

BETWEEN: Public Prosecutor
Prosecutor

AND: Sano Patunvanu
Defendant

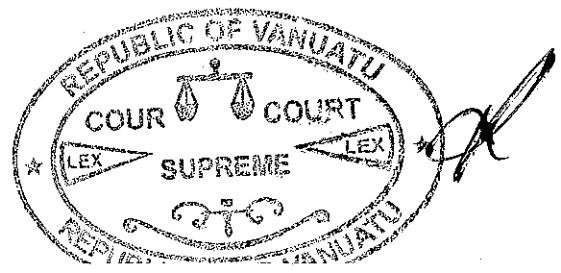
Date of Sentence: *Monday 29th August 2016*

Before: *Chief Justice V. Lunabek*

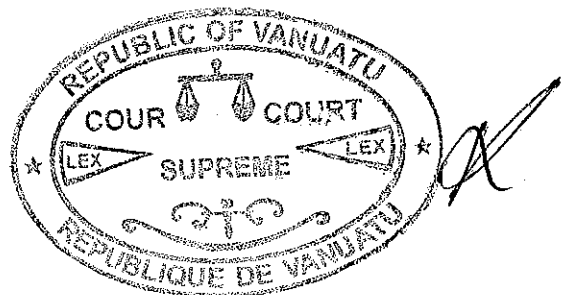
In Attendance: *Simcah Blessing for Prosecutor*
Mr Henzla Vira & Ms Kylie Bakeo for Defendant

SENTENCE

1. Sano Patunvanu you appear for sentence today at the age of 46 on two counts under sections 90 and 91 of the Penal Code of sexual intercourse without consent against your daughter Keline, respectively, sometimes in the years 2006 and 2009.
2. On the 24th August 2016, you entered guilty pleas on two (2) Counts of Sexual Intercourse without Consent charged against you.
3. The brief facts of this case are these – The complainant is from Atchin mainland, Malekula. She was 21 years of age at the time of the offending. She is now 27 years of age. She is your biological daughter.
4. You are also from Atchin mainland, Malekula. You are unemployed at the relevant time and were 40 years old.
5. The events giving rise to the complaints occurred sometimes in 2006 and 2009.



6. The sexual intercourse in 2006 occurred while the complainant's mother was away in Santo. You entered the room of the complainant sometimes around midnight, you held on the complainant and removed her clothes. The complainant resisted and tried to call out for help but she was overwhelmed by you.
7. You grasped the complainant, went astride her and had full Penile intercourse with her until you ejaculated on the complainant's stomach and then you left the complainant's room. The complainant endured severe pain as much as she was previously a virgin.
8. The complainant left in the early hours of the next morning and moved in with her relatives. She disclosed the intercourse to them upon arrival.
9. A meeting was held thereafter. You admitted the allegations, fined to the complainant's mother and promised to abstain from further sexually abusing the complainant thereafter. The complainant subsequently returned to her parents.
10. The second intercourse occurred sometimes in 2009 when the complainant's mother was away from home.
11. After the complainant and several of her relatives returned home from a dance, you entered the complainant's room and asked her to have sex with you. The complainant refused and told you that she will inform her mother. You fastened the door with a wire and threatened assault on her if she refused to comply with your request.
12. You then proceeded to fondle with the complainant's breast and vagina. You removed her clothes and have penile intercourse with her. You commanded her again to refrain from disclosing to anyone about what had happened. The complainant nevertheless reported the matter to a relative of hers.

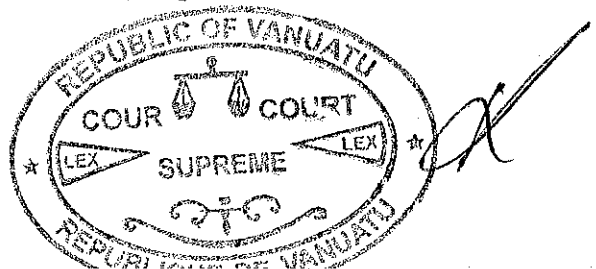


13. Although the sexual intercourse ceased after the second encounter, you continued to sexually harass the complainant until the matter was reported to the police.
14. Investigations were conducted after an official complaint was lodged by the complainant on the 25th of September 2010.
15. You were arrested on the 17th of September 2010 and were interviewed under caution that same day.
16. You have made a statement to the police admitting the allegations. You mentioned in your statement that all the allegations against you are true but it is too late as the offending had already occurred.
17. You further stated that the reason why you committed these offences was because of your marital problems and you made promise to the police that you will not never again repeat what you had done.
18. The law defines sexual intercourse without consent in this way (s.90). It provides:

"Any person who has sexual intercourse with another person-

- a) without that person's consent; or*
- b) with that person's consent if the consent is obtained-*
 - (i) by force; or*
 - (ii) by means of threats of intimidation of any kind; or*
 - (iii) by fear of bodily harm; or*
 - (iv) by means of false representation as to the nature of the act; or*
 - (v) in the case of a married person by impersonating that person's husband or wife;*
or
 - (vi) by the effects of alcohol or drugs; or*
 - (vii) because of the physical or mental capacity of that person,*
commits the offence of sexual intercourse without consent"

19. The law punishes for sexual intercourse without consent (s.91). It provides:



"No person shall commit sexual intercourse without consent.

Penalty: Imprisonment for life."

20. The maximum penalty for sexual intercourse without consent is life imprisonment. It tells you how seriously the Parliament of Vanuatu regards rape offending.

21. This offending has a number of aggravating features:

(i). Your act constitutes a risk of both pregnancy and a sexually transmitted disease.

(ii). The obvious and very serious aggravating feature of gross breach of trust. There can be no more serious breach of trust between a father and a daughter. Your daughter must be safe at home and she must feel that she is safe at her home. You grossly breached that trust.

(iii). In addition there was the aggravating feature of the use of force and threat of assault.

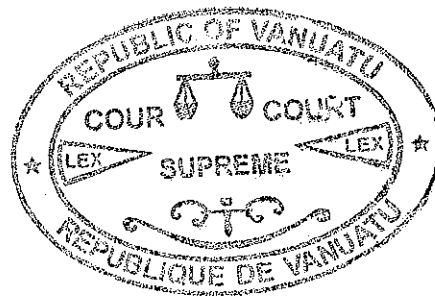
(iv). The offences occurred in the night.

(v). It was a repeated offending.

(vi). The complainant lost her virginity.

22. I note there was no additional violence actually inflicted on her beyond that which is inherent in the offence itself.

23. I must now determine an appropriate Sentence. That is the sentence that would be appropriate having regard to the maximum penalty, the circumstances of the offending including all of its aggravating features and taking into account the guidance from the Court of Appeal and the way that similar cases have been dealt with in the Supreme Court. Once I have assessed the starting point I will then need to consider mitigating features, your personal circumstances and other factors which will reduce that starting point sentence. I need also to take into account the time you have already spent in custody prior to sentencing and the comments made in the pre- sentence report (if any) and the submissions made by your lawyer on your behalf.



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24. Before I consider the submissions about the starting point, I make some general comments about sexual intercourse without consent. It is a serious violent offence carrying a penalty equalled only by pre-meditated intentional homicide offence. It may be that the rationale for this very high maximum penalty would be that sexual intercourse with consenting adult persons is desirable and accepted part of the society, sexual intercourse which is the same physical act without consent with implicit threats and violence associated may not be treated as seriously as it should be. Violence can never be part of a civilized society such as Vanuatu including Malekula Island in which the human rights of Women must be respected at all times. No man should ever treat any woman in the way you did with your daughter, particularly no father towards his daughter to whom you are responsible. Your duty was to look after rather than to sexually abuse your daughter, let alone two times. You must be held accountable for what you did.

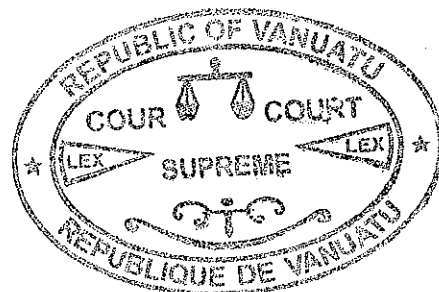
25. In the present case a custodial sentence is necessary for the following reasons:-

First to mark the gravity and seriousness of the offence; second to emphasize that the public in the society disapproves of this type of offending; third to serve as a warning to others and deter them from committing such a type of offence again in future; fourth to punish you (offender) for the offence; the last but not the least reason is to protect women.

26. In the terms of the starting point Mr. Simcah Blessing on behalf of the prosecution submitted that considering the maximum penalty imposed by the legislature, the guideline judgment of the Court of Appeal in PP -v- Scott [2002] VUCA 29, comparative rape sentencing in the Supreme Court and the aggravating factors of your offending, a starting point sentence of 10 years imprisonment is appropriate.

27. Your lawyer refer the Court to other decisions of the Supreme Court in rape cases where substantive amount of delays occurred before the Defendants were sentenced. However, your lawyers submitted that the circumstances of your case require a custodial sentence. Your lawyers do not submit directly on what will be appropriate as the starting point sentence.

28. I sentence you to 9 years imprisonment as a starting point on both counts to be served concurrently.

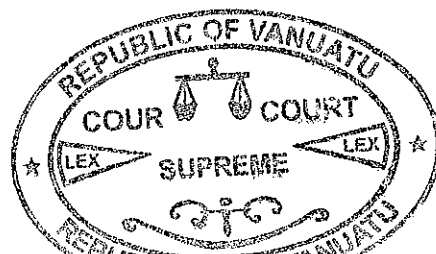


29. In mitigation, the following are submitted on your behalf by your lawyers:

1. Your immediately admitted the offending and cooperated with the police in Malekula on your arrest.
2. You have pleaded guilty at the first opportunity given to you by the Court. This has saved the Court's time and also means the victim does not have to give evidence.
3. You have no prior convictions.
4. You have good work history.
5. You have strong community support.
6. You expressed insight and remorse for your offending. In your statement to the police you promised you will stop having sexual intercourse with the victim. You respected that promise.
7. You performed a custom reconciliation ceremony to the victim, the family and chiefs of your area.

30. I note that at this stage there is no information before the Court about the effects on your daughter of this offending. It is unfortunate. But from long experience as a sentencing judge having read many victim impacts statements in other jurisdictions written by the rape victims and families, I sense that the consequences for your daughter will have been mentally very serious. The consequences of rape on the victims will be with them for the rest of their life. The same is for your daughter in this case.

31. Sometimes they will have difficulties in getting into healthy sexual relationships. I say for all victims of rape, there will be very serious mental consequences, I think between a father and daughter, some of the effects will be even more serious. There is a danger that because your family having suffered as a result of your time in custody and the time yet to come that they may blame your daughter rather than you for what happened. Your family and others must not blame your daughter. They should not do that. Your daughter has nothing

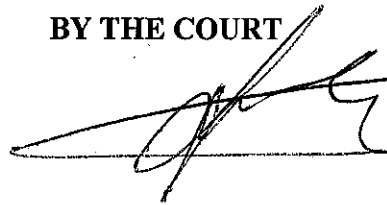


wrong. She has taken the considerable courage on her part to bring you to justice. I think, you should be proud as a father (parent) of what your daughter did in this case.

32. On balance between the aggravating features and the mitigating factors; I reduce your sentence of 9 years imprisonment to one third (1/3) to reflect your early guilty pleas.
33. Your sentence is reduced to 6 years imprisonment. I reduced your sentence further to 1 year to reflect other mitigating factors including the custom ceremony you performed. Your sentenced is then reduced to 5 years imprisonment. I reduce further your sentence for another 1 year for the delay taken to deal with your case. Your sentence is finally reduced to 4 years imprisonment.
34. Your end sentence is 4 years imprisonment.
35. I consider suspension. I decline to suspend your sentence.
36. I order that you served your term of 4 years with immediate effect.
37. You have 14 days to appeal this sentence if you are unsatisfied with it.

DATED at Lakatoro, Malekula this 29th day of August, 2016

BY THE COURT



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**V. LUNABEK
Chief Justice**

