

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

Criminal
Case No. 18/1924 SC/CRML

BETWEEN: Public Prosecutor

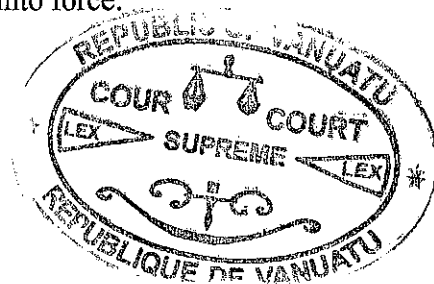
AND: Abel Quaga
Defendant

Before: Justice Aru

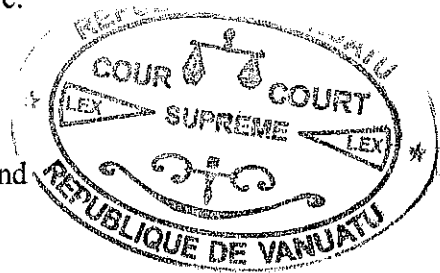
Counsel: Mr. D. Boe for Public Prosecutor
Mrs. J. Aru for the Defendant

SENTENCE

1. **ABEL QUAGA** you appear for sentence today. You were charged with one count of intentional assault causing permanent injury contrary to section 107 (c) of the Penal Code [CAP 135]. On the 7 August 2018 you pleaded guilty to the charge and was convicted accordingly.
2. The brief facts are that the offending took place on the 7 January 2018 at Vuigalato on the island of Ambae. On the night before the incident the defendant assaulted the victim on her chest with a piece of wood. In the morning when the defendant approached the victim again he was drunk and had a knife in his hand. He cut the victim with the knife on her right arm and cut off the tip of her right index finger. Dr Bage at Lolowai hospital who prepared her medical report says that there were multiple cuts to her right forearm and the tip of the right index finger was severed which will leave a scar forever on her right hand.
3. A formal complaint was then made against the defendant for intentional assault causing permanent injury. Following his arrest, the defendant was cautioned by the Police and admitted his offending.
4. Intentional assault causing permanent injury is a serious offence. This is reflected in the fact that Parliament has recently seen fit to increase the maximum penalty for this offence from 5 years to 10 years imprisonment. The offence in this case was committed after the amendment to the Act came into force.



5. Mr Boe submits that the starting point should be 6 years imprisonment as applied in **Public Prosecutor v Qon** [2018] VUSC 140. He submits the following as aggravating factors: that the assault was unprovoked, a knife was used, the nature of the injuries caused and their impact on the victim and finally that there was a breach of trust as the defendant was in a defacto relationship with the victim. Mrs Aru on the other hand submits that the offending in Qon was much more serious as the victim lost part of her right arm as a result of the assault on her body. She submits that a starting point of 3 years would be appropriate and the end sentence should be 12 to 18 months imprisonment which should then be suspended. She relies on **Public Prosecutor v Lopez** [2018] VUSC 122 to submit that in that case permanent injury was caused with several knife wounds but the sentence was suspended although the defendant also had a previous conviction.
6. A custodial sentence is warranted to denounce the defendant's behaviour and conduct and to serve as a deterrent to the defendant and members of the public at large from similar offending. I accept that the offending was aggravated by the following factors:
- The unprovoked nature of the assault;
 - A weapon was used;
 - A Permanent injury was inflicted which will impact the victim for the rest of her life; and
 - There was a breach of trust.
7. I adopt a starting point of 5 years imprisonment.
8. I am thankful to the probation officer for preparing the Same Day Report. The following are extracted from the report. The defendant was born in 1988 and is now 30 years old. He completed his education at year 6. He does not have any children with the victim but they look after and care for the victims seven children. He is also involved in sports and other social and community activities. He has not performed any custom reconciliation. The victim's family are reluctant to accept any custom reconciliation and the victim told the probation officer that she no longer desires a relationship with the defendant.
9. Factors submitted by defence counsel as mitigation are:
- The defendant is a first time offender;
 - He pleaded guilty at the first opportunity;
 - He cooperated with the police investigation; and
 - He spent 2 months on remand.
10. For the early guilty I allow the full 1/3 discount, which reduces the sentence to 3 years and 3 months imprisonment. As a first time offender I deduct 1 year which

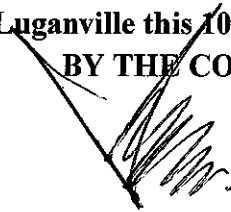


reduces the sentence to 2 years and 3 months. For the time spent in custody 3 months is deducted leaving a sentence of 2 years imprisonment. A further 6 months is deducted for his cooperation with the Police leaving an end sentence of 18 months imprisonment.

11. Defence counsel submits that I should then suspend the sentence .Taking into account the factors I need to consider if suspension is warranted as provided in s57 of the Penal Code, I am also mindful of the fact that the defendant has lost his livelihood on Ambae as a result of the volcanic disruption and will need to find somewhere to re-establish himself. He is also a first time offender therefore I will suspend the sentence for a period of 2 years. In addition he will have to do 100 hours community work under supervision for 12 months.
12. You have 14 days to appeal the sentence if you are not happy with the decision.

DATED at Luganville this 10th day of August, 2018

BY THE COURT



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D. Aru
Judge

