

BETWEEN: PUBLIC PROSECUTOR

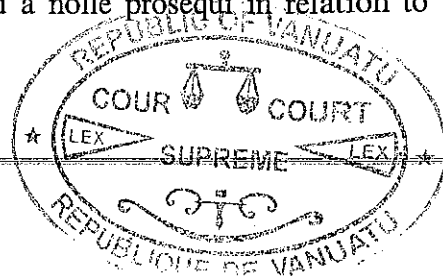
AND: PATTISON TULA
Defendant

Before: *Justice Aru*

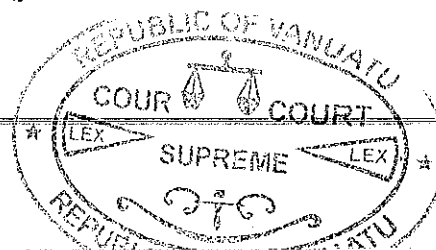
Counsel: *Mr. K. Massing for the Public Prosecutor*
Mr. J. Garae for the Defendant

SENTENCE

1. **PATTISON TULA** you appear for sentencing. You were originally charged with one count of sexual intercourse without consent contrary to section 90 and 91 of the Penal Code [CAP 135]. You entered a not guilty plea to the charge and a trial was listed for Gaua Island where all the witnesses are located.
2. On the date of trial on Gaua, the trial did not proceed as set down for 11 June given that the complainant was still in Santo. The trial was then adjourned to 12 June when the complainant would be available in Gaua. Before the trial began, the Prosecutor informed the Court that he intended to amend the information and sought leave to do so and also for the defendant to retake his plea. There were no objections to his reasons for doing so and leave was granted. The information was amended by adding a further charge of unlawful sexual intercourse contrary to s 97 (2) as count 2.
3. The defendant was re arraigned and maintained his not guilty plea to count 1 – sexual intercourse without consent and entered a guilty plea to count 2 – unlawful sexual intercourse. The Prosecutor then entered a nolle prosequi in relation to

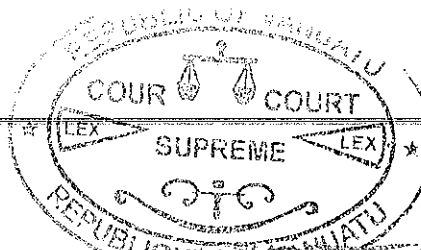


- count 1 and the defendant was discharged accordingly on that count alone and convicted on count 2. This is his sentence.
4. The complainant and the defendant are related as their mothers are sisters. They both live in Lebal village on Gaua Island. The defendant is married and is a 32 year old man as he was born on 20 September 1986. At the time of the offending he was 24 years in 2010 and 25 in 2011. The complainant was living with their grandmother at the time of the incident as her mother had passed and her father had re married and moved on with his own life.
 5. The complaint was made following a serious assault by the defendant on the complainant around September 2017. The defendant assaulted her with a piece of wood for not responding to his calls when at the time she was out in the canoe fishing in the ocean. This left her unable to walk properly for some time. She then decided to ran away. She reported the offending and what the defendant did to her to the Women's Centre on Gaua .They assisted her in reporting the matter to the Police. The initial complaint was for sexual intercourse without consent.
 6. Following his arrest the defendant admitted that he had been having sexual intercourse with the complainant previously without any complaints until the assault.
 7. The offending occurred between 2010 and 2011 in their village. On these occasions the defendant would have sexual intercourse with the complainant in the kitchen and also in their gardens.
 8. At the relevant time, it is not disputed that the complainant was under 15 years of age.
 9. You are a married man. You chose to take advantage of a girl who was more or less an orphan as her mother had passed and father had re married and moved on with his life. The only protection she had was the care of a woman who was a grandmother to both of you. Despite being closely related, that did not deter you



from abusing her in the manner you did. The serious assault to her body gave her the courage to ran way and report you.

10. In your Police statement you admitted having sexual intercourse with the complainant since 2010 but say that she did not complain. Unlawful sexual intercourse is an offence that prohibits sexual intercourse with young girls under 13 years of age and those who are over 13 but under 15 years. The fact that the girl consented has no relevance whatsoever as it is not a defence.
11. If the girl is under 15 but is 13 years or over as the complainant in this case then the offending is punishable by up to 5 years imprisonment .This penalty was increased recently but does not apply in your case as the offending occurred in 2010 and 2011. The new amendment applies as from February 2017.
12. The following factors are taken into account as aggravating factors:
 - Age disparity
 - Repeated offending
 - Psychological effect on the complainant
 - Exposure to risk of pregnancy and sexually transmitted diseases (STDs)
13. I have considered the following cases referred to the Court for consideration:
 - **PP v Gideon** [2002] VUCA 7
 - **PP v Ure** [2017] VUCA 22
 - **PP v Mark Moi** [2015] VUSC 94
 - **PP v John** [2016] VUSC 157
 - **PP v Aru** [2014] VUSC 141
14. I adopt a starting point of 3 years imprisonment.
15. Your personal details submitted by Counsel on your behalf are:
 - You are married with 3 children. All attend Aworo Primary School;
 - You are the sole breadwinner as your wife underwent an operation. You earn your living through gardening and selling kava and copra to meet your family needs and pay school fees for your children as you want them to have a good life;



- Completed your schooling at class 6 at Aworo Primary School in 1998;
- You performed custom reconciliation to your wife by giving money and pigs but not to the complainant. After you assaulted the complainant you said sorry for assaulting her;
- You are now remorseful for what you did to the complainant.

16. Factors factors taken into account as mitigation:

- Early guilty plea
- First time offender
- Admission of offending and cooperation with the Police
- Remorseful for actions
- 71 days spent in custody

17. For your early guilty plea your sentence is reduced by one third to 2 years imprisonment .As a first time offender and for your cooperation with the Police I deduct 6 months further reducing your sentence to 1 year 6 months imprisonment. A further 6 months is deducted for remorse shown and the 71 days spent in custody.

18. Your end sentence is therefore 1 year imprisonment and it is effective from today. I am not satisfied that a suspension is warranted therefore your sentence will not be suspended.

19. You have 14 days to appeal if you are not happy with the decision.

DATED at Gaua this 14th day of June, 2018

BY THE COURT

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D. Aru
Judge

