

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

REGINA MALVARU

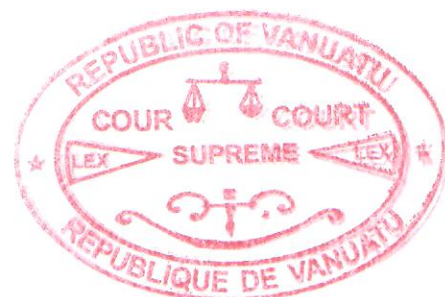
Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

Mr P. Wirrick for the Public Prosecutor
Miss Jane Tari for the Defendant

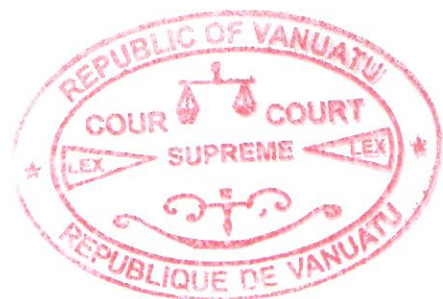
Date of Hearing: 11th April 2011
Date of Sentence: 15th April 2011

SENTENCE

1. Regina Malvaru, you were charged with two counts of Intentional Homicide contrary to Section 106 (1) (b) of the Penal Code Act Cap 135 (the Act). These are serious offences because they carry a maximum sentence of life imprisonment.
2. From the facts to which you have agreed, you first gave birth to your first child on 13th July 2006, a son now 5 years old and is adopted by your step-father. In 2007, you were pregnant for the second time and in August 2008, you gave birth to your second child by going to a bush toilet and letting the baby drop into the toilet causing its death. This happened at Fanafo, Santo. Then again in 2009, you became pregnant for the third time and on the night of Sunday 26th September 2010, you felt the pain and again went into a bush toilet and delivered your baby and then dropping it into the toilet causing its death. This happened at Bushman's Bay on Malekula.



3. On 8th March 2011 when the two charges were put to you, you freely admitted to committing the offences. Accordingly, the Court convicts you on the two counts of Intentional Homicide.
4. In sentencing you today the Court takes into account the aggravating features of your offending which are that –
- (a) You deliberately concealed deliveries and births of your children. You could easily have talked to your church pastor, village chief or elder or your mother about your situations but you did not. And the only explanation you have provided to the police on interview is that your step-father threatened to “spearem mi wetem knife”. But that is not substantiated by any evidence.
- (b) You knew your actions were unlawful because you stated it all happened according to your step father’s plans and instructions. Again, that was not tested and there is no evidence to substantiate the assertions.
- (c) It was a repeat offending. The incident in August 2008 occurred when you were only 15 years old. The second birth in 2010 occurred when you were 17 years old.
- (d) The offending involved the lives of two innocent babies who did not deserve to be treated in such a manner. There was complete lack of any respect for human lives.
- (e) There was a breach of trust as a mother. You had a duty of care and you neglected that duty.
5. It is the view of the Court that in view of the serious offences you committed, the only appropriate punishment the Court can impose on you today will be a custodial sentence.



6. The Prosecutions have urged the Court to follow the sentencing guidelines laid down in the cases of Mathias v. PP [2002] VUCA 8 and PP v. Agnes Massing [2011] VUSC 1.

These cases are distinguished from your case. On their facts and circumstances. Indeed, no two cases can ever be the same. One thing however is clear. Your offendings are more serious than in those two cases.

7. Defence Counsel referred the Court to the cases of Mathias v. PP [2002] VUCA 8, PP v. Banga [2004] VUSC 21 and PP v. Napat [2003] VUSC 45 and urged the Court to show leniency by imposing suspended sentences. However, that submission must be rejected. This is not a case which warrants a suspended sentence if it is to act as a deterrence to others. These offendings must be frowned upon by the community and the only way to achieve that, it is hoped, is by imposing adequate custodial sentences.

8. Counsel did not make any references to other cases of PP v. Jenny Livo [2010] VUSC Criminal Case No. 13 of 2010 and PP v. Brim Moli [2010] VUSC Criminal Case No. 24 of 2010, where Mathias v. PP [2002] VUCA 8 was followed.

9. Having analyzed those cases, it is the view of the Court that Defendant Regina Malvaru be sentenced as follows:-

(a) For Count 2 – Intentional Homicide in August 2008 – No separate punishment is imposed as she was only a minor then (see Section 54 PCA).

(b) For Count 3 – Intentional Homicide in September 2010 – The starting point is 4 years imprisonment increasing it by 3 years for aggravating features making a total of 7 years imprisonment.

10. I bear in mind the mitigating factors submitted by defence counsel. Of the 7 factors submitted only the following are accepted –



- (a) Her young age of 18 years.
- (b) Good cooperation with Police on interview.
- (c) Early guilty plea at the first available opportunity.

She is entitled to a 1/3 reduction from her 7 years imprisonment. She has a balance of 4 years and 8 months to serve at the Correctional Centre.

11. This term of imprisonment began on 17th December 2010 when she was first taken into custody.

12. There is a right of appeal against sentence within 14 days from today's date.

13. That is the sentence of the Court.

DATED at Luganville this 15th day of April 2010.

BY THE COURT


OLIVER A. SAKSAK

Judge

