

PUBLIC PROSECUTOR VS- HARRY KALO

Coram: Mr. Justice Oliver A. Saksak

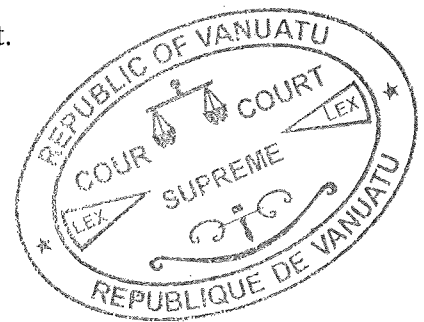
*Counsel: Philip Toaliu for Public Prosecutor
Lorenzo Moli for the Defendant*

Date of Plea: 19th June 2019
Date of Sentence: 14th August 2019

SENTENCE

Criminal Case No. 24 of 2009

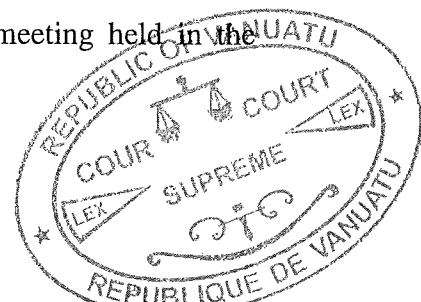
1. Harry Kalo, you are here for sentence today for having pleaded guilty to one count of act of indecency with a young person contrary to section 98 A of the Penal Code Act [CAP 135]. The maximum penalty for this offence is 10 years imprisonment.
2. You committed this offence in or about May 2006. Your victim at the time was Winnie Estel who was only 13 years old. In the early hours of the morning you instructed this young girl to go to her aunt's kava nakamal. You followed her there, pushed her into the nakamal and began touching her. You then removed your penis and made her suck it. After doing this you then opened her legs and licked her vagina. You then held her breasts, made her lie down and you had penile intercourse with her, despite she was unwilling to do so.
3. You are lucky the Prosecution did not charge you also for unlawful sexual intercourse and for rape or sexual intercourse without consent. You have been charged only for the offence of act of indecency and that is what you will be sentenced or punished for.
4. This offending was your first in time. You are therefore convicted and sentenced for this offence to a starting sentence of 5 years imprisonment.



5. For delay and custom reconciliation 1 year is deducted from the start sentence of 5 years leaving the balance of 4 years imprisonment.
6. I deduct a further 1/3 for your guilty plea albeit late, which is 1 year 4 months, leaving the end sentence for this offence to be 2 years and 8 months. I order that this term of imprisonment be served consecutively with the sentence for your other offences in Criminal Case No. 701 of 2019.

Criminal Case No. 701 of 2019

7. In Criminal Case No. 701 of 2019 you were charged with one count of sexual intercourse without consent contrary to sections 90 and 91 of the Penal Code Act (Count 1), with one count of act of indecency without consent contrary to section 98 (b) (iv) (Count 2), and with 2 counts of attempted sexual intercourse without consent contrary to sections 28, 90 and 91 of the Act. (Counts 3 and 4).
8. Your offendings occurred more recently in 2018. The facts are as follows:-
 - a) In July 2018 at Benapo village on South East Ambrym you presented yourself to Mayline Johnny, a 16 year old girl at the time that you knew the person who had caused her to have stomach pains. You asked her to lift up her skirt and you applied the leaves on her abdomen and at the back and then told her to go back to her house. Then on Friday 13 July 2018 you told the victim you would apply the leaves again on her body so that the police would not go and see her about some matter. This time you took some leaves and approached the victim. You told her to close her eyes and you rubbed the leaves around her head. After doing that you told her to lie down on the grass with her eyes closed. Then you removed her skirt and panty, forcibly opened her legs and had forced sexual intercourse with her. She struggled but you over powered her. You tried penetrating her twice but could not succeed. Eventually you succeeded the third time you tried. You penetrated her until your ejaculated on her legs. This girl had never had sex before this time. She felt great pain. She has been traumatised by the experience. She publicly confessed during an evangelistic meeting held in the

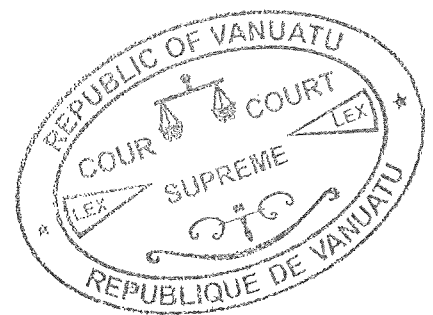


village in August 2018 and eventually to the police. The girl is your niece. Those are the relevant facts in relation to the offence in Count 1.

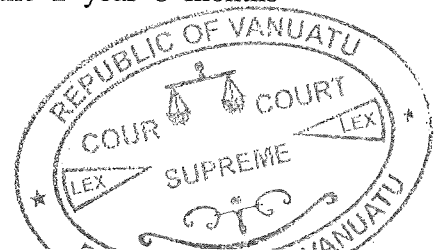
- b) In relation to the offence of act of indecency without consent (Count 3) it happened between July and December 2018. The victim was Annie Bob a 17 year old girl at the time of offending and a student at Vaum Secondary School. At around 7 pm Annie Bob and another girl were walking to her aunt's house. You approached them and told them to follow you behind a toilet hut. There you told Rose to wait. You took Annie about 5 metres into the bushes and told her you would perform voodoo on her so she could not be expelled from school because she was meeting a boy. You then took her to the beach. You told her to keep her eyes closed. You applied the leaves on her, under her skirt and on her belly. You touched her vagina and told her to lie down on the grass with her eyes closed. She did. You opened your zipper and laid on top of her trying to insert your penis into her vagina. It was too big to penetrate her vagina so you withdrew. You told her not to tell anyone.

What you did amounted also to attempted sexual intercourse for which you are charged in Count 3.

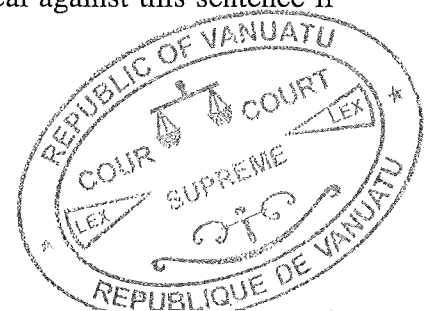
- c) Then in the same period from July to December 2018 you attempted to have sexual intercourse with Natasha Mael, a 16 year old student of Mbossong School. Mayline Johnny had told her you wanted to make a voodoo on her to twist the minds of the police who were going to meet these girls to take statements or talk to then about boys. You then went to the bush to meet the girl. You rubbed leaves on her head, face, chest, back and the breast and belly. You told her to keep her eye closed and remain still. You told her to remove her clothes. She was afraid and declined to do so. You then forcibly removed her skirt and panty. You told her to lie down but she declined. She was afraid. You then told her you would insert the leaves into her vagina. You tried doing so but did not succeed. That is the offence you are charged with in Count 4



9. These are very serious offences. There were 3 victims here. Two of the victims were 16 years old who were 35 years younger. One was 17 years old, 34 years younger than you. They were all school girls. Sex was unprotected on at least 2 of the girls. You put them at risk of teenage pregnancies and venereal diseases. You took advantage sexually of these young girls.
10. You applied herbal leaves which did not work. You simply deceived them so you could obtain sexual gratification to your self-satisfaction. The activities were performed in the night and in isolated spots with eyes closed, putting them at risk of being hurt. There were degrees of planning involved on your part.
11. Taking all those aggravating features into account together with the seriousness of the offendings, your sentences will be a custodial one. And your sentence shall be as follows:-
- a) For Sexual intercourse without consent- Count 1- 7 years imprisonment
I treat this as the lead offence
 - b) For act of indecency without consent-Count 2- 3 years imprisonment
 - c) For attempted rape- Count 3- 5 years imprisonment.
- These two sentences are to run concurrently- the total shall be 5 years imprisonment.
- Because this was a separate offending on a different victim on different dates, the concurrent sentence shall be cumulative to the 7 years sentence for rape in Count 1.
- d) For attempted rape- Count 4-5 years imprisonment. Again this was a separate offending on a different victim on a different date. This sentence too shall be cumulative to the sentences for Counts 1, 2 and 3.
12. That means the total cumulative sentence for all four offences shall be 17 years imprisonment. Further, this shall be made consecutive with the 2 year 8 months sentence for the offending in Criminal Case No. 24 of 2009.



13. Your total sentence shall be 19 years and 8 months imprisonment.
14. The principles of sentencing of men convicted of rape are well established in PP.v. August [2000] VUSC 73 and endorsed by the Court of Appeal in PP.v. Scott [2002] VUCA 29 and of men who take advantage sexually of young girls in PP.v. Gideon [2002] VUCA 7. And a custodial sentence in your case is to serve the purpose of general and specific deterrence, public condemnation and protection of the young and the vulnerable members of the society.
15. I shall now consider reducing your sentence in the light of your mitigating factors.
16. First I note you have spent a period of 6 months from 24th February 2019 when you were first remanded in custody. Your sentence will be backdated to 24th February 2019 to accommodate this factor.
17. Second, your medical report showing valvular heart disease and by pecholesterolemia. You have performed custom reconciliation ceremony to the victims and to the village chiefs and community killing 2 pigs and a bullock. I note your remorse and good cooperation with the police in respect of your recent case in 2018.
18. For these I deduct 3 years 8 months from your sentence of 19 years 8 months leaving the balance at 16 years imprisonment
19. Thirdly, I reduce 16 years by 1/3 for guilty pleas. This means 5 years and 4 months are deducted. Your end sentence is now 10 years and 8 months imprisonment as a final cumulative sentence.
20. You are now sentenced to an end cumulative sentence of 10 years and 8 months backdated to 24 February 2019.
21. That is the sentence of the Court. You have a right of appeal against this sentence if you do not agree with it, and you have 14 days to do so.



21. That is the sentence of the Court. You have a right of appeal against this sentence if you do not agree with it, and you have 14 days to do so.

DATED at Port Vila this 14th day of August 2019

BY THE COURT


OLIVER.A.SAKSAK

Judge

