

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU

(Criminal Jurisdiction)

Criminal Case No.27 of 2001

PUBLIC PROSECUTOR

-V-

KATHLEEN MATHIAS

Prosecution: Ms. Forsyth

Defence: Mr. Morrison ✓

JUDGMENT ON NEWTON HEARING

On 18th December 2001 Kathleen Mathias was sentenced to eight years imprisonment for the intentional homicide of her four year old, disabled son Jimako. On 26th August 2002 the Court of Appeal quashed the sentence and the case was returned to the Supreme Court for resentence.

The Court of Appeal found the sentencing judge did not have sufficient material before him to assess properly the correct sentence. On the one hand the defendant's action might have been "*a heartless and wicked decision to kill her defenceless child*". On the other hand her action might have been that of a woman "*who was heavy with child, who was emotionally stressed, who was unable to get the support she needed ... who in desperation while acting irrationally*" did this act.

There will necessarily be a large gap in sentence between these two sets of circumstance.

This is a Newton Hearing. The burden of proof is on the prosecution to satisfy me beyond reasonable doubt that their



version of events is correct. If they do not do that, I must sentence on the defence version of events.

I have heard the evidence of Dorah Johns for the prosecution and Dr. Grace, Dr. Everard, the defendant and her mother Elizabeth John.

Dorah Johns of the Vanuatu Society for Disabled People saw the defendant and Jimako twice before his death. Jimako was born on 28th May 1996. The first occasion was on 19th February 1998 "on referral" as having "*Physical - Cerebral Palsy*". An assessment of physical and mental development was made (Ex. 1 and 2).

Jimako was seen again on 22nd April 1999 for a follow up and the establishing of goals and objectives.

Dorah Johns made her notes contemporaneously. There was nothing to foreshadow the events of a year later.

Whilst Dorah Johns is not highly trained she clearly is intelligent and conscientious and knows her job. I accept her evidence is truthful and reliable and her notes accurate. Everything she related and recorded is within her levels of knowledge and capabilities.

The evidence and conclusions of Doctors Grace and Everard are set out in their reports. Together they saw the defendant on 26th and 28th June 2002. They talked to the defendant. Apart from the medical notes of the defendant herself there was no other source for the pertinent information in their reports. Jimako's medical notes have not been found, they would usually be in the custody of the mother. They did not see Dorah Johns notes until after writing their reports. Dr. Grace made the psychiatric assessment of the defendant, Dr. Everard the assessment of Jimako's disabilities. Both acknowledge the various difficulties stemming from the circumstances in which they made their reports, and set out the ambit of their expertise.



There were a few important differences between the evidence of Dorah Johns and Doctor Everard. I need not resolve these differences. The plain fact is that Jimako had severe disabilities. He was totally dependent, required 24 hour care, had severe spastic quadriparesis and was subject to seizures. He provided small or no response of pleasure to anyone looking after him.

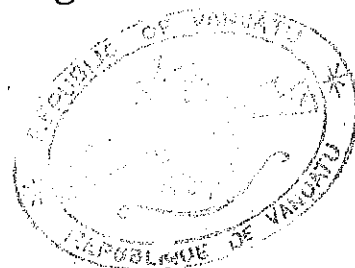
Dr. Grace came to the opinion that the defendant "*experienced an acute loss of reality and acted irrationally under extreme emotional and physical distress. It is possible this may have been a psychosis associated with acute depression*".

The evidence of Elizabeth John, the defendant's mother, was generally supportive of the defendant. It must be said there were a few significant differences such as the defendant saying Jimako had gone off to an island, when the defendant's evidence was she had not given any explanation as to where Jimako was. Also Elizabeth John asserted there was more ready help available than the defendant had suggested. I accept the evidence of Elizabeth John.

The defendant gave evidence. I must approach her evidence with the greatest of care, especially bearing in mind the events she was describing. It is difficult if not impossible to say how anyone would act in these circumstances, and what would be behaviour inconsistent with the position put forward by the defendant.

She explained her circumstances, her feelings and how she came, when eight months pregnant to wrap Jimako in a red blanket, take a spade, carry Jimako for a 30 - 45 minute walk and then bury him alive. She said at the time "*I was crazy*". She described her remorse and feelings immediately after and for the year following until her confession to Pastor Moses.

There were some disturbing inconsistencies in her evidence. At first she had told the police she had strangled Jimako. A short



time later she said she'd buried him alive. She had shown the place, but no body had been found. In cross-examination when asked about this, she said she had an eye problem. It was in Court before me that an eye problem was first mentioned. She did not give the reason of being "crazy" for the killing when interviewed by the police.

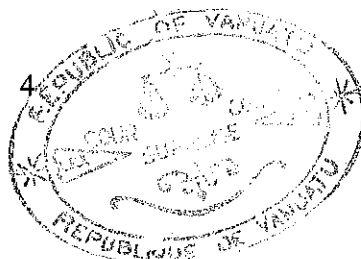
Jimako was quite a weight and difficult to carry. While eight months pregnant she walked with him and carrying a spade for 30 - 45 minutes and then dug a hole. Is that believable?

There was the suspicion that someone else had killed Jimako and buried him, or she had killed him and someone else buried him. She denied these possibilities in answers to the Court.

There is no doubt that looking after Jimako was a tiring and demanding task, with little reward by way of smiles or affection from him. There were the immense pressures, emotional and physical upon the defendant. However, there was a lurking impression throughout her evidence that all she said might not be true. Her answers in some respects seemed to be rehearsed or mechanical. There was at times a feeling of calculation. This particularly concerned me when assessing the reliability of the factual basis upon which the doctors founded their opinions. This is supported by the differences in observations of Dorah Johns when placed alongside the conclusions of Dr. Everard. The latter stated she was careful to use open questions.

I cannot say the prosecution has shown beyond reasonable doubt that this killing was a "*heartless and wicked decision*". I therefore must sentence on the basis put forward by the defendant, particularly with the benefit of the opinions of the doctors.

I am considering mitigation. The mental state of the defendant at the time of these acts has not been advanced as a defence.

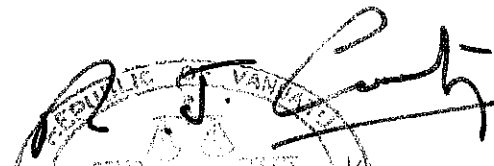


There are concerns about the truth of the circumstances of Jimako's death. That is not a factor in sentencing.

I have considered whether a suspended sentence should now be imposed or one that meant Kathleen Mathias' immediate release. I accept she is not a danger to the community. However, even given the pressures upon the defendant and her emotional state I consider a significant, if much shorter, prison sentence is correct. That is not only in the context of this case but also as a clear message to anyone in these circumstances, trying and desperate as they are, that the killing of a child, however disabled, is not acceptable.

In my judgment, the correct sentence is one of two years to run from the date of the original sentencing, 18th December 2001.

Dated at Port Vila, this 5th day of August, 2002.



R. J. COVENTRY
Judge.

The image shows a circular official seal of the Republic of Vanuatu. The seal features a central emblem with a palm tree and a star, surrounded by the text 'REPUBLIC OF VANUATU' at the top and 'REPUBLIQUE DE VANUATU' at the bottom. Overlaid on the seal is a handwritten signature in black ink, which appears to be 'R. J. Coventry'. Below the signature, the name 'R. J. COVENTRY' and the title 'Judge.' are printed in a bold, sans-serif font.