

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

Criminal
Case No. 20/3311 SC/CRML

BETWEEN: Public Prosecutor

AND: ALFRED NARAU
Defendant

Date of Plea: 25th February 2021
Date of Sentence: 29th April 2021
By: Justice Oliver A Saksak
Counsel: Mr Philip Toaliu for Public Prosecutor
Mr Brian Livo for Defendant

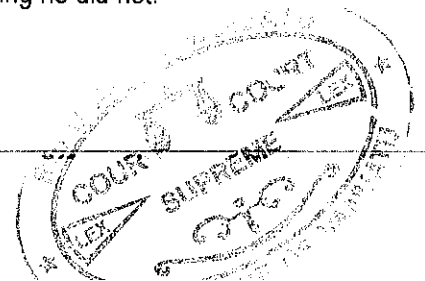
SENTENCE

Introduction

1. The defendant Alfred Narau is for sentence today. He pleaded guilty to one charge of attempted intentional homicide contrary to sections 6 (2) and (3), 28 and 106 (1) (a) of the Penal Code Act [CAP.135] on 25th February 2021.

Facts

2. The defendant committed the offence on the night of 30th September 2020 at Port Resolution, Tanna. The victim was returning to his village after drinking kava with his relatives.
3. The defendant met the victim on the way. He had a machete (knife) in his hand at the time. He approached the victim and asked the victim if he had any tobacco. The victim responded saying he did not.



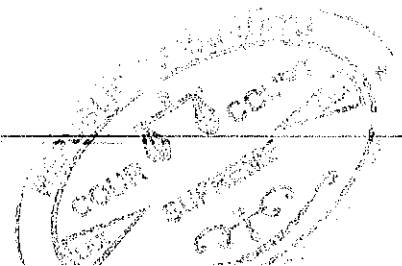
4. At his response the defendant became angry. He tackled the victim to the ground and cut his throat with the knife that he had.
5. The victim was shocked but luckily he shouted for help. At this the defendant ran away to hide at his uncle's house at Enka Village.
6. The victim was taken to Lenakel Hospital and examined by Dr Ala. A medical report dated 2nd October 2020 noted a laceration of 7 centimetres long on the victim's neck. The wound was stitched and the victim eventually recovered.
7. The Police apprehended the defendant and cautioned him on 2nd October 2020. He freely admitted the allegations made against him.

Maximum Penalty

8. The offence of intentional homicide under section 106 (1) carries the maximum penalty of 20 years imprisonment where the homicide is not premeditated.
9. Where an attempt is committed and a charge is laid under sections 28 and 106 of the Act, the commission of the attempted act constitutes the offence of intentional homicide and is punishable in the same way as the offence of intentional homicide.

Aggravating Features

10. The attack on the victim as unprovoked. Although it was not planned, on the night on which the attack occurred, it was intentional and deliberate. A bush knife, as a lethal weapon was used and on the neck of a 51 year old victim. The neck is a vulnerable part of the human body and with 7 centimetres long wound or laceration, it clear indicates the defendant intended to end the victim's life. Only when he heard the victim shouting, he ran away to hide, knowing he had not completed what he intended to do. The victim did not deserve to be attacked in this way. The defendant had taken the law into his own hands. There were no mitigating circumstances warranting such a violent attack on an innocent victim.
11. By comparison, PP v Namri [2018] VUCA 52 in my view was less serious in that there were mitigating circumstances leading to the assault.
12. In PP v Pakoa [2002] VUSC 1 there were 2 counts of intentional homicide and one count of attempted homicide. While the case was more serious than the defendant's case, his end sentence was very much on the lower side to mark the seriousness of the offences committed, to serve as a deterrence and protection to the public and the vulnerable members of the society.
13. Taking the seriousness of the offence committed, together with the aggravating features and that there were no mitigating circumstances, I set the start sentence at 7 years imprisonment for the defendant.



Mitigation

14. In mitigation I consider first his guilty plea. I accept Prosecution's submission that the defendant is not entitled to the full 1/3 reduction on the basis of the Court of Appeal ruling in PP v Samuel [2019] VUCA 76. I accept he is entitled only to a 25% reduction. That brings his start sentence down to 5 years and 3 months.
15. The defendant is a young and single man of 20 years old. He has a clean past record. He performed custom reconciliation to the victim and his family consisting of a pig, a cow, 7 mats, 4 kava stems and some root crops. I allow a reduction of 12 months for all these factors.

End Sentence

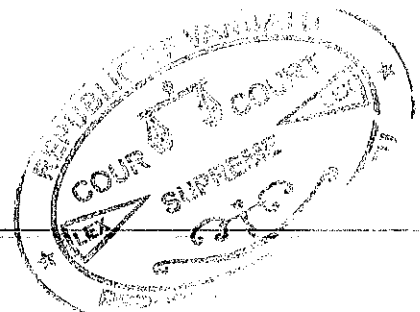
16. The defendant's end sentence is therefore 4 years and 3 months imprisonment. He is not entitled to any further reductions.
17. The end sentence submitted by defence counsel of 1 year 8 months is way far too low for such a serious offending.

Suspension

18. Finally defence submitted the end sentence should be suspended. This submission is rejected.
19. I accept Prosecution's submission based on the case of R v Serutawake [2014] NSWSC 1762. In Vanuatu the trend is becoming obvious that there are too many killings occurring in the community. It is therefore incumbent upon the Court to impose higher sentences for this type of offendings to deter others from behaving in like or similar manner in the future.
20. I do not see any circumstances that warrant a suspension of sentence.

Pre-Custodial Period

21. But I take the defendant's pre-custodial period since 6th October 2020 into account.
22. I order that the defendant's end sentence of 4 years and 3 months be backdated to 6th October 2020.



Right of Appeal

23. The defendant has a right of appeal against the sentence within 14 days if he does not agree with it.

DATED at Port Vila this 29th day of April 2021

BY THE COURT

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Oliver.A.Saksak

Judge

