

**PUBLIC PROSECUTOR**  
**V.**  
**ARNOLD JOB BONGWELAN**

**Coram:** Justice D. Fatiaki  
**Counsel:** Mr. L. Malantugun for the State  
Mr. A. Bal for the Defendant  
**Date of Sentence:** 24<sup>th</sup> August 2010

**SENTENCE**

1. On 1<sup>st</sup> June 2010 the Defendant was convicted after he pleaded guilty to the following offences:

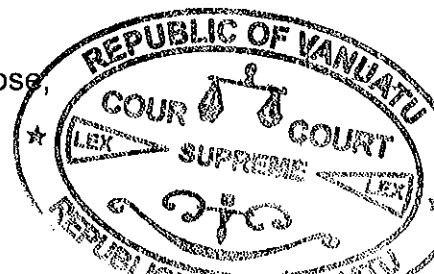
Count 1 – Threats to kill: contrary to Section 115 of the Penal Code which carries a maximum penalty of 15 years imprisonment;

Count 2 – Abusive or Threatening Language: contrary to Section 121 of the Penal Code which carries a maximum penalty of 3 years imprisonment; and

Count 3 – Intentional Assault: contrary to Section 107 (b) of the Penal Code which carries a maximum penalty of 1 year imprisonment;

2. The brief admitted facts of the case are that on the morning of the day in question at Faramasu village in North Ambrym, the complainant a 45 year old woman went to a neighbour's house to ask for fire to cook breakfast. Whilst she was waiting for the fire the Defendant approached her armed with a bush knife and threatened to kill her. He then punched her several times on the eyes, head and mouth and swore at her. The complainant who tried to run away from her attacker, unsuccessfully sought the help of the couple she was visiting and eventually her two sons came and led her home. Later that afternoon the complainant lodged a complaint with the Vanuatu Women's Centre. The next day she was examined by a nurse at the local dispensary and the following injuries were noted in her medical report:

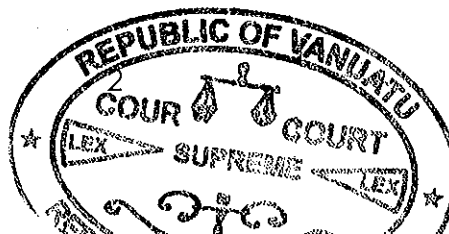
- Bruise and swelling of the face, eyes, lips and nose,
- Pain all over her body and on breathing;



- Vision was poor – unable to see things clearly;
- Right eye swollen and red; and
- Difficulty in chewing food owing to a painful jaw and teeth;

No open wounds or fractures were noted in the report.

3. The Defendant was arrested by police and interviewed several days later and he frankly admitted threatening, assaulting and swearing at the complainant.
4. The pre-sentence report on the Defendant discloses the following relevant personal details:
  - He is 35 years of age, married with 2 children attending school;
  - He attended primary school but left due to financial difficulties;
  - He supports his family by planting food crops and raising pigs which he sells for cash which he uses for his children's school fees and other family needs;
  - He is an active member of his church and community at North Ambrym;
  - He is destined to inherit his father's chiefly title and role in the community;
  - He is a first offender and has behaved himself in prison whilst on remand awaiting his sentence since 31<sup>st</sup> March 2010.
5. The Defendant explained to the Probation Officer that the incident arose out of the sale of a pig he had earmarked for a kastom ceremony and which he had previously refused to sell to the complainant's husband. He later learnt that the pig was purchased by the complainant from his wife without his knowledge and approval and that made him very angry and he assaulted the complainant for going behind his back.
6. The Defendant has offered to conduct a reconciliation ceremony to the complainant and her family when he is released.
7. For their part the complainant and her family who live on the Defendant's family land, informed the Probation Officer that they have forgiven the Defendant and would accept a reconciliation ceremony from the Defendant if he wished to perform one to them. The complainant has also fully recovered from her injuries sustained in the incident.
8. In light of the foregoing the Probation Officer recommends Community Work and Supervision for 12 months with a special condition that the Defendant undertake and complete the Niufala Rod Programme offered by the Probation Service.
9. Prosecuting counsel submits however that a custodial sentence is appropriate having regard to the dual aggravating factors of : "*planning and premeditation*" and "*possession of weapon*". Defence counsel whilst accepting that a prison sentence is called for nevertheless seeks its suspension or, alternatively, a sentence of community work.



10. This was a sustained assault by a fully grown, healthy man on a woman who was visiting his brother to ask for help. There is no suggestion that the complainant had said or done anything to the Defendant immediately before the assault to provoke it and the so-called "reason" given by the Defendant for the gratuitous assault suggests that the complainant became the innocent victim of his anger with his wife's action in selling the pig to her without consulting him first. In simple terms, this was an aggressive unprovoked misguided assault on a helpless defenceless woman.
11. Having said that I do not necessarily accept that the mere possession of a bush knife is an aggravating factor in the assault although, undoubtedly, it would have been on the threatening charge.
12. I am satisfied that the seriousness of the assault warrants a custodial sentence.
13. Accordingly, I sentence you Arnold Job Bongwelan to 12 months imprisonment however, in light of your guilty pleas and early admissions to the police, and this being your first criminal offence, I am willing to give you an opportunity to return to your family and community. Your sentence is therefore suspended for a period of 18 months and you are ordered to perform a custom ceremony of reconciliation to the complainant and her family by 17 September 2010.
14. Although the effect of this suspended sentence of imprisonment is that you will not have to return to prison today, I trust that you have learnt a salutary lesson from the time you have spent in prison on remand and I hope that you will resolve never to return to prison again. If however, you should re-offend in the next 18 months and be convicted you will be required to serve this sentence of 12 months imprisonment in addition to any other sentence that may be imposed on you for your re-offending.
15. Needless to say Arnold Job Bongwelan whether you behave yourself in the next 18 months is entirely in your hands but if you do not and you appear before this Court again and are convicted of another offence you cannot expect to be shown the same leniency that the Court has extended to you today.
16. You have 14 days to appeal against this sentence if you do not agree with it.

**DATED at Port Vila, this 24<sup>th</sup> day of August, 2010.**

**BY THE COURT**

  
**D. FATIAKI**  
Judge.

