

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

**Criminal
Case No. 24/855 SC/CRML**

BETWEEN: Public Prosecutor

AND: Soni Albani
Defendant

Coram: Justice Aru
Counsel: Ms. M. Tasso for the Public Prosecutor
Mr. E. Molbaleh for the Defendant

SENTENCE

Introduction

1. The defendant Mr Sonie Alban pleaded guilty to four (4) counts of domestic violence and pleaded not guilty to one (1) count of threats to kill. The charge of threats to kill was later nollied by the prosecution. He now appears for sentencing on his guilty pleas.

The Facts

2. The offending occurred between the hours of 11: 00 pm on 1st of January 2024 and 3.00 am on 2nd January 2024 at Eratap village. On the night of 1st of January 2024, the defendant had some drinks at his brother's house. When he returned to the house, the complainant was already asleep. His children were also asleep. It was around 11.00 pm when he returned to the house.

Count 1

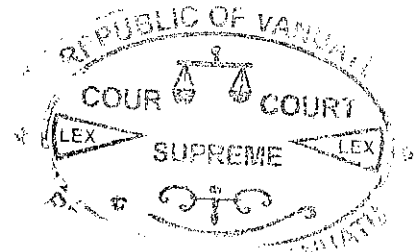
3. The defendant woke the complainant up and she sat on the bed. He had an argument with the complainant about her drinking problems and misuse of money. He punched her face and threw her down to the floor. The complainant got up and sat on the floor. The defendant again threw his hand to punch her face but she blocked her face with her hands.

Count 2

4. The defendant did not stop. He used his right leg and kicked the complainant on her chest. At that time, he wore safety boots which caused a lot of pain to the complainant. After that he left the bed room and went out into the living room. He overturned their dining table and everything fell on the floor.

Count 3

5. When she found an opportunity to escape, she ran off into the dark. The defendant ran after her, took hold of her and grabbed her by the hair and dragged her back to the house. He pushed her into the house and then kept on assaulting her.

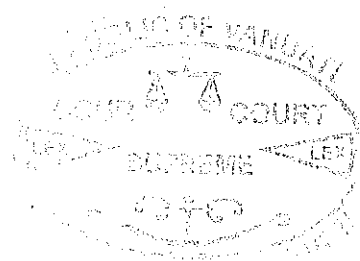


Count 4

6. He swore at the complainant saying: "*yu wan rabis woman, wan solmit woman mo wan stupid mo dump woman, yu traem usum fucken brain blo yu*" (that she was a "bad woman, solmit woman and stupid woman, she should be using her fucking brain") .
7. When the complainant lodged her complaint with the police, she mentioned that this was not the first time she was assaulted by the defendant. She had attended the police station for round table meetings and asking for restraining orders in the past to stop her husband from ongoing violence in their home, but, her efforts did not deter the defendant from being violent towards her.
8. The defendant admitted the allegations against him to the Police.

Sentence start point

9. The maximum sentence available for domestic violence is a term of imprisonment not exceeding 5 years or a fine not exceeding 100,000Vatu, or both. The offending is aggravated by a number of factors namely:
 - there is an element of planning involved;
 - the offending occurred at home where the victim should be protected;
 - there is a gross breach of trust as the victim is the defendant's de facto partner;
 - the offending occurred at night and in the presence of their children;
 - the defendant was intoxicated and continued the assaults for roughly 3 to 4 hours;
 - the defendant wore safety boots whilst assaulting the victim which caused the victim severe pain and injuries; and
 - the victim was humiliated in front of her children.
10. There are no mitigating factors of the offending.
11. When considering the sentence start point, the Public Prosecutor referred to Public Prosecutor v Harry Willie Criminal Case No 3367 of 2020 and Public Prosecutor v Shem Kora Criminal Case No 1959 of 2020 and submitted that those cases are less serious than the offending in this case. In both cases the starting point of sentence was 2 years imprisonment and the end sentences were suspended. In *Willie*, the offending was a single charge of domestic violence involving the defendant hitting the victim's back with his hand. *Kora* on the other hand was charged with two counts of domestic violence. He assaulted the victim, his step daughter but missed and hit her baby. The second charge involved the defendant hitting the victim's mother (his partner) with a piece of wood.
12. It was submitted that I adopt a starting point between 2 to 3 years imprisonment.
13. Mr Molbaleh on the other hand referred to Public Prosecutor v Bosco Alick Criminal Case No 227 of 2022 and submitted that I adopt the approach taken in that case. The offending consisted of one charge of assault causing temporary injury where a clay cup was thrown at the victim and one charge of domestic violence involving hitting the victim with a spirit level on her head, back, face and legs. The victim was the defendant's wife and their children witnessed the offending. The Court adopted a starting point of 18 months imprisonment and imposed an end sentence of 10 months imprisonment which was suspended for a period of 2 years.



14. In the current case, the defendant is charged with four counts of domestic violence committed when the defendant was drunk and the assaults lasted several hours involving punching and kicking the victim with safety boots in front of her children. The defendant also has a history of ongoing violence towards the victim.
15. The cases referred to above are less serious than this case. For each count, the starting point of sentence is three years imprisonment. The total concurrent starting point of sentence is 3 years imprisonment.

Mitigating factors

16. No pre sentence report was filed as directed. Mr Molbaleh submits that the defendant is a first-time offender and that he is the sole bread winner. He earns his living by doing seasonal work in New Zealand.
17. Taking these factors into account I reduce the sentence start point by 12 months.
18. The defendant also entered a guilty plea at the first available opportunity therefore the sentence start point will be discounted by 25%.

End sentence

19. The defendant is sentenced to an end sentence rounded off to 17 months imprisonment. Considering the circumstances of this case, the nature of the offending and the defendant's character, I will not suspend the sentence. The sentence must be served to mark the gravity of the offending and to serve as a deterrence to any future offending by the defendant and the public at large.
20. As the defendant has been on bail, unless he elects to begin serving his sentence immediately, he must present himself to the Centre Manager of the Correctional Centre to begin serving his sentence **by no later than 25 June 2024**. Should he fail to do so, an application may be made to have him arrested and brought to the Correctional Centre.
21. The defendant has 14 days to appeal if he disagrees with the decision.

DATED at Port Vila this 11th day of June, 2024

BY THE COURT


Dudley Aru
Judge

