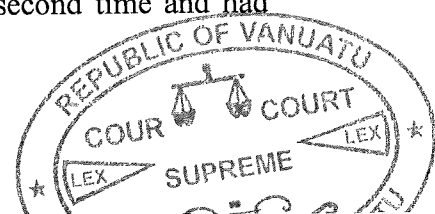


PUBLIC PROSECUTOR VS TINO RASA AND BRENTON SANIBUL

Date of Hearing: 29th March 2019
Date of Issued: 3rd April 2019
Before: Justice Oliver Saksak
In Attendance: Damien Boe for the Public Prosecutor
Jane Tari Aru for the Defendant

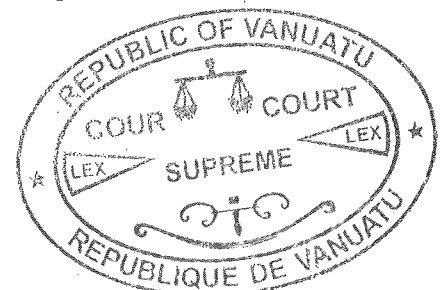
SENTENCE

1. Tino Rasa and Brenton Sanibul, the Court found both of you guilty on 27th March 2019 of one charge of sexual intercourse without consent. Both of you were charged jointly. The maximum penalty for this offence is life imprisonment. It is a very serious charge. You are both here for sentence today.
2. The facts are detailed in the summary of evidence in the judgment as to verdict dated 27th March 2019 for the purpose of sentencing they can be summarise in brief as follows-
3. At or about 9:00am in the night of 29th January 2018 Juline Toa (complainant) followed the road in search of her husband, Justin Toa. She had drank some kava and wanted a little more. You both met her on the road. She asked you where her husband was. You told her he was at the last bar (Kava Nakamal). When she heard this she turned around and went back to their home. Tino Rasa ran behind her , stopped her and asked her for sex twice. She said “No” each time. Then Tino Rasa took out some paper money, put it into her hand, held her hand and pulled her to the side of the road and into an old house belonging to one Remon. Tino Rasa was ahead, the complainant was on the middle while Brenton was behind. You entered the old house. It was dark. You took her into the living Room. Tino Rasa went with her first into a room and had sexual intercourse with her. Tino Rasa called to Brenton who wanted by the door. Brenton went in and had his turn. Then Tino Rasa went in a second time and had



another round of sexual intercourse with her. After this, the complainant reached for her clothes, wore them and ran out the door and back onto the road. She ran over a stone and fell into a pool of water and got wet. She reached the road and found her husband approaching her. He asked her what had happened. After a second time she responded by saying you two had put money in her hand and then had sex with her without consent. Brenton appeared on the road at this time and was asked by the complainant's husband. When he did not answer, Justin Toa assaulted him and he admitted to them having sex with his wife. Then Justine assaulted his wife as well that night. Next day the chiefs held a meeting to resolve the matter.

4. Clearly the guideline principles for this type of sexual offendings are helpfully set out in PP.v. Scott [2002] VUCA 2 and PP.v. Ali August Crc 14/2000.
5. Ali's case establishes that rape is always a most serious case and that it calls for immediate custodial sentence, other than in wholly exceptional circumstances. I find nothing wholly exceptional in your case. Further Scott's case establishes that where rape is committed by two or more men acting together, or by a person who is in a position of responsibility towards the victim, or by a person who abducts the victim and holds her captive, the starting point shall be 8 years imprisonment.
6. Mrs Aru submitted the Court should adopt a lower starting point because of your young age, and in particular for Brenton Sanibul. I see no reason to depart form what the Court of Appeal has clearly hand down, and I reject that submission. The facts show that there were 2 of you, Tino Rasa held her captive with money. She walked in between the 2 of you. I accept prosecution's submission that the starting sentence for both of you should be 8 years imprisonment.
7. A sentence of imprisonment for the two of you will serve as a deterrence for you and other like-minded people, to mark the seriousness of your offendings, to mark public disapproval of your actions and to protect women, girls and generally the weak and the vulnerable members of the society. These principles are well established in PP.v. Kalosil which adopts the foreign cases of R.v. Radidi and Veen [1954] NZ LR 86, the Queen (No.2) (1988) 164 CCR 465.



8. I therefore convict both of you and sentence you both to a starting sentence of 8 years imprisonment.

- a) I consider that 2 years are appropriate to be added to the 8 years starting sentence bringing the sentence to 10 years imprisonment.
- b) For you Brenton, your starting sentence of 8 years will be uplifted by 1 year for the following aggravating features-
- c) Serious breach of trust- as brother of the complainant's husband.
- d) Your involvement in the plan by keeping a lookout.
- e) Your action was a repetition.
- f) No protection measure used.
- g) The victim was a married women (creating the friction between the husband and her later that night when he beat her up) with a risk of breaking up the marriage.

I consider that 2 years are appropriate to be added to the 8 years starting sentence bringing the sentence to 10 years imprisonment.

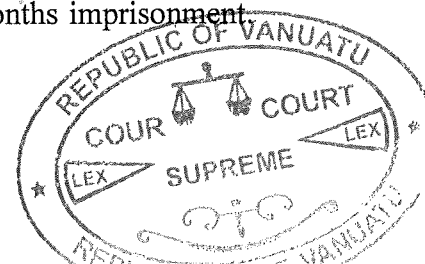
9. For you Brenton, your starting sentence of 8 years will be uplifted by 1 year for the following aggravating features-

- a) Serious breach of trust- as brother of the complainant's husband
- b) Your involvement in the plan by keeping a lookout.
- c) Your action was a repetition.
- d) No protective measure used.

Your sentence is now increased to 9 years imprisonment.

10. Now for mitigation, I have read a Same Day Report. I note you are both young offenders of no previous criminal report. I note you are both young offenders of 18 years and 16 years 9 months. You both have no previous criminal record. You were summoned to a meeting by the chiefs on 20th January 2018 and imposed fines which you have paid but not in full. Both of you have spent about 4 months in custody on remand before being released on bail.

11. For those factors Tino Rasa, your sentence of 10 years imprisonment is reduced by 4 years leaving the balance at 6 years imprisonment. 4 months are deducted for your pre-custodial period. Your end sentence is now 5 years and 8 months imprisonment.



You are sentenced therefore to an end sentence of 5 years and 8 months imprisonment with immediate effect at the Correctional Service in Luganville, Santo.

12. For you Brenton Sanibul your sentence of 9 years imprisonment is reduced by 4 years for the mitigating factors leaving the balance of 5 years imprisonment. I deduct this further by 4 months. Your end sentence is now 4 years and 8 months imprisonment with immediate effect, at the Correctional Centre in Luganville, Santo.

13. I accept prosecution's submissions that your sentences will not be suspended.

14. Both of you are reminded that are entitled to apply for parole after having served up to half of your respective sentences.

15. Finally I advise both of you as to your rights of appeal within 14 days if you disagree with your convictions and sentences.

DATED at Betarara, North Maewo this 29th day of March 2019

BY THE COURT

OLIVER.A.SAKSAK

Judge

