

PUBLIC PROSECUTOR v JOHN SIMO

Before: Chief Justice V. Lunabek

Appearances: Mr D Boe for the State
Mr RT Willie for the Defendant

Date of Plea: 24 April 2023

Date of Sentence: 5 May 2023

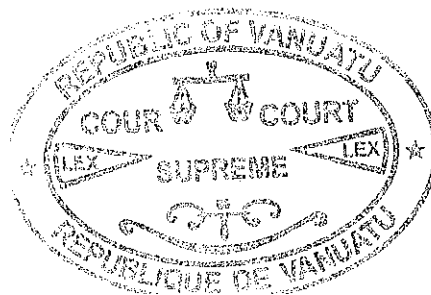
SENTENCE

A. Introduction

1. John Simo, you appear today for sentence. On 24 April 2023, you entered guilty pleas on three (3) Counts of sexual intercourse without consent, contrary to Sections 90(a) and 91 (in the first two counts) and Sections 90(b)(i)(ii)(iii) and 91 (in the third count).

B. Facts

2. You are from Malo island and you are 44 years of age (DOB: 8 November 1979). The complainant is 37 years of age. She lives in Santo.
3. You live in a defacto relationship with the complainant woman and you have two children together with your partner.
4. On 9 February 2023, the complainant lodged a complaint against you for sexually abusing her.
5. The complainant began a relationship with you in 2015 after she separated from her previous husband.



6. It was during the relationship with your defacto wife that you both consumed alcohol drinks. The complainant had faced a lot of physical violence and to some extent sexual violence.
7. You both lived with the complainant's family at Solway area, Santo. Because of the violence and abusive treatment the complainant received from you and because she refused help from her family members that her family members sent you and the complainant out of their family home.
8. Sometime in June 2022 the complainant made the decision for her and you to leave Santo and to go and live with your family at Malo island.
9. The complainant recalled that when you were both living on Malo island you would have sexual intercourse with her every day, even when she finished work and returned home you will force her to have sexual intercourse with you. The complainant would refuse but she was afraid of you as you would threaten to kill or harm her or threaten to cut her with a knife.
10. The complainant recalled that sometimes in 2017 after the birth of her first child with you, you both were renting at Pepsi near Solway area.
11. You and the complainant were drinking alcohol, it was in the evening, and the complainant went to sleep.
12. When the complainant woke up the next morning she felt pain in her vagina, she saw a tusker bottle near the side of the bed and asked you what did you do to her.
13. You responded that you did not push the bottle into her vagina but that you only pushed the bottle a little in her and you then took it out.
14. The complainant recalled that sometimes around December 2020, she was at home at Solway area, she was drinking alcohol, had food and then she went to bed. She was sleeping when she suddenly felt a pain in her body when she got up she saw you trying to pull out a hand watch from her vagina.
15. She asked you what you were doing and when she turned on the light she saw blood running down her legs.

c. Sentence Start Point

16. Sexual intercourse is defined by Section 89A of the Penal Code. Relevantly, it provides:



"For the purposes of this part sexual intercourse means any of the following activities, between any male upon a female, any male upon a male, any female upon a female or any female upon a male:

- (a) The penetration, to any extent, of the vagina or anus of a person by any part of the body of another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorized by law; or*
- (b) The penetration, to any extent, of the vagina or anus of a person by an object, being penetration carried out by another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorized by law; or*
- (c) The introduction of any part of the penis of a person into the mouth of another person; or*
- (d) The licking, sucking or kissing, to any extent, of the vulva, vagina, penis or anus of a person; or*
- (e) The continuation of sexual intercourse as defined in paragraphs (a), (b), (c) or (d); or*
- (f) The causing, or permitting, of a person to perform any of the activities defined in paragraph (a), (b), (c) or (d) upon the body of another person."*

17. Sexual intercourse without consent is prohibited by Section 90 of the Penal Code. It provides:

"Any person who has sexual intercourse with another person:

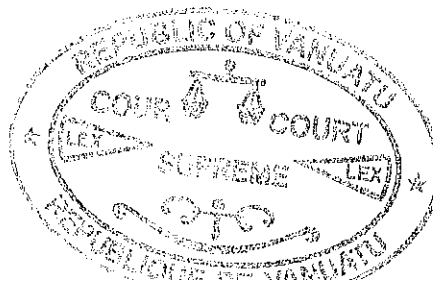
- (a) Without that person's consent; or*
- (b) With that person's consent if the consent is obtained:*
 - (i) By force; or*
 - (ii) By means of threats of intimidation of any kind; or*
 - (iii) By fear of bodily harm; or*
 - (iv) By means of false representations as to the nature of the act; or*
 - (v) In the case of married person, by impersonating that person's husband or wife; or*
 - (vi) By the effects of alcohol or drugs; or*
 - (vii) Because of the physical or mental incapacity of that person.*

Commits the offence of sexual intercourse without consent."

18. Section 91 provides for the punishment of sexual intercourse without consent. Section 91 provides:

*"No person shall commit sexual intercourse without consent.
Penalty: Imprisonment for life".*

19. The following aggravating features exist in this:



- (i) There was a degree of planning involved;
- (ii) There is gross breach of trust;
- (iii) The offences were committed at home where the victim should be safe;
- (iv) The force was used and above the commission of the offence;
- (v) The offence was repeated on several occasions;
- (vi) The effect upon the victim, whether physical or mental;
- (vii) The threats were sued to the office – cut her with a knife.

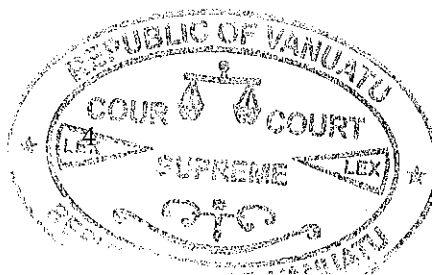
20. Mr John Simo, you are a second time offender. You have been convicted in 2016 for charge of cultivation of cannabis. You were given 60 hours community work. You have completed this community sentence successfully. I treat this as your personal factor to the offending.
21. I adopt a sentence start point of 12 years imprisonment for each and all the three (3) counts of sexual intercourse without consent. They will run concurrently to each other. This means that your sentence start point is 12 years imprisonment.

D. Mitigation Features

22. The only consideration here is your guilty pleas entered at the earliest opportunity. You will be entitled to 33% discount of your sentence start point.
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23. For the purposes of your sentencing, the pre-sentence report shows you are not remorseful for your offending.
24. As to custom compensation, there is none, apart from your intention to do.
25. The report shows you assisted and helped your local church on Malo island with your community there. I give a further allowance of 3 months to reflect this.

E. End Sentence

26. Your end sentence is 7 years and 7 months imprisonment.
27. You were remanded in custody on 24 January 2023 to 20 February 2023. You were released on bail on 20 February 2023. You have already spent a total of 25 days in custody. This is also to be taken into account in your favour.



28. Your sentence of 7 years and 7 months shall be deemed to be effective on 1 April 2023 to take into account the pre-custodial period of 35 days you have already spent in custody.

29. I bear in mind of the provision of Section 50 of the Penal Code. Section 50 provides:

"Commencement of sentence

50. If the offender has not been held in custody pending trial and no warrant of arrest or remand is issued against him or her at the time of conviction in the circumstances authorized by the rules of criminal procedure, no sentence of imprisonment may be enforced until the time of appeal against such sentence has expired or the offender earlier elects to begin serving his or her sentence."

30. You shall start serving your sentence after 14 days ie. on Friday 19 May 2023 or if you elect (chose) to serve your imprisonment sentence earlier, you may do so.

31. The Correctional Services Centre to manage the situation of this detainee. If Mr John Simo fails to start serving his imprisonment on Friday 19 May 2023 as directed, an application for his arrest must be made to the Supreme Court and once arrested, he shall be kept in custody to serve his imprisonment sentence.

32. You have 14 days to appeal this sentence if you are unsatisfied with it. The 14 days starts today at the date of this sentence (ie. 5 May 2023).

Dated at Luganville, Santo, this 5th day of May 2023

BY THE COURT

Chief Justice V. Lunabek

