself. He expressed in court here, the desire to seek professional counselling. This he has not been able to do, because there are no counsellors available here in Santo. What he has done however, is to seek spiritual counselling from Pastor Raynold Bori. Pastor Bori gave evidence before me. Pastor Bori indicated that he hopes that the parties can be reconciled. I do not know whether this will be achieved. Whether it is achieved or not, it is necessary to see that steps are taken to see that further offences are not committed. In the course of his evidence, I asked Pastor Bori if he would help to see that the defendant did not offend again, in the event that the parties did not reconcile. Pastor assured me that he would. Whether or not the motive for seeking the assistance and guidance of Pastor Bori stems from an attitude of remorse, the fact of the consultation can assist in preventing further offences. This is a further factor which assists the defendant and hopefully, ultimately, both Mrs Lini Leo and the community. Whilst I still have mixed feelings about the depth of remorse, I believe that the defendant does not wish to cause further harm to his wife and that he is troubled by what he has done. I am sure that this is often the case in cases of assault in similar circumstances. Such feelings of themselves do not necessarily guarantee that there will not be a repetition of the offences. Repeat

offences in these cases would appear to be the rule rather than the exception. Therefore it is important that there is a positive attempt being made to avoid repetition. The factors that I have referred to in my opinion require me to come to the conclusion which I have. the defendant is not yet free from the prospect of punishment. If he keeps the conditions of his release, there is a good prospect that he will have been reformed. Reform of offenders is also an objective of the criminal law, I do not think that that aspect would have been assisted by gaoling him now.

I am concerned that the aspect of general deterrence of other possible offenders may not be seen to be covered by this sentence. I should indicate that a person being bound to be of good behaviour for a period of three years has a very serious obligation. They are constantly aware that if they do the wrong thing, they will be punished. They are not getting away with anything. Any breach of the criminal law, even for a completely different type of offence will result in the offender being called up for sentence. This should have the effect of deterring the individual offender, but it should also make other people aware that if they offend although they may not go to gaol straight away, they will carry that risk with them for a long time. Not all offenders will be in the same situation as this offender and there will be cases where even first offenders will go to gaol.


Robert K. Kent
Judge
Luganville
1 September 1994

