

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

Criminal Case No. 13 of 2008

PUBLIC PROSECUTOR

-v-

**JACKY SHACK SAUL
MAFE WILLIE
VATY JIMMY
SANDRINO PAUL
HIU JACK**

Coram: Justice N. R. DAWSON
Date of Hearing: 11th December 2008
Date of Decision: 11th December 2008
Counsel: Mr. Standish for Public Prosecutor
Mr. Loughman for 1st Accused
Mr. Vira for other Accuseds

SENTENCE

Mr. Saul you appear in Court today for a sentencing on charges of Unlawful Entry of a dwelling, Sexual Intercourse without Consent, Premeditated Intentional Homicide and Theft. I note that the two charges of Sexual Intercourse without Consent and Premeditated Intentional Homicide have maximum sentences of life imprisonment. Also appearing today with you for sentencing are Mr. Willie Mafe, Sandrino Paul, Hiu Jack and Vaty Jimmy. They are charged with Unlawful Entry of a dwelling and with Theft.

The facts of your and their offending are as follows:-

As at the 5th January 2008 the victim was an unmarried retired school teacher, 69 years of age and lived alone in her house on Devil's Point Road at Mele. She was an Australian citizen and a long time resident of Vanuatu and was last seen alive on 4th January 2008 by her housegirl. On 5th January 2008 you and your co-offenders



agreed to go to her property and to unlawfully enter her home and to steal property from her home. You discussed your plan during the afternoon of 5th January 2008. You then walked along the beach at blacksands to Mele and waited under a tree until night fall when you could commit the offending under the cover of darkness. You jumped over the victim's fence and the other defendants initially stayed back to ascertain whether there is any security guard operating that night and when they saw there were no security guards Mr. Jack and Mr. Jimmy entered the victim's yard and hid behind a garden bed.

You were very familiar with the victim's residence because you had formerly worked for her as a gardener. You approached the victim's bedroom window and attempted to cut the screen open to gain entry. Your actions awoke the victim who was in bed at that time. She got out of bed and you walked to the electric mains and switched the lights on and off several times before eventually switching off the power to the house. The victim walked to the front door of the house with a torch. She had with her two small house dogs. She opened the front door and the dogs jumped towards you. You hit the dog with the piece of wood you were holding and the dogs fled. You then struck the victim with the piece of wood. She dropped the torch and it broke on the floor. You then said to the victim "*mi wantem fuckem yu*". You forced the victim to the floor so she was lying on her back. She was wearing tights and you cut a hole in her tights in the area of her groin. She yelled out "help" on a number of occasions. Her screams were heard outside by the other defendants who were still outside of the house. You penetrated the victim's vagina with your penis without her consent and despite the fact that she attempted to resist you and poke you in the eyes. You ejaculated inside the victim. You had possession of a sharp knife and after the rape of the victim you then slashed her neck causing her death. You left her body on the floor of the house. After killing the victim you then turned the mains power back on and then turned on the lights of the house. You called to your co-defendants to come inside to help you steal property.

You co-defendants Mr. Jack and Mr. Jimmy entered the house and assisted you in stealing a number of items of property belonging to the victim. That included 2 DVD decks, a remote control, a mobile phone, a set of audio speakers, a pair of sandals, a



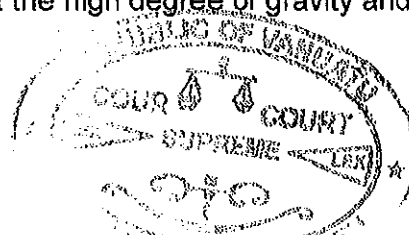
digital camera, a pair of binoculars and some clothing along with a carton of milk from the refrigerator. While you, Mr. Jack and Mr. Jimmy gathered the stolen items the other defendants Mr. Paul and Mr. Willie remained outside keeping watch. You all then left the victim's property.

On the morning of 7th January 2008 the victim's body was discovered by her gardener when he reported for work and an investigation into the crime was commenced by the police. The crime attracted extensive media attention.

You made admissions to a number of civilians as to your involvement in these crimes. You also retained the victim's mobile telephone and made a number of calls on that phone. Several friends of the victim called her telephone and on at least one occasion you responded by telling the caller to go away obscenely. You were all arrested by the police and made admissions as to your involvement in the crimes and you all appeared in the Magistrate Court on 17th January 2008. Arraignment of you all was delayed on several occasions while one or more of you were unlawfully at large through out 2008. Eventually you were all recaptured, pleas of guilty were entered on 13th October 2008 and matters were then remanded through to today for sentencing.

I note Mr. Saul that you have a number of previous convictions and that you are a serving prisoner. You have escaped from custody on at least 6 occasions in the last 2 years. I have read and heard submissions on your behalf from your defence counsel and also read and heard submissions from the Public Prosecutor.

In sentencing you Mr. Saul it is necessary for me to denounce your behaviour in the strongest terms. Your offending was brutal and vicious. The community's abhorrence to this type of offending must be considered when setting your sentence. Your offending deserves and requires the strongest condemnation of this Court. Your sentence needs to be set so it will act as a deterrent to you and others not to behave in this way. The protection of the community is paramount. Your name is one that is associated with savagery and violence in Vanuatu. All of the people in Efate were concerned and many were in great fear during your times at large when you had escaped from custody. Your sentenced needs to reflect the high degree of gravity and



the high level of seriousness of your offending. There are a number of very strong aggravating factors the Court needs to take into account when sentencing you today.

The first is you threatened violence by the use of a knife during the rape and you had also previously hit the victim with a piece of wood and also hit her dogs with that same piece of wood. You unlawfully entered her dwelling place to effect the rape and the appalling homicide and theft offences. There was a considerable degree of cruelty in your offending. You beat, raped and killed a 69 year old woman. You physically and psychologically degraded the victim by raping her before killing her. There was an abuse of trust involved also in that you use your knowledge as an ex employee of the victim to gain access to her house and you raped and killed her in her own home. The victim was particularly vulnerable as an elderly woman living on her own without protection. There is also a considerable degree of premeditation as you and your co-defendants spent the afternoon discussing the commission of your crimes. I also need to take into account the number of your previous convictions along with the rape, burglary and theft as aggravating factors.

In mitigation, you entered guilty pleas on arraignment. However, it must be noted that the evidence against you was strong and you had previously made admissions of your offending to a number of people which detracts from credit you may be entitled to for entering an early guilty plea. You claim to be remorseful. I find that hard to accept. I think your remorse is pre-sentence remorse, I think you are remorseful for what you are about to be sentenced to and not for the anguish, pain, and death that you caused to your victim. You have escaped from custody on a number of occasions and it has previously been recognized by this Court that such escapes from custody, detracts from any expression of remorse. In my view you are not entitled to full one third reduction of your sentence due to an early admission of guilt because of the remarks I have made about the mitigating factors. You are classified as a high risk detainee inside the Correctional Centre due to your continued escaping. I note that you are not a first offender, that you have previous convictions, and you are currently serving a sentence of 4 years and 9 months imprisonment for unlawful entry and for theft.

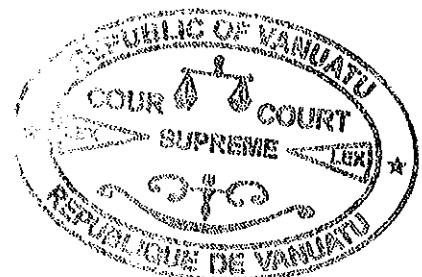


Mr. Saul I have formed the view that your offending was one continuous course of conduct. The charge of premeditated intentional homicide is the lead offence and the other offences are aggravating factors of that lead offence. I take into account the cases that have been submitted to me both by the Public Prosecutor and defence counsel I am of the view that a starting point for sentencing you for the charge of Premeditated Intentional Homicide is a sentence of imprisonment of 27 years. I am allowing a reduction of that sentence of 7 years for the mitigating factors I have mentioned which is a reduction of 26%. On the charge of Premeditated Intentional Homicide you are therefore convicted and sentenced to 20 years imprisonment to be served cumulatively on any existing sentence you may be serving as this offence is separate and distinct offending from your previous offending.

For the charge of Sexual Intercourse Without Consent you are convicted and sentenced to a term of imprisonment of 10 years to be served concurrently. For the charge of Unlawful Entry, and after taking into account your previous convictions for this type of offending, you are convicted and sentenced to a term of imprisonment of 5 years to be served concurrently. For the charge of theft you are convicted and sentenced to a term of imprisonment of 1 year to be served concurrently.

I am not at this stage able to allow you any credit for any pre-sentence custody because that information is unknown and has not been able to be provided to the Court. It would appear that your pre-sentence custody may well be for your earlier offences and therefore not relevant to the sentencing today. If that is not the case then defence counsel will need to make a separate and further application to this Court to consider that factor.

Mr. Saul you have the right to appeal this sentence. For any appeal you must lodge a notice of the appeal within 14 days of today's date.

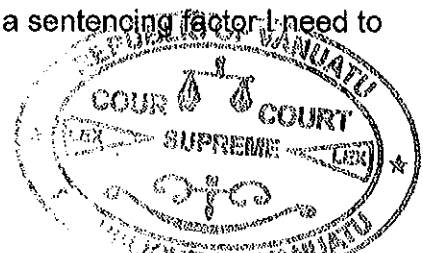


This is a continuation of the sentencing of Mr. Saul, Mr. Mafe, Mr. Paul, Mr. Jack and Mr. Jimmy. Sentencing was adjourned to 2:00 pm to enable defence counsel to ascertain how much time each of the defendants have already served in prison so that the appropriate deductions can be made from any sentence that is imposed upon them. The sentencing for Jacky S Saul was completed this morning and the remaining four defendants are here this afternoon for sentencing on them to be completed.

When I sentenced Jacky S Saul I did not make any allowance for time served as at that time this morning I was of the understanding that he was already serving a sentence and therefore he was not in custody awaiting sentencing on these matters only. I am now advised that two of the months that he spent in custody did relate to these charges and therefore his sentence of 20 years imposed this morning is reduced to 19 years and 10 months accordingly.

I note that Mr. Mafe is a first time offender although while he has been in custody he has escaped three times. Mr. Paul, is currently serving a sentence of 9 years for unlawful, rape and theft and has escaped from custody at least 6 times. Mr. Jack has previous convictions for unlawful entry and has two escapes from custody on his record. Mr. Jimmy is a first time offender and has escaped from custody on three occasions. I do note with some interest that none of the defendants today appear to be facing any charges for escaping from custody and I make that as an observation only and it is not a matter I will take into account when I impose your sentences today. It seems unusual that further charges had not resulted. I have read all your probation report the same as I have read the report from Mr. Saul that I commented upon this morning. I have also heard and read the submissions that have been filed by your respective defence counsel in Court.

In sentencing you it is necessary for me to denounce your behaviour. The Unlawful Entry committed by each of you is a serious offence at any time as it involves the invasion of a person's private residence. You got involved with a very serious offender, Mr. Saul, and you assisted him after he had committed a heinous crime against the victim concerned. Therefore deterrence is a sentencing factor I need to



take into account when I sentence each of you today. I also need to take into account the seriousness of your offending as it relates to the particular facts of your offending.

There are aggravating factors I need to take into account as well. You all acted together to commit these offences. There is also a considerable degree of cruelty involved. The victim screams were heard by you while you were waiting outside the house when Mr. Saul was inside with the victim. You all saw blood and the body of the victim in the house but you callously continued in your offending either by stealing the victim's goods or maintaining a look out. I note that two of you did not enter the house but nonetheless both of you told the probation report writers that you looked inside the house and you saw the blood and the body of the victim there.

The victim of course was extremely vulnerable. She was an elderly lady living alone and you and Mr. Saul all decided to go and burgle her house and take advantage of that lady in her isolated position. There was also a considerable degree of premeditation and planning in your offending in that you spent the afternoon talking about it and you went down to a place near to her house and waited for night to fall before you committed the offences. You had plenty of time to change your mind and not continue with the offences but that did not happen.

There are mitigating factors I need to take into account also. The first are your ages. You are all relatively young men. You also all entered guilty pleas at an early stage and you showed a degree of cooperation with the police. According to the probation reports and submissions from your counsel you have all shown some remorse for your offending. Mr. Mafe your probation report notes you are a first time offender. It also indicates that you saw the victim laying on the floor full of blood and that there was blood all over the place. That is what you reported to the report writer. You did not indicate that you felt sorry for the victim.

Mr. Paul you also told the report writer that you saw the victim lying on the floor with blood and her clothes were broken. You also indicated that you felt sorry for what you had done. Mr. Jack it was noted in your probation report that you are not a first time offender and you have been previously sentenced for unlawful entry and theft and also



it notes that you are classified as a high risk prisoner and a person with an escape record. Mr. Vaty your probation report also notes that you found the victim lying on the floor with blood and records you asked Jacky Saul what he had done to that victim.

All four of you took part and offended in the most appalling circumstances. Notwithstanding your relatively young ages and good records of two of you, prison is the only possible outcome for your offending. In my view the lead offence for each offender is that of Unlawful Entry. The starting point given the aggravating features that I have already mentioned is a sentence of imprisonment of 3 years. I then need to take into account the personal mitigating circumstances of each of you, for appropriate reductions to be made.

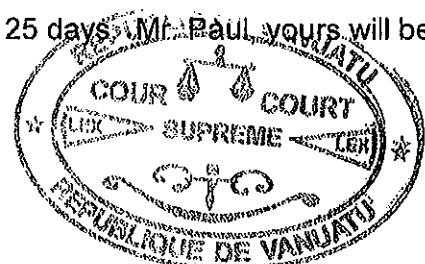
Mr. Mafe you are a first offender and you are presently 18 years of age. You are therefore convicted and sentenced to a term of imprisonment of 1 year and 10 months.

Mr. Paul you are 18 years of age but you have previous convictions for Unlawful Entry and other matters and you have a shocking escape record. You are convicted and sentenced to a term of imprisonment of 2 years.

Mr. Jack you are 18 years of age and you also have a previous conviction for Unlawful Entry and two escapes while in custody are recorded against your record. You are convicted and sentenced to a term of imprisonment for 2 years.

Mr. Jimmy you are 17 years of age. You are the youngest of the group. You are also a first time offender but you have escaped from custody twice. Taking in to account your younger age, you are convicted and sentenced to a term of imprisonment of 1 year and 6 months. For the charges of Theft, each of you are convicted and sentenced to a term of imprisonment of 6 months each to be served concurrently.

The following reductions will be made to the sentences that I have just mentioned. Mr. Mafe your sentence will be reduced by 9 months and 25 days. Mr. Paul yours will be



reduced by 5 months 23 days. Mr. Jack your sentence will be reduced by 9 months and 19 days and Mr. Jimmy your sentence will be reduced by 10 months and 4 days. Those reductions are made for the time that each of you have already served while awaiting sentencing for these crimes.

You have the right to appeal the sentences I have entered on you today. For any appeal you must lodge a notice of appeal within 14 days of today's date.

Mr. Paul your previous conviction was for a different and distinct set of offending. Your sentence imposed today is a cumulative sentence on your previous sentencing. The cumulative sentence does not breach the totality principal in my view and it gives a just and proportionate result for all your offending.

Dated at Port Vila, this 11th day of December, 2008

BY THE COURT

