

PUBLIC PROSECUTOR

- v -

VANESSA ARINE

Coram: Vincent Lunabek, Chief Justice
Counsel: Mr Tristan Karae for Public Prosecutor
Mr Eric Molbaleh for the Defendant

Date: 7 October 2014

SENTENCE

Vanessa Arine, you are from Rori Village, Malekula. Your date of birth is 12 February 1999 and you are 15 years of age. You are residing at Fresh Water Four (4) Area, Vila.

You appear today to receive your sentence. You are initially charged with one count of intentional homicide, contrary to section 106 (1) of Penal Code. You pleaded not guilty and a 3 days trial was scheduled to begin on 6th August 2014.

On 6th August 2014, the Public Prosecutor abandoned the charge of Intentional Homicide laid against you. It is therefore dismissed. The Prosecution lays a new charge of Unintentional Harm Causing Death, contrary to section 108(c) of the Penal Code Act [Cap135].

On 6th August 2014, you entered a guilty plea on the charge of unintentional harm causing death.

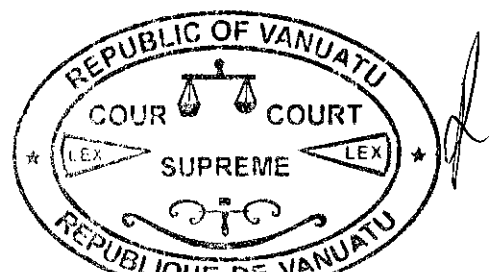
The facts of your offending are summarised in the Prosecution's brief of facts. The facts are as follow:

Brief Facts:

1. The complainant in this case is your uncle Mr Rueben Bong. On or about the 9th of March 2014 your uncle Mr. Rueben Bong lodged a complaint against you for giving birth to a baby born and throwing the baby into a rubbish dump site at his home at Kawenu field.

Background:

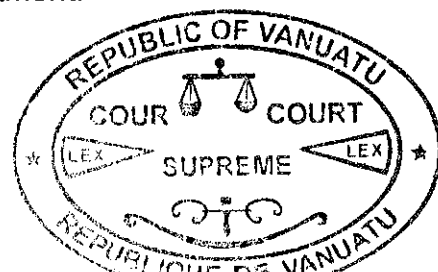
2. Your mother is the sister of your uncle Rueben Bong. You arrived in Port Vila on the 9th of October 2013, to help with the taking care of your uncle's children and also looking after his little shop at Kawenu area.



3. Upon your arrival in Port Vila your uncle's wife Selina Bong noticed that you looked as though you were pregnant. Mrs Selina questioned your uncle and your mother who was back in Malekula about this. But they both did not know whether you are pregnant or not.
4. Several other persons living around you also asked you whether you are pregnant but you always deny it.
5. During your stay at the home of your uncle, you would work very hard, cleaning the house, washing the clothes, carrying two full buckets of water, and in other words you were doing hard labour which would seem that you were not pregnant.
6. You also never went to the hospital for medical check up rather you stayed at home working and paying stay free to show others that you were not pregnant.

The night of the incident:

7. On or about the 8th of March 2014, Miss. Evelyne Bong came home from work she also resides with your uncle who is her father.
8. When she arrived home around 11.30pm she found you lying on the mat on the floor. You saw Miss. Evelyn and you stood up and climbed back into bed.
9. That night Miss. Evelyn saw that you were wearing a white pant, covered in a blue lava-lava / calico and a black tank top.
10. Miss. Evelyn asked how you were doing; you responded that you were feeling hot. After a while she asked you again if you were feeling okay or whether you needed a fan, you said you were hot and that you could use a fan.
11. Miss. Diana Bong also returned that same night around 11:30pm; she also saw you moving from your bed to the floor then from the floor to your bed. She noticed that you looked as though you were in pain.
12. On or about the 9th of March 2014, sometime around 5am in the morning, the son of Miss. Estella Nambong went to the bathroom. This bathroom is shared amongst the tenants including your uncle and his family. Miss. Estella's son returned from the bathroom and told her mother that he saw a lot of blood in the bathroom. Miss. Estella went into the bathroom and noticed that there was a lot of blood in the bathroom, so she took her son back into the house and waited for daylight to find out what had happened.
13. Also on the 9th of March 2014, your uncle went to the bathroom that morning and noticed that there was blood drops outside of the toilet, after leaving the bathroom he told Miss. Minnie what he had seen. Your uncle then made his way back to his apartment when he noticed that there was a trail of blood droplets all the way to his apartment.

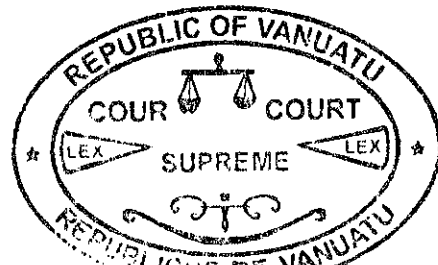


14. Your uncle then told his wife Mrs. Selina Bong of what he saw. Mrs Selina Bong then asked you whether you had given birth; you were in the room lying in bed covered you with a blanket. You denied giving birth and that it was not your blood.
15. Miss. Diana Bong and Mrs. Estella and some of the neighbors followed the trial of blood leaving the bathroom and they followed the trial of blood and saw blood on the septic tank and banana leaves and further they went they found more blood. Mrs. Estella then went over the fence and picked up a dry banana leaves and saw a baby lying dead on the ground covered in dirt and ants. They also found the clothes that you were wearing last night covered in blood inside a bucket near the washing area.
16. Your aunt Selina Bong continued to question you. You got out of bed and your aunt Selina Bong saw blood running down from your leg. You then admitted to her that you gave birth to the baby boy and the baby fell on the floor, you then broke the placenta and threw the baby to the rubbish dump site.
17. After finding the baby the Police were called to the scene including the Paramedics.
18. Police took photo of the crime scene including the body of the baby and the blood trails.
19. On the 13th of March 2014 Officer Ruth Christopher cautioned and conducted an interview with you. You made admission that the baby fell to the floor and you noticed that the baby was then dead, so you threw the baby.
20. According to your medical examination the following can be observed:
 - a) You have no antenatal visits to the hospital
 - b) You said you delivered around 10pm
 - c) You delivered the baby alone and the placenta
 - d) You were still dizzy and anxious
 - e) You had a 2nd degree tear from your vagina
21. On examination of the deceased, the following can be observed:
 - a) Large swelling on the side of the head;
 - b) Several bruising on the baby's body; and
 - c) According to the doctors assessment there was no explanation as to the death of the newborn at delivery.

Vanessa, the offence of unintentional harm causing death is prohibited by the law of Vanuatu. This is what the law says:

UNINTENTIONAL HARM

s. 108. No person shall unintentionally cause damage to the body of another person, through recklessness or negligence, or failure to observe any law.



[Handwritten signature]

Penalty:

(a)...

(b)...

(c) if the damage so caused results in death, imprisonment for 5 years.

Vanessa, you are a girl of 15 years of age. You may not understand the seriousness and gravity of the offence of unintentional harm causing damage to the body of another person resulting in the death of that person. It is a serious offence. The law says a person must not commit such an offence. The law also says that if a person commits this type of offence the maximum punishment for it is to go to prison for 5 years. I am sure you now realise that you have committed a serious offence. The court, the people and the society condemn this type of crime. They cannot accept and cannot tolerate this type of offending. You have broken the law. That is why you come to court.

It is the duty of the court to deal with people who break the law and pass sentence on them by punishing them. The punishment can take different forms – generally either imprisonment or non-imprisonment sentence such as payment of fines or community base sentence or sentence of compensation. In your case, the sentence or punishment that the court will pass on you will depend on the circumstance under which you have committed the offence, your age, your state of mind and other factors that the court must take into account.

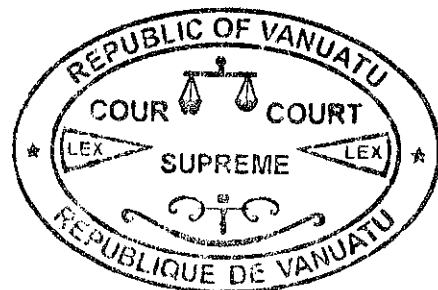
When I consider what sort of sentence I am going to impose upon you for your offending, I read and consider the following :

- (1) The facts and circumstance under which you committed this offence;
- (2) The submissions of the Public Prosecutor on the facts and law;
- (3) The submissions of your lawyer on the facts and law;
- (4) The report of the Probation officer after the officer interviewed you, your aunt Marry Kalman and others.

The Public Prosecutor submits and refers the court to many Supreme Court and Court of Appeal guideline judgments on the application of section 108(1) of Penal Code Act. I note specifically two(2) judgments of the Court of Appeal in *Mathias v. Public Prosecutor [2002] VUCA 8* and *Malvaru v. Public Prosecutor [2011] VUCA 34*.

In *Mathias v. PP [2002] VUCA 8* it was stated that:

“the problem which now confronts us is in knowing about the relevant and complete circumstances relating to this strategy. Without that material it is impossible to assess the appropriateness of the sentence or compare it with other cases.



On the one hand it is possible to view the case as one in which a woman having commenced a new relationship was caught in bind between her parental duty and a new man and her life with his extended family. It has been said that they were taking the view that they did not want to bring into this new relationship a child of another man and particularly one who was disabled. This was coupled with child care problems as her mother was unwilling or unable because of her unemployment to provide full time care. Ms. Mathias therefore decided to deal with her own selfish needs and requirements taking a heartless and wicked decisions to kill her defenceless child.

On the other hand the matter may be viewed as a hapless in a precarious and vulnerable positions shortly before the birth of another child, feeling fragile and unsupported from all sides, emotional stressed and unable to make a rational, sensible decision and the circumstances, acting in an inexcusable but understandable way because of the impossible pressures which she found around her."

Furthermore the Court of Appeal stated:

"In those circumstances although a term of imprisonment would still be imposed to reflect the needless loss of a life, the term would be much less and there could exist the possibility of the term being suspended in light of the needs of the youngest child."

This is reiterated again in the case of **Malvaru v. Public Prosecutor [2011] VUCA 34 and Public Prosecutor v. Jenny Livo [2010] VUSC 71**

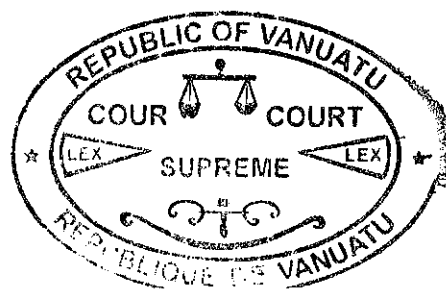
"The difficulty recognized by those cases is to identify whether the homicide has come about through a careless and selfish disregard from human life or at the time when the mother was acting irrationally for reasons that might be related to the pressures of the motherhood in those individual circumstances."

Furthermore in the case of **Malvaru**; the Court of Appeal stated that:

"Infanticide cases are, however, not the only cases where special consideration needs to be given to the state of mind of a mother who kills her child. Infanticide cases draw on established international jurisprudence that a mothers mind can become disturbed and that she act irrationally essentially as a result of not having fully recovered from the child birth"

The Public Prosecutor accepted your young age, your vulnerable position, the fact that you felt fragile and unsupported from all sides, you are unable to make a rational and sensible decision because of the pressure you found yourself in. Your lawyer also accepted that you faced with this environmental pressure and you are unable to make rational decision.

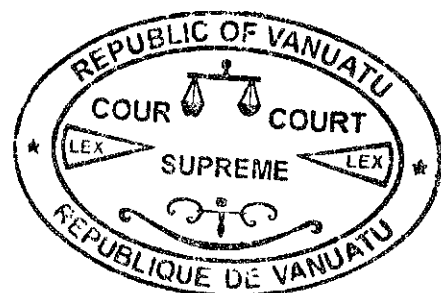
The Prosecution submits that I will pass upon you a sentence of imprisonment between 12-18 months suspended for 2 years and 12 months supervision.



In his submissions, your lawyer reminded me that you are 15 years old. The law is that: *"A person under 16 years of age is not to be sentenced to imprisonment unless no other method of punishment is appropriate. If a person under the age of 16 years of age is sentenced to imprisonment, the court must give its reasons for doing so."* (s. 54 (1) (2) of Penal Code Act".

Your lawyer asks me to take into consideration the following mitigating factors when I consider your sentencing:

- 1) You are a very young girl of 15 years of age and were born on the 12 February 1999;
- 2) You pleaded guilty at the first opportunity given to you by the court on 6 of August 2014;
- 3) You are a first time offender;
- 4) You have no paid job at present but lives only with the family members in Port Vila;
- 5) You are so ashamed of yourself for being pregnant and for committing that offence;
- 6) Your pregnancy was a result of an alleged sexual abuse by the husband of your real sister;
- 7) You have lodged an official complaint to the Police against the husband of your sister over this said alleged sexual abuse;
- 8) You are remorseful as appears in your pre-sentence report that you regret your offence;
- 9) You could not complete your year 6 studies as there was no financial support from your mother to pay for the school fees and so you left school as your father had deserted you, your sisters and brothers and your mother;
- 10) Your parents are separated since you were a little child;
- 11) You are fearful and shameful now that you have committed this offence, you do not like to be seen much in public.
- 12) From time to time you fall in tears when you think about the tragedy you went through;
- 13) You find very hard to forget the tragedy you went through and you were and still are very stressful;
- 14) You are a child yourself;



15) You really wanted to continue with your education but it was not possible as you were sorry for your mother working hard by herself and looking after you and others (children), a family of five children and you are the last born child in the family. You have two brothers and two sisters and a brother attended secondary school at that point you left school as it was too expensive for your mum so you wanted to help your mum.

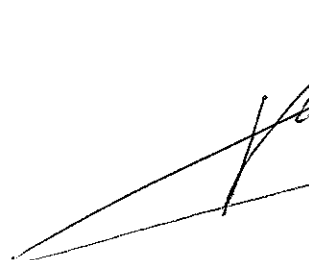
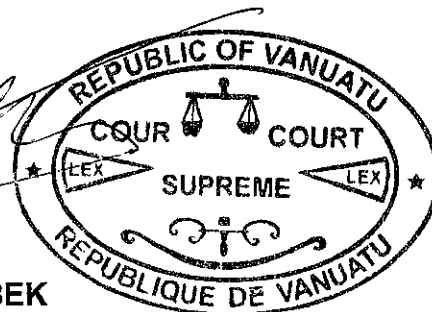
Your lawyer submits that the appropriate sentence that the court may pass upon you is a sentence other than imprisonment sentence either for community sentence or supervision sentence. I accept the submissions of your lawyer. I am not going to impose upon you an imprisonment sentence. I am going to pass a sentence that will help you to rehabilitate back into your family, community and the society in general.

On balance between the aggravating and mitigating factors, I sentence you to 24 months supervision on the following conditions:

1. You reside Six (6) months in Port Vila with your small mother to undertake Niufala Rod Program and rehabilitation Programs and education training with Vanuatu Family Health.
2. The remaining balance of the period of your supervision (ie 18 months) you shall go back to Malekula Island and you reside with your family at Rori village, North Malekula and undertake:
 - Any rehabilitation program organised by the Probation Officer
 - Not to re-offended
 - Spiritual counselling with a church Pastor or another that may help in the counselling where convenient as directed by a Probation Officer
3. You have 14 days to appeal this sentence if you are unsatisfied with it.

DATED at Port-Vila this 7th day of October 2014

BY THE COURT

**Vincent LUNABEK
Chief Justice**