

PUBLIC PROSECUTOR

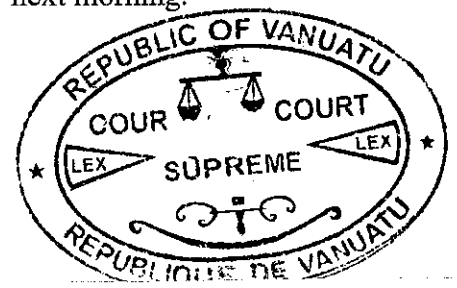
VS

ANDRIANA KELEP

Date of Trial : 27th to 28th October 2016
Date of Verdict: 28th October 2016
Date of Sentence: 9th August 2017 @8:30am
Before: Justice Oliver.A.Saksak
In Attendance: Betina Ngwele for the Public Prosecutor
Edmond Toka for the Defendant

SENTENCE

1. Andriana Kelep, you are for sentence today for one charge of sexual intercourse without consent. The Court found you guilty and entered conviction against you on 28th October 2016 after a two-day trial.
2. The offence of sexual intercourse without consent is always a serious offence which carries a maximum penalty of life imprisonment.
3. Your victim was of or about 15 years of age at the time of the offending. She is your cousin sister. The offence occurred within the confines of your family home. Your defacto wife was present at the time. Under those circumstances you could have easily resisted and or refused any sexual advances made by your victim. But you succumbed to her demands which indicate that you intended to have sexual intercourse. And it does not matter that the complainant may have been acting inappropriately. As a mature man you should have acted more responsibly. But you breached the trust placed on you by imposing yourself on the complainant. Had she agreed to what you did, she would not have reported to her father the very next morning.



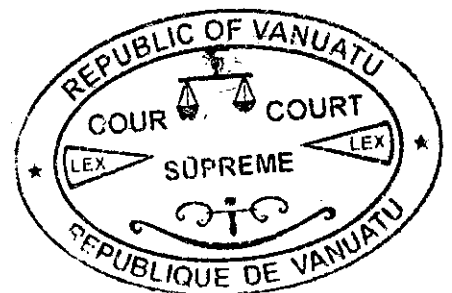
4. The principles of sentencing for an offence of rape or sexual intercourse without consent is well established in cases such as Public Prosecutor.v. Scott and Tula [2002] VUCA 29, Public Prosecutor .v .Ali [2002 VUSC 73, Public Prosecutor .v. Gideon [2001] VUCA 3, Public Prosecutor .v. Hinge [2008] VUCA 30 and Public Prosecutor .v. Andy [2011] VUCA 14.

5. In assessing your punishment the Court adopts and applies the principles set out in those cases.

6. The Public Prosecutor has submitted the cases of PP.v. Tabigerian [2015] VUSC 181 and PP .v. Jacob Marie Tovorvor [2013] VUSC 31 for comparative purposes. But those cases are distinguished on their facts and both cases are more serious than your case.

7. You must understand however that as a serious offence, rape calls for immediate custodial sentence according to the cases of PP.v. Ali and PP.v.Scott and Tula.

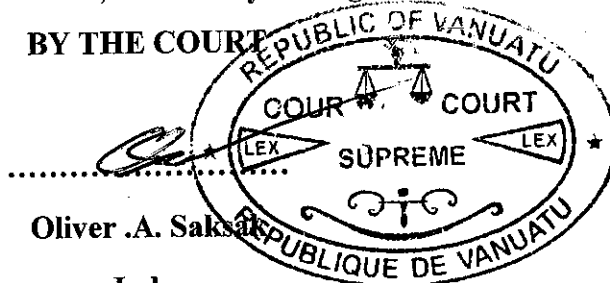
8. You are therefore sentenced to a term of imprisonment. Taking account of the aggravating features stated in paragraph 3, the starting point shall be 6 years imprisonment. A custodial sentence is necessary to-
 - a) Mark the seriousness of your offending.
 - b) Mark public disapproval and condemnation of your offending.
 - c) Serve as a warning or deterrence to you and to others.
 - d) Punish you adequately and appropriately.
 - e) Protect women, girls and the vulnerable members of the community.



9. It is unfortunate that defence counsel has filed late written submissions as to sentence on your behalf. There has not been any pre-sentence report submitted either by the Probation Officer. Clear directions were issued in the verdict dated 28th October 2016. Clearly defence counsel and the Probation officer have failed in their duties to assist you and the Court. The late submissions by defence counsel filed on 22nd February 2017 is of little or no assistance to you.
10. Be that as it may as regards mitigation, it is my view that you are entitled to a reduction of sentence, but I agree with prosecuting counsel that it will not be for early guilty plea. From the facts you are a father of 3 children and the sole bread winner. I therefore reduce your starting sentence of 6 years by 12 months and your end sentence shall be 5 years imprisonment.
11. You are therefore sentenced to 5 years imprisonment with immediate effect at the Correctional Centre in Luganville, Santo. Because of the delay in sentencing I order your sentence to be backdated to 28th October 2016.
12. You have a right of appeal against this sentence within 14 days if you so choose, but you must begin to serve your sentence as of today.

DATED at Lakatoro, this 9th day of August 2017

BY THE COURT



Oliver .A. Saksak

Judge

[NOTE: This sentence is read and announced by Justice Aru on behalf of Justice Saksak]