

PUBLIC PROSECUTOR

v

STEWARD TULILI

Date: 25 July 2024
Before: Justice V.M. Trief
: Public Prosecutor – Mr C. Shem
Defendant – Mr K.S. Amos; Defendant via video link from Lakatoro Court House

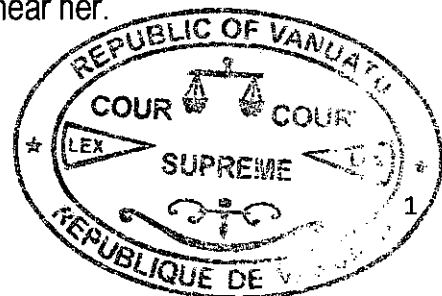
SENTENCE

A. Introduction

1. The Defendant Steward Tulili pleaded guilty to sexual intercourse without consent contrary to ss. 90 and 91 of the *Penal Code* [CAP. 135] (Charge 2). The Prosecution's summary of facts was accepted as true and correct. Accordingly, Mr Tulili is convicted on his own plea and the admitted facts.

B. Facts

2. Mr Tulili is 20 years old and the complainant AH (name suppressed) is 17 years old. They were aged 19 and 16 respectively when the offending occurred. They are related – Mr Tulili is AH's uncle.
3. At around 4am on 15 July 2023, the complainant and 3 others returned to Unmet village on Malekula island from a walk to another village. Mr Tulili called AH to follow him but she refused. He walked to her at the Unmet roundabout and grabbed her hands. She called out to the others who she had been walking with but Mr Tulili blocked her mouth with his hands and they did not hear her.



4. Mr Tulili dragged AH into nearby bush inside a plantation and undressed her. She was crying and he forced her to lie down on the ground. He tried to kiss her but she turned her head away. Mr Tulili then held her head tight on the ground and kissed her. He pulled her legs apart and penetrated her vagina with his penis. AH cried out as this felt very painful and she started struggling. Mr Tulili then stopped having sexual intercourse with her and AH stood up, grabbed her clothes and ran onto the main road. Mr Tulili ran after her but then stopped. AH stopped closer to her house, put her clothes back on and went home.

5. Mr Tulili admitted the allegations to the Police.

C. Sentence Start Point

6. The sentence start point is assessed having regard to the maximum sentence available, and the mitigating and aggravating factors of the offending.

7. The maximum sentence for sexual intercourse without consent is life imprisonment.

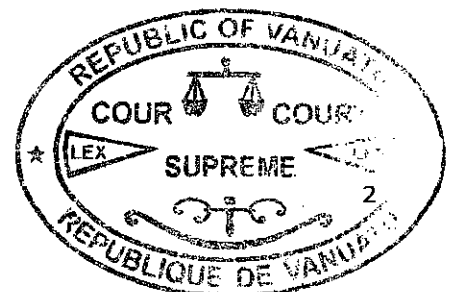
8. The offending is aggravated by the following matters:

- a. The breach of trust involved, in that Mr Tulili is an uncle to the complainant;
- b. The offending took place at night and just off a public road;
- c. The use of force to effect the rape;
- d. The complainant's young age;
- e. The lack of protection used, exposing the complainant to sexually transmitted infection and pregnancy; and
- f. The effect on the complainant including the pain and fear caused to her.

9. There are no mitigating aspects to the offending.

10. The Prosecution submitted that a starting point of 42-48 months imprisonment was appropriate, citing *Shing v Public Prosecutor* [2021] VUCA 21 and *Public Prosecutor v Samson* [2024] VUSC 52. However, *Shing* concerned another offence therefore is not relevant. Defence counsel also cited *Samson*. That case involved sexual intercourse without consent where digital penetration occurred – the Court adopted a starting point of 4 years imprisonment. However, in the present case, penile penetration occurred.

11. I consider that the factors set out above require a sentence start point of 5 years imprisonment.

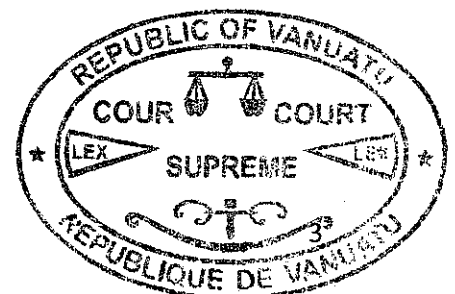


D. Personal Factors

12. Mr Tulili pleaded guilty as soon as he had the benefit of new legal representation. His plea indicates that he has accepted his wrong-doing. It has also saved time and expense, and importantly it has saved the complainant the trauma of giving evidence against him. I reduce the sentence start point by 30% (18 months) for the early guilty plea.
13. Mr Tulili is 20 years old. He is single and lives with his parents. He is a Year 9 leaver. He is very good at sports and currently plays for Unmet FC. He generates income for his family through gardening and kava.
14. He has no previous convictions. He is remorseful, as reported by the pre-sentence report writer. He has not performed a custom reconciliation ceremony but is willing to do so. He has the support of his family and chief.
15. For Mr Tulili's personal factors, in particular his youth and immaturity, I further reduce the sentence start point by 25% (15 months).
16. A further month and 10 days is deducted from the sentence start point for the 20 days already spent in custody (19 July 2023 to 7 August 2023).

E. End Sentence

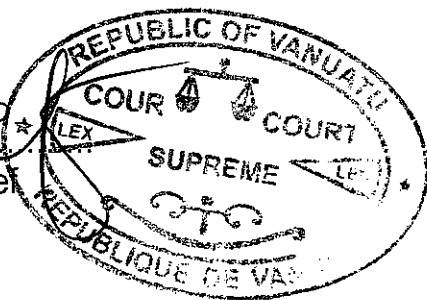
17. Mr Tulili is sentenced to 2 years 1 month 10 days imprisonment.
18. This was serious offending. On the other hand, I take into account that at the time of the offending, Mr Tulili was 19 years old. He had no prior convictions. He voluntarily admitted the offending to the Police when interviewed. He pleaded guilty at the first reasonable opportunity and is willing to perform a custom reconciliation ceremony to the complainant.
19. In the sentencing of young offenders, the dual purposes of punishment and deterrence may need to give way to reform and rehabilitation in the interests of society that young offenders be rehabilitated and grow up to become responsible law-abiding members of society: *Heromanley v Public Prosecutor* [2010] VUCA 25 at [17].
20. I consider that the imposition of an immediate sentence of imprisonment on Mr Tulili with the inevitable consequence of exposing him to long term hardened criminals would be counter-productive and inappropriate.



21. I therefore exercise my discretion under s. 57 of the *Penal Code* to suspend the sentence for 2 years. Mr Tulili is warned that if he is convicted of any offence during that 2-year period that he will be taken into custody and serve his sentence of imprisonment, as well as the penalty imposed for the further offending.
22. In addition, Mr Tulili is to complete 100 hours of community work.
23. Mr Tulili has 14 days to appeal the sentence.
24. All details leading to the identification of AH are permanently suppressed.

**DATED at Port Vila this 25th day of July 2024
BY THE COURT**

VM Tria
Justice Viran Molisa Tria

The seal of the Supreme Court of Vanuatu is circular. It features a central emblem with a scale of justice and a sword. The text "REPUBLIC OF VANUATU" is written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. In the center, the words "COUR SUPREME" and "COURT SUPREME" are written in French and English respectively, with "LEX" on either side of the central emblem.