

PUBLIC PROSECUTOR

v

HERVE ASANG

Date: 22 November 2023  
Before: Justice V.M. Trief  
Counsel: Public Prosecutor – Mrs B. Tamau  
Defendant – Mrs M. Markward

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SENTENCE

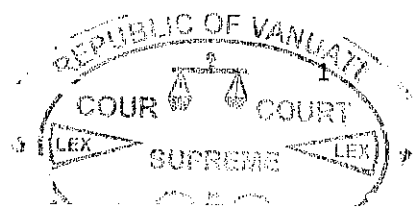
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A. Introduction

1. Mr Asang pleaded guilty to indecency without consent contrary to para. 98(a) of the *Penal Code* (Charge 2).

B. Facts

2. In June 2022, at Malekula island, Mr Asang picked up the complainant Rosineth Samuel and her cousin sister Norine Tarlili at Timber Store and told them to come with him to LDC where he would buy them lunch. Instead of stopping at LDC, he continued on saying that they would go pick up a passenger from Tautu village then go to lunch.
3. When they got to the roundabout at Norsup airport, Mr Asang headed toward the sea. He parked at the beach and they all exited the truck. Mrs Tarlili received a call on her phone from her husband so she walked away to speak with him. Mr Asang came towards Ms Samuel and started demanding sex from her. He held onto her hands and tried to kiss her but she turned her face away. He did not stop. He started touching her breasts with his hands.
4. Mrs Tarlili saw what Mr Asang was doing to Ms Samuel including that he had a full erection as he was forcing himself on to Ms Samuel. She was scared and wanted to run away but Ms Samuel told her to stay.



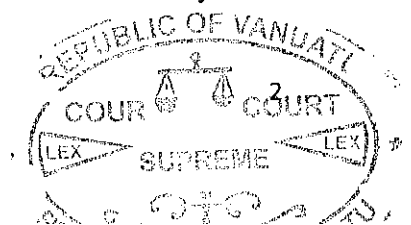
5. Ms Samuel was adamant about not wanting to have sex with Mr Asang. He told her that sex is a normal thing to do and it would not take long for them to do it. He opened the door to the truck and tried to pull Ms Samuel into the truck but she refused. He told her that if she agreed to have sex with him, he would pay her money.
6. Ms Samuel was scared by Mr Asang's actions and told him that she did not need his money and if he continued to pressure her for sex, she will run away and look for help. She was one month pregnant at the time. She and Mr Asang are related – he is her nephew.

C. Sentence Start Point

7. The sentence start point is assessed having regard to the offending, its aggravating and mitigating features and the maximum sentence set by Parliament.
8. The maximum sentence provided is 7 years imprisonment.
9. There are no mitigating aspects to the offending however, it is aggravated by the following:
  - a. Breach of trust;
  - b. Pre-meditation on the part of the defendant;
  - c. The level of dishonesty shown by the defendant;
  - d. Luring the complainant to an isolated area where the offending took place; and
  - e. The effect on the complainant and the other woman present, including the fear caused.
10. Taking into account the circumstances of the offending including the indecent touching (through clothing) of breasts while also asking and pressuring the complainant for sex whilst displaying a full erection (through clothing) and without caring that the other woman present was seeing all of this and was also frightened by his actions but continuing to forcefully press the complainant for sex, and the breach of trust involved, I adopt a sentence start point of 3 years imprisonment.

D. Mitigation

11. Mr Asang pleaded guilty at the first reasonable opportunity, saving the Court's time and the need for the complainant to give evidence. A third is deducted from the sentence start point for the early guilty plea.
12. Mr Asang is 32 years old. He is married and has four children aged 7, 5, 4 and 2 years old. He is employed as a bus driver. His family relies on him for income and support.
13. He has no previous convictions although in cases of a sexual nature, that is of little mitigatory value.
14. Mr Asang is stated to be remorseful and that has not breached his bail conditions, including not to commit an offence. He is willing to perform a custom reconciliation ceremony if that would be accepted.



15. A further three months is deducted from the sentence start point for Mr Asang's personal factors.

E. End Sentence

16. The sentencing principles applicable in this case are holding Mr Asang accountable for his conduct, to denounce the criminal conduct and emphasize public disapproval of such offending, to protect the community, and to deter him and others from acting in this manner in the future.

17. Taking all of those matters into account, the end sentence imposed is 1 year 9 months imprisonment.

F. Suspension of Sentence

18. The Court has a discretion under s. 57 of the *Penal Code* to suspend all or part of the sentence 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."

19. The offending is serious. This counts against suspension of sentence. On the other hand, there was no skin-to-skin contact in the circumstances of the offending, Mr Asang's remorse and prospects of rehabilitation favour suspension of the sentence. I consider that imposing immediate imprisonment with the inevitable consequence of exposing Mr Asang to long-term hardened criminals would be counter-productive and would undermine his prospects of rehabilitation. I am therefore prepared to exercise my discretion under s. 57 of the *Penal Code* to suspend the sentence for 2 years. Mr Asang is warned that if he is convicted of any offence during that 2-year period, that he will be taken into custody and serve this sentence of imprisonment, as well as the penalty imposed for the further offending.

20. In addition, Mr Asang is to complete 60 hours community work.

21. Mr Asang has 14 days to appeal the sentence.

**DATED at Port Vila this 22<sup>nd</sup> day of November 2023  
BY THE COURT**

  
Justice Viran Molisa Trief

