

**IN THE COURT OF APPEAL OF
THE REPUBLIC OF VANUATU**

APPEAL CRIMINAL CASE No 11 of 1995

BETWEEN: Serah SALOME

Appellant

AND: Public Prosecutor

Respondent

JUDGEMENT

On 4th July 1995 at the Vanuatu Supreme Court, the Appellant Serah Salome pleaded guilty to the charge of

"Aiding the Disposal of property used for the Commission of the Offence of Premeditated Intentional homicide contrary to Sections 30, 34 & 106 (1) (b) of the Penal Code Act CAP 135".

The particulars of the offence allege that

"Serah SALOME, sometime on the 28th November 1994 at Francesco and Luciana Picchi's home at Tassiriki, Port Vila, you did help Tui Georges Saipir, Berry Max Jimmy and Luciana Picchi following Francesco Picchi's death, as you did dispose of the clothes with his blood, the pair of hand gloves, wood, and the rasta wigs by putting them in a plastic bag and gave it to Tui Georges Saipir so that he can hide these properties."

She was convicted and on 6th December 1995 and sentenced to 12 years imprisonment. She appeals against her sentence on the ground that it was manifestly excessive.

In passing the sentence the trial judge, the learned Chief Justice said

" As for you Serah Salome, I do not for one moment accept your account that you were there by accident on 28 November 1994. I believe that this was pre-arranged with your mistress. You had bought the wigs. You knew about the gloves and nalnals. Indeed you knew where they were hidden. You did not hesitate to take them out and pass them on Tui and Berri when they came. I do not believe that you did not know that your mistress was plotting to murder her husband. The evidence points overwhelmingly to the fact that you were her confidante and trusted handmaid. She could not have coped on that night without your assistance. I believe that you were aware from a very early stage that she was



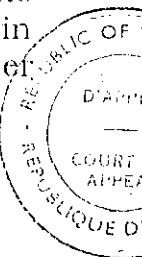
plotting to poison her husband. Indeed you were present and a party to her discussions with Ezra. I have no doubt that you tried hard to minimise your role in this whole affair. You are fortunate that you were not charged with the murder, the same as the others. The fact is that you were not. I will respect that fact and reflect it in my sentence. I have no doubt that you too were manipulated by Luciana Picchi and that save for her influence over you, you would never have come before this Court today. Nevertheless, I can not ignore the fact that you were a perfectly willing party to this dreadful night's events. I give you full credit, as I did to the others, for your immediate confession to the police and for your plea of guilty. I accept that it took courage for you to come and testify against your mistress and friend in this Court and that this was particularly traumatic for you. It was obvious to me, that unlike Tui and Berri, you lied to the Court, certainly to minimise your own role to this dreadful affair, but also probably out of misguided loyalty to your former mistress and friend. I also take into account everything else that your learned Counsel has very ably told the Court about you, especially your previous good character. In your case, the least sentence that I am able to pass upon you is one of 12 years imprisonment ..."

This offence arose from a case of murder described by the Chief Justice as "*one of the most gruesome killing in living memory in Vanuatu*". A man by the name of Franco Picchi was hacked to death allegedly at the instigation of his wife by her and two ni-Vanuatu men, Tui and Berri. Upon the evidence before the trial Judge this appellant played a significant role in finding ways of poisoning Mr Picchi, introducing to Tui and Berri to Mrs Picchi, and finally in the killing of Mr Picchi.

The Appellant was a house girl of Mrs Picchi and had witnessed some of the cruelties inflicted by Mr Picchi on his wife which finally led to his killing. Undoubtedly there was evidence before the Court upon which more serious charges could have been brought against her and most probably she would have been convicted of such offences.

However the prosecution chose not to bring any charges other than the one she pleaded guilty to. It follows she cannot be punished for the part she played in this sad affair other than for the offence to which she has pleaded guilty. She has had no opportunity to defend herself on those other more serious charges, she cannot be convicted of any such offences and certainly in our view, can not be punished for them.

Passing of sentence is in the discretion of the trial judge and this Court cannot interfere with the exercise of that discretion, unless the sentence is manifestly excessive. We feel that in this case the sentencing judge took into consideration the matters such as the appellant's unhelpful evidence in that she was less than truthful in her evidence, she minimised her role and was more helpful to her




former mistress, this in our view was a misdirection. Had she not been waiting to be sentenced herself it is doubtful if the Court could have taken any action for what she did or did not say in her evidence. It would be wrong that she should be punished because she gave evidence in an unsatisfactory way. The sentence passed in our view was disproportionate, manifestly excessive and wrong in principle.

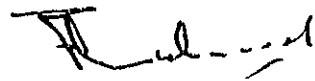
It is recognised practice that a sentencing Court should inquire not only into the circumstances of the offence but also the circumstances of the accused. It does not seem to have been done.


As far as the offence is concerned the role played by the appellant was that she collected the things used in the murder upon the instructions of her mistress put them in a bag, placed this bag in a cardboard box and handed it to Tui. She did not contribute a great deal in assisting the disposal of property itself. She made confession at an early stage and pleaded guilty. Her relevant personal circumstances are that she is 28 or 29 years old married woman. She has a 4 year old child and she has four other children under her care. She has lost her job.

In all the circumstances a fair sentence in our view, which meets the Justice of the case is 12 months imprisonment. We therefore quash the sentence of 12 years imprisonment passed by the learned trial Judge and substitute it with a sentence of 12 months imprisonment.

DATED AT PORT VILA this 1st November 1996


Justice ROBERTSON
Judge of Appeal


Justice MUHAMMAD
Judge of Appeal


Justice DILLON
Judge of Appeal

