

PUBLIC PROSECUTOR

-v-

WILLIAM KOATA

*Mr. Molbaleh for the Prosecution
Mr. Vira the Defendant*

SENTENCE

Mr. William Koata, you appear for sentencing following a verdict against you on a charge of having sexual intercourse without the consent of complainant under section 91 of the Penal Code. The maximum term of imprisonment for that offence is life imprisonment. I entered a conviction in respect of the charge and accordingly you will have 14 days from today to appeal both against the conviction and the sentence I am about to impose.

The offending occurred in February 2006. You and the complainant were cousins. You were giving her a ride home from her work place after she had finished work. Instead of driving her to her home, you drove her to another place, stopped your bus, locked the door of the bus and assaulted her in the back seat after she refused to have sex with you. You banged her head against the seat, you tore her trousers and you raped her once.

At your trial you admitted that you and she had had sexual intercourse but claimed that she consented. You alleged that she was making up the allegation of rape to protect herself against your wife finding out about what you said was consensual sexual relations.

The pre-sentence report is a lengthy one. It reveals that following this offending an even greater tragedy affected your life. In November 2007 there was a fire in



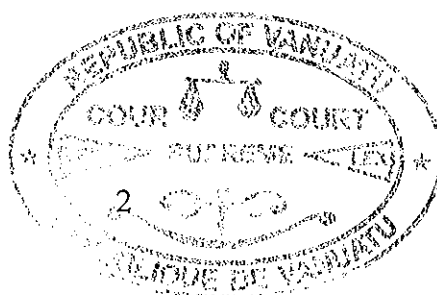
your house. Two of your children were killed and you were seriously injured yourself. A third child was injured and died just recently as a result of the injuries suffered in that fire. Your wife has found it difficult to cope without your assistance, she is expecting another child. You admit this offending and you are remorseful about it. Your behavior and attitudes the pre-sentence report says have changed since February 2006. You have ceased to consume alcohol. A consequence of your offending for you was that you were beaten by the complainant's relatives and hospitalized for seven days as a result of the injuries they inflicted on you. You, yourself organized a custom ceremony giving a pig and VT30,000 in cash as a gesture of remorse. The recommendation of the report is a suspended sentence of imprisonment.

The purpose I adopt in sentencing you is to deter you and others from behaving in this way in future. Imprisonment for rape can really be the only response that the Court imposes and I adopt a starting point of imprisonment of 6 years. That includes the violence inflicted on the victim over and above that which is inherent in the rape.

In mitigation you have shown that you are remorseful for the offending, you have undergone a custom ceremony and you have previously a good record.

I also take into account the beating which you received at the hands of the relatives of the complainant while I do not endorse that sort of behavior, it is something that has affected you to the point of you being hospitalized and I do take it into account.

Secondly, the prosecutor has sympathetically suggested today that the delay in sentencing on this matter is the fact we should weight in your favor and I agree with him. Originally, you were to be sentenced but then I learned of the death of your third child deferred the sentencing to today so that you could be with your wife.



Those factors in my mind reduce the sentence of imprisonment to one of 4 years. I need to consider whether that sentence should be suspended. The Vanuatu Court of Appeal has said that a suspended sentence for rape will only be imposed in vary rare circumstances. In this case it is impossible for me to ignore the death of your three children, the injuries which you have suffered yourself and which are detailed in a medical report which I have, the fact that your wife is expecting another child and needs your help and the fact that you have not re-offended since February 2006.



Accordingly the 4 years sentence of imprisonment will be suspended for a period of 3 years. That 4 years term of course will be reduced by any period of time which you have spent in custody in relation to this charge.

The effect of the suspended sentence is that if you are convicted again during the 3 years suspension period of any other offence then that sentence can be activated either in whole or in part.

As I indicated to you earlier in this judgment you have 14 days to appeal either against your conviction, your sentence or both.

DATED at Port Vila, this 20th day of May, 2009.

BY THE COURT



P. BUTLER
Judge.