

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

**Criminal
Case No. 24/852 SC/CRML**

BETWEEN: Public Prosecutor

**AND: James Sam Karapia
Defendant**

Coram: *Justice Dudley Aru*
Counsel: *Ms. M. Tasso for the Public Prosecutor*
Mrs. K. Karu for the Defendant

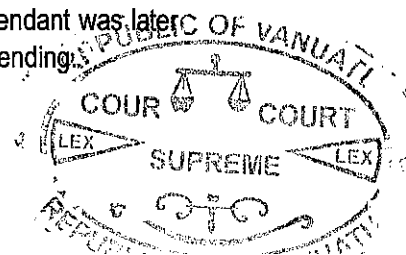
SENTENCE

Introduction

1. The defendant pleaded guilty to 1 count of sexual intercourse without consent.

The Facts

2. The complainant is 17 years old and the defendant is 29 and both live in the same yard at Black sands area in Vila. The complainant was looking after her uncle and aunt's house. On 31 December 2023 she had some alcoholic drinks with a relative. They finished around midnight then she went inside the house locked the door and slept. Whilst sleeping she felt her body and the bed moving. The light was still on. When she opened her eyes, she saw the defendant and recognised him because they lived in the same yard and she knew him. The defendant on noticing that she saw him, turned off the light and moved her hands upwards and undressed her. He laid on top of her despite her protests to remove himself. He did not listen and proceeded in penetrating her vagina with his penis.
3. The complainant was too drunk to fight back although she tried calling out for help. She felt the defendant insert his penis into her vagina and she felt pain. She felt very weak and numb to call out for help. Upon satisfying himself, the defendant left and she heard him close the door. When the complainant woke up in the morning, she noticed she was half naked and felt wet and was bleeding from her vagina. She was terrified and ran out of the house into her neighbour's yard and told them what the defendant did to her.
4. She was still bleeding from her vagina and a relative took her to the hospital on 1 January 2024. A medical report confirmed an abrasion on the complainant's vagina. The defendant was later arrested. After being cautioned and interviewed, the defendant admitted the offending.



Starting point of sentence

5. The maximum sentence available for sexual intercourse without consent is life imprisonment. In this case there are a number of aggravating factors, namely that there is an element of planning involved, there is a breach of trust as the complainant knew the defendant as they lived in the same yard, there is an age disparity, the offending occurred in the home where the complainant is meant to feel safe, the complainant was exposed to the risk of unwanted pregnancy and the risk of contracting sexually transmitted diseases.
6. There are no mitigating factors of the offending.
7. In setting the starting point of sentence, I take into account the authorities referred to me by both counsels namely Public Prosecutor v Gideon [2002] VUCA7 and Public Prosecutor v Scott [2002] VUCA 2. The Court in Scott said:-

“....
For rape committed by an adult without an aggravating or mitigating feature, a figure of five years should be taken as the starting point in a contested case. Where a rape is committed by two or more men acting together, or by a man who has broken into or otherwise gained access to a place where the victim is living, or by a person who is in a position of responsibility towards the victim, or by a person who abducts the victim and holds her captive the starting point should be eight years.”
....

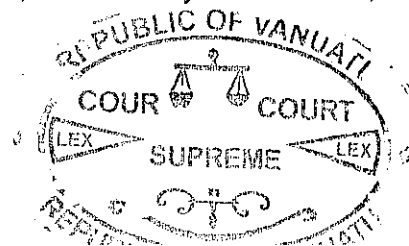
8. I adopt a starting point of 8 Years imprisonment. As there is an element of planning involved, the sentence start point is uplifted to 9 years imprisonment.

Mitigating factors

9. The pre sentence report shows that the defendant is 30 years old and is a first-time offender. He left school at year 9 and intends to one day join the seasonal work scheme in Australia or New Zealand. His chief and family speak highly of him and were surprised with his offending as he was always willing to help with chores around the house.
10. No reconciliation has been done as yet but the defendant is willing to perform one. Taking these factors into account I reduce the sentence start point by 12 months.
11. The defendant pleaded guilty at the first available opportunity therefore the sentence start point will be discounted by 33%.

End sentence

12. The defendant is sentenced to an end sentence rounded off to 5 years imprisonment effective from 30th January 2024 when he was remanded into custody. A custodial sentence is warranted. *“First of all, to mark the gravity of the offence. Secondly to emphasize public disapproval. Thirdly to serve as a warning to others. Fourthly to punish the offender, and last but by no means least, to protect women” (PP v Scott).*



13. The defendant has 14 days to appeal if he disagrees with the decision.

DATED at Port Vila, this 21st day of May, 2024

BY THE COURT

Dudley Aru
Judge.

