

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

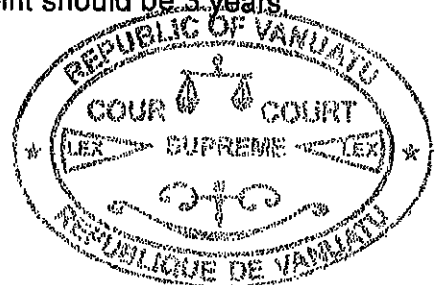
MORRIS SOBRO

Mr Justice Oliver A. Saksak
Mrs Anita Vinabl – Clerk

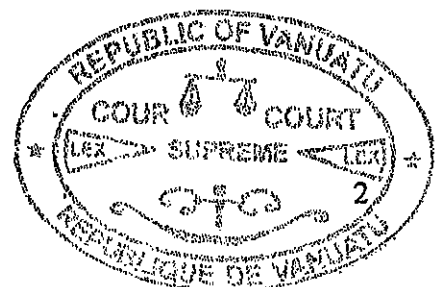
Mr Gregory Takau for Public Prosecutor
Mr Kevin Nathan for Defendant

SENTENCE

1. The Court found you guilty on one count of sexual intercourse without consent on 20th February 2009. Sentencing was adjourned to today pending a Pre-Sentence Report.
2. A Pre-Sentence Report was filed on 2nd March 2009. Your Counsel's submissions are based on the information contained in that Report.
3. In assessing your Sentence, I have taken into consideration submissions raised by the prosecutor and defence counsel.
4. Both counsels submit that the appropriate sentence for you should be a custodial one and that three (3) years should be the starting point
5. The Court agrees with counsels that the only appropriate sentence for you for a section 91 charge will be a custodial one. But the Court disagrees with counsels that the starting point should be 3 years




6. The principle in PP v. Ali August Cr. 14/2000 is clear that for an offence of rape the starting point is 5 years where the case is contested and where there are no aggravating or mitigation factors.
7. Your case was contested. Therefore, the starting point is 5 years imprisonment.
8. However, I consider your age and your previous clean record. As a simple village boy who only managed to reach class 4, living an unsophisticated life style in the village in the same house as the complainant, and your belief (although a mistaken one) that the complainant's silence meant consent, the Court would like to think this is not habitual behaviour but only a one time silly mistake on your part.
9. You did the right thing by asking but once the girl said "no", and then in the middle of the night you went your way to get under the mosquito net, lifted up her skirt and pulled her panty down without her knowledge or invitation and consent, you broke a "tabu" known as "respect".
10. I have considered these circumstances and have decided that the Court will allow you a reduction of 6 months from 5 years of your sentence.
11. You will therefore serve the balance of 4 years and 6 months at the Correctional Centre in Luganville.
12. Your sentence began on 28th January 2009 when you were first remanded in custody.



13. You have a right to appeal within 14 days from the date of this sentence.

DATED at Luganville this 3rd day of March 2009.

BY THE COURT


OLIVER A. SAKSAK

Judge

