

**IN THE SUPREME COURT**  
**OF THE REPUBLIC OF VANUATU**

*(Criminal Jurisdiction)*

Criminal Case No.10 of 2006

**PUBLIC PROSECUTOR**

-v-

**JUSTINE TAHO ABEL**

**Coram:** Justice Treston

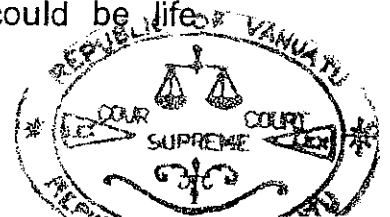
Mr. Tevi for Public Prosecutor

Mr. Kausiama for Defendant

**Date of sentencing:** 10 April 2006

**SENTENCE**

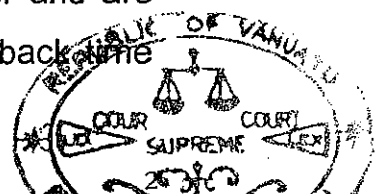
Ms. Justine Taho Abel, you appear for sentence today on a charge of attempted intentional homicide. At the beginning of the submissions, the Public Prosecutor submitted that the maximum sentence was 20 years imprisonment but during the course of submissions, he agreed that the potential could be life imprisonment because the actual charge does not specify whether it was intentional or otherwise but it seems to be generally accepted that the maximum sentence could be life imprisonment.



This occurred, from the summary of facts, when on the afternoon of 24 February 2006 you were seen getting water in a bucket and you had blood on your hands and legs. You had become pregnant during 2005 but did not tell anyone including your parents. They said they were unaware that you were pregnant. They confirm that in Court today and that seems to be the case. You are 20 years of age and you are the oldest child of 6 and your parents and your uncle are here in Court supporting you today. You were assisted on 24 February 2006 by someone and that assistance led to the conclusion that you had given birth. When your mother came home she took you to the hospital for assistance and treatment. On the next day others searched for the baby because they believed that you had endeavoured to throw the baby away. A search was carried out and in a local garbage dump a carton with blood on it was seen. In it was the baby which was still breathing although it had the umbilical code tied around its neck. It was taken to the hospital and treated there but died on 19 March 2006. Despite this the charge remains an attempted intentional homicide and when you were interviewed by the Police, you admitted that you had given birth to a baby and thrown it away in a garbage dump.

The Prosecutor submitted to me here in Court that I ought to impose close to the maximum term of imprisonment by way of persuading others from similar actions less of course an allowance for your plea of guilty. As I have said the Prosecutor originally adopted the stance that the homicide was not premeditated but has changed somewhat during the course of submissions. The Prosecutor has also provided me with some additional authorities for my assistance.

On your behalf, the Public Solicitor confirms your age of 20 and your marital status as single. You are, as is said, a first offender and are remorseful. The Public Solicitor said that if you could turn back

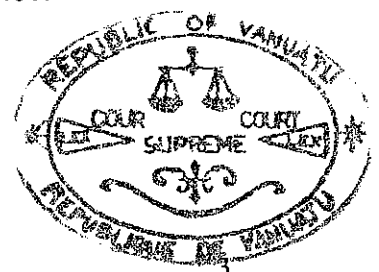


you would do so. Of course you cannot do that. You have cooperated with the Police. It was submitted that you yourself were surprised when you found out you were pregnant because you had only had sex once. You had pain in your back and you returned home and delivered the baby in the bathroom. Because you were inexperienced and scared and because the baby was not moving much or making noise you thought it was dead and you decided to dispose of it. It was submitted that with reference to some other cases, the Court ought to lenient upon you with reference to the maximum sentence. It was submitted that that is particularly so because the baby survived for a short period.

When I sentence you, I must consider various factors. I must hold you accountable for the harm done the victim, that is the baby, I must ensure you understand your responsibility and I must denounce your conduct. I must deter others, as the Prosecutor has said, but I do not consider that I need deter you particularly in the very firm way that he has submitted. Of course, the community generally and young new born babies particularly need to be protected but there are wider ramifications in this sort of offending than a simple deterrent sentence. The Chief Justice said in the case of Public Prosecutor v Banga Criminal Case No. 34 of 2004 as follows: -

*"Children are our most precious possessions. They require and demand greater love, care, protection and concern from all, particularly their parents. The Court on behalf of the community must condemn in the strongest terms any who from their own selfish ends, breach the sacred trust which always exists.*

*The seriousness of this case warrants a custodial sentence."*



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There are aggravating features which I must consider and balance against the mitigating ones. There was the attempted harm to the child by abandoning it, even though you thought it had already passed away. There was the fact that the umbilical code was tied around its neck. That seems more than an accident of the birth process. Of course, there was the vulnerability of a new born child which has the right to expect to be supported by its parents rather than abandoned.

On the other hand there is of course the mitigating circumstances in your case with your relatively young age of 20 years, the fact that you have pleaded guilty and your expression of remorse and the fact that you are a first offender and have never previously appeared. I take into account and accept that you yourself were somewhat vulnerable and that you panicked and acted in the way that you did through a certain amount of inexperience but of course the upshot is that now a precious young life has been lost when it might have been saved. The circumstances in my view deserve nothing short of a sentence of imprisonment but the length of the term must be mitigated by the circumstances which have surrounded this incident. While in some cases there are psychological and medical reports given to the Court so that it can make a more reasoned approach to the circumstances of the offending, that is not the case here. I read between the lines that there must have been emotional stresses upon you which you found difficult to ignore.

Sentencing in these circumstances is not an easy task. This is not a crime of passion or a matter of that kind. Despite the fact that the Prosecutor said that this sort of incident is all too common around Vila and the surrounding areas an individual offender such as you should not be treated as a scapegoat or made an example of. Although it was not submitted, clearly this sort of offending cannot be properly dealt




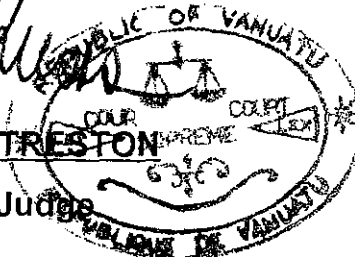
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with by a suspended sentence. Nevertheless, the Court must be merciful in general terms for this offending and in particular terms towards you. You have pleaded guilty and have accepted your responsibilities. I consider that the appropriate term is 3 years imprisonment but for the mitigating factors which I have mentioned, I reduce that to 2 years imprisonment.

You have 14 days to appeal that sentence if you are not satisfied with it.

**Dated AT PORT VILA on 10 April 2006**

**BY THE COURT**

  
  
**P. I. TRESTON**  
Judge