

PUBLIC PROSECUTOR – VS – SEWEN TARI PUBLIC PROSECUTOR – VS – SEWEN TARI

Coram: Mr. Justice Oliver A. Saksak

**Counsel: Mr. Ken Massing for the State
Ms Jane Tari for the Defendant**

Date: 26th February 2014

SENTENCE

1. Sewen Tari you are for sentence today after the Court found you guilty after a trial hearing on one charge of sexual intercourse without consent contrary to sections 90 and 91 of the Penal Code Act [Cap.135].

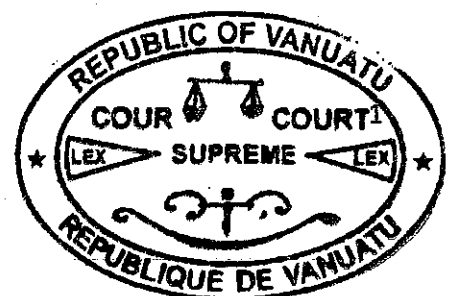
2. The maximum penalty for this offence is life imprisonment.

3. Your offending is serious. It involved a 16 years old school girl. You were 16 years old too at the time of offending on Penama Day, 14th September 2012. The Court found that there was some degree of force used over and above the force necessary to commit the offence of rape. Further, the Court accepted there was some planning of the offence.

4. The cases of Public Prosecutor v. Scott [2002] VUCA 22, Public Prosecutor v. Gideon [2002] VUCA 7 and Public Prosecutor v. Andy [2011] VUCA are well known and classic cases. The Court of Appeal said in Scott that :

"The offence of rape is always a most serious crime. Other than in wholly exceptional circumstance, rape calls for an immediate custodial sentence."

5. Based on that principle, the Court will impose a custodial sentence in order to –
(a) Deter you and others;



- (b) Mark the seriousness of your offending;
- (c) Mark public disapproval of your actions;
- (d) The protect the young and vulnerable members of the society especially girls and women; and
- (e) Punish you adequately.

6. This Court therefore convicts and sentences you to imprisonment. I accept defence counsel's submission that the circumstances of your offending warrant that a starting point below 5 years be imposed. The Court therefore imposes a starting point of 4 years imprisonment. There will be no uplift.

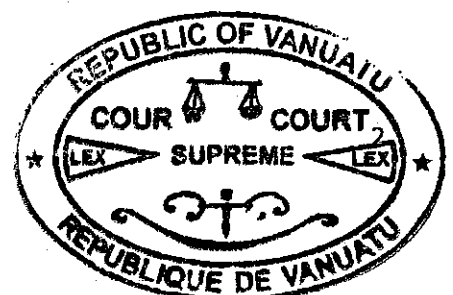
7. In mitigation I consider your age at the time of the offence being 16 years old. You only entered a plea of Not-Guilty on 6th August 2013 some 11 months later. The case was listed for mention first on 4th June 2013, 28th June 2013 and 2nd July 2013. I consider these delays tantamount to exceptional circumstance which warrant a suspension of your sentence of imprisonment.

8. I consider that some deduction be made for the following mitigating factors such as –

- (a) Being a young offender;
- (b) Clean past record;
- (c) Good cooperation with the Police at investigation and interview; and
- (d) Willingness to perform custom ceremony to the victim and family.

I allow 2 years deduction for these.

9. You have a balance of 2 years imprisonment. However, these are suspended for 2 years with supervision and on special conditions. These are specified in a separate order. You must report to the Probation Service within 72 hours. You require Supervision to assist you rehabilitate.



10. That is the Sentence of the Court. You have a right of appeal against this sentence within 14 days if you so choose.

DATED at Luganville this 26th day of February 2014.

THE COURT

BY THE COURT

O. A. SAKSAK
Judge

Oliver A. Saksak
OLIVER A. SAKSAK
Judge

