

PUBLIC PROSECUTOR

- v -

FELICI LINGSON

Coram: Lunabek Vincent CJ

*Counsel: Mr Damien Boe for the Public Prosecutor
Mr Francis Tasso for the Defendant*

SENTENCE

1. Felici Lingson, you appear for sentence. On 12 May 2015 you entered a guilty plea on one count of premeditated killing of your new born baby boy.
2. The court requires the prosecution to provide further facts of the offending for sentencing purposes instead of the Prosecution relying on their plea brief facts. The reason being that this is an infanticide case and the culpability of a mother killing her own child is treated in a special way in order to recognise the unique features of motherhood as the prosecution brief facts are not incomplete in this sense.
3. Upon receiving further facts you challenge the prosecution that the killing of your baby was not premeditated. I consider and take it that you come back to your earlier guilty plea. I record this to mean a "not guilty plea".
4. I inform the prosecution of this and of its likely consequence. The prosecution then amended the charge of premeditated intentional homicide under s.106 (1) (b) into one of the intentional homicide, contrary to s.106 (1) (a).
5. On 10 June 2015, you are re-arraigned on the charge of intentional homicide under s.106 (1) (a) of Penal Code. You enter a guilty plea.



Section 106 of Penal Code provides :

"106. Intentional Homicide

(1) No person shall by any unlawful act or omission intentionally cause the death of another person.

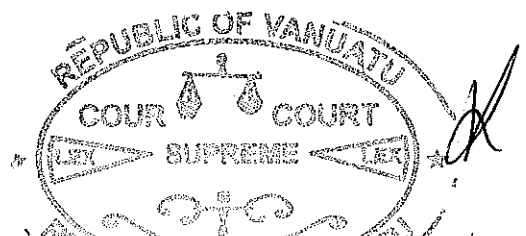
Penalty:

(a) If the homicide is not premeditated, imprisonment for 20 years;

(b) If the homicide is premeditated, imprisonment for life.

(2) For the purpose of subsection (1), premeditation consists of a decision made before the act to make a homicidal attack on a particular person or any person who may be found or encountered".

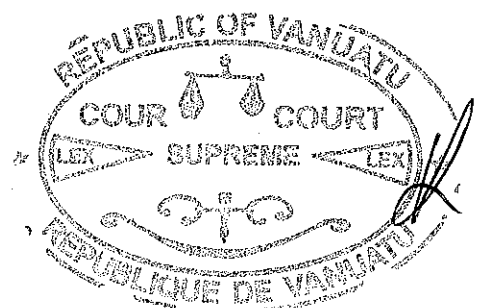
7. This is a very serious offence as reflected by the maximum penalty of 20 years imprisonment set by law.
8. The facts of this case are this. The complainant is one Jerauld Groundlin Lingson who lodged a complaint to the police on 29 December 2014. Mr. Jerauld Lingson reported that on 28 December 2014, the boys from his home residence discovered the body of a newly born baby boy buried under the bananas at his back yard.
9. You are 24 years old mother when you were 6 months pregnant in 2014. During your 6 months pregnancy, you did not let anyone or members of your family know about your pregnancy. You were asked by the members of your families several times but you deny of being pregnant.
10. During your 6 months pregnancy, you did not attend the prenatal clinic or hospital for examination on your status of pregnancy. At one time you had attended the clinic accompanied with Piera, a relative of yours, but there was no medical facilities and you went back home and you have never returned back for medical test.
11. During your pregnancy, you worked and moved around as if you were not pregnant. You did not want your family to know of your pregnancy. You explained that your brothers put pressure on you as you have already two children and you are a single mother. You also say that you conceal your pregnancy because if your employer knows



that you were pregnant, you will lose your job of massaging and working in the Bar and Restaurant at Le Melanesian Hotel.

12. You started to feel pain on 16 December 2014. On 17 December 2014 at night, you started experiencing mild labour pains which resulted of blood coming out from your body. The mild labour pains continued to 18 December 2014 but you did not go to a clinic or hospital.
13. On 19 December 2014, at the early hours of the morning (2.00am o'clock), because of the painful situation you were experiencing, you decided to go to the clinic. You told your mother to go to the clinic and you told her to look after your son. While you were walking for NTM clinic you suffered too much pain which stopped you from walking. There were no person on the road nor trucks (taxis). You felt you will give birth because of the strong contractions on your body.
14. You went back inside the yard and went direct inside the bathroom used or belonging to Pentecost people. You give birth to a baby boy. You say you are unable to call someone for help because you were afraid people would found you and say you had designed to kill your baby.
15. You were in a standing position when you delivered your baby on 19 December 2014. It was not a complicated delivery. The baby came out from your body and banged his head on the stones which were located in the bathroom.
16. The baby cried twice as it banged its head on the stone. You looked at the baby. The umbilical cord was still around its neck. You felt sorry for the baby as you realise that the baby is not going to survive. You covered the whole body of the baby with a towel. You felt unconscious for a short period of time.
17. When you recovered from your consciousness, you realise that your baby was already died. You put it into a plastic bag wrapped with a towel and you took it to your home and placed it on top of the roof of an adjacent building.
18. On the morning of 19 December, 2014 ladies from Pentecost island went to swim inside the bathroom, they discovered strong blood stains in the bathroom. They approached you and asked if the blood is yours. You told them the blood is yours but you were only pregnant

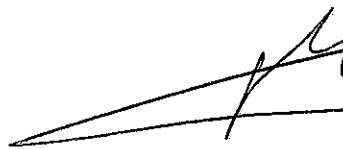
- for four (4) months and the blood dropped from your body on its own (as if you miscarried).
19. At around 4-5pm o'clock on 19 December 2014, you started digging the grave of the baby. You used a spade to dig the grave. You buried your baby at the back yard under the bananas.
 20. On the 27th December 2014, Peter Lakau and Leny Seroa smelt the body so they searched the back yard and spotted the place to which concrete and two stones covered the ground recently removed. When they removed the concrete and stones they could smell the smelling coming out from the ground.
 21. On 28th December 2014 at around 9.00am in the morning, they dug the grave and to their surprise, they discovered the body of the baby covered with a towel. The body was taken to the hospital for examination. There were macerated new born baby remains.
 22. On 8 January 2015, you were cautioned and interviewed by the police authorities. You admitted to the police you had killed your baby and buried the body at the back yard.
 23. When I consider the appropriate sentence I am going to pass on you, I bear in mind that your case is a case of infanticide, that is the killing of a new born baby by its mother. You are liable for the 20 years imprisonment. However, I will proceed with your sentencing on a special basis taking the special circumstance of the motherhood, your mental status after delivery, the environment and family pressures you have experienced leading to your offending as reflected in the circumstances of your offending in this case.
 24. In considering your sentencing, I apply the court of Appeal Guideline judgments in *Mathias –v- Public Prosecutor* [2002] VUCA 8 and *Malarus –v- Public Prosecutor* [2011] VUCA 34 and I also bear in mind of other relevant Supreme Court judgments.
 25. When I sentence you, I take into account of the following as aggravating factors:
 - (i) you conceal your pregnancy;
 - (ii) you did not go to hospital for pre-natal examination;
 - (iii) you delivered the baby yourself; and
 - (iv) you dug the grave and buried the baby.



26. You are sentenced to 18 months imprisonment as a starting point.
27. In mitigation, I consider the following factors:
- (i) you early guilty plea;
 - (ii) you are a first time offender;
 - (iii) the pressure by your family (elder brothers);
 - (iv) the anxiety of losing your job;
 - (v) you had no one to look to for support when you gave birth to the baby;
 - (vi) the man who fathered the child had deserted you and you were alone or single mother;
 - (vii) this man had used strong words against you because you had another child with another man and his family would not accept you; and
 - (viii) you are remorseful and you regret your offending.
28. On balance, I allow one third reduction for your early guilty plea on your total sentence of 18 months imprisonment. Your sentence is now reduced to 12 months imprisonment. I give you another allowance of 6 months to reflect your other mitigating factors. Your sentence is further reduced to 6 months.
29. Your end sentence is 6 months imprisonment. I consider whether your sentence of 6 months imprisonment could be suspended. I consider your situation with two young children and an old mother to look after and the fact you lose your job, I decide to suspend your imprisonment term of 6 months for a period of 1 year as you do not represent any risk for the society if your sentence is not suspended.
30. In addition, I order you to undertake 12 months supervision under the general conditions to be provided by the Probation Office.
31. You have 14 days to appeal this sentence if you are not happy with it.

DATED at Port-Vila this 11th day of June 2015

BY THE COURT



**Vincent LUNABEK
Chief Justice**

