

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

Criminal Case No. 28 of 2010

PUBLIC PROSECUTOR

-v-

NAIKA DANIEL

Coram: Justice N. R. DAWSON

Date of Sentence: 8th June, 2010

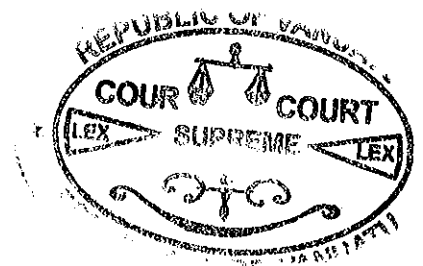
Counsel: Mr. G. Takau for Public Prosecutor
Mr. A. Bal for Accused

SENTENCE

1. Mr. Daniel appears in Court today for sentencing on 1 charge of Sexual Intercourse Without Consent. This offence took place in Emae Island in the Shepherd group of islands. The accused and the complainant are from different villages.
2. On 31st December 2009 the complainant and a relative went to take their grandfather to a relative's house. It was dark, night time and there was a dance party going on in that area. As the complainant was walking home you appeared to be drunk, approached her and you told her that you wanted to have sex with her. You grabbed her hands and you pulled her to a bush. She did not consent but you kept pulling her into the bush and then demanded she removed her clothes until she did so. The complainant was afraid that you might assault her, she removed her clothes and you had sexual intercourse with her. After the event took place you left and the complainant walked back to her home. The following day she was in bed that day because she was in pain, had some blood on her vagina, and could not walk.



3. Mr. Daniel I note that you are presently 21 years of age and you were 20 years of age at the time the offence took place. I have read the submissions from the prosecution, from defence counsel and I have also seen and read the Probation Report that has been prepared for your sentencing. In sentencing you today it is necessary to impose a sentence that will hold you accountable for the harm that you caused to the victim of your offending. It is necessary to denounce your behaviour and make it absolutely clear to you and all men in the community that rape is an offence that cannot and will not be tolerated by the Courts. A sentence needs to be imposed that will act as a deterrent to put you and any like minded person off offending in this way. Women in our community are entitled to be protected. They are entitled to walk on the streets day or night and be safe from offences of this type.
4. The aggravating feature to your offending is that the victim was 15 years of age when you offended against her and she suffered some injury that was causing her pain the following day.
5. In mitigation you entered a guilty plea at an early stage and you have indicated remorse for you offending. You have no previous convictions and you have indicated willingness to be involved in compensation by way of custom. The Probation Report writer says that you have indicated that you were sorry for your actions and you wish to confirm this will be the last time you will ever do something like this. Mr. Daniel this needs to be the last time, for you come back to Court again on a similar charge you will be going to prison for far longer than what I am going to sentence you today.
6. You are considered as being at a low risk of offending and you have indicated your willingness to perform a custom reconciliation ceremony.



7. The starting point for a crime of rape is generally that of five years. I take into account the aggravating and mitigating factors that I have mentioned, and you are convicted and sentenced to a term of imprisonment of three years and four months. I note that you have been remanded in prison since 23rd February 2010 and therefore you have three years and 14 days to serve from today.

8. You have the right to appeal this sentence. For any appeal you must lodge a notice of appeal within 14 days of today's date.

DATED at Port Vila, this 8th day of June, 2010

BY THE COURT

