

PUBLIC PROSECUTOR VS "T"

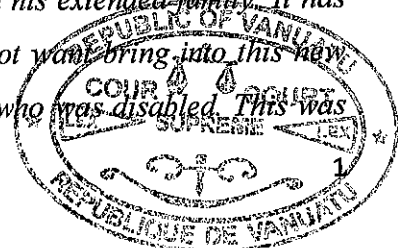
Coram: *Mr. Justice Stephen Harrop*

Counsel: *Ken Massing for Public Prosecutor
Jane Tari for the Defendant*

Date: *18th December 2014*

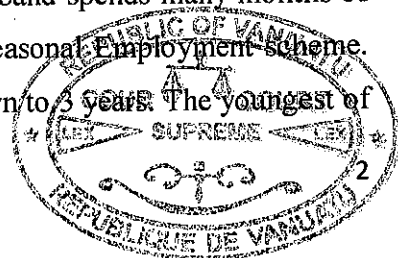
SENTENCE

1. Ms T, you appear for sentence today having pleaded guilty to one count of intentional homicide under section 106(1)(b) of the Penal Code. This charge carries a maximum penalty of life imprisonment which indicates how seriously Parliament and the community of Vanuatu regard the intentional killing of another human being. However, this is a case of infanticide, the killing of a newborn baby by its mother. In various countries this is regarded a special kind of offence and attracts a much less serious maximum penalty. Despite a call by the Vanuatu Court of Appeal in **Malvaru v. Public Prosecutor [2011] VUCA 34** for the authorities in Vanuatu to give consideration to the enactment of a such offence here, this has not occurred. You are therefore liable to a sentence of life imprisonment but I will nevertheless proceed on the basis that this case is indeed a special one likely to warrant a much lighter sentence than a typical homicide does.
2. The Court of Appeal both in **Mathias v. Public Prosecutor [2002] VUCA 8** and the **Malvaru Case** emphasised that sentencing for infanticide requires, so far as it is possible, assessment of the true criminality involved in the killing of the baby. What was the mother's true state of mind?
3. In **Mathias** the Court of Appeal said: "*On the one hand it is possible to view the case as one in which a woman having commenced a new relationship was caught in a bind between her parental duty and a new man in her life with his extended family. It has been said that there were taking the view that they did not want bring into this new relationship a child of another man and particularly one who was disabled. This was*"



coupled with childcare problems as her mother was unwilling or unable because of her unemployment to provide fulltime care. Ms Mathias therefore decided to deal with her own selfish needs and requirements, taking a heartless and wicked decision to kill her defenceless child. On the other hand the matter maybe viewed as a hapless woman in a precarious and vulnerable position shortly before the birth of another child, feeling fragile and unsupported from all sides, emotionally stressed and unable to make rational, sensible decisions in the circumstances, acting in an inexcusable but understandable way because the impossible pressures which she found around her."

4. As the Court of Appeal in **Malvaru** (paragraph 8) said, the culpability of a mother for killing her child is often treated in a special way in order to recognise the unique features of motherhood: *"The difficulty... is to identify whether the homicide has come about through a carelessness and selfish disregard for human life or at the time when the mother was acting irrationally for reasons that might be related to the pressures of motherhood in those individual circumstances."*
5. At paragraph 16 the Court also recognised, *"the extreme distinction between a callous and selfish decision by a mother to dispose of an unwanted child and the mother, in a fragile or emotional or psychotic state, who acts irrationally and disposes of a child because of the pressures that she perceives that she is under."*
6. The Court went on paragraph 17: *"those are the extreme ends of the possibilities that can arise and most cases will fall somewhere between those two ends. We do not consider that a sentencing court can easily face its task without expert valuation, either to dismiss the possibility of some overwhelming psychological or psychiatric factor or to identify and assess it."*
7. It is important to record at the outset that in this case the prosecution accepts that you are in the category of acting irrationally to dispose of your baby as a result of the pressures you were, or perceived you were, under. It accepts the defence submissions that you perceived that you had no option but to do what you did.
8. This central facts are that you are married and your husband spends many months of each year working in New Zealand on the Regional Seasonal Employment Scheme. You have six children ranging in age from 15 years down to 3 years. The youngest of

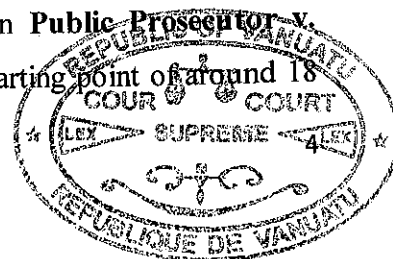


these is not the child of your husband rather of another man, from another island. When your husband found out about that child's paternity, he badly assaulted you.

9. You fell pregnant on the relevant occasion again to the man from the other island while your husband was working in New Zealand. On his return you told him you were about three months pregnant so that he believed that he was his although you knew very well that was not true. As the time to give birth approached you became increasingly fearful that you when your husband found out that again you had been unfaithful to him he would violently assault you. I should add that your husband has also been unfaithful to you so clearly the relationship is far from what a marriage should be.
10. The night before you gave birth to the baby you had an argument with your husband and as result you did not sleep in your usual sleeping house but rather you spent the night at your bush kitchen. You gave birth early in the morning and killed the baby shortly afterwards using a knife and/or hitting it several times with an object. Its injuries included a skull fracture. You wrapped the corpse in a blanket and buried it in the hole at the coconut plantation.
11. I should add that the father of the baby has moved back to his island and is living with another woman. He had sent you cheeky messages saying that once again your husband would help to take care of and raise one of his children.
12. In summary then you were in position where you justifiably feared physical violence from your husband and you had concern at the way the baby would be treated by your husband based on the way he has treated the 3-year old. Further it was clear that you would have no support from the natural father.
13. I accept in the circumstances described that you killed your baby perceiving you really had no choice. Objectively of course there were other choices but it is very easy to sit in judgment of your conduct and to adopt a rational approach to a situation when reality was very different. By contrast with a first-time mother, having six children already you well appreciated, at least on some level, the consequences of what you were going to do.

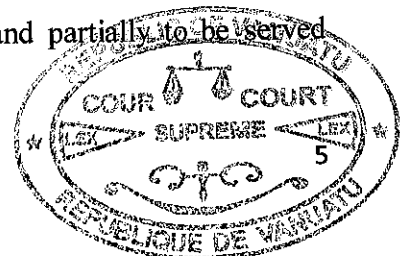


14. While ideally I would have been assisted by an independent expert psychological report informing me of your mental state at the time of the incident and now, unfortunately this is simply not available here on Santo so I have to proceed on the information I have. I do not think it is in anybody's interests to defer this case, especially in circumstances where the prosecution does not dispute the defence contentions about your mental state.
15. You cooperated well with the Police and pleaded guilty at the first opportunity. You have been remanded in custody from 6th November until today, some six weeks, so you have effectively served a prison sentence of some three months.
16. I have of course considered the pre-sentence report which in addition to points I have already mentioned refers to your having a heart disease problem for which you are required to take medication. You are a first offender and otherwise therefore of good character. You are also deeply remorseful and wish that you could turn the clock back but you realise that it is now too late.
17. Mr. Massing submits that the appropriating sentence is a prison term of one and half years. Alternatively if the Court disagrees he submits that a partly custodial and partly suspended prison sentence would be appropriate, together with supervision.
18. On your behalf Ms Tari submits, particularly having regard to the interests of your children that a sentence of supervision is appropriate or at worst that this be combined with a suspended term of imprisonment. She highlights that since your remand in custody your eldest daughter, aged 15, has had the substantial responsibility of looking after entire family as your husband still working in New Zealand.
19. I have considered a number of Supreme Court and Court of Appeal judgments but do not propose go through them in detail since inevitably the particular facts of each case differ and those facts are the primary determinant of the appropriate sentence. In particular I have had regard to the two Court of Appeal judgments, including that Court's approach to the *Brim Moli* case which was dealt with at the same time as the *Malvaru* appeal and to the judgment of Justice Fatiaki in *Public Prosecutor v. Massing* [2011] VUSA 1. I have reached the view that a starting point of around 18



months imprisonment would be appropriate. That relatively low starting point takes account of my assessment of the true criminality here.

20. In **Massing** Justice Fatiaki adopted the same starting point. At paragraph 15 His Lordship said : *"this is really a truly sad case of a single first-time unemployed and uneducated woman giving birth to a child far from her parents and family support with no real prospect of being able to support and care for the child. It can never be an easy act for a woman to take the life of her innocent newborn child. Such an act is more likely to be an act of desperation and fear than a calculated act of a completely stable mind."* I respectfully adopt those observations here, though of course your position is different because you have other children and you are 34.
21. In **Massing** Justice Fatiaki reduced the sentence from the starting point of 18 months imprisonment down to 12 months in recognition of the defendant's guilty plea and remorse. He deducted a further period to reflect the time she had spent in custody resulting in sentence of 8 months and 2 weeks imprisonment. His Lordship decided that it was not a suitable case for suspension.
22. From the starting point of 18 months imprisonment here I reduce the sentence to 12 months on account of your guilty plea. To give effect to your remorse and your previous good character I reduce the sentence by further 2 months down to 10 months and I reduce it by a further 3 months to recognise your six weeks in custody which is effectively the serving of a 3 months prison sentence. That leaves an end sentence of seven months imprisonment.
23. The next question is whether that sentence should fully or partly suspended. In the **Mathias** case the Court of Appeal observed that while a term of imprisonment would still be imposed to reflect the needless loss of a life, the term would be much less than for a usual homicide and *"there could exist the possibility of the term being suspended particularly in light of the needs of the youngest child."*
24. If you did not have other dependent children and had you not been remanded in custody I would not have been prepared wholly to suspend the prison sentence but rather would likely have imposed a partially suspended and partially to be served



prison sentence. However because of those factors I am going to suspend the entire seven months' prison sentence.

25. It seems to me that the deterrent effect of imposing a prison sentence has been largely if not totally achieved by your 6 weeks in custody. You will have received the message loud and clear, especially as a first offender who has never been to prison, that taking the life of another human being, regardless of the circumstances, is extremely serious. You will have incurred during that period the additional penalty of realising that your six other children who are entirely dependent on you were suffering. If I were require you to serve any part of the period of imprisonment that suffering would continue. It seems to me that in doing so I would be marking the sanctity of human life and the unjustified killing of your baby at the expense of the six children who are alive and who need to be supported. They have already been innocent victims of your offending and would be further harmed if I were to require you to serve further time in custody.

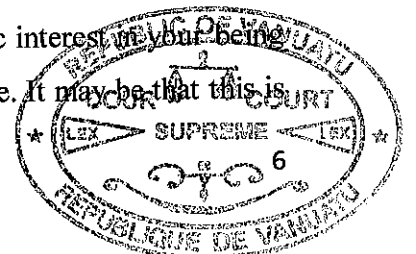
26. In addition, you are no risk to the community so there is no need to protect the public from you.

27. I therefore suspend the seven months' prison term entirely and do so for 2 years. You need to realise that if you offend in any way during that period you will be required to serve that term together with the penalty for such further offending.

28. In a case like this I think a supervision sentence is also essential. It should, if this is available on Santo include such psychological counselling a directed by your probation officer, the completion of the Niufala Rod program and ideally some sexual education including contraception advice.

29. Therefore I impose a sentence of supervision for 2 years, which is the maximum possible, on the standard conditions and on the special conditions which I have mentioned.

30. Finally, I have noted that the names the defendants in all the infanticide cases I have read have been published. It seems to me that there is no public interest in your being named given the assessment of the true criminality I have made. It may be that this is

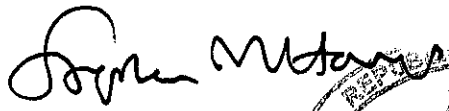


merely academic as I am sure that everyone in your village and probably beyond that in another parts of Santo are well aware of your identity. However there is no need in my view to add to the publicity by publishing your name in the media or on any legal database. Further supporting suppression of your name are the interests of your six children as they grow up. Publication of your name risks an association being made with them and some adverse consequences resulting. I therefore propose to anonymise this judgment and to refer to you only as T.

31. You have 14 days to appeal against this sentence if you disagree with it.

DATED at Luganville this 18th day of December 2014.

BY THE COURT


STEPHEN HARRO
Judge

