

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

Criminal Case No 16/3849 SC/ CRML

PUBLIC PROSECUTOR

Vs

JENNY BANI

Coram: Justice Mary Sey

Counsel: Mr. Damien Boe for Public Prosecutor
Ms. Kylie Bakeo for the Defendant

Date of Decision: 14 February 2017

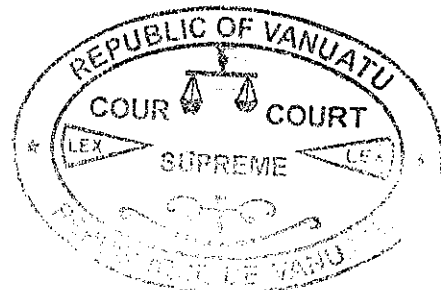
SENTENCE

1. Mrs. **Jenny Bani**, you are before this Court for sentence having been convicted on 15 December 2016 on your guilty plea to a single count of Intentional Assault causing permanent injury contrary to section 107 (c) of the Penal Code Cap 135.
2. The section provides as follows:

"107. No person shall commit intentional assault on the body of another person.

Penalty:

- (a) if no physical damage is caused, imprisonment for 3 months;*
- (b) if damage of a temporary nature is caused, imprisonment for 1 year;*
- (c) if damage of a permanent nature is caused, imprisonment for 5 years;*

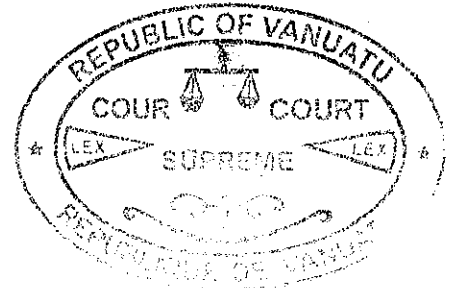


(d) if the damage caused results in death, although the offender did not intend to cause such death, imprisonment for 10 years."

3. No dispute is taken with the brief facts presented by the prosecutor and those are the facts that rendered the defendant guilty of the offence of intentional assault causing permanent injuries. The victim Mr. Brian Bani is the defendant's husband. The offending occurred on 22 October 2016 around 01:00 A.M at Agatist area after the couple had gone clubbing. Both were drunk at the time of the incident. On their way home the couple started quarrelling and this resulted in the defendant stabbing the victim with a sharp kitchen knife. The defendant was cautioned and interviewed at the police station. She admitted that she had stabbed the victim with the knife because she was trying to stop him from beating her.
4. The victim was medically examined at the Vila Central Hospital and the medical report shows that the victim sustained a deep incisive wound on the left axillar region about 8cm – 10cm deep.
5. Mrs. Bani, you acknowledge the seriousness of this offence and you have shown remorse as can be seen in the pre-sentence report submitted by the probation officer. You also performed a custom ceremony with Mr. Bani and members of his family on 29 January 2017 and the gifts which you exchanged were as follows:
 - 5 Baskets of Sweet Potatoes/Kumala
 - 2 Baskets
 - 15 x1kg Rice
 - A Pig worth VT30,000
 - 1 Island Cabbage
 - 9 mats to Brian Bani
 - 50 yards Calico
 - A total of VT11,500 cash which was shared to each member of the victim's family.

Mr. Brian Bani also exchanged gifts consisting of five Mats and 1 x 40 yards calico to you as a sign of welcoming you back to his home.

6. I note from the colour photographs attached to the pre-sentence report that the custom reconciliation ceremony was very impressive and that it was witnessed by the whole community and immediate family members as well as the Church



members and your Chiefs. Be that as it may, this Court cannot overlook the fact that a serious offence was committed by you and consequently you need to be adequately punished for your offending.

7. A further purpose of punishment is to denounce the conduct of the offender. See the New Zealand Criminal Court of Appeal decision of **R v Radich** [1954] NZLR86at 87:

"... one of the main purposes of punishment ... is to protect the public from the commission of such crimes by making it clear to the offender and to other persons with similar impulses that, if they yield to them, they will meet with severe punishment."

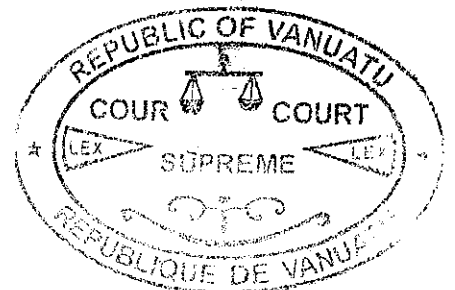
In **Veen v The Queen (No.2)** [1988] HCA 14; (1988) 164 CLR 465, Mason CJ, Brennan, Dawson and Toohey JJ said at 476:

".....sentencing is not a purely logical exercise, and the troublesome nature of the sentencing discretion arises in large measure from unavoidable difficulty in giving weight to each of the purposes of punishment. The purposes of criminal punishment are various: protection of society, deterrence of the offender and others who might be tempted to offend, retribution and reform. The purposes overlap and none of them can be considered in isolation from the others when determining what an appropriate sentence is in a particular case. They are guideposts to the appropriate sentence but sometimes they point in different directions."

8. Mrs. Bani, your offending seem to be compounded by the following aggravating factors:

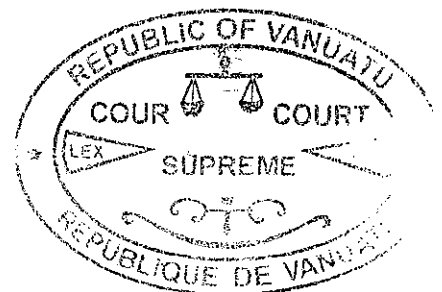
- You used a sharp knife which is a weapon.
- You are the victim's wife and as such there is a serious breach of trust.
- The incident occurred during the night.
- You acted out of anger.

9. Undoubtedly, the offence you have committed is a serious offence and such seriousness is reflected in the maximum penalty of 5 years imprisonment set by law. In sentencing you, it is necessary for the Court to hold you accountable for your actions. The fundamental requirement is that the sentence imposed should, in addition to punishing you, act as a deterrent to other persons minded to engage in a similar activity.



10. In considering the appropriate sentence to impose on you, I will adopt the Chief Justice's sentencing approach in **Public Prosecutor v lawafil [2010] VUSC 90** in which a similar offence was committed. His Lordship said that for offences of this nature, the starting point of the sentence is 2 years imprisonment.
11. In the circumstances, I hereby sentence you to 2 years imprisonment as a starting point. I increase this sentence by 1 year imprisonment to reflect the aggravating factors thus uplifting your sentence to 3 years imprisonment.
12. In mitigation, defence counsel submits that you are a first time offender and you have entered a guilty plea at the earliest opportunity. Moreover, you cooperated well with the Police during the time of arrest and investigation. The pre-sentence report shows that you are 35 years old and you come from the Eastern part of Ambrym Island and that you have two children aged 6 years and 3 years. You informed the probation officer that you began your primary education at Wuruo Primary school, classes one (1) to six (6) but you were not able to complete your education due to financial difficulties. However, despite your lack of education, you were able to undertake computer courses as organised by the Presbyterian Church and you also managed to work as a house maid for some years before you were employed by the Bamboo Royal restaurant as a waiter for a year. Your main ambition in life is to live a good life with your children and to focus on their education.
13. I am now required to consider what discount from the second stage end sentence of 3 years imprisonment should be applied for a guilty plea. The greatest discount allowed under this head will be a discount of one third where the guilty plea has been entered at the first reasonable opportunity. I therefore give you full one third credit for your early guilty plea which is a discount of 1 year leaving you with an end sentence of 2 years' imprisonment.
14. I turn now to consider whether or not I should suspend all or part of your sentence pursuant to sections 57 and 58 of the Penal Code (Amendment) Act No.25 of 2006. At this juncture I shall adjourn this case to Friday 24th February 2017 at 12 noon to deliver my Ruling on this issue.

You have 14 days to appeal against this sentence if you do not agree with it.



DATED at Port Vila, this 14th day of February, 2017.

BY THE COURT


M.M. SEY
Judge

