

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

WILLY ANSEN

Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

Mr P. Wirrick for the State
Mrs M. P. Vire for the Defendant

Date of Submissions Hearing: 16th February 2012
Date of Sentence: 17th February 2012

SENTENCE

1. Willie Ansen Bule, you have been charged with two criminal charges of Sexual Intercourse Without Consent contrary to Section 91 and with Demanding Money With Menace contrary to Section 132 of the Penal Code Act Cap 135 (the Act).
2. On 16th March 2011 when you were first arraigned you pleaded not-guilty to both charges. The trial hearing was set down initially for 22nd June 2011 but this was adjourned to 5th December 2011. Trial was to have taken place at Waterfall Village, Central Pentecost. However at a mention hearing on 28th October 2011 in Luganville, Defence Counsel indicated to the Court that you wished to vacate your earlier pleas of not-guilty and sought leave to be re-arraigned on both charges. The Court granted leave and adjourned the case to 5th December 2011 for re-arraignment to take place in Luganville. You sought bail and was granted bail on condition that, amongst others, you should be at Court on 5th December 2011.
3. On 5th December 2011 when the Court sat, you were not in Court, neither was your Counsel. The Court was told you were at your village on Pentecost. The Prosecutor then applied for a Warrant of Arrest and the Warrant was issued. The Warrant was only executed by the Police



on 30th January 2012 when they had to travel all the way to Pentecost to arrest you and bring you over to Santo on the Patrol Boat. You were remanded further in custody until you sought bail on 30th January 2012 which was refused. You were remanded further in custody until 3rd February 2012 when you were re-arraigned and pleaded guilty to the two charges.

4. So much for the background facts. You realize that you admitted committing two very serious criminal offences. The first charge of Sexual Intercourse Without Consent carries a maximum penalty of life imprisonment. The second charge carries a maximum of 15 years imprisonment.
5. You could have pleaded guilty on 16th March 2011 and avoided the delay and the great expense the State had to incur in executing the Warrant of Arrest on 30th January 2012. But you pretended you were innocent until 3rd February 2012 when you finally admitted it was you who committed these two very serious offences. There has been a delay of more than 10 months and 18 days.
6. These offendings took place on 16th January 2011. When you were questioned by Police on 21st January 2011, you stated you would not make any statement and would only speak in Court. During your Record of Interview on 27th January 2011, you persistently denied all the allegations made against you. You appeared evasive in answering some of the questions put to you. And your answers are full of inconsistencies. You tried your best to conceal your guilt and you maintained that position until 28th October 2011 when you realized you could not hide forever. All along you have been dishonest about your behaviour and actions.
7. You have been dishonest about your age as well. On 27th January 2011 you said to the Police your date of birth was 14th March 1996. Your Registration of Birth Extract shows you were born on 13th May 1996. But your birth was declared earlier than you were born. This was



done on 7th March 1996. That cannot be possible. In fact when examining your stated date of birth more closely one can see that it is written over. The figure "13" is written over, the figure "15" remains the original but the figure "96" is written over so that what appeared originally to be "5" now appears as "6". So the correct date of your birth this Court will safely assume is 13th May 1995 and not 1996. With that date it makes sense to have it registered some 10 months later on 7th March 1996. So in fact as at 13th May 2010, you turned 16 years old. So on 16th January 2011, when you committed these two offences you were already 16 years old. Your physical size and height betray your assertion that you were only 14 years old when you committed these offences and that now you are only 15 years old and as a minor, you are protected under Section 54 of the Act. That section does not apply to you because you are not a minor. But the Court must accept that you are a young offender.

8. You have been dishonest also about the custom ceremony because your victim left Pentecost the very next day (17th January 2011) for Port Vila. Nobody has confirmed this taking place. None of those who wrote in your favour made any mention of that ceremony. Therefore, the Court will not accept the ceremony as a mitigating factor or as a sign of remorse.
9. So how does the Court punish you? You are not a minor so the Section 54 of the Act does not protect you from being sent to prison. The Court accepts and is guided by the principles laid down by the Court of Appeal in the case of Public Prosecutor v. Maslea Scott and Tula [2002] VUCA 29 and Public Prosecutor v. Ali August Criminal Case No. 14 of 2000. I find nothing exceptional in your case to warrant a suspension. Your offendings are so serious that they warrant an immediate custodial sentence. Accordingly, the Court convicts you on both charges and Sentences you as follows –



- (a) For Sexual Intercourse Without Consent . The starting point of 5 years imprisonment. This is increased by 3 years for the 10 aggravating features outlined by the Prosecutor which are:
- (i) Young age of the victim being 21 at the time of offending.
 - (ii) Persistent threats to kill the victim.
 - (iii) The use of a knife as weapon to threaten the victim.
 - (iv) The offending was planned.
 - (v) The defendant concealed his identity.
 - (vi) The actions of rape were repeated.
 - (vii) The victim was subjected to sexual indignities and pervasion against her wishes.
 - (viii) No protective measures were used exposing the victim to risks of infection and pregnancy.
 - (ix) Loss of dignity and self-esteem.
 - (x) The psychological impact on the victim as contained in the statement attached to the Prosecution Submissions.

These bring the total sentence of imprisonment to 8 years imprisonment for the first charge.

- (b) For Demanding Money With Menace. The Court sentences you to 5 years imprisonment however, this is to be served concurrently with the 8 years sentence for the first charge.

10. I consider your mitigating factors. I do not accept any of the letters written in your support that are attached to your Pre-Sentence Report. They do not represent a balanced summary of your life. But I accept the following as relevant mitigating factors that should be allowed to reduce your sentence of 8 years imprisonment. These are –

- (a) That you are a young offender of 16 years old.
- (b) You are a first time offender at least for the time being (leaving aside your pending charge in the Magistrate's Court).
- (c) Your decision to change your plea – although it was late, it still saved a lot of time and more expenses that would have been incurred had a trial taken place.




For these three mitigating factors, I consider that 3 years should be deducted from your 8 years sentence leaving the balance of 5 years imprisonment. The huge reduction of 3 years is to ensure that your lengthy sentence of 8 years does not have a crushing effect on your hopes of reform and rehabilitation. This is done in line with the Court of Appeal ruling in Heromanley v. Public Prosecutor [2010] VUCA 25.

11. You are therefore sentenced to serve a total concurrent sentence of 5 years imprisonment to be served at the Correctional Centre in Luganville, Santo. This term of imprisonment commenced on 30th January 2012 when you were taken into custody after arrest. This sentence serves the following purposes:-
 - (a) to deter you and others;
 - (b) to mark the gravity of your offending;
 - (c) to mark the public disapproval of your actions; and
 - (d) to punish you adequately.
12. You will be entitled to apply for parole after having served 2 ½ years of your 5 year imprisonment term.
13. You have a right to appeal against your conviction and/or Sentence within 14 days from the date of this Sentence if you so wish.

DATED at Luganville this 17th day of February 2012.

BY ORDER OF THE COURT


OLIVER A. SAKSAK

Judge

