

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

Criminal
Case No. 19/3309 SC/CRML

BETWEEN: Public Prosecutor

AND: Meletau Trief
Defendant

Date: 11 and 13 March 2020
By: Justice G.A. Andrée Wiltens
Counsel: Mr D. Boe for the Public Prosecutor
Mr R. Willie for the Defendant

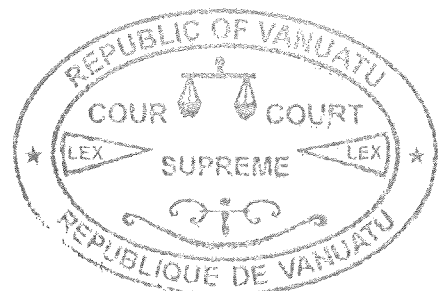
SENTENCE

A. Introduction

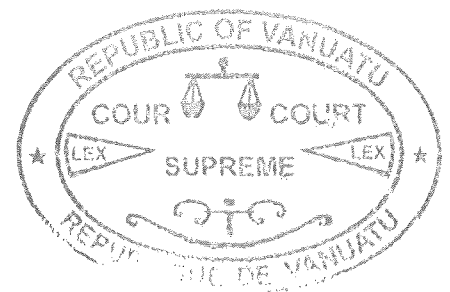
1. Mr Trief pleaded guilty to a charge alleging attempted pre-meditated intentional homicide. The maximum sentence for that offence is a term of life imprisonment. It is a very serious offence.

B. Facts

2. On 18 October 2019 a plan was formed by Mr Trief and others to kill Sandrine Litu, a fellow villager, through the use of witchcraft.



3. That plan was then followed, at midnight on 22 October 2019, by several members of the group entering Sandrine's home where she was sleeping with her 4 children, one of whom woke up and tried to protect his mother.
4. On the way to Sandrine's home, those carrying out the plan sang songs and used sorcery – they had with them knives, leaves and a custom stone that had previously been used for the purpose of sorcery. Once inside, they placed some red custom leaves around Sandrine.
5. However the sorcery undertaken did not cause Sandrine to die, and so violence was resorted to. Sandrine was dragged outside into the bush and her head was cut with a sharp object. Sandrine was also hit twice to her back, punched in the head, and hit with a solar light battery. It was only when she screamed loudly that the assailants fled, leaving Sandrine behind bleeding.
6. Sandrine was taken initially to a local infirmary, but later to hospital. Her injuries are described as:
 - A left swollen jaw;
 - Swollen lips with bruising; and
 - A head cut caused by a sharp object at the top of her head.
7. Mr Trief made admissions to the police. He explained it was true that they attempted to kill Sandrine by witchcraft – he named 4 participants, including himself. The plan was made on Saturday 18 October 2019, and they agreed to action the plan on the following Tuesday. On 22 October 2019, he took with him a custom stone he had acquired in 2017 and had previously used to kill using witchcraft. They also took with them red custom leaves (nagaria) and they sang to be able to fly to Sandrine's house. There was another red custom leaf that was to be used to spit on Sandrine's blood which would remove all traces of her blood.
8. The plan included the removal of Sandrine's intestines by the insertion into her anus of another custom leaf, which would remove her intestines when pulled back out. Mr Trief explained further that he had flown to Tanafoli to fetch that special leaf, before flying to Sandrine's house. He landed on a Clyricidia, near an orange tree in Sandrine's yard. He wore a white shirt and water boots. He stated that he had a knife, as did another of the group. He said one of the group used a solar battery to strike Sandrine's head.
9. Mr Trief explained that adults are able to witness the customs practices they were doing only if they wash using custom leaves. However, children are able to witness what they were doing – hence Sandrine's son saw what the group was doing to his mother and became upset and tried to stop them. Mr Trief confirmed that Sandrine was taken outside to the bush, where she struggled with her assailants. To prevent her struggling Mr Trief struck her twice with his hand. He then hit her backside but the struggling continued. Then another of the group cut Sandrine's head with a knife. Sandrine was then unconscious. Prior to that Sandrine had been crying and saying she's not done anything wrong.



10. Mr Trief further told the police he and another of the group had removed Sandrine's clothes and when they were about to remove her intestines, they were disturbed. So the group of assailants flew away. He landed on a Navena tree; others landed on a blue water tree. He explained that he was tired of doing the devil's work and wanted to admit everything to the police so that his reputation was not spoiled.

C. Aggravating/Mitigating Factors to the Offending

11. There are a number of aggravating factors to the offending. There was a group of assailants, all acting together against the one victim. They entered the victim's home at night and used violence against their target in the presence of young children, one of whom became upset. Various weapons were used to inflict the violence, as well as the witchcraft.

12. There are no mitigating factors to the offending.

13. The start point that I adopt as appropriate for this offending and for the criminal culpability involved is 10 years imprisonment.

D. Personal Factors

14. Mr Trief is 63 years of age, married with 5 grown up children who are no longer dependent. He is a gardener. He has no previous convictions, but given the nature of this offending, that stands for very little.

15. There has been no custom reconciliation ceremony.

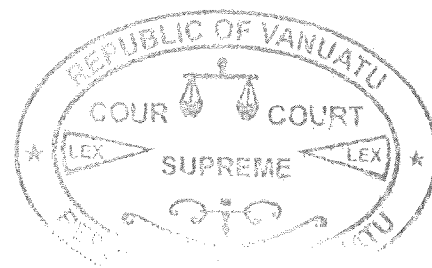
16. I allow a reduction from the sentence start point of 10 months for Mr Trief's personal factors, which takes into account his age and stage of life plus the fact that he has been law-abiding for a significant period.

17. I accept Mr Trief has been remanded in custody for some 3 months prior to this matter coming on for trial. The sentence will be back-dated to take that into account.

18. The final factor I can take into account is Mr Trief's plea.

19. This case was scheduled for trial, but after hearing a voir dire as to the admissibility of Mr Trief's interview, I ruled that it was given voluntarily and was admissible into evidence. At that stage Mr Willie sought further instructions and then asked for Mr Trief to be re-arraigned. He then pleaded guilty to the charge.

20. The reality is that had stronger advice been given earlier, there would have been no need for a voir dire (as the challenges were weak and with little or no prospects of success), and the plea would have been entered at a much earlier stage. It seems to me that Mr Trief should not be disadvantaged by having received diffident legal advice.



21. Further, there were several other charges that the prosecution did not proceed with, thereby accepting that the evidence in respect of those matters was weak. In the circumstances, I exceptionally allow a further discount for Mr Trief for his late plea of guilty to this charge of 25%.

E. Sentences

22. The end sentence that I impose on Mr Trief is one of 6 years 10 months imprisonment. The sentence is to commence on 13 December 2019 to reflect time already served in custody.

F. Suspension

23. The law provides a discretion to suspend all or part of the sentence, pursuant to section 57 of the Penal Code, namely where it is not appropriate to make an offender suffer immediate imprisonment "... (i) in view of the circumstances; and (ii) in particular the nature of the crime; and (iii) the character of the offender".


24. However, this offending is simply too serious to consider taking such a step.

G. Conclusion

25. Mr Trief has 14 days in which to appeal this sentence if he does not agree with it.

DATED at Luganville this 13th day of March 2020

BY THE COURT


Justice G.A. Andrée Wiltens

