

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

Criminal
Case No. 21/1215 SC/CRML

BETWEEN: Public Prosecutor

AND: David Sel
Defendant

Date: 6th October 2021
By: Justice G.A. Andrée Wiltens
Counsel: Mr P. Toaliu for the Public Prosecutor
Mr A. Bal for the Defendant

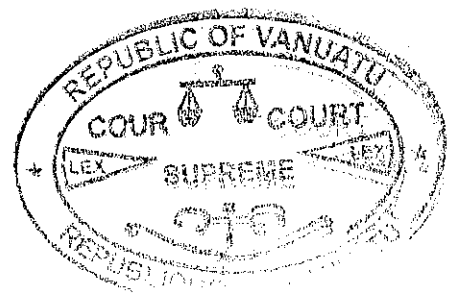
SENTENCE

A. Introduction

1. Mr Sel pleaded guilty to a charge of intentional harm causing death.

B. Facts

2. In the afternoon of 24 December 2020, Mr Sel was driving a Mitsubishi Lorry, Registration No. 4VE 825. He had picked up more than 15 persons and 4 tonnes of cement before driving down Kakwasei Hill at speed. He was unable to negotiate the corner at the bottom of the hill and crashed into protective railings.
3. Several passengers were thrown off the back of the vehicle down towards the sea. One of those, Ray Keras, died as a result.
4. The cement shifted on impact and was pushed into the lorry's cab. Tao Enoch Loughman was caught by the moving cement and he also died.
5. Seven other passengers were injured as a result of the accident. Anthoine Kamei suffered bruising to his face, his left arm and elbow and soft tissue swelling to his lower back. Fred George suffered an open laceration to his right leg, with chest pain. David Iris suffered a crushing injury to his right leg – tibia and fibula.



6. Jimmy Iatock Taio suffered abrasions to both knees, abrasions to his right elbow, superficial laceration above left eyebrow, and abrasions to his left eye and nostril. Willie Koda suffered superficial bruise to his left arm and an open fracture of his right tibia/fibula with a suspected pelvic fracture with urethral bleeding. Timothy Nako suffered a closed fracture of his right forearm, and deep laceration proximal third posterior forearm, a deep punctured wound L5 spine. Erick Koukare suffered abrasions and bruises to his bilateral gluteal muscle, abrasions to both elbows, bruises on his knees as well as abrasions, and an abrasion and laceration to his right ankle.

C. Sentence Start Point

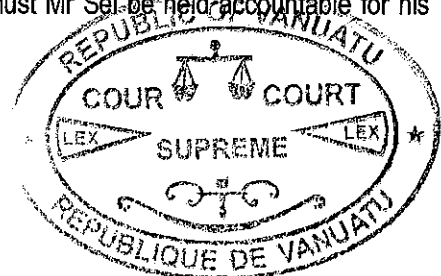
7. The sentence start point is to be assessed by having regards to the maximum sentence available and factoring in the aggravating and mitigating aspects of the offending.
8. The maximum sentence for this offending is 5 years imprisonment.
9. There are no mitigating aspects to the offending. There are however some of aggravating aspects, which include the following:
 - Mr Sel was driving at very high speed;
 - the severe consequences flowing from the poor driving; and
 - the overloading of the vehicle with both cement and too many persons as passengers in the tray of the truck which was therefore unsafe.
10. I adopt a sentence start point of 4 years imprisonment.

D. Mitigation

11. Mr Sel pleaded guilty at the first available opportunity. For that, the sentence start point is reduced by 25%.
12. Mr Sel is 44 years old. He is married with 3 children. He is the sole breadwinner for his family and also cares for his aged father.
13. Apart from being a driver he also earns income from farming.
14. He has no previous criminal convictions. He is in good standing with his church and his family.
15. He has performed 2 significant custom reconciliation ceremonies. The first was with the families of the deceased, and the second with the families of those injured.
16. For his personal factors I reduce Mr Sel's sentence start point further by 4 months.

E. End Sentence

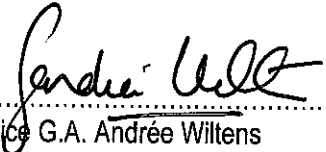
17. Mr Sel is sentenced to 2 years 8 months imprisonment. This offending is far too serious for suspension of sentence to be contemplated. Not only must Mr Sel be held accountable for his



conduct but the sentence must act as a deterrent so that this type of tragedy is avoided in the future. There is a little doubt the lorry was unstable due to the large amount of cement on board, which made controlling the vehicle more difficult. The accident was compounded by the usual Vanuatu unsafe practice of also loading too many persons on the back of the lorry where they cannot be secured by seat belts to protect them in case of an accident. This was an accident waiting to happen. Mr Sel was responsible for the lorry. He should have declined to load so much cement, and he should not have allowed any passengers on board apart from those who could do it in the cab of the lorry. And of course you should not have been speeding.

18. The families of the deceased and those persons injured have the ability to bring civil litigation against Mr Sel, and possibly CCECC. Whether they choose to do so is a matter for each of them. I decline to order compensation as to do so may compromise such civil claims.
19. Mr Sel has 14 days to appeal his sentence.

Dated at Isangal, this 6th day of October 2021
BY THE COURT


Justice G.A. Andrée Wiltens

