



**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**

*(Criminal Jurisdiction)*

Criminal Case No. 133 of 2009

**PUBLIC PROSECUTOR**

**-V-**

**NOCLAM SAWE**

*Coram: Justice D. Fatiaki*

*Counsel: Mr. Lent Tevi for the State  
Mr. Tom Loughman for the Defendant*

*Date of Sentence: 17<sup>th</sup> February 2010*

**SENTENCE**

1. Noclam Sawe you appear before the Court today to receive your sentence after you were convicted on 2 counts of Sexual Intercourse without Consent. The first count alleged penile penetration of the anus of the complainant and the second, digital penetration of her vagina. Although you had denied both offences the Court found you guilty after a trial lasting 2 days. In neither incident did the complainant suffer any physical injuries.
2. Noclam Sawe besides Intentional Homicide, the offence of Sexual Intercourse without Consent is perhaps the most serious crime that can be committed in this country against a girl or a woman. This is reflected in the maximum sentence provided by the law for both offences which is imprisonment for life.
3. The facts of the case which was affirmatively proved by the prosecution at your trial may be briefly summarized.
4. In respect of the first offence the prosecution's evidence which was based entirely on the complainant's sworn evidence which was accepted by the court in preference to your bare denial. The evidence established that on the day in question in December 2008 you called the complainant to your house where you removed her clothes and penetrated her anally until you ejaculated on her. After that you gave her a fish to take home.
5. The second more recent incident occurred in August 2009 when you called the complainant who was playing nearby to come and eat some

navara at your plantation. When she came to you, you gave her some navara and you then lifted her dress and pushed your finger into her vagina. On this occasion you gave the complainant some corn and some ripe banana to take home. You were also seen in a compromising position by 2 young boys who were passing your plantation at the time.

6. Noclam Sawe you are a mature married man with 2 young daughters of your own and, until you committed these offences, you have generally led a blameless and productive life. You have not had much formal schooling but you are a successful subsistence farmer and fisherman. This has enabled you to provide reasonably well for your family. Within your community you are considered a private person and a bit of a "loner". There is also some suggestion that you may have some mild form of mental health problem although there is no medical report to confirm that.
7. Noclam Sawe I have received and considered the helpful written submissions provided by prosecution and defence counsels as well as a pre-sentence report prepared by the probation service. I have also gained much assistance from considering various sentencing decisions of the Court of Appeal and the Supreme Court of Vanuatu including:
  - Public Prosecutor v. Scott and Tula [2002] VUCA 29;
  - Public Prosecutor v. Keven Gideon [2002] VUCA 7; and more recently
  - Public Prosecutor v. Lewawa [2009] VUSC
8. The starting point affirmed by the Court of Appeal in Scott and Tula is:

*"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."* I respectfully adopt that starting point for the purpose of considering the appropriate sentence in this case.
9. To that starting point must be added the following aggravating features of this case:
  - a) The fact that the offence was repeated and involved the penile penetration of the complainant's anus and digital penetration of her vagina by the defendant;
  - b) The fact that the complainant was barely 10 years of age at the time of the offences; and the defendant was a mature able-bodied man of about 38 years of age; and

- c) The fact that the defendant was a neighbor and well known to the complainant who affectionately referred to him as "daddy". The defendant was also related to the victim through his wife (the complainant's aunt), and might be expected to protect her;
10. Noclam Sawe as a result of these aggravating features the Court adds a further year to your starting sentence raising it to  $(5+1) = 6$  years. In mitigation, defence counsel urges the Court to consider you are a first offender, that no physical injury was caused to the complainant and the fact, that your untreated mental health problem may have contributed in some unexplained way to your offending.
11. Noclam Sawe despite having been convicted of these serious offences, you have continued to maintain your innocence and have shown no remorse whatsoever for your offending nor have you expressed any desire to apologise to the complainant or indeed, accepted any responsibility for your disgraceful behavior towards her. It is difficult therefore to give you much of a reduction in your sentence by way of mitigation.
12. The sentence of this Court is that you Noclam Sawe are ordered to serve a sentence of 5 1/2 years imprisonment which is further reduced by 3 months to reflect the time you have been remanded in custody and making a sentence 5 years and 3 months.
13. I have also considered and rejected any possibility of suspending your sentence because of the seriousness of the offences.
14. You have 14 days within which to appeal this sentence if you are unhappy with it.

**DATED at Port Vila, this 17<sup>th</sup> day of February, 2010.**

**BY THE COURT**

  
**D. FATIAKI**  
Judge.

