

PUBLIC PROSECUTOR

V

JIMMY SAWAN NAPAU

Coram: *Hon. Chief Justice V. Lunabek*

Counsel: *M Tasso for the State*
PK Malites for the Defendant

Date of Plea: *7 June. 2022*

Date of Sentence: *12 May 2023*

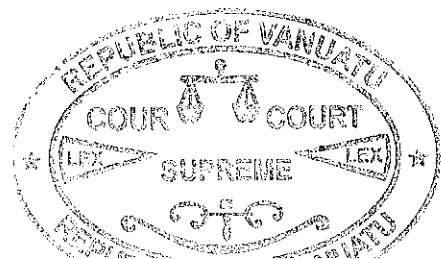
SENTENCE

A. Introduction

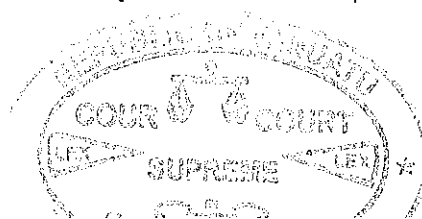
1. Jimmy Sawan Napau, you appear today for sentence.
2. On 7 June 2022, you entered a guilty plea on one count of pre-meditated intentional homicide causing death, contrary to Section 106(1)(b) of the Penal Code Act.

B. Facts

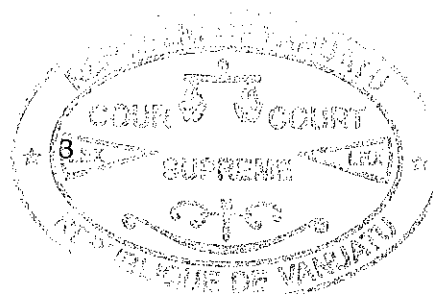
3. The facts are not disputed. You accepted the brief facts provided by the prosecution upon which you entered guilty plea on 7 June 2022.
4. You were 35 years old at the time of the murder of the deceased (Sharon Shiro). You are originally from Tanna island. You settled in Port Vila in 2004. You studied at NTM Bible College. You then attained a supervisor and operation manager roles in SPSA Security Firm.



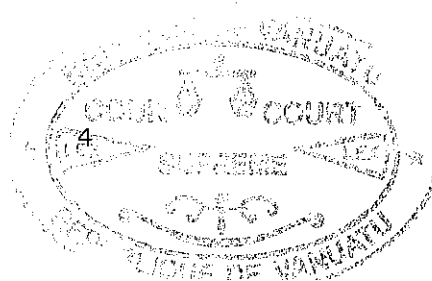
5. In 2009 you and Sharon Shiro (the "deceased") cohabited together as de-facto partners. This cohabitation lasted until 2011 before you both parted ways.
 6. You were, at that time of the premeditated intentional homicide, on bail awaiting sentence for the offences of Domestic Violence under the Family Protection Act and Threats to Kill a person under the Penal Code [CAP. 135]. The deceased in this case was one of the complainants in the domestic violence case in question.
 7. Jimmy Napau, after you were separated with Sharon Shiro in 2011, you cohabited with other women in defacto relationships until 2021.
 8. In 2021, you resumed your relationship with Sharon Shiro. In 2021 before your both resumed your relationship, Sharon Shiro lived with her biological sister Amelia Shiro at Blacksands who rented a house there.
 9. At the time when Sharon Shiro lived with her sister, you and Sharon started to date again after few years of separation. During that time you would sneak into the house of Amelia Shiro to meet Sharon Shiro when her sister Amelia worked at night.
 10. This goes on until you eventually moved into the house and lived with them. There were two rooms in the house. Sharon Shiro and you occupied one room while Amelia Shiro stayed in the other room.
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11. On the property where Amelia Shiro rented, there were other six (6) tenants who also rented other rooms next to the house rented by Amelia Shiro.
 12. On the fatal night of 21 November 2021, Amelia Shiro returned from work after her night shift at around 8:00pm. She had her food and whilst she ate her food, she heard some drunken boys on the road calling on Jimmy Napau's name and she also heard Sharon Shiro telling Jimmy Napau that these boys were calling him to drink alcohol. This was the last word Amelia heard from her sister Sharon. Amelia then slept.
 13. Amelia Shiro was awoken by the cries of Sharon Shiro in the early hours of the morning. Amelia Shiro got up. She opened her door room and was shocked to see her sister Sharon Shiro on the floor of the house covered with blood on her head and on the floor while Jimmy Napau was standing next to Sharon Shiro with a black hammer in his hand. Amelia Shiro called out but you, Jimmy Napau threatened to assault her with the hammer and this caused her to return to her room and closed her door.
 14. At that point in time, other neighbours assisted to call the police and the Pro-Medical to attend the crime scene but Sharon Shiro was already dead when the help arrived.



15. There were also other tenants in the same property and they provided statements as independent witnesses as to what they heard and saw at the time of the incident.
16. Amelia Shiro was the first independent witness. She is the biological sister of the deceased. She shared the same house with the defacto couple. In the early hours of the 21st November 2021, she heard the deceased cried out. When she came out of her room she saw you, Jimmy Napau, stood next to the deceased with a hammer in your hand while the deceased was on the floor covered with blood on her head and on the floor.
17. Amelia Shiro further described that the defacto couple relationship was not smooth because you, Jimmy Napau, occasionally abused the deceased at your home and that domestic violence is an ongoing issue at your home.
18. Kensly Tabi was the second independent witness. He was the tenant next to the deceased's room. He stated that in the early hours of the morning of 21 November 2021, he heard the deceased called out to you, Jimmy Napau, not to touch her, after that he heard you, Jimmy Napau, responded and said "*what kind of woman are you?*". As soon as he heard that he looked through the window and saw you, Jimmy Napau walked away from your room. Kensly Tabi went out of his room and he saw the deceased's sister Amelia Shiro was standing near to the deceased and she was crying. He noticed that the deceased was on the floor covered with blood on her head and on the floor. He further stated that on a number of occasions before the death of the deceased, he heard you, Jimmy Napau, assaulted the deceased inside your bedroom, he felt sorry for the deceased but he cannot do anything to help her because he was scared of you, Jimmy Napau.
19. Marama Taura, the defacto partner of Kensly Tabi, was the third independent witness. She stated she heard a loud noise coming from the deceased and Jimmy Napau's room the night in question. She said the loud noise was like someone had fallen down. She came out of her house, she saw you, Jimmy Napau, walked past her and when she went into the deceased's house she saw her (the deceased) on the floor covered with blood. She also confirmed that domestic violence is an ongoing issue in your relationship.
20. Graig Bond, is one of your neighbours with the deceased, was the fourth independent witness. On the said night while he was watching movie, he heard the couple argued. He came out of his house and stood outside while listening to you both. A few minutes later he saw you, Jimmy Napau, walked out of the house with a hammer in your hand and walked towards the main road.



21. Soon after that he heard the deceased's sister, Amelia Shiro, cried out. He walked into your house and Amelia Shiro told him to check the deceased but he was afraid of you, Jimmy Napau, and left.
22. Eric Nalau, a senior public health educator and the landlord of the property in which the incident occurred, was the fifth independent witness. He became aware of the incident by one of his tenants. When he arrived on the scene he saw the deceased on the floor covered with blood and blood were all over the floor. He also noticed that part of the deceased's brain was on the floor with the blood. He knew at that point in time that there can be no way to revive the deceased.
23. An autopsy was performed on the body of the deceased on 24 November 2021 by a pathologist Dr Crystal Garae at Port Vila Central Hospital. The pathologist did an external examination of the deceased and the following were her findings:
- The deceased appeared to be pallor on both conjunctive of the eyes;
 - Evidence of open compound (bone visible through the skin) fracture of the temporal (facia side) of the skull;
 - Brain matter was seen discharging from the fracture site;
 - Small laceration on the measuring 1cm x 1cm on the left forehead. It was the Doctor's opinion that the deceased died from severe head injury due to the blunt force trauma to the head. However, the Doctor did not comment as to what sort of weapon might have caused the injuries and how many blows that lead to the death of the deceased.
24. Jimmy Napau, you were cautioned on 23 November 2021 by the police and you made the following admissions: "yes, mi minim blo kilim ded Sharon, mi usum black hama mi kilim head blong hem 2 (two) taem lo side blo right sorae". "Mi wantem talem tu se 'yes' ol fesfela woman blong mi mi stap kilim olgeta".
25. To the extent that it was relevant, your admission was consistent with the finding of the pathologist because the pathologist also stated that there was an open compound (bone visible through the kin) fracture of the right temporal (facia side) of the skull and that brain was seen discharging from the site. According to that report, those are the major cause of death.



C. Sentence start point

26. The sentence start point requires an assessment by me as the sentencing judge. I will do that assessment by having regard to the maximum penalty available for the offending and I will factor in the aggravating and mitigating aspects of the offending. I will consider also the comparable case authorities.

27. Intentional homicide is prohibited under Section 106(1)(a)(b) of the Penal Code. Section 106(1)(a) provides:

"(1) No person shall by any unlawful act or omission intentionally cause the death of another person.

Penalty: (a) if the homicide is not premeditated, imprisonment for twenty years;

(b) if the homicide is premeditated, imprisonment for life (emphasized).

(2) For the purpose of subsection (1), premeditation consists of a decision of a decision made before the act to make a homicidal attack on a particular person or on any person who may be found or encountered" (Emphasised).

28. The maximum sentence for premeditated intentional homicide is imprisonment for life.

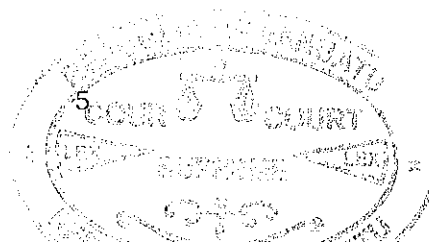
29. I consider the statement made by the Vanuatu Court of Appeal in *Public Prosecutor v Manap and others* [2018] VUCA 7; Criminal Appel Case No. 21 of 2017 (23 February 2018) that:

"After conviction for premeditated homicide, if the sentencing judge concludes a finite sentence of imprisonment is appropriate then we consider the start sentence should generally be at least 20 years imprisonment. This will reflect the maximum sentence in unpremeditated homicide (s.106(1)(a))".

30. I consider that in this case, a finite sentence is appropriate.

31. The following aggravating features exist in this case:

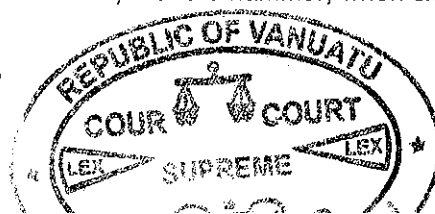
- (i) There is a serious breach of trust as the offender is the defacto partner of the deceased;
- (ii) The offending occurred at the home of the defendant and the deceased, the very place where the deceased is entitled to feel safe;
- (iii) The offending occurred in the early hours of the morning;



- (iv) The defendant left the scene soon after he killed the deceased and left her bleeding to death, without any attempt of helping the deceased;
 - (v) A black hammer was used as a weapon;
 - (vi) The defendant assaulted the head of the deceased with the hammer, the most vulnerable part of the human body;
 - (vii) The defendant assaulted the deceased on her head more than once;
 - (viii) There was an open compound (visible through the skin) fracture of the right temporal;
 - (ix) The deceased's brain was seen discharging from the fracture site;
 - (x) The deceased was a woman, a vulnerable member of the community and she was defenceless after she gave birth to twin babies but one died the next day after birth;
32. The following are the personal mitigating factors of the defendant leading to the offending:
- (i) The defendant (Jimmy S. Napau) was on bail waiting for a sentence in a previous case in which the deceased was one of the complainants when he re-offended and murdered the deceased;
 - (ii) The defendant (Jimmy S. Napau) has a history of violence in the relationship;
33. The prosecution submitted a range between 25 years imprisonment to 30 years imprisonment. The defence submitted a sentence start point of 23 years imprisonment based on the authority of Public Prosecutor v Manap and others [2018] VUCA 7.
34. I adopt a start point sentence of 25 years imprisonment as reasonable taking into account of the aggravating factors and personal circumstances of the defendant leading to the offending and their seriousness.

D. Mitigation

35. Mr Jimmy S. Napau, you pleaded guilty at the earliest opportunity. But the evidence against you was strong. The assaults on the body of Sharon Shiro which caused her death are supported by other witnesses hearing you, Mr Jimmy Napau, fatally assaulted Sharon with a black hammer. They saw you with the hammer in your hand next to the body of the deceased with blood on the head of the deceased and on the floor. You were threatening to assault the sister of the deceased Amelia Shiro, with the hammer, when she saw the body



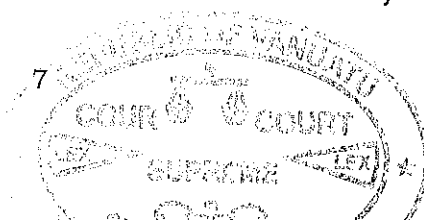
of Sharon on the floor covered with blood on her head and on the floor and she cried out. I am prepared to reduce the sentence start point for the prompt guilty plea by 25%.

36. Mr Jimmy Napau, you are 35 years at the time of the murder of Sharon Shiro. You are the sole bread winner of the family, with experience in security work. You work for the DBSA Security Firm for almost six (6) years. You stated to have good relationship with your family and community. You assisted your community with your skills in carpentry construction, mechanic and panel beating.
37. Mr Jimmy Napau, you said you have nothing to say about your offending and you are sorry for your actions. It is noted but this cannot bring back a dead body to life. You were thinking of putting an end to your own life when thinking about the life that has been taken. The senior corrections officer for the remand unit, Mr George Edson said, so far, you poses no risk from suicidal but you are an active detainee in his cells.
38. Mr Jimmy Napau, you stated you could not control your anger, which led you to commit such an offence. It is not a mitigation nor an excuse to premeditatedly intentionally caused the death of another person.
39. For your personal factors, I reduce the sentence start point by 3 months.
40. The balance remaining for your sentence is 19 years imprisonment.

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41. You have previous convictions. Part of your previous convictions were summarized by Justice Spear in Public Prosecutor v Jimmy (Sawan) Napau [2021] VUSC 307; Criminal Case 3301 of 2021 (26 November 2021) at [20]:

"In 2017, he pleaded guilty to intentional assault (x 2) and threats to kill. The complainant of that case was his then defacto partner, who he attempted to cut with a knife, kicked her to her left ear, threw objects at her and stuck her in the face causing bleeding. He also whipped her with a sugarcane trunk, while telling her that he would end her life. He attributed his act to his inebriation. He received an end sentence of 2 years imprisonment. In 2020, under different name, he pleaded guilty to a further intentional assault and was fine ..."

42. The other part of your previous convictions concerned your convictions of charges of domestic violence in 2021. The first incident occurred in January 2021 when you and Sharon went together into Port Vila to do some shopping. Sharon was pregnant at the time and she bought dish for washing, and you bought a bottle of beer. In the bus on your way back home, there was an argument, as you had wanted to have sufficient money to buy 2 bottles of beer

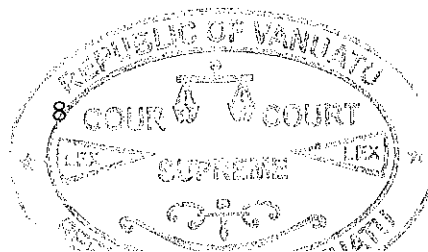


which was not possible due to the purchase of the dish. When you both reached home, the argument escalated to the point where you, Jimmy Napau, used your beer bottle to strike Sharon in the face, breaking the bottle and causing bleeding [Charge 1].

43. The second was that you, Jimmy Napau, were not content with your first blow on Sharon, took up a bush knife which you used to cut Sharon's right eyebrow and her right shoulder. This caused heavy bleeding, but then, you went off to sleep regardless [Charge 2].
44. In June 2021, when 6 months or so pregnant, Sharon told you that the next day she intended to go to Freshwater and asked a relative for money so she could pay for her next check-up. You told Sharon that if she did go out as intended, she would not be permitted back home. Sharon responded that in fact you should be the one to leave. You responded by striking Sharon's back several times, while scolding her, Sharon got up to go outside, but fainted. A neighbour saw her and took her safely to hospital with the aid of Pro-Medical [Charge 3].
45. On 19 August 2021, at 3am, you returned home drunk. When you woke up in the morning you asked Sharon for sex, which she declined as she was heavily pregnant. You then squeezed her neck to the point that she could no long breath [Charge 5].
46. In the period that Sharon and you were estranged, you took up residence with Collette. In February 2020, Collette went to wash clothes in a river. She later changed and covered herself with some calico. This upset you, who accused her of having poor dress sense. In the heat of the ensuing argument, you said to her "*you luk hand blong me ia sipos me kilim neck blong you ia wetem bae me brekem*". This terrified Collette, due to her previous experiences of violence at your hands [Charge 8].
47. On 10 February 2020, the Magistrate's Court issued a Protection Order against you in favour of Collette. On 19 August 2021, the Magistrate's Court also issued a Protection Order against you in favour of Sharon.
48. Mr Jimmy Napau, you were convicted by the Supreme Court and sentenced on those 5 counts of domestic violence and was sentenced to 2 years and 10 months imprisonment on 26 November 2021. To reflect these previous convictions, an uplift is required to the sentence start point of 14 months.

E. End Sentence

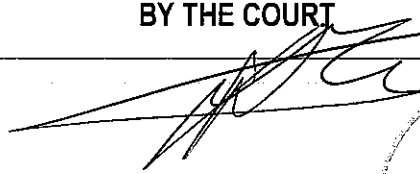
49. The end sentence I impose is 20 years and 7 months imprisonment.



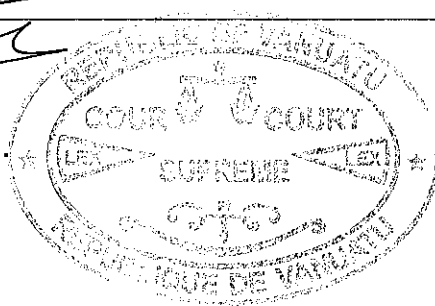
50. Mr Jimmy Napau, you are currently serving a custodial term of 2 years and 10 months for the 5 charges of domestic violence which was effective as from 22 October 2021.
51. This current sentence of 20 years and 7 months imprisonment shall be consecutive to your sentence of 2 years and 10 months you are currently serving. This means that your sentence of 20 years and 7 months imprisonment must be consecutive to the total period of imprisonment to which you, Jimmy Napau, are already subject.
52. I consider whether or not it is appropriate to suspend in part or whole the sentence. The court is aware of the facts that three separate defacto partners who have had endured violence at Mr Jimmy Napau's hands, and one of the women partners, Sharon Shiro, died as a result of unlawful acts and physical violence done to her by you, Jimmy Napau, which caused her death on 21 November 2021. For the protection of the community a deterrent sentence is warranted. There is to be no suspension of sentence.
53. Mr Napau has 14 days to appeal this sentence if he is unsatisfied with it. The 14 days starts at the date of the sentence.

Dated at Port Vila, this 12th day of May 2023.

BY THE COURT



Vincent LUNABEK
Chief Justice



The seal of the Supreme Court of Vanuatu is circular. The outer ring contains the text 'REPUBLIC OF VANUATU' at the top and 'SUPREME COURT OF VANUATU' at the bottom. Inside the ring, the words 'COURT' and 'COURTY' are written in a stylized font. In the center, the word 'SUPREME' is written above a decorative flourish. The letters 'LEX' are written on either side of the flourish.