

PUBLIC PROSECUTOR

V

JOHN SOKEN

Date of Sentence: 23rd day and 27th of July, 2018 at 2:00 PM
Before: Justice Felix
In Attendance: Mr. Blessing S. Public Prosecutor
Ms. Bakokoto L. for the Defendant

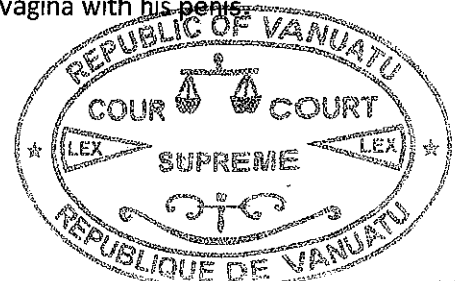
SENTENCE

Introduction

1. Mr John Soken pleaded guilty to and was convicted of the offence of Sexual Intercourse without consent Contrary to Section 89(A), 90 and 91 of the Penal Code Act [CAP 135] in Count 1 of the Charge;
2. The Prosecution has entered a Nolle Prosequi under Section 29 of the Criminal Procedure Code Act [CAP 135] for the offence of Incest in Count 2 of the charge. The accused is therefore discharged in respect of that charge of Incest Contrary to Section 95(b) of the Penal Code Act [CAP 135]

Facts

3. The summary of the agreed facts as submitted by the Prosecution shows that at about 6:00 hours in the morning of Monday the 18th of September 2017 at Pinalum village, East/ North-East Malekula, the complainant, [REDACTED], was on her way to school and was waiting on the road side for a transport when the Defendant John Soken approached her.
4. After some discussions, the Defendant managed to convince the complainant to follow him back to their house.
5. When they entered the house, the Defendant told the complainant that he wanted to have sex with her.
6. The complainant told the Defendant that she did not know what the Defendant was on about and refused his demand.
7. The defendant told her to remove her cloths but she refused.
8. He then broke the button of the complainant's pants and remove her cloths;
9. The Defendant then removed his pants, forced the complainant to lay onto her parents mattress, spread her legs and penetrated her vagina with his penis.



10. The complainant felt pain and wanted to get away but could not as the Defendant had held her tightly so she could not move.
11. After a while the Defendant got dressed up and left; The Complainant also got dressed up and went to school.
12. The Complainant's parents were out of the house when this incident happened.
13. The medical examination report did confirm that the complainant had a sexual relationship

Submissions

14. Mr Blessing submitted that these following factors be considered as aggravating factors by the Court:
 - The relationship between the Defendant and the Complainant – The Defendant is the son of the Complainant's uncle and would refer to her as aunty with some degree of respect. The Defendant has however abused his position;
 - The age disparity also was a factor to be considered. The Defendant was 27 and the victim was 15 at the time of the offending;
 - The unsafe sex creating the risk of the victim contracting sexually transmitted diseases and even pregnancy;
 - The circumstances surrounding the commission of the offence and the emotional and psychological harm inflicted on the victim as a consequence of the Defendant's conduct;
15. The State submits that the starting point in this case should be between 7 and 8 years imprisonment;
16. And that reduction should be made because of the early guilty plea taken by the Defendant.
17. Section 89A, 90 and 91 of the Penal Code Act prohibits the act of sexual intercourse without consent and prescribe a maximum penalty of Life imprisonment
18. The guidelines followed in the cases of *Public Prosecutor v Ali August* and *Public Prosecutor v Scott* and *Public Prosecutor v Andy* should be considered as guides in determining an appropriate sentence in this case.
19. Ms Linda Bakokoto, on behalf of the Defendant, submitted that the Defendant is a young man aged 27 years at the time of the offending now 28 years old originating from Malekula;
20. She invited the Court consider the guidelines laid in the case of *Public Prosecutor v Pale [2015]VUSC 162* as well as the case of *PP V Meltek [2016] VUSC 120* where the offences were committed under similar type circumstances which include a breach of trust, age disparity, exposure to risk of sexually transmitted diseases and pregnancy, one off offending and no threats was used at the time of the offending nor subsequently;
21. In addition to the good character and personal history of the Defendant, the Presentence report also inform that the Defendant has performed a custom reconciliation to the victim and his parents and family who accepted the payment of a fine of VT 10.000 and 1 pig



22. Ms Bakokoto submitted that a starting point of 6 years with the reductions for the mitigating factors to an end sentence of 3 Years would be appropriate.

The Purpose and Principles of Sentencing:

23. In the case of *PP v Kalosil and Others [2015] VUSC 149*, the Court in that case has set out the purpose of sentencing as to punish and to hold the offender accountable for the harm done to the complainant and also to the community;
24. It is also to deter other members of the community; to send a clear message condoning a particular conduct as unacceptable in the society and also protecting other innocent members of the society;
25. It is also to serve as retribution and to ensure that the punishment must fit the crime as explained in the case of *R V Enger (1995) 84 Crim R67* with approval per Gleeson at 68: *"In every case, what is called for is making of a discretionary decision in light of the circumstances of the individual case, and in light of the purpose to be served by the sentencing exercise"*.
26. It is also to correct and rehabilitate the offenders to try and change their ways and behaviours and to become good citizens

Starting Point:

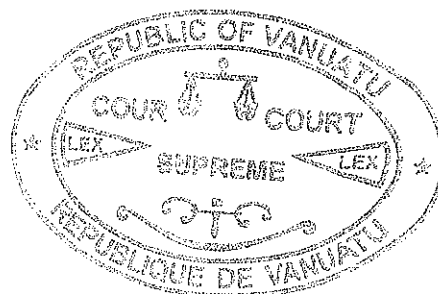
27. Having heard and considered the submissions from both the Prosecution and the Defence and taking into account the personal factors of the Defendant, the starting point is fixed at six(6) years imprisonment;
28. From the six(6) years, reduction are made as follows:
29. 1/3 or two(2) years are deducted for the early guilty plea taken by the Defendant which has saved a lot of the court's time and also indicates the Defendant's early acceptance of his wrongful and unlawful conduct;
30. A further reduction of six(6) months for the expression of remorse through the performance of the custom reconciliation ceremony and also the delay of over 10 months in the prosecution of this matter since the date of commission of the offence.
31. The Defendant is therefore sentenced to a total of three(3) years and six(6) months imprisonment

Suspension:

32. Section 57(1) of the Penal Code Act requires the Court to consider whether the end sentence imposed should be served immediately or suspended ;
33. In my analysis of the circumstances in this cases, I take into account the nature of the crime committed, the defendant's personal character and also the common message expressed through previous Court Decisions and therefore refuse to suspend the sentence but order that it be served immediately.

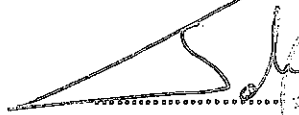
Appeal Rights:

34. The Parties have 14 days to appeal



Dated at Lakatoro this 27th of July 2018

By the Court



Stephen Felix
Judge

