

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
(Criminal Jurisdiction)

Criminal
Case No. 19/2679 SC/CRML

BETWEEN: Public Prosecutor

AND: Johnny Kekei
Defendant

Date: 12 March 2020

By: Justice G.A. Andrée Wiltens

Counsel: Mr D. Boe for the Public Prosecutor

Mr L. Tevi for the Defendant (Mr Tevi withdrew from acting on 12 March 2020 due a conflict within his instructions)

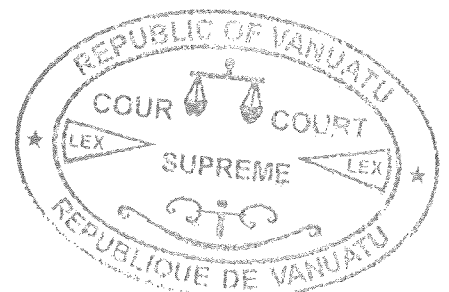
SENTENCE

A. Introduction

1. Mr Kekei pleaded guilty to one charge of sexual intercourse without consent with a person with physical or mental incapacity. The maximum sentence for that offence is a term of life imprisonment. It is a very serious offence.

B. Facts

2. On October 2017, Mr Kekei forced the complainant into having sexual intercourse with him in her kitchen. He took the opportunity of no one else being home. He then dragged her into the kitchen, disrobed her and took off his own clothes. While having sexual intercourse, to stop her from calling out, he blocked her



mouth. Once he had finished, he then fled the scene, leaving her bleeding. The complainant immediately told her mother what had occurred.

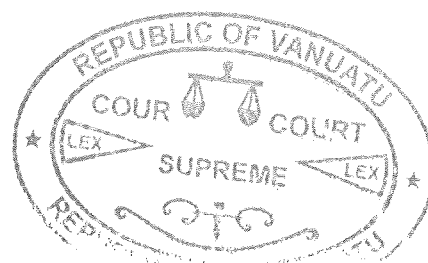
3. The complainant is Mr Kekei's sister-in-law and was 16 years old at the time of the offending. She has a background of epilepsy which is controlled by medication. She has suffered numerous uncontrolled seizures in the past, with some resultant injuries. She is said to lack judgment, and lacks emotional control. She has difficulty with certain motor functions and has from an ineffective ability to communicate.
4. When interviewed by the police Mr Kekei denied the offending.

C. Aggravating/Mitigating Factors to the Offending

5. There are a number of aggravating factors to the offending. There is clearly a gross breach of trust involved as the complainant is his sister-in-law. As well, the offending took place in the family home, where the complainant should have been safe. No protection was used, so that there was a risk of transmission of sexual diseases and of pregnancy. There was an age differential in that Mr Kekei was 29 and the complainant only 16. Not only that, but due to her physical and mental incapacities, there was an enormous power imbalance between them, with the complainant having no ability to thwart Mr Kekei's wishes. Finally, it is aggravating that Mr Kekei prevented the complainant from calling for assistance by blocking her mouth.
6. There are no mitigating factors to the offending.
7. The start point that I adopt as appropriate for this offending and for Mr Kekei's criminal culpability is 8 years imprisonment.

D. Personal Factors

8. Mr Kekei is 29 years of age, living in a de facto relationship with one young child and another on the way. He is a gardener, with no previous convictions.
9. There has been no custom reconciliation ceremony, and Mr Kekei was not intending to participate in such.
10. I allow a reduction from the sentence start point of 3 months for Mr Kekei's personal factors. No doubt his immediate family are much affected by these allegations, which he has now confirmed by his plea.
11. The final factor I can take into account is Mr Kekei's plea, which was not given at the earliest possible opportunity but on the morning of trial. However, the plea has meant that the complainant has not had to give evidence against her brother-in-law in front of a number of strangers and have to relate embarrassing details. Accordingly, I allow a discount for that and for the saving of Court time and expense as a result of the late guilty plea, of a further 15%.



12. I accept Mr Kekei has been remanded in custody between 4 September 2019 and 10 December 2019. The sentence will be back-dated to take that into account.

E. Sentence

13. The end sentence that I impose on Mr Kekei is one of 4 years 6 months imprisonment. The sentence is to commence on 7 December 2019 to reflect the 3 months and 6 days he has already served in custody.

F. Suspension

14. The law provides a discretion to suspend all or part of the sentence, pursuant to section 57 of the Penal Code, namely where it is not appropriate to make an offender suffer immediate imprisonment "... (i) in view of the circumstances; and (ii) in particular the nature of the crime; and (iii) the character of the offender".

15. However, there are a substantial number of authorities by the Court of Appeal indicating that where serious sexual offending is involved, as there is here, it is not appropriate to suspend all or part of the sentence. Accordingly Mr Kekei must serve this sentence in prison.

G. Conclusion

16. Mr Kekei has 14 days in which to appeal this sentence if he does agree with it.

DATED at Luganville this 13th day of March 2020

BY THE COURT


Justice G.A. Andrée Wiltens

