

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Criminal Jurisdiction)

Criminal Case No. 97 of 2015

PUBLIC PROSECUTOR
v.
HARRY SAM

Coram: Justice D. V. Fatiaki
Counsel: Mr. D. Boe for the State
Mr. F. Tasso for the Defendant
Date of Sentence: 11 March 2016.

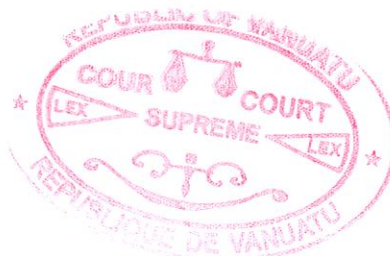
SENTENCE

1. Harry Sam was originally charged with a single count of Arson committed on 18 December 2012 which alleged that he burnt down the house of Jimmy Keke at Bukovio village. On being arraigned the defendant pleaded not guilty.
2. The prosecution's evidence in support of the charge comprised a caution statement signed by the defendant admitting the allegation and a statement of the complainant to the effect that the defendant had performed a reconciliation ceremony to him and confessed to having burnt the complainant's house.
3. Despite those admissions the defendant maintained his not guilty plea and defence counsel volunteered that the defendant's defence was an alibi. It later transpired that the defendant was protecting the identity of the real arsonist.
4. Prosecuting counsel was then granted leave to amend the Information by adding an alternate count of Accessory After the Fact contrary to Section 34 of the Penal Code. Sub-section (1) relevantly provides:

"An accessory after the fact shall mean a person who, knowing or having reasonable cause to suspect that another person has committed a criminal offence, shelters such person ... from arrest or investigation ..."

And sub-section (3) states:

"An accessory after the fact shall be punished as a principal offender".



5. This category of offender is intended to cover persons who knowing that an offence has been committed shields and protects the identity of the offender with a view to enabling the offender to evade the course of justice and the consequences of his criminal action. The offence is intended to assist in the detection of criminal activity and in the apprehension of offenders by imposing a positive duty on members of the public who are aware of the perpetrators of crimes, to provide information to the police and authorities.
6. On being arraigned on the amended Information the defendant pleaded guilty to the offence of being an Accessory After the Fact. He also admitted the fact that he knew who had burnt down the complainant's house and had decided to shield the offender's identity by taking the blame himself.
7. If I may say so the defendant was seriously misguided in taking the blame for the burning of the complainant's house however much he might have agreed with it. The burning of any house is a serious matter especially where houses are constructed of highly flammable materials such as is used in the construction of traditional houses.
8. Having said that the defendant is not charged with Arson rather he is charged with a lesser serious offence of being an Accessory after the Fact which is akin to obstructing or hindering the course of justice contrary to Section 79 or aiding a prisoner to escape contrary to Section 85. Both of these latter offences carry a maximum penalty of 7 years imprisonment.
9. I have considered the defendant's pre-sentence report which confirms the following mitigating factors:
 - The defendant is 46 years of age from Bogovio village and attended primary school to grade 6;
 - He is married with 3 children and has travelled and worked in New Zealand under the RSE scheme;
 - The defendant is well regarded in the community and is considered especially helpful in assisting his chief in village activities;
 - He is a first offender and although misguided in taking the blame for his brother-in-law, he clearly condoned and benefited personally from the burning of the complainant's house;
 - The defendant performed a substantial kastom reconciliation ceremony to the complainant where he presented 6 mats, a kava root worth VT3,000, a pig worth VT30,000 and VT50,000 cash;



10. The house that was burnt down was not a permanent structure but a traditional thatched rest house used to rest in when attending to the complainant's gardens. At the time that it was burnt down it was empty and there is no suggestion that any person was put at risk. The arson was also the culmination of a brewing land dispute between the complainant and the defendant where the defendant had given the complainant verbal warnings that he was trespassing into the defendant's family land.
11. Having said that, I remind you Harry Sam that a house however temporary or makeshift and whatever its use, represents time, effort, and resources invested by its owner and is a means for comfort and shelter.
12. I also need to remind you that the law exists to protect all people and no-one should take the law into his own hands or obstruct the law from taking its course. This case was delayed for 3 years because of your actions and even today the real culprit has not been brought to justice. You could have assisted the police with valuable information but instead you withheld that information and for that you have been convicted thereby undermining your chances of further participating in the RSE scheme.
13. Both counsels agree that you should receive a non-custodial sentence of community work and with that suggestion the court agrees.
14. Harry Sam the sentence of this Court is that you shall perform 150 hours of community work under the supervision of Chief Saksak and as directed by the probation officer.
15. You have 14 days to appeal against this sentence if you do not agree with it.

DATED at Rovo Bay, Epi, this 11th day of March, 2016.

BY THE COURT



D. V. FATIAKI
JUDGE.

