

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU

Criminal
Case No. 18/2305 SC/CRML

BETWEEN: Public Prosecutor

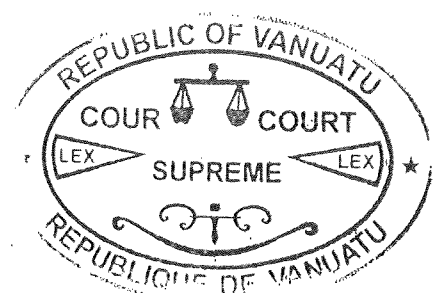
AND: Bob Robert
Defendant

Date: 16 April 2019
By: Justice G.A. Andrée Wiltens
Counsel: Ms K. Mackenzie with Mr P. Toaliu for the Public Prosecutor
Ms K. Karu for the Defendant

SENTENCE

A. Introduction

1. On 30 April 2014, Mr Robert was convicted and sentenced to an end term of 5 years imprisonment for one count of sexual intercourse without consent. The sentence was back-dated to commence on 28 December 2013.
2. Mr Robert was subsequently released from prison, on parole, on 26 September 2016. Some 18 months later, now aged 27 years, Mr Robert committed a further series of six harrowing criminal offences for which he is to be sentenced today. All his victims are from his village community in the Etas area.
3. This is his sentencing, and the reasons for the sentences imposed.



B. The Facts

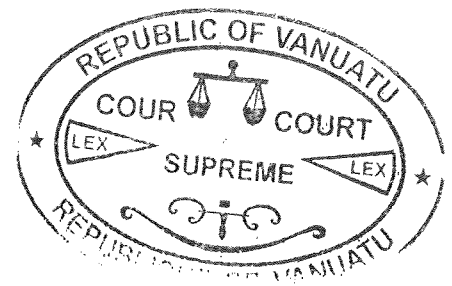
4. On the evening of 17 April 2018 and through until almost daylight the next morning, Mr Robert had been drinking kava and alcohol. His further offending commenced in the early hours of the day on 18 April 2018.

Charges 1 and 2

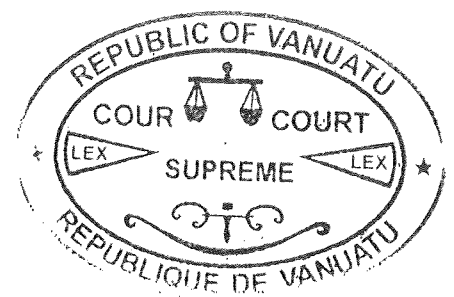
5. Firstly, sometime after 1 am, he entered the home of the Napuati family, with intent to criminally offend. He went to the bedside of a young 9 year old girl who was sleeping in her bed and was kneeling down and over the young girl before her mother sounded the alarm; and Mr Robert then fled.
6. Secondly, Mr Robert entered the home of the Malcom family and attempted to enter into a room occupied by a young 4 year old girl sleeping inside. Again the alarm was sounded by the vigilant mother and Mr Robert fled. That was at around 3:15 am.
7. This conduct is reflected in charges 1 and 2, namely entering a dwelling house with intent to commit an offence, and attempting to also do so. The maximum penalty for each of these offences is a term of 20 years imprisonment.
8. Ms Karu submitted that Mr Robert was at both premises looking for his girlfriend Ms Nihali Napuati. However, if that were correct, he should not have pleaded guilty as he would not have had the necessary criminal intent. On the other hand, given what later followed, Mr Toaliu submitted that Mr Robert had entered both houses with the intent of having sex with a young child. I accept that was Mr Robert's criminal intent when he entered both houses, and that is the basis on which he is to be sentenced.

Charges 3 – 6

9. Next, at about 5:30 am Ms Lorin Karl woke up at her parents' house and went into the kitchen where her parents were cooking. Lorin was looking for her 6 year old daughter, Florence Iaruel. Lorin had seen Florence get up earlier and had assumed that she was going to the kitchen to be with her grandparents. However, Florence was nowhere to be seen in or around the house, and the alarm was raised.
10. Independently, Mr Iata was taking his two children to school at about 6 am. He crossed a creek and on the other side found Florence, lying naked on the ground, with bleeding from her ears. She was no longer alive. Florence's clothes were later found at a nearby sandalwood plantation. One of Mr Iata's children identified Florence, and Mr Iata therefore picked up Florence's body and took her to her family. Florence's family later took her body to the Port Vila Central Hospital.
11. Dr Wari examined Florence's body at the Port Vila Central Hospital at 2 pm – she considered that Florence had died several hours previously. She observed that Florence had bled from both her nose and also her left ear.



12. A Post-Mortem examination was conducted 2 days later by Dr Kaloulgivaki. He found Florence to have been a normal healthy child for her age. The cause of death was certified to be severe haemothorax, caused by severe traumatic chest injuries and multiple other traumatic injuries which were caused by blunt force trauma [a pooling of blood in the chest cavity].
13. The examination revealed that, prior to death, multiple traumatic injuries had been caused by blunt force trauma, as evidenced by:
- The inner membranes around Florence's brain showed widespread sub-arachnoid haemorrhage [a life-threatening type of stroke caused by bleeding onto spaces].
 - The external surface of Florence's brain showed obliterated haemorrhage-filled sulci and flattened gyri [the grooves and ridges of the brain], consistent with cerebral edema [fluid around the brain]; and the upper part of the cervical spinal cord showed evidence of sub-arachnoid haemorrhage.
 - Numerous haemorrhages to the scalp, face and neck of varying dimensions.
14. Other significant findings included:
- Multiple severe deep lacerations on the upper and middle lobes of the lungs.
 - A collection of 480 ml of blood in the plural cavities, the spaces between the chest wall and the lungs, which made breathing no longer possible.
 - The thoracic cage [rib cage] showed severe extensive injuries to the soft tissue. Further examination showed there were complete fractures bilaterally from the clavicles, to the 6th rib anteriorly along the respective mid-clavicular lines. There were also widespread soft tissue haemorrhages surrounding the fracture areas.
 - The peritoneal cavity of the abdomen showed the presence of 150 ml of blood.
 - A 35mm x 20mm tear of the anterior fornix of the vagina.
 - Unequivocal evidence of recent trauma, prior to death, of the external genitalia including an obvious severe extensive vaginal impalement injury, measuring 55mm x 55m in dimension
 - Multiple severe contusive tears of varying dimensions with surrounding haematoma throughout the entire vaginal vault.



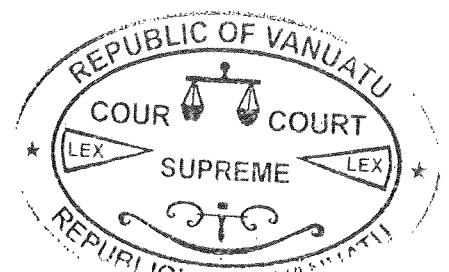
15. Dr Kaloulgivaki concluded that there was clear evidence of sexual intercourse having taken place. Two high and two lower vaginal swabs were taken in the course of the post-mortem. All four swabs were later examined and found to contain spermatozoa.
16. Other DNA samples were also collected. The DNA of the spermatozoa was from Mr Robert. DNA taken from Mr Robert's clothing, which he wore at the time of his offending, was found to be from Florence.
17. The police investigation fairly quickly concluded that Mr Robert was a suspect. Accordingly, he was arrested at 5:40 pm on 20 April 2018. He agreed for his home to be searched the next day and pointed out the clothes he had been wearing on 18 April 2018, which were seized by the police and from which the DNA samples were taken.
18. Mr Robert was formally interviewed on 22 April 2018. He was appropriately cautioned and reminded of his rights. He then filled in some of the gaps in the police' reconstruction of the events that happened in the early hours of 18 April 2018.

Charge 3

19. Mr Robert told the police that when he went past the laruel home looking for some food he saw Florence sitting outside. He called out to her and asked her to follow him. When asked why he did this Mr Robert said "I thought I would have sex with her".
20. Mr Robert said he had to force Florence to go with him. He picked her up and blocked her mouth to stop her crying out while he carried her some 400 metres to the sandalwood plantation. That could be seen as a carefully chosen secluded area where he would be unlikely to be interrupted.
21. That conduct is the subject of the third charge, namely abduction of a person under 18 years of age. The maximum sentence for that offence is 7 years imprisonment.

Charges 4 and 5

22. Mr Robert was asked what he did when he arrived at the sandalwood plantation. He told the police "I tried to have sex with her but her vagina was too small so I pushed a small torch into her vagina". He said Florence had cried out and again he had blocked her mouth with his hand.
23. Mr Robert said he then inserted his penis into Florence's vagina.
24. Those two acts are reflected by charges 4 and 5, namely aggravated sexual assault of a child under 15 years. The maximum penalty for each of those offences is life imprisonment.

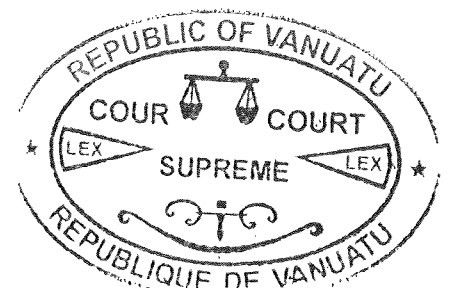


Charge 6

25. Mr Robert then told the police that he became afraid of being returned to prison, so he decided to kill Florence. He punched her to the chest until she was dead, and he then took her body from the sandalwood plantation and left it by the creek for others to find – even further away from her grandparents' home. He said that even though the roosters had started to crow, there still wasn't any day light. Mr Robert then returned home to sleep.
26. Mr Robert's final act is reflected in charge 6, namely Premeditated Intentional Homicide. The maximum penal for that offence is also life imprisonment.
27. This Court has no doubt that Mr Robert's interview was truthful and accurate. His frank admission to firstly using a torch prior to penile sex is borne out by the medical findings; and the fact that sexual intercourse took place is confirmed by the DNA analysis. Mr Robert's account dovetails with other findings of the police inquiry; and of course, his account is confirmed by his guilty pleas to all 6 charges. I determined it was safe to rely on what Mr Robert had told the police.
28. Ms Karu submitted that the prosecution had wrongly interpreted Mr Robert's interview as revealing that full sexual intercourse had occurred – the actual words, accordingly to Mrs Karu, are that he tried to do so. I do not accept that submission. Answer 26 of the police interview makes it plain that following on from the use of the torch Mr Robert had sex with Florence. Further, Mr Robert's spermatozoa were found not only on the lower vaginal swabs, but also on both the higher vaginal swabs. Finally, he accepted as correct both the charge relating to this conduct and the summary of facts which makes it plain that following the use of the torch Mr Robert inserted his penis into Florence's vagina. This was not just an attempt – Mr Robert had full penetrative sexual intercourse with Florence. Mr Robert is to be sentenced on this basis.

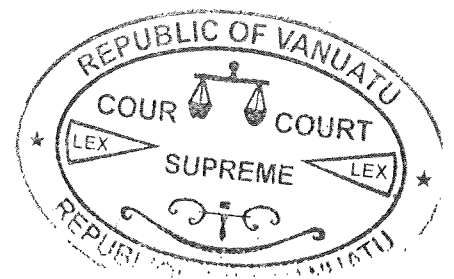
C. The Sentence Start Point

29. Ms Karu submitted that the offences perpetrated by Mr Robert were clearly a single course of conduct, and accordingly the sentences to be imposed must run concurrently: *Kalfau v. PP* [1990] VUCA 90. Ms Mackenzie accepts that in relation to charges 1 - 5, but says charge 6 should be seen differently and dealt with by way of a consecutive sentence. She submits that not only are the offences of a different character, but the motive behind sexual offending and premeditated intentional homicide are quite different. I agree with Ms Mackenzie's submission.
30. In setting a starting point it is appropriate to take the intentional homicide as the lead offence, the circumstances of which are seriously aggravated by the prior offending. This poor innocent 6 year old child was abused by Mr Robert, while he was on parole, in ways that most people in our society simply cannot imagine or understand. The sexual offending was truly depraved and reprehensible conduct. In terms of aggravating factors, I accept Ms Karu's submissions that Mr Robert's conduct could not properly be said to



be a breach of trust, even though there is clearly a large differential in age between him and Florence and he, as an adult, had the advantage of the power imbalance between them.

31. Prior to using his undoubted boxing skills and experience to end Florence's life in the most violent way imaginable, Mr Robert treated her in an abominable way for his sexual gratification. Mr Robert completely ignored her pain and feelings, he prevented her from doing what came naturally, namely screaming out for help and in pain, he enabled later sexual intercourse by using a torch to disfigure her, and having done that he then forcefully raped a 6 year old child until ejaculation. After that he came to realise that what he had done could well have serious repercussion in that the likelihood of going back to jail depended on young Florence being able to later identify him as the criminal that he was. So, to try and save himself, Mr Robert ended her life. He did so by bludgeoning her to death – punching her repeatedly so as to break her rib cage and cause internal bleeding to the lungs. The autopsy reveals that Mr Robert also attacked her head and caused serious and multiple head injuries. All that, so that he might not be held accountable for his earlier conduct towards young Florence.
32. This most serious offence of premeditated intentional homicide is at the very highest end of criminal culpability. One of the principles of sentencings is that the most serious offending should be met with the maximum sentence available, unless there are circumstances relating to the offender that make that inappropriate.
33. I also take note of the purposes of sentencing which are particularly relevant in this case: namely, to hold Mr Robert accountable for the harm done, to promote in him a sense of responsibility for the harm he has done, to take into account the interests of the victim's family, to denounce Mr Robert's conduct, to deter him and others from similar future conduct, and to protect the community from Mr Robert. The considerations of rehabilitation and re-integration back into the community are of limited relevance to Mr Robert's case, not just because of his previous conviction and sentence, but also because of the sheer gravity of his offending.
34. A strong factor which might ameliorate from life imprisonment being the appropriate sentence is the fact that by law, if sentenced to a term of life imprisonment, Mr Robert would be eligible for parole in only 8 years. That proposition does not in any way, for me, sit comfortably with the principles and purposes of sentencing. In my view, Mr Robert needs to be kept well away from our community for much longer, for the protection of our society. However, it is not appropriate for me to take possible parole into account when determining appropriate sentences, and I therefore put this issue to one side.
35. The start point for Mr Robert's sentence that I adopt as the only proportionate outcome, in relation to charge, is a term of life imprisonment. Mr Robert's other criminal conduct is so serious that it also, on a concurrent totality basis, merits a sentence of life imprisonment. The sexual offending must have been horrendous for Florence to endure. The offending was callous and exhibited a complete indifference to the feelings of a young and vulnerable child. Mr Robert's criminal culpability is at the highest level. Hence the



maximum sentence of life imprisonment must be adopted as the start sentence in respect of charges 1 - 5 also.

36. The overall start point I adopt is life imprisonment. I do not think it appropriate to impose two such sentences consecutively.

D. Mitigation

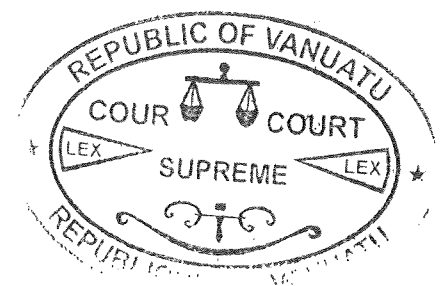
37. There are three mitigating factors that need to be acknowledged. First, some kind of a custom ceremony has been undertaken on his behalf. Mr Robert did not participate in that ceremony. It was conducted by others on his behalf, and the reconciliation was with Florence's family – in an attempt to unify them. That does not, in my view, amount to significant mitigation – but it is something I have taken into account.

38. Secondly, Mr Robert pleaded guilty to all of the charges. He did so, despite the prosecution case not being complete – further witnesses would have had to prepare briefs of evidence, and if a trial had eventuated, a number of witnesses would have had to testify – at a cost to themselves and the State. Mr Robert's pleas have obviated the need for that, for which credit is due.

39. As well, the pleas indicate a degree of remorse, which is also referred to in the PSR. However, the pleas, were not at the first available opportunity. Pleas were first scheduled to be taken on 4 September 2018. That date was vacated as the prosecution was still not ready and the matter was adjourned to 1 November 2018. Ms Karu sought an adjournment to take further instructions that day due to the recent disclosure of the DNA evidence. There was a similar adjournment sought on 15 November 2018; but the Court would not allow any further delay – after all Mr Robert was well aware of what he had done and had not done. He then entered his pleas after taking further legal advice.

40. All the while, Florence's family were waiting to hear what would happen. And no doubt they were anxious, not only for resolution, but also about the prospects of having to give evidence against Mr Robert in a very public arena. The enormous community interest in this case would no doubt have only increased their anxieties.

41. At most, Mr Robert's pleas would merit a reduction from the start point of 20%. Not only is that due to the relatively late pleas, but more so due to the overwhelming nature of the prosecution case. It seems to me that where the evidence is so strong that it is inevitable a Court would convict, the mitigating effect of a guilty plea is much reduced. The real benefit to society is where an accused pleads guilty to an equivocal case – that's when an early plea merits the maximum discount available of 33%. The stronger the evidence against an accused, the lesser benefit to society of a guilty plea; and the lesser the appropriate reduction.



42. Thirdly, as earlier adverted to, Mr Robert undoubtedly co-operated with the police during the inquiry and filled in various gaps of the chronology. I took that assistance into account when evaluating the appropriate discount for Mr Robert's pleas.

43. In my assessment, these mitigating factors do not impact sufficiently on the start sentence to necessitate the Court to impose a lesser finite sentence on Mr Robert.

E. End Sentence

44. Accordingly, the sentences I impose are as follows:-

- For entering a dwelling house and attempting to enter a dwelling house, charges 1 and 2, Mr Robert is sentenced to 4 years imprisonment on each charge;
- For abducting a person under 18 years, charge 3, Mr Robert is sentenced to 5 years imprisonment;
- For aggravated sexual assault on a child under 15 years, charges 4 and 5, Mr Robert is sentenced to life imprisonment on each charge; and
- For premeditated intentional homicide, charge 6, Mr Robert is sentenced to life imprisonment.

45. All Mr Robert's sentences are to be served concurrently.

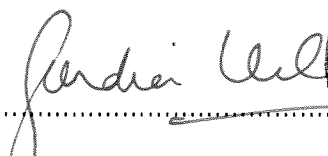
46. There is no possibility, given the gravity of Mr Robert's offending for any of the sentences to be suspended. Further, given the sentence imposed, there is no possibility of the Court ordering Mr Robert to make a compensation payment to Florence's family pursuant to section 41 of the Criminal Procedure Code.

47. Given that Mr Robert has been held in custody since his arrest, his sentence is back-dated to start as at 22 April 2018.

48. Mr Robert has 14 days to appeal these sentences if he so chooses.

DATED at Port Vila this 16th day of April 2019

BY THE COURT


Justice G.A. Andrée Wiltens

