

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**

(Criminal Jurisdiction)

Criminal Case No. 08 of 2007

PUBLIC PROSECUTOR

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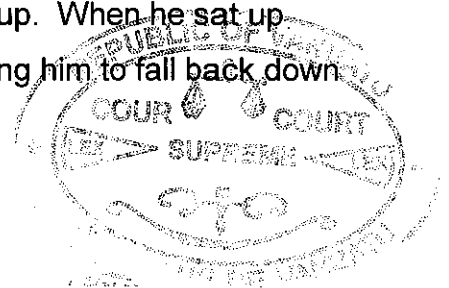
**SPOONER KALSES
CHRISTIAN KALSES
ERIBERT KALSES**

Coram: Justice N. R. DAWSON
Date of Hearing: 12th December 2008
Date of Decision: 12th December 2008
Counsel: Mr. Standish for Public Prosecutor
Mr. Kilu for Accuseds

SENTENCE

Mr. Spooner Kalses, Mr. Christian Kalses & Mr. Eribert Kalses you all appear in Court today for sentencing on the charge of Intentional Assault Causing Permanent Damage. I note that it is a charge that carries a maximum sentence of 5 years imprisonment. You were each found guilty of this offence after a trial.

The facts of the matter are that on 1st January 2007 at Eton Village at about 6:00 pm in the evening, a woman went to meet her husband at a nakamal. She spoke to her husband who had been drinking there. He got angry with her and started to assault her. He kicked and punched her. She retreated into a yard at the home of Timothy Kalses. Her husband followed her and continued to assault her. Timothy Kalses came outside to try and calm the situation down. The husband of the woman punched Timothy Kalses, hitting him on his right hand. Timothy Kalses retaliated by punching the victim causing him to fall down onto the ground. At that point the victim did not assault anyone else nor did he threatened to do so. After he fell to the ground the three of you approached him and began to kick him. You were not wearing shoes on your feet when you kicked him but you just kicked him with force. After a period of time Timothy Kalses went to assist the victim to help him sit up. When he sat up Eribert Kalses once again kicked the victim in the back forcing him to fall back down



onto the grass. Timothy Kalses and another person saw the victim was in distress and tried to help him. He was not breathing and they tried to help him to breath. He was taken to the Vila Central Hospital where he was pronounced dead.

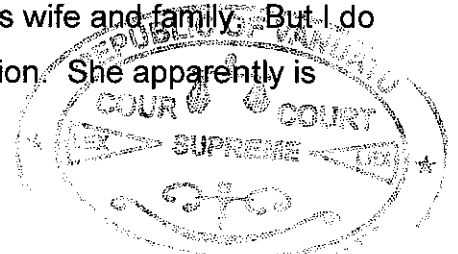
I note that none of you have any previous convictions on your record whatsoever. I have read the probation reports that had been supplied to the Court and I have also read the compensation reports that have been prepared. I have also read and heard submissions from the Public Prosecutor and Mr. Kilu on your behalf.

In sentencing each of you it is necessary for me to take a number of sentencing factors into account. The first factor is that you need to be held accountable for the extreme harm that you caused to the victim. He had been a healthy man and died due to the attack of all three of you upon him. I also need to consider compensation to assist the widow of the victim. The two main sentencing factors in this case that I need to take into account are those of denunciation and deterrence. It is necessary for you and everyone else to understand that you cannot take the law into your own hands. Violence inflicted by one person upon another does not justify violence by others when that violence has not continued. I need to take into account the gravity of your offending which is very high indeed as it resulted in the victim's death.

There are aggravating factors to your offending. The first is that there were three of you who acted together in a joint assault on the victim who was defenceless, and on the ground. The harm you caused him was extreme and he died within minutes as a result of your attack upon him. The victim was very vulnerable, he was outnumbered, he was on the ground and he was defenceless.

There are mitigating factors I need to take into account also. The first is the conduct of the victim who had been behaving in a particularly poor manner prior to your assault. But his bad behaviour was over by the time your assault upon him began. Your assault on the victim was gratuitous and was not done to protect anybody else.

You have all expressed your remorse and I accept that remorse is genuine. You have also all been persons of good character until this offending. I also take into account that a custom ceremony has been performed to the victim's wife and family. But I do note that it is not accepted by her as adequate compensation. She apparently is



having a hard time trying to pay her children's school fees and she wants compensation for the death of her husband. It has been submitted from the bar on your behalf that you could each pay 5,000VT per month to the widow of the deceased victim. No evidence had been produced to show how you could pay these amounts. None of you have any source of income for yourselves and you are all subsistence farmers. It is unrealistic to make any such compensation order in all of the circumstances.

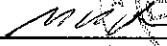
Whilst the custom ceremony has been conducted and must be taken into account when I sentence you, it does not detract from the need to impose a custodial sentence. You beat a man which caused his death and therefore imprisonment must be part of your sentence.

In my view the appropriate starting point for this offence for each of you after taking into account the aggravating features I already mentioned, must be the high end. In my view the appropriate starting point is sentence of imprisonment for each of you of four years imprisonment. I take into account the mitigating factors I have mentioned, and you are each sentenced to a term of imprisonment of three years each. You have each served one month of imprisonment already and therefore you are sentenced today to two years and 11 months as from today.

There are insufficient grounds to suspend your sentence of imprisonment and to do so would seriously undermine the sentencing factor of deterrence. You each have the right to appeal this sentence. For any appeal you must lodge a notice of appeal within 14 days of today's date.

Dated at Port Vila, this 12th day of December, 2008

BY THE COURT


N. R. DAWSON
Judge

