

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

Criminal
Case No. 21/4021 SC/CRML

BETWEEN: Public Prosecutor

AND: Sano Koriaru Anatu
Accused

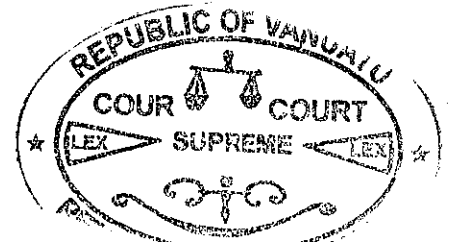
Date of Sentence: 11 October 2022

Before: Justice EP Goldsbrough

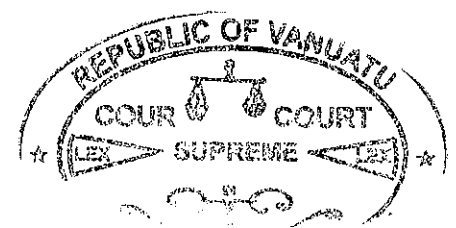
Appearances: Massing, K holding papers for Karae, T for the Public Prosecutor
Livo, B for the Accused

SENTENCE

1. Sano Koriaru Anatu has admitted an offence of indecency without consent. The victim of this offending was Susan Busai with whom the defendant used to live as husband and wife. That relationship ended more than six months before this offence took place. The facts suggest that on 12 November 2021 when the victim came home from a night spent drinking and dancing, the accused Sano Anatu was already at her home. He gave her more alcohol and she went to bed after drinking some of it.
2. She woke up to find the defendant undressing her. He had already removed her outwear and bra and was trying to remove her underwear, in particular her panties. She felt him touch her vagina through her panties. She scolded him. She noticed that he had made the room secure from onlookers by closed curtains.
3. The facts as set out in the statement of brief facts are admitted. No reason for the offending is given.



4. The maximum penalty for an offence under section 98 of the Penal Code is imprisonment for seven years.
5. Said to aggravate this offence is the fact that the defendant took advantage of his victim when she was drunk and in her own home. It is difficult to see how premeditation and planning can be regarded as aggravating in this case as it appears the defendant seized the opportunity when it was offered. He did draw the curtains which perhaps could be regarded as planning. If it is, it is not particularly significant.
6. A starting point of eighteen months imprisonment is set. The touching was through clothing, there was no actual penetration of any organ by any part of his body and the offender did not attack his victim as a stranger might, they had been drinking together in the house after she returned from a night out.
7. The offender has pleaded guilty to his offence and deserves a reduction in sentence for that. He pleaded guilty at the first available opportunity. He has no previous convictions and deserves some credit for that. He has already spent around 30 days in custody before he was released on bail. He is entitled to have that period of custody taken into account.
8. There is no indication that any customary reconciliation has taken place, only an indication that as he is employed, the offender supports his family financially.
9. Sexual offences are often dealt with by way of immediate custodial sentences, and there is authority from the Court of Appeal in that regard. In particular see PP v Gideon [2002] VUCA 7. But this is not a case of the sexual abuse of a young person.
10. Given the circumstances of this particular offence and the relatively minor interference with the health, safety and comfort of the victim, this offence may fall outside of that category of offending requiring an immediate custodial sentence. Other indicators, such as no history of offending and a good work record suggest that a sentence of imprisonment may be suspended.
11. The starting point of eighteen months imprisonment is changed to reflect a guilty plea and the offender already having served thirty days in custody to eleven months imprisonment. That eleven-month imprisonment is suspended for two years. This



means that Mr Anatu does not need to serve a term of imprisonment for this offence unless he is convicted within the next two years of any offence for which he may be sentenced to imprisonment. If that happens, this suspended sentence may be put into effect. If he is not so convicted, the sentence does not need to be served, so the way to stay out of prison is not to re-offend.

12. Right of appeal explained.

Dated at Port Vila this 11th October 2022

BY THE COURT

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Justice EP Goldsbraugh

