

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

JEROME WARAWARA

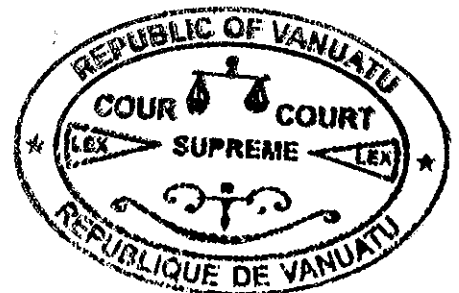
Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

Mr Simcha Blessing for the State
Mr Daniel Yawha for the Defendant

Date of Verdict: 16th December 2011
Date of Sentence: 17th February 2012

SENTENCE

1. Jerome Warawara, you were found guilty by this Court after a trial hearing on 16th December 2011 on a charge of Intentional Assault Causing Death contrary to Section 107(d) of the Penal Code Act Cap 135 (the Act).
The maximum penalty for this offence is 10 years imprisonment.
2. In sentencing you today I have had regard to your Pre-Sentence Report, the facts as proved by evidence from witnesses for the State, the written submissions by the Prosecutor, Mr Blessing and the oral submissions made on your behalf by Mr Yawha.
3. The clear facts as proved were that the deceased who was drunk approached Varea Jacob and yourself. He used abusive and vulgar language and made threatening or intimidating gestures. But he did not throw any punches at either Jacob or yourself. It was Jacob who asked him if there was a problem and was attempting to talk him out of any

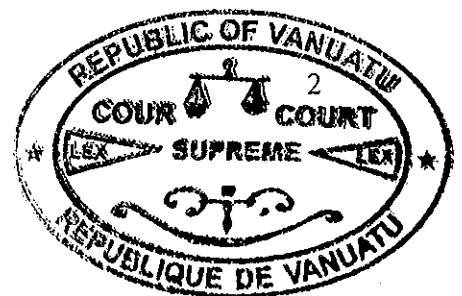


problem. In the course of that conversation and without saying a word, you threw a punch and hit him in the face. He fell backwards as a result and hit his head against the concrete slab. You knew he was under the influence of alcohol. You were in your right frame of mind at the time. You must have known you were standing on the concrete slab two steps up from the concrete slab or base on which the deceased fell and hit his head. You must have known the risk that would have resulted if you hit him under the influence of alcohol and he fell over backwards and hit his head. Yet you simply ignored or failed to foresee those risks as a reasonable man would under those circumstances. Having so failed, you were negligent and/or reckless. Pursuant to Section 6(2) of the Act recklessness is equivalent to intention.

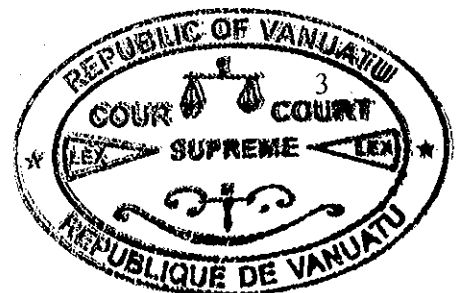
4. Defence Counsel and your Pre-Sentence Report raised the point of self-defence. Section 23(1) of the Act ends with a proviso as follows:
- “.....provided that the means of defence be not disproportionate to the seriousness of the unlawful action threatened.”*

The evidence is clear. Despite the deceased making a threatening approach with abusive language, he never threw any punches. Therefore, when you retaliated or responded with a punch, it was disproportionate to the unlawful action of the deceased. That being so the point of self-defence is rejected.

5. From the evidence, it is clear that after the deceased fell over backwards and hit his head on the concrete base, blood was seen coming from his mouth whilst in the car yet instead of taking the deceased directly to hospital, you instructed that he be taken to the scheduled area of the wharf for a wash. There was a delay of about 2-3 hours since 8.30 am to about 11.30 am when you called at Molisale's house to enquire about the deceased's home.



6. The foregoing facts represent some of the aggravating features that add to the seriousness of your offending.
7. Based on the sentencing principles in the case of Public Prosecutor v. Malesu [2001] VUSC 37 Criminal Case No. 9 of 2001 as endorsed by the Court of Appeal in the cases of Public Prosecutor v. Ierogen [2002] VUCA 34, I am of the view that your offending is serious enough to warrant a sentence of imprisonment.
8. The purpose of imposing a custodial sentence today is to (a) denounce your unwarranted action, (b) to deter you and others from acting in a similar way in future and (c) to punish you adequately for the offence.
9. You are therefore convicted and sentenced to a term of imprisonment for a term of 4 years.
10. I now consider your mitigating factors. You are a family man with four young children with ages ranging from 8 months, 1 year and 2 months, 3 years and 12 years. You are the only breadwinner with earnings from a taxi. You also care for your widow mother. You showed some "Good Samaritan" acts of kindness by lifting the deceased into a taxi and taking him for a wash and then giving him VT500 as an act of reconciliation. You made enquiries as to where his home was and eventually took him to his relatives at the family home at Chapuis I. You cooperated well with police during investigations. You have not had any formal reconciliation ceremony but have indicated you are willing to provide a piece of land to the widow and the children of the deceased. You are a first time offender with no previous criminal record.



11. For the foregoing mitigating factors, you deserve a discount of 2 years from your initial 4 years. You have a balance of 2 years to serve at the Correctional Centre in Luganville. Your Sentence of 2 years imprisonment is effective from the date of this Sentence.
12. You will be entitled to apply for parole after having served 12 months of your 24 months.
13. You have a right of appeal against conviction and/or sentence within 14 days from the date of this sentence, if you so wish.

DATED at Luganville this 17th day of February 2012.

BY THE COURT


OLIVER A. SAKSAK
Judge

