

Registry

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

Criminal Case No. 74 of 2014

PUBLIC PROSECUTOR

V

MARK ATI

Coram: *Mrs. Justice M.M.Sey*

Counsel: *Mr. Ken Massing for the Public Prosecutor
Mr. James Tari for the Defendant*

Date: *22nd August 2014*

SENTENCE

1. **Mark Ati**, you are before this Court for sentencing having been convicted on the 19th day of August 2014 on your own guilty pleas to two counts of which one is Unintentional Harm Causing Death contrary to section 108(c) of the Penal Code Act [CAP 145] and the other is Driving When Under Influence of Drink contrary to section 16 of the Road Traffic (Control) Act [CAP 29].
2. No dispute is taken as to the summary of facts presented by the prosecutor and the defence concedes to the said facts as follows:

The incident occurred on the 7th of March 2013, along the road close to Bene Clinic East Santo. On that day, you were driving your vehicle, Toyota Hilux double cabin registration number S29 and you were accompanied by four other men namely, Warsal Ronald (deceased), Revelino Ben, Elise Toriri and Armel Rapoulpoul (who died early this year). All of you were drinking inside the vehicle as you drove around Luganville town. After drinking in town, you headed to the eastern part of Santo to Hog harbour village purposely to kill cattle. On the way down to Port-Olry village you continued your drinking spree inside the vehicle. After you had killed



the cattle, you told your four passengers that you should return to town. On the way back to town, you were driving too fast at an excessive speed when you lost control of the vehicle and hit a coconut tree close to Bene Clinic.

As a result of the accident, your vehicle got damaged resulting in the loss of life of Warsal Ronald who died instantly. The deceased was 32 years old and he was from the eastern part of Santo. You and your other passengers were taken to Northern District Hospital to receive medical treatment.

3. The offence of unintentional harm causing damage on the body of that person resulting in the death of that person is prohibited by law under **section 108 (c)** of the Penal Code Act [CAP 135]. It provides as follows:

"UNINTENTIONAL HARM

108. No person shall unintentionally cause damage to the body of another person, through recklessness or negligence, or failure to observe any law.

Penalty:

- (a) *If the damage so caused is purely temporary, imprisonment for 3 months;*
- (b) *If the damage so caused is permanent, imprisonment for 2 years.*
- (c) *If the damage so caused results in death, imprisonment for 5 years."*

4. The offence of driving when under influence of drink or drugs is also sanctioned by law under **Section 16 of the Road Traffic (Control) Act [CAP 29]**. It states that:

"It is an offence for any person to drive on the public road when under the influence of alcoholic liquor or a drug to such



an extent that the driver is incapable of properly controlling his vehicle. A police officer shall be empowered without warrant to arrest any person contravening this section....."

5. Mark Ati, you cannot and should not ignore the reality that you face a life time in which you will live with the knowledge that, as a consequence of your careless driving under influence of drink, a life was taken on the 7th day of March 2013. Given the seriousness of the offending, the starting point of your sentence on count 1 must be of a custodial nature in the range of 15 months imprisonment.
 6. I note from the detailed pre-sentence report which has been submitted by the probation officer that you are 32 years old, married to Eleanor Waiwo of Epi Island and you have 5 children who are pursuing their education in Port Vila. Currently, you are the Director of the Vanuatu Export and Vanuatu Coconut Products Ltd (VCPL) in Santo and your financial status is sustainable.
 7. In 2000, you undertook educational studies and obtained qualifications in Business Studies from the Institute de Technologie (I.N.T.V.). This afforded you an opportunity to gain employment with the Vanuatu Commodities Marketing Board and other private sectors. You are well known to individuals and organizations and during your interview with the probation officer you stated that you "assist anyone who seeks financial assistance from you despite political interest."
- It is also reported that you are taking regular medication in Sydney due to severe head injuries you sustained from the accident.
8. A report on custom process of peace and compensation which has been performed by you on 27th April 2013 at the Catholic Mission on Port Olry is also provided to the Court. The reconciliation was witnessed by respective chiefs of Port Olry and Hog Harbour and other government officials concerned and you compensated VT2,000,000 to the victim's wife Mrs. Marie Ronald and the family of the victim.



9. I am grateful to the correctional services for its assistance in providing their detailed pre-sentence report timely. I have also found the sentencing submissions filed by the prosecutor with references to case authorities quite helpful.
10. In his sentencing submissions filed for and on behalf of Mark Ati, defence counsel submits that the compensation of VT2,000,000 should be a very strong mitigating factor in this case. Counsel further submits that the payment should be enough and no penalties should be imposed on the charge of unintentional harm causing death.
11. In my considered view, it is rather unfortunate that the defendant and his counsel are labouring under a misconception regarding the issue of compensation in cases such as this one at hand. The reality we are faced with is that a life has been lost and no amount of compensation can fill the void. A criminal court in determining sentences on this sort of charge cannot possibly put a value or an appreciation of the life which has been lost.
12. As the Court of Appeal observed in the case of **Newell v. Public Prosecutor** [1998] VUCA 2:

"Dealing with cases of this sort creates some of the most difficult sentencing tasks in any Court. This is a matter which in general conversation would be described as an accident. In the laws term it is a situation where death result from an unlawful act. That in law is not an accident but is unintentional harm causing death. A criminal court in determining sentences on this sort of charge cannot possibly put a value or an appreciation of the life which has been lost. It is unfortunate (particularly when people are grieving and hurt) that sometimes there is a suggestion that the Court minimise the value of the life which was taken. What the Court is concerned to do is to assess the criminal culpability of the wrong doer."



13. The aggravating factors in this case are the excessive speed at which you were driving on a public road when under the influence of alcoholic liquor resulting in the death of the deceased.
14. In mitigation, you are a first time offender with no previous convictions. You are also very remorseful about the incident. Your wife states that you have reduced your consumption of alcohol and you are now mindful to have someone drive you when you are drunk.
15. **Mark Ati**, you pleaded guilty at an early time and you are entitled to a full one third credit for that which brings me to 10 months imprisonment on count 1. However, on the balance between the aggravating and mitigating factors and the delay taken before your conviction, I reduce your sentence on count 1 to 6 months imprisonment suspended for a period of 1 year in the circumstances of this case.


In respect of count 2, I sentence you to 3 months imprisonment suspended for a period of 1 year.


Both sentences are to run concurrently. During such period of suspension, you must not re-offend otherwise your sentences of 6 months and 3 months respectively will be re-activated.

16. You have 14 days to appeal this sentence if you are not satisfied with it.

DATED at Luganville, Santo this 22nd day of August 2014.

BY THE COURT


M.M. SEY
Judge



The seal of the Supreme Court of Vanuatu is circular. It features a central emblem with a scale of justice and a book. The text 'REPUBLIC OF VANUATU' is written along the top inner edge, and 'REPUBLIQUE DE VANUATU' along the bottom inner edge. In the center, the words 'COUR SUPREME' and 'LEX' are visible, along with a star on the right side.