

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

Criminal
Case No. 19/229 SC/CRML

PUBLIC PROSECUTOR
v
ETIENNE JOHN SAMUEL

Coram: *Justice Dudley Aru*

Counsel: *Mr. P. Toaliu for the Public Prosecutor*
Mrs. P. Malites for the Defendant

SENTENCE

Introduction

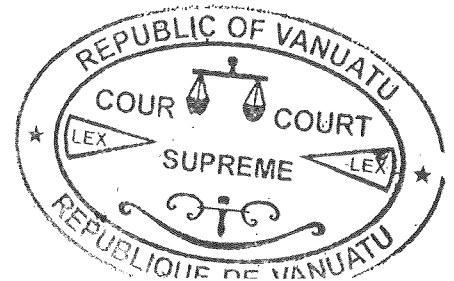
1. Mr Etienne John Samuel you appear today for sentencing in this matter. You were charged with one count of intentional homicide pursuant to s 106 1) (b) of the Penal Code [CAP 135]. On 6 March 2019 you pleaded guilty to this charge. This is an offence which is punishable by a maximum penalty of life imprisonment.

Background

2. In June 2009 the defendant was convicted of rape and sentenced to 2 years and 7 months imprisonment. On 8 June 2012 he was again convicted of sexual intercourse without consent and attempted sexual intercourse without consent. He was sentenced to 8 years imprisonment. He was released on parole on 23 December 2016. Mr Samuel's offending in this matter was committed whilst still on parole.

Facts

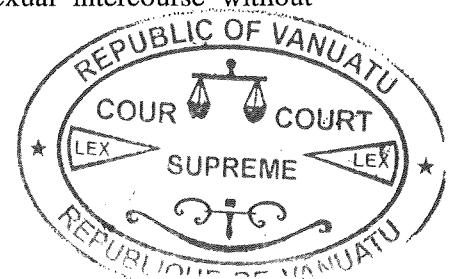
3. On 10 October 2018, the victim now deceased was 16 years of age. She was a student at the Monmarte School and was in year 10. That day she had arranged to meet the defendant at the cross road at Sorovanga early in the morning. From there they took a bus ride and were dropped off on the road leading up to Teuma Gardens area. From there they walked and followed the road leading up to Teuma gardens. After walking some distance they left the road and entered an area of bushland by climbing over a few large boulders till they came to a small clearing. It was well hidden from some houses which were nearby.



4. Upon entering this bushland, they sat down and the defendant told the deceased he wanted to have sex with her. She refused but he persisted with his demands for sex for about three times. The deceased told him that she did not want to have sex with him and pushed him away. She told him that she will report him to the Police.
5. At that instant the defendant picked up a rock and hit her on the head. She fell to the ground and he picked up another 5 large rocks and hit her head until she died. He hit her at least 5 times to the back of her head.
6. The defendant left around 7.30 am. The deceased was left lying on the ground. Around 1.30 pm later that day, a grandmother gathering firewood with her grandchildren discovered the body and alerted the Police.
7. After leaving the deceased's body in the bushland, the defendant made his way back into town. He informed his employer that he was unwell to work that day and returned to Sorovanga. There he washed his clothes which were stained with the deceased's blood.
8. The following day, 11 October 2018 without any knowledge or permission from his parole officer, the defendant obtained an advance of VT 10, 000 from his employer and booked a flight to Malekula. On 12 October the defendant flew to Malekula as Richard Alick to avoid suspicion.
9. On 19 October 2018 he was arrested on Malekula by the Police and transported back to Vila. He was then remanded at the Correctional Centre.

Pre-Sentence Report

10. In the Pre-Sentence Report filed, the Probation officer says that the defendant is 38 years old. His mother is from New Caledonia and father from the island of Tongoa. He has a brother and two sisters. He started his education from class 1 to 6 at South West Bay Malekula. He completed year 7 and 8 at Mafea Junior Secondary School and went on to complete year 9 and 12 at Matevulu College both in Santo.
11. He is trained in joinery and had an employment to support himself until he was arrested. He does not have a good relationship with his family or his community.
12. The defendant admitted to the Probation officer that he has not performed any reconciliation ceremony with the families of the deceased. One was performed by his families but was done with the purpose of maintaining peace within their community. This was confirmed by the defendant's uncle, (father's brother).
13. The report says that the defendant was convicted in 2009 for rape and sentenced to 2 years and 7 months imprisonment. He served part of the sentence in prison and was then released on parole by the Parole Board. On 8 June 2012 he was convicted again for sexual intercourse without consent and attempted sexual intercourse without



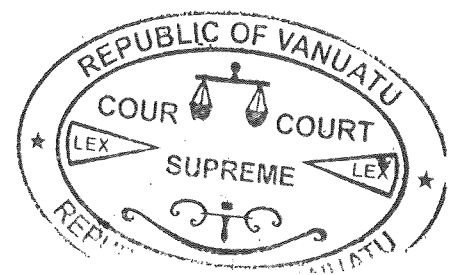
consent .He was sentenced to 8 years imprisonment .On 23 December 2016 he was released on parole by the Parole Board. He was still on parole when he committed the offence of intentional homicide he is now charged with.

Victim Impact Statements

14. The mother of the deceased Mrs Yvette Maccoc and her son, the deceased's brother Sergino Maccoc provided written Victim Impact Statements to the Police .They were allowed to read out these statements in Court without any objection from the defendant .
15. Mrs Maccoc who is a teacher by profession, was teaching at Mangaliliu school, North Efate. She was unaware of what happened to her daughter that day until she was informed of her death. She felt heartbroken and was deeply emotionally and psychologically affected. The deceased was her eldest child and had a bright future ahead of her. After sometime the deceased was diagnosed with a heart condition. Her doctors advised that she remain a day boarder in school so that she can be assisted by her family whenever needed.
16. Following the doctor's advice, Mrs Maccoc requested the Teaching Service Commission to give her a teaching post in town to be close to her daughter. Despite her pleas she was posted to Mangaliliu, North Efate. She felt helpless and refused to be comforted or to talk to anyone or participate in any community activity. She said the financial loss to her family was substantial in terms of cash and resources used to finally put the deceased to rest and to mourn her loss.
17. Her son Sergino Maccoc is a year 9 student at the Lycee LAB. He said he was at home when the Police arrived around 7 pm at night with news of his sister's death. Both their parents were away at work. His mother was at Mangaliliu and father at Chuan store where he was working. After being informed by the Police, he went to Chuan store and told his father.
18. Sergino was also emotionally and psychologically affected by the death of his elder sister. He felt an emptiness in their home as she would always help him with his homework. He feared other family members in their community as a result of his sister's death. He no longer goes out with his friends and no longer visits his grandparents. Two days after the death of his sister he went back to school to complete his exams but could not do so as he was overcome by emotion.

Submissions

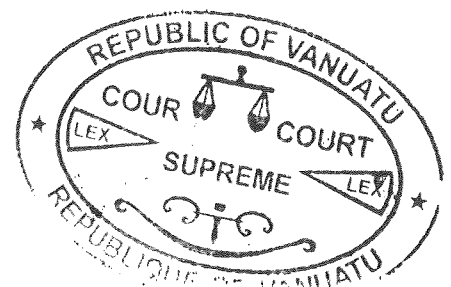
19. In summary, the prosecution submits that this is a very serious case resulting in the death of a 16 year old girl who was still in school. It was submitted that the defendant must be punished and be held accountable for his actions. It was also submitted that rehabilitation as a principle of sentencing should not be given any weight in this case.



20. Furthermore, it was submitted that the starting point of sentence must be 35 years as the defendant has previous convictions and was on parole when he offended. In relation to the guilty plea, it was submitted that the defendant should not be accorded the full one third discount on his sentence as the prosecution had a strong case against him before the plea was taken.
21. For the defendant, it was submitted by Mrs Malites that although the offending resulted in the death of the deceased, Mr Samuel had not planned to kill the deceased on the day she died. It was a spontaneous reaction when his request to have sex was refused and he was pushed away by the deceased saying she will report him.
22. Referring to similar cases of offending it was submitted that none of the cases previously dealt with by this Court had a starting point of 30 years. It was submitted that the starting point of the sentence must be 25 years. Referring to a statutory declaration filed by the defendant, it was submitted that he was assaulted and mistreated by the Police and Correctional officers whilst in their custody. Therefore appropriate deductions must be made for that.
23. It was finally submitted that the defendant is entitled to the full one third discount for his guilty plea as it was entered at the first reasonable opportunity. And that an end sentence of 16 years imprisonment would be justified.

Starting point

24. The principles of sentencing are well established. The sentence I impose must fit the crime as punishment for the senseless and selfish ending of a 16 year old girl's life for refusing to have sex. The sentence is also to denounce such conduct and to protect the community and deter the offender and the public at large from this type of behaviour.
25. I have heard Mrs Maccoe and Sergino Maccoe expressing their sorrow and loss. The death of the daughter and sister has greatly affected them both emotionally and psychologically.
26. In this Republic, the right to life is a fundamental right of each and every citizen to enjoy. No one can take another's life. The defendant's actions have been aggravated by the following factors namely:-
 - There was an age disparity. Mr Samuel was 38 years old and the deceased was 16 years of age;
 - There was a high level of violence. Rocks were used to hit the deceased on her head resulting in loss of life;
 - There was an element of planning involved. The deceased followed the defendant from Sorovanga all the way to a bushy area at Teuma Gardens area where the offending occurred;



- The defendant was motivated to end the victims life when she said she will report him to the police as he was still on parole for a previous offence of sexual intercourse without consent ; and
- Mr Samuel has a history of sexual offending.

27. Taking these factors into account I adopt a starting point of 27 years imprisonment.

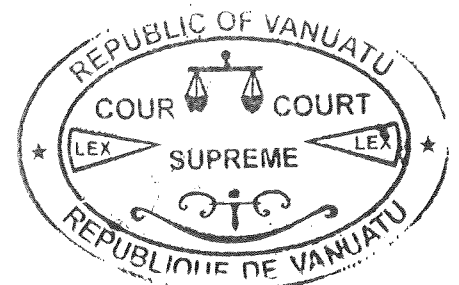
Mitigation

Extra Curia Punishment

28. It was submitted that I accept the extra curia punishment as mitigation and make an appropriate deduction in the end sentence. In the Statutory Declaration made on 4 March 2019 the defendant says that he was assaulted by the Police and Correctional Officers whilst in their custody. An officer punched him and another stood on his head whilst being handcuffed. Another officer hit him with a baton in his ribs before tying him up by his ankles. He was thrown into a truck lying face down and was driven away and transferred to a Police vehicle in the same manner.
29. After being transferred to the high risk centre in Vila, some of the Correctional officers swore and spat on him and hit him on the back of the head.
30. I do not accept that this is a mitigating factor in this case. The truth of the statement has not been tested .Secondly, the defendant was clearly trying to evade capture by the authorities. He says when the news of the death broke out he boarded a flight to Malekula. He was able to do so under a different name to avoid detection as he was still on parole. In the statutory declaration, the defendant says that when the police approached him in Malekula, he was in a nakamal drinking kava and tried to escape when he was captured. The police are entitled to use reasonable force to ensure he does not try again to escape.

Guilty plea

31. Defence Counsel submitted that the defendant cooperated with the Police and entered a guilty plea at the first reasonable opportunity. During his cautioned interview the defendant admitted hitting the deceased with rocks and stoning her on the head. At the end of the interview he said he was sorry for causing the death of the deceased.
32. When the matter was called for plea on 6 March 2019, the defendant admitted the offending and entered a guilty plea.

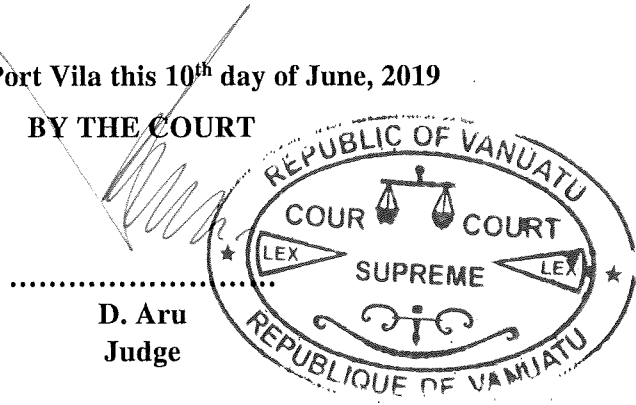


End sentence

33. Aside from the guilty plea there are no other mitigating factors. I am satisfied that the guilty plea was entered at the earliest reasonable opportunity therefore the defendant is entitled to the full one third discount.
34. Mr Samuel your end sentence is 18 years imprisonment. It is effective from 19 October 2018 when you were remanded into custody.
35. You have 14 days to appeal if you are not happy with the decision.

DATED at Port Vila this 10th day of June, 2019

BY THE COURT



**D. Aru
Judge**