

PUBLIC PROSECUTOR
v
GASTON BULE

Coram: Hon. Chief Justice Vincent Lunabek

Counsel: K Massing for the State
B Taleo for the Defendant

Date of Plea: 22 April 2024

Date of Sentence: 26 April 2024

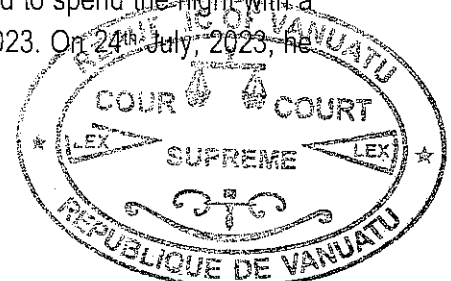
SENTENCE

I. Introduction

1. Mr Gaston Bule ("Mr Bule"), you appear for sentence today.
2. On 22nd April 2024, you pleaded guilty to one charge of Attempted Sexual Intercourse Without Consent, contrary to Sections 28, 90(a) and 91 of the Penal Code Act [CAP. 135] (Count 1); and also to one charge of acts of Indecency Without Consent, contrary to Section 98(a) of the Penal Code Act [CAP. 135].

II. Facts

3. You were convicted on your own pleas and admitted to the following facts.
4. The complainant is a disability and he is 30 years old. He as a registered member of Vanuatu Disability Promotion & Advocacy Association. He is a person with intellectual disability. Mr Bule, you are 54 years old.
5. The complainant lives at Banban area on the island of Santo. Mr Bule, you live at Sakele area in Luganville, Santo. On the 23rd of July 2023, the complainant went to Chapuis area to see and met his friends. But when he arrived there, his friends were drinking beers. So he joined them and he had some beers with them. After he had beers with his friends, he then went tot Sakele area in the late afternoon about 5pm. At about that time, he decided to spend the night with a relative of his at Sakele till the next day which is the 24th of July 2023. On 24th July, 2023, he

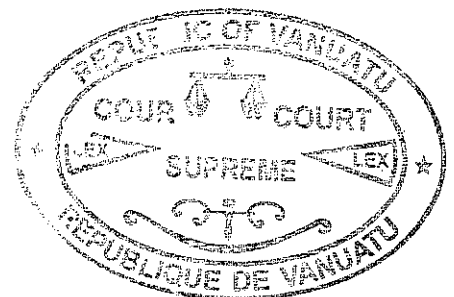


decided to go and watch rodeo. When he arrived at Sakele, his cousins or brothers were drinking at the chiefs' nakamal at the stage. He then went and joined them to drink. They had beers until 12pm where he was really drunk and he went to sleep. He went to a relative of his by the name of Uro.

6. When he went there he found out that the house was locked and he went to your kitchen where he slept at the armchair until daylight. In the morning at around 6am, he woke up and then wanted to walk home. But on his way you called him into your yard. The complainant came to your yard with the thought that you will save him by providing to him a place to sleep. He went and sleep inside your house.
7. While he was about to sleep, you woke him up. When he woke up, you were already naked in front of him. You then asked the complainant to suck your penis. He refused. You then held his head towards your penis and then forced him to suck your penis without his consent. During the sucking you ejaculated into his mouth and he drank all your sperm.
8. After the sucking, he went to sleep again because he was still drunk. While he was still sleeping, you went and removed his clothes and then rub oil on his anus. The complainant felt that you were trying insert your penis into his anus. You tried several times to penetrate his anus with your penis, but failed on all those attempts. He also heard you said to him that his anus was too small.
9. You then proceeded on to have him sucked your penis again the second time and you ejaculated into his mouth. He drank your sperm again the second time. He then went to sleep again. When the complainant woke up, you were still sleeping, the complainant then went outside of the house. Outside of the house, he told a relative of his Linda about what you had done to him. You threatened him to death if he told anyone about what you did to him. He said that he was really drunk with alcohol where he cannot fight back or resisted your actions.
10. You were later arrested, cautioned and interviewed by the police where you admitted the allegations that were made against you.

III. Sentence Start Point

11. The maximum sentences that are available for offences in this case are:-
 - Imprisonment for life; and
 - 7 years imprisonment.
12. Here, there is more than one charge so, the appropriate maximum sentence that is available in this case for the overall offending is imprisonment for life and it is so concurrently.



13. There are no mitigating factors to the offending, but the following aggravating features of the offending exist:

- There was a degree of planning on the part of Mr Bule (you invited the complainant at your home to sleep and attempted to have sexual intercourse with him);
- The complainant is a person with a disability (intellectual);
- There were more than one offence committed of the complainant at that particular time;
- Mr Bule, you threatened to kill the complainant if he told anyone about the offending; and
- The mental impact of the offending on the victim.

14. The sentence start point, in this case, is 4 years imprisonment based on the close similarities with the case of Public Prosecutor v Kapalu [2021] VUSC, where the defendant was charged with a count of Attempted Sexual Intercourse Without Consent. The defendant pleaded guilty and was convicted by the Court. Similar aggravating features existed like in the present case, based on those aggravating factors, the court adopted a sentence start point of 4 years imprisonment.

IV. Personal Mitigating Factors to the Defendant

15. Mr Bule, you come from Levatlis on Central Eastern side of Pentecost Island. You are 56 years old and you live and work on Santo. You are married to Mrs Asamona Alison and you both had two grown up children with four grandchildren. You are a professional carpenter builder.

16. You stated that you were wrong in your actions with the complainant in this case. You wanted to perform a custom compensation but you were arrested and remanded before you had a chance to perform one. Chief Ronald Luwisilili from Central Pentecost stated he is willing to facilitate a reconciliation when Mr Bule, when you were released from custody.

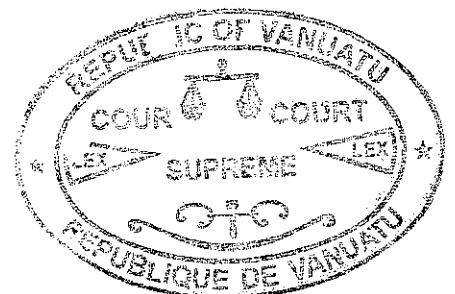
17. I give you a reduction allowance of 3 moths to reflect on your mitigating factors.

18. I further give you a reduction allowance of 33% for your early guilty pleas given at the earliest opportunity. You had saved the court time and costs to call for a trial.

19. Your sentence balance remaining is 39 moths i.e. 3 years and 3 months.

V. The End Sentence


20. Your end sentence is 3 years and 3 months imprisonment.



21. You have already spent in pre-custodial period 19 months until you are sentenced today. This period must be taken into account in your favour.
22. I consider but I decline to suspend this imprisonment term sentence of 3 years and 3 months. You were arrested and remanded in custody on 15 December 2023 till date.
23. Your sentence of 3 years and 3 months imprisonment is deemed to start on 15 December 2023 to take into consideration the time you have already spend into custody.
24. You have 14 days to appeal this sentence if you are unsatisfied with it. The 14 days appeal starts on the date of this sentence.

DATED at Luganville, Santo, this 26th April, 2024.

BY THE COURT



Hon. Chief Justice Vincent LUNABEK

