

BETWEEN : PUBLIC PROSECUTOR

A N D : POEPOE POIA

Coram : J. W. VON DOUSSA AJ

Prosecutor : HILARY TOA

Defence : STEVEN JOEL - PUBLIC SOLICITOR

REASONS FOR JUDGMENT

You have been convicted of 1 crime of abduction and 1 of kidnapping. The charge of abduction arises out of events which occurred it seems early in 1992. On that occasion, you along with your father and the chief of your village at Namuru went to the village where the victim lives at Ankora in Big Bay. That was a two-day walk and on the third day there was a meeting of the chiefs of the two villages and it is said by your counsel and the court accepts that at the meeting of the chiefs, it was agreed that you were entitled to take the girl who was the victim as your customary wife. The difficulty arose because the girl and her parents did not approve of her going with you at that time, and the crime arose because you and those with you then took the girl away by force against her will. Whatever the position might have been according to customary law, it is against the statute law of this land to do that. What the statute law now says is that no one with intent to marry a girl shall have sexual intercourse with her because of not being married, or take her away against her will. And the maximum penalty provided by the law is 10 years imprisonment

It must now be clearly understood by everybody in Vanuatu that Parliament has passed this law which takes priority and comes first over customary law. It must also be understood that if people take girls against their will for purposes of marrying her and having sexual intercourse with her against her will, will be treated very seriously and result in jail sentences. And if the warning has not been given before, it is given now that that's what will happen to people.

The second crime of which you are charged arose quite some time later. After the first abduction you took the girl to your village and she lived with you as your wife after the marriage ceremony. She did not consent to the marriage ceremony, nor was she a willing party to all of the sexual activity that thereafter happened. If it had not been for the customary marriage when you arrived in the village, you would also be charged with many serious rape offences. After some time the victim's parents came and took her away from your village. That takes into the second offence where I'm told by your counsel that the following things happened. And what your counsel says is consistent with the statements of the witnesses. Because your wife has been taken away, members of the village including some chiefs arranged to hire a truck to go the victim's village in ~~xxxxxxxxxxxxxx~~ in Big Bay to get the girl back. You went along with those people in the truck and were one of the people that seized the girl and took her back to the village. Again, the statute law passed by Parliament makes that a serious crime. The crime of kidnapping involves taking someone from one place to another place against their will. And that's exactly what you did. Parliament has said the maximum penalty for kidnapping is 10 years imprisonment. Again it's necessary to give a warning to everyone in the community that if any

attempt is made to enforce notions of variety of the customary law, by physically seizing a person from one village, taking him somewhere else, all those involved commit a very serious crime. It is necessary to give yet another warning that everybody that is involved as people taking part in the seizing of a person against their will is guilty of the offence of kidnapping. Also in the case of the abduction, everyone involved in seizing the girl and take her off to be married is guilty of the crime. And if a group of men sit around at a meeting and decide to take a girl against her will, from one place to another, those people are guilty of what is called "conspiracy" which also carries a jail sentence. A conspiracy is an agreement reached between people to carry out an illegal act. And on the information that has been given to this court by your counsel, it appears that many people were guilty of the offence of kidnapping. That includes all the people who agreed to hire the truck and all the people that went in the truck to seize the girl. If they happened to be chiefs of the community, they are guilty of the offence just the same as you are. And if they get arrested by the Police they can expect to get the same sort of punishment.

It is necessary for me to give you a penalty which is appropriate to your own circumstances. But in doing that the penalty has to be heavy enough to make it clear to the community that you have been guilty of a serious offence. In future cases it is quite likely that people guilty of these offences will get penalties of between 3 years and 6 years imprisonment. Your case is slightly different. I have given a warning to people today about what will happen to them if they do these things. But you haven't had that warning and you perhaps didn't realise how serious your crime was. So you'll get a lighter sentence for that reason. But other people that come along after you, will have heavier sentences. You're also entitled to have brought to your account your previous good character, you are entitled to a lighter sentence because you came here and pleaded guilty and because you've told the Police honestly and immediately what you done when they asked you. By admitting your crime you've saved the girl the embarrassment of coming here and giving evidence. I take into account also that you were acting under the influence of your Chiefs and senior members of the community. But that does not excuse your crime, you must still be punished for it and it may be that some of the others will be charged even yet and they will suffer penalties too. I have to punish you for two quite separate crimes. The first is for abduction and the second kidnapping some months later. So you have to have two penalties and you have to serve them one after the other. But I do take into account the fact that you will be serving one sentence after the other, the total sentence must not therefore be too long.

The penalties that the court imposes on you is a sentence of 2 years imprisonment on each charge, and they will be served one after the other, that is consecutively that's altogether 4 years, and the sentence starts from the 13th of March 1993. If you are a good behavior in jail, you will get some time taken off your sentence, some remission.

Dated this 7th day of July 1993 in Luganville Santo, VANUATU.

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J. W. VONDOUSSA
Acting Justice