

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

**Criminal
Case No. 18/253 SC/CRML**

PUBLIC PROSECUTOR

V

HARRIETTE YATIBU

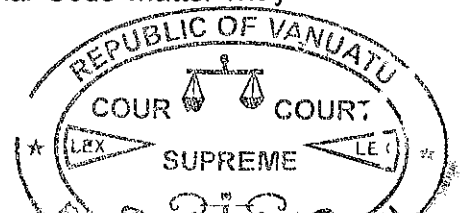
Date of Sentence: 22nd day of March, 2018 at 9:00 AM

Before: David Chetwynd

***Counsel: Marie Taiki for Public Prosecutor
Andrew Bal for Defendant***

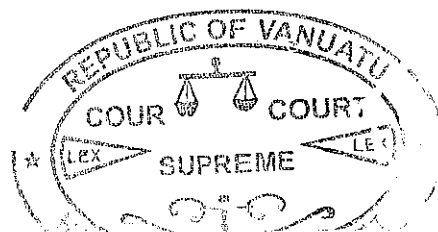
SENTENCE

1. In the early morning of 1st July 2017 there was a collision between a pedestrian and a bus being driven by the defendant Harriet Yatibu. As is usual in such collisions the pedestrian came off worse and he received very serious injuries and died at the scene.
2. As a result of this incident the defendant was charged with a number of offences. When the case was called on at arraignment the defendant faced two charges, causing death by reckless driving and causing unintentional harm resulting in death. The first charge was pursuant to the Road Traffic (Control) Act, the second was a charge under the Penal Code.
3. The defendant pleaded guilty to the charge under the Penal Code but not guilty to the death by reckless driving charge. Both charges carry a maximum penalty of 5 years imprisonment. The prosecution treated the charges as alternatives and did not pursue the death by reckless driving matter.
4. It might be thought that is a pragmatic way to approach such issues. Unfortunately I do not agree. Whilst the Penal Code matter may be



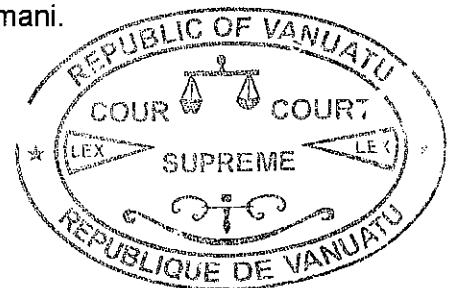
marginally less challenging to prove it does leave the Court in a difficult situation if and when proved with regard to the defendant's driving licence. I can find no provision in the Penal Code which would allow me to disqualify the defendant from driving as there is in the Road Traffic (Control) Act at section 55. Counsel were unable to point me to such a provision. In the circumstances I would suggest to the Public Prosecutor that in future when faced with similar circumstances a prosecution under the Road Traffic Legislation is preferable to a prosecution under the Penal Code.

5. The facts as agreed by the defendant disclose a very serious offence. The defendant spent the early morning drinking inside Club Planet 107. The police came and closed the club. It is unfortunate the police did not stop drivers who, like the defendant were affected by alcohol, from driving away.
6. The defendant was told by security officers not to drive but she ignored them. She got in her bus with several passengers and drove to Mele. She drove back from Mele towards town with one passenger and it was as she was entering the Tagabe round-about she knocked the unfortunate pedestrian over killing him almost instantly.
7. The defendant was obviously extremely drunk. So drunk she drove on the wrong side of the road. On the entrance to the roundabout at Tagabe when travelling from Mele there is a triangular traffic island. The defendant should have passed to the right of that traffic island. She did not. She was to the left of it. That is obvious from the damage to the bus because the damage from the collision with the unfortunate pedestrian was on the right side of the bus. The damage caused to the vehicle when it hit to kerb is to the front right wheel. This all clearly shows the defendant was entering the round-about on the left side of the traffic island, which is the wrong side of the island.
8. The pedestrian, the late Joshua Womani was in no way at fault. He was on or just stepping off the traffic island. He would have been looking for

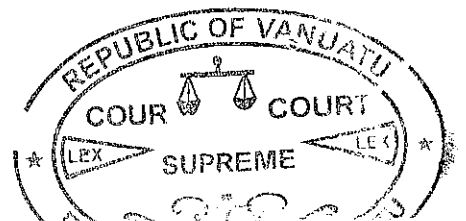


traffic approaching from his right (from the airport direction with traffic be exiting Tagabe round-about). He would not have expected to see a vehicle to his left coming towards him. He would have thought that any vehicle approaching from the Mele direction would pass behind him.

9. The defendant is a professional driver. The Court is entitled to expect a higher standard of driving from her. She should also have known of the dangers of driving whilst under the influence of alcohol.
10. There have been reports in the press recently of serious and fatal accidents involving driving under the influence. Those who earn their living by driving, professional drivers in other words, should know better than to drive under the influence. However, the reports seem to show that it is the professional drivers who are most often drink driving and causing death or serious injury as a result. If a professional driver appears before the Courts in respect of traffic offences he or she must realise that it would be reasonable for a tribunal to expect a higher standard of driving from them.
11. So far as the facts in this case show, the defendant exhibited a high degree of recklessness by driving when she was so adversely affected by alcohol. This was not an accident, this was a death caused by the defendant drinking too much and then getting into a vehicle and driving it. The defendant fell far short of the standard of driving that could be expected of her.
12. Given the degree of her culpability, the nature of the driving and the deliberate and wilful disregard of the effects of drinking a considerable amount of alcohol; and the consequences of doing so, a sentence of 3 years is appropriate.
13. It is said that the defendant has been very remorseful. However she has today in Court shown more concern for her family than she has for the unfortunate family of the late Joshua Womani.



14. I will reduce the defendant's sentence by 3 months to take account of the fact she has no previous convictions.
15. The defendant has entered a guilty plea on the facts at an early stage and is entitled to a reduction of 1/3. That leaves a final sentence of 22 months.
16. I am unable to discern anything in the circumstances of this case and in particular the nature of the crime or the character of the defendant, which would enable me to suspend all or part of the sentence.
17. I have considered ordering the defendant's bus to be confiscated in accordance with section 58ZC of the Penal Code, ordering it to be sold and the proceeds to be passed to the family of the late Mr Womani. However, I have no information about his family and to take away the bus may be to the defendant's family's detriment. I am assured the defendant is or was insured and therefore it would be preferable that the late Mr Womani's family sued the defendant in the Civil Courts. The insurance should provide compensation to an appropriate level. I suggest the late Mr Womani's relatives apply for a grant of probate and institute proceedings. If it turns out that the defendant was not insured then I am of the view it would be possible for this sentence to be revisited and an order for compensation made under Section 46 of the Penal Code. That might well involve the confiscation and sale of the bus.
18. I am, as mentioned earlier, unable to do anything in regard to the defendant's driving licence. She should be disqualified from driving but I cannot make that order under the Penal Code. However, I presume the defendant was registered as a member of the appropriate Public Land Transport Association as is required by Section 11 of the Public Land Transport Act of 2015. She should also be the holder of a permit as is required by sections 17 or 19 of the Act. If she is then the disciplinary provisions of Section 39 can be put into effect. In the circumstances I will arrange for a copy of this decision to be given to

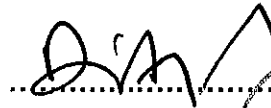


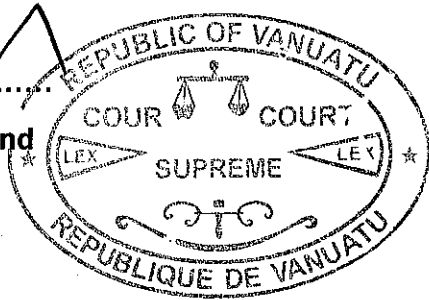
the appropriate Public Land Transport Association so it can take whatever action it sees fit.

19. As I told the defendant in Court, she has the right to appeal against this sentence. The time for doing so will start to run when her counsel receives a copy of these written reasons.

DATED at Port Vila this 28th day of March, 2018.

BY THE COURT


.....
David Chetwynd
Judge



The seal of the Supreme Court of Vanuatu is circular. The outer ring contains the text "REPUBLIC OF VANUATU" at the top and "REPUBLIQUE DE VANUATU" at the bottom, separated by two small stars. Inside the ring, the words "COUR" and "COURT" are positioned on either side of a central scale of justice. Below the scales, the word "SUPREME" is written in a larger font. On either side of "SUPREME", the word "LEX" is written in a smaller font, flanked by two small stars. At the bottom of the inner circle, there is a decorative flourish.