

PUBLIC PROSECUTOR

-v-

POIDA NASE

Coram: Judge Aru

Counsels: Mrs. L. Matariki for Public Prosecutor
Mr. S. Kalo for the Defendant

Date of Sentence: 29 June 2016

SENTENCE

1. **POIDA NASE** you appear today for sentencing in this matter. You stand convicted on your guilty plea to one count of intentional homicide contrary to section 106 1) (a) of the Penal Code [CAP 135].
2. The brief facts of your offending are not disputed. You live in a different yard to the complainant. On 12 March 2015, you walked into Ricky Shem's yard, pulled out nine (9) month old Alia Shem from her mother's arms, held onto the baby's legs and swung her upper body smashing it against a wooden stool. Before the incident the victim's mother, Agnes Shem while carrying the victim went to cut sugarcane for her older daughter with a knife. She was surprised to see you in front of her demanding that she hand you the knife. She did not want to give you the knife and fearing what you would do with the knife threw it away.
3. Agnes got a shock when you pulled out the baby from her arms and holding the baby by her legs you smashed her body against a wooden stool. Kalter Sope who was also in the yard, saw what you did. The victim's father Ricky Shem who was squeezing kava at that time saw you pulling the baby from her mother



and ran towards you but he was late in stopping you. The baby's mother then took the baby from you and ran towards a bus to rush the baby to the hospital but was pronounced dead on arrival.

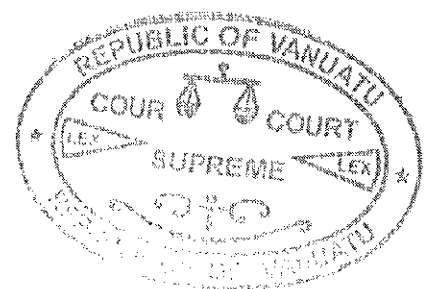
4. You admitted the allegations against you in your statement to the Police. In sentencing you today I have taken into account the submissions of the Public Prosecutor and Counsel on your behalf and the Pre-sentence Report.
5. Your personal circumstances as stated in your Pre-sentence report are that:-
 - You are 20 years old;
 - You left school at year 3;
 - You enrolled at the NTM Bible College at Pango but could not complete your training;
 - You assisted your father for a while working on a plantation here in Vila.
6. You told your probation officer that during your childhood you had no health issues until you started taking cannabis. This led to Counsels consenting at the beginning of this case that you undergo psychiatric evaluation by Dr Jimmy Obed at the Vila Central Hospital. His report which is dated 30 March 2016 and is attached to your Pre-sentence report concludes:-

"Mr Poida acted out of impulsion (anger) and bashed the baby against the tree trunk after refusing to be given a knife. He says he knows what he did and later that what he did was wrong.

He does not have any mental retardation."

7. The Doctor's conclusion is that you did what you did out of anger rather than as a result of any mental impairment. The offence of intentional homicide as provided under section 106 1) a) of the Penal Code states:-

"106. Intentional homicide



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

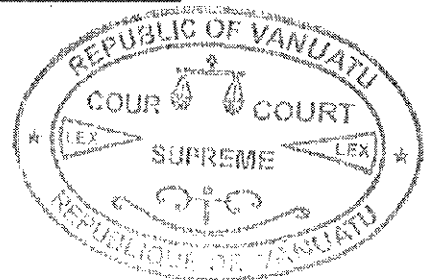
Penalty: (a) if the homicide is not premeditated, imprisonment for 20 years;

....."

8. Your offending is aggravated by the fact this is a very serious offence as it carries a maximum penalty of 20 years imprisonment. Secondly, you took away the life of a very young nine (9) month old baby girl who is vulnerable and unable to defend herself by holding both legs and smashing her body against a stool which led to her instant death. Taking these factors into account I adopt a starting point of 8 years imprisonment. This is to mark the gravity of the offending and as punishment for your crime it should deter you from reoffending in future. It should also be a deterrence to likeminded individuals from offending in a similar manner.
9. Counsel on your behalf submits that you are a first time offender and you cooperated with the Police and entered a guilty plea at the earliest opportunity. Your Pre-sentence report states that a custom reconciliation was performed to the victim's family and attaches a list of goods exchanged prepared by your father Mr John Nase which includes the following:-

- | | |
|--|-------------|
| • 1 buluk | - VT 36,000 |
| • 3 basket kumala @ VT 700 each | - VT 2,100 |
| • 3 basket manioc @ VT 700 each | - VT 2,100 |
| • 4 bags rice @ VT 3,350 each | - VT 13,400 |
| • 1 kava stumb | - VT 12,000 |
| • 6 blankets @ VT1,000 each | - VT 6,000 |
| • 5 mats @ VT 2,000 each | - VT 10,000 |
| • 2 bundle calico (40 yards) @ VT 2,000 each | - VT 4,000 |

Total - VT 85,600



10. In addition to this, your father told your probation officer that your family is ready to perform a further custom reconciliation after sentencing by performing the Tannese custom of swapping where your family is to swap one of their daughters for the life of the deceased. I will address this later.
11. For your early guilty plea you are entitled to a one third discount on your sentence which is reduced to 5 years and 3 months. I make a further deduction of 1 year and 3 months taking into account the mitigating factors referred to above which leaves you with an end sentence of 4 years imprisonment effective from 25 September 2015 when you were remanded in custody.
12. Dealing with your intention to perform the Tannese custom of swapping a young girl for the life of the deceased it needs to be recorded that this practice must be discouraged as it ignores the rights of children protected by the Convention on the rights of the Child which Vanuatu has ratified. Children are human beings not material goods that can be traded or exchanged. This Court has expressed similar sentiments in *Public Prosecutor v. Andrew Kuao and Therese Sasia* [2010] VUSC 8 and *Public Prosecutor v. Nawia* [2010] VUSC 52. The mother of the deceased has told your probation officer quite correctly that she is reluctant to accept the swap with another girl but would accept a plot of land in exchange. That is what you should consider.
13. You have 14 days to appeal if you are not happy with this decision.

DATED at Port Vila this 29th day of June, 2016

BY THE COURT



D. ARU
Judge

