

PUBLIC PROSECUTOR

V

ABBIE JOHNATHAN SAMSON

Coram: *Hon. Chief Justice V. Lunabek*

Counsel: *Mr C Shem for the State*
Ms C Dehinavanua for the Defendant

Date of Plea: *6 March 2024*

Date of Sentence: *9 April 2024*

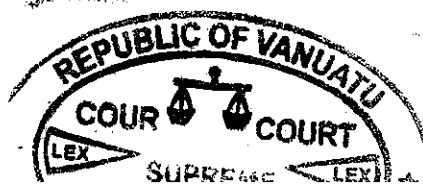
SENTENCE

I. Introduction

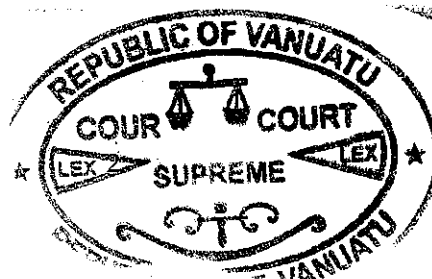
1. On 8 March 2024, defendant Abbie Johnathan Samson ("*Mr. Samson*") pleaded guilty to one count of sexual intercourse without consent, contrary to Sections 90(a) and 91 of the Penal Code [CAP. 135]. Such an offence carries a maximum penalty of imprisonment for life.

II. Facts

2. The brief facts of the case which the defendant admitted was as follows.
3. The complainant at the time of the alleged offending was 20 years of age. She had just completed Year 12 at Rensari College. She was on holiday with her relative. The complainant is now a student at the Vanuatu Institute of Technology in Port Vila. She normally resided in Malekula with her parents. However, she had come to Efate on the 17 of December 2023 and resided with her uncle at Freshwater 3 area in Port Vila. On the 24 of December 2023, they went to Nguna island to spend Christmas day there.



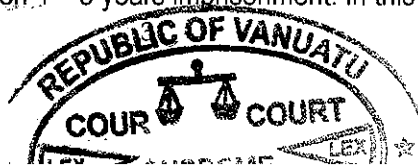
4. Sometimes on the afternoon of the 25 of December 2023, one Jasmina Willie sent the complainant and her cousin Serah Willie to go and purchase a refill card at the shop. This was around 6.00pm. They had to go down to another village to get that. On their way to the shop, they met the defendant and another person named Freddy.
5. At that time the defendant and his friend told the complainant and her friend that there were too many drunken people at the area where they were intending to go and they offered to assist to go and get the refill card. At that time, Freddy went and got the refill card while the defendant stayed back with the complainant and her cousin.
6. After Freddy's return and while they all wanted to go their own paths, the defendant was hanging onto the complainant and intending to say something to her. This was also confirmed by her cousin Serah Willie. The complainant responded by removing the defendant's hands over herself and told the defendant that he be straight with her.
7. The defendant then responded by touching the complainant's breast, in which she was not comfortable with. She pushed him away and rushed behind her cousin Serah who was already on her way with Freddy. The defendant caught up with her, grabbed her and pulled her backward. She tried to call out but the defendant had his hands covering her mouth. She stated that by this time her cousin Serah was already some distance away from her. The path she was on was a steep hill.
8. He then pulled her over, forced her to the ground on the side of the road and got on top of her. He tried to kiss her but she refused by moving her head from side to side. At that time, he used his right hand to lock up the complainant's hands against the ground.
9. The defendant then tried to remove her trousers but the complainant was moving a lot and, in his failure, to do so, then forced his left hand through the complainant's trousers from the front, and through her panty and pushed two of his finders into her vagina. He then penetrated her vagina with his two fingers for a while.
10. The complainant felt severe pain inside her vagina at that the time of the penetration. She tried calling out but no one could hear her. She cried out from that pain but the defendant did not stop.
11. While she was struggling, she then managed to kick the testicles of the defendant with her right foot causing the defendant to let go of her and she run out of the defendant's presence. She speeds up the hill crying and frightened. Once she got to the top, she tried to catch her breath and doing so she noticed that her legs were shaking and she also felt pain in her vagina.



12. She got home and texted her cousin Jasmina who got to her immediately and she told her about the alleged incident. While she had showered that night, she noticed blood on her panty.
13. The matter was related to the chief at that time by the complainant and her cousins. After that while they were returning home the complainant suffered from severe pain coming from her stomach and vagina disallowing her to walk without the aid of her cousins. At that time nurse Patricia was asked to evaluate the complainant. The nurse affirmed observing vaginal bleeding and laceration to her clitoris and vaginal wall. She observed the complainant having difficulties walking and she administered her with antibiotics to assist with the pain.
14. The defendant in his caution interview stated that what was alleged could be true because he was drunk and have no memories of the allegation.

III. Sentence Start Point

15. The sentence start point is determined by reference to the maximum sentence available. I need to assess the overall culpability of the offending. I do this by assessing the aggravating and personal mitigating aspects of the offending [Philip v Public Prosecutor [2020] VUCA 490].
16. In this case, the maximum sentence available is life imprisonment. Here, there is no personal mitigating factors leading to the offending, but the following aggravating factors exist based on the authority of Scott v Public Prosecutor [2002] VUCA 20, as follows:
 - (a) There is breach of trust. The victim/complainant and the offender are family members. The victim referred to the offender as a cousin brother;
 - (b) There was a degree of planning. The offender waited for the victim's friend and his friend to get out of sight before he committed the offence;
 - (c) The force used is over and above that necessary to achieve non-consensual sexual intercourse;
 - (d) The offending took place at night and there, on a public road;
 - (e) The effects of the crime on the victim, who was emotionally traumatized, and the pain and suffering on her body – vaginal bleeding and laceration to the clitoris and vaginal wall.
17. I take all these matters into account, on a global basis, the appropriate sentence start point for Mr. Samson is between 4 – 5 years imprisonment. In this case, I fix it at 4 years.

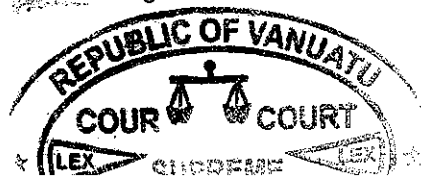


IV. Personal Mitigating Factors for the Offender

18. Mr. Samson, You are a single man of 23 years old. You are from the village of Varalapa on Nguna Island. You are in good relationship with your family and chief. You finished schooling at the primary school. You have skills in gardening and fishing. You are unemployed and you depend on your single mother. You assisted your mother with little income from your gardening and fishing.
19. You are a first time offender. You do not have previous conviction. You felt sorry for what you did and you added you would not re-offend again in the future. You wanted the victim to forgive you. You promised to change as you realized the mistake you had made.
20. Your sentence is reduced to 8 months to reflect the mitigating factors.
21. Your sentence is further reduced by 33% to reflect your guilty pleas at the first opportunity given to you by the authorities. The remaining balance of your sentence term is 27 months (2 years and 3 months) imprisonment.

V. End Sentence and suspension of sentence considerations

22. Mr Samson, you are accordingly sentenced to 2 years and 3 months imprisonment.
23. Mr Samson, you have been held in pre-custody period since the 16 January 2024 until you are sentenced today. The time you have already spent in pre-custody period will be taken into account in your favour.
24. I do consider whether or not I should suspend your imprisonment sentence.
25. Your lawyer referred the following cases to the Court: Public Prosecutor v Manpit [2023] VUSC 160, and Public Prosecutor v Melteck [2016] VUSC 120. The case of Public Prosecutor v Manpit [2023] was a case where a 33 years old defendant was charged with one count of sexual intercourse without consent, contrary to s.90(a) and 91 of the Penal Code. The 16 years old victim in that case was a relative of the defendant. The victim was helping the defendant's partner with some work throughout the day, as it was getting late the victim decided to sleep over at the defendant's house. The defendant's partner told the victim that they would sleep in the couple's bedroom. The defendant entered into his bedroom and had sex with his partner. He then removed the victim's trousers and underwear and put his penis on and slightly into the victim's vagina. The defendant's partner scolded him and he threatened to kill them with a bottle. The victim escaped the house and ran home in the dark. The Supreme Court Judge considered the factors of the offending and the



circumstances of the defendant and imposed an end sentence of 23 months imprisonment. The learned judge suspended that imprisonment sentence for a period of 2 years with a 12 months supervision and for the defendant to undertake a rehabilitation module on sexual offences. The circumstances of the Manpit case are less serious than the present case.

26. The case of Public Prosecutor v Melteck [2016] VUSC 120 was the second case referred to the Court by your lawyer. The defendant was an old man of 75 years. He had serious medical conditions. There was a lengthy delay in the prosecution of the defendant. The Court imposed a start sentence point of 7 years imprisonment, and arrived at an end sentence of 2 years and 11 months imprisonment. This case was assessed on its particular circumstances and is distinguished from this present case.
27. In the present case, the nature and circumstances of the offending do not justify the suspension of your imprisonment sentence of 2 years and 3 months. The principle of deterrence and accountability for your actions are the paramount sentencing principles in this instance based on Public Prosecutor v Scott [2002] VUCA 29, where the Court stated:

"There can be no room for any deviations from these fundamental and essential principles. The rights of women must be recognized, maintained and upheld ... It will only be in the most exceptional of cases that suspension could ever be contemplated in a case of sexual abuse".

28. Your sentence of 2 years and 3 months imprisonment is effective from the date of 16 January 2023 when you were kept into custody until you are sentenced today.
29. Mr Samson, you have 14 days to appeal this sentence if you are unsatisfied with it. The 14 days starts at the date of this sentence.

DATED at Port Vila, this 9th day of April, 2024.

BY THE COURT

Hon. Chief Justice Vincent LUNABEK

