

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

Criminal  
Case No. 25/1408 SC/CRML

BETWEEN: Public Prosecutor

AND: Banabas Fabiana Sew  
Defendant

Coram: Justice Dudley Aru  
Counsel: Ms. J. Tete the Public Prosecutor  
Ms. B. Taleo for the Defendant

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### SENTENCE

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#### Introduction

1. Banabas Fabiana Sew you pleaded guilty to two counts of sexual intercourse without consent contrary to s90 and 91 of the Penal Code. You are convicted on your guilty pleas and the admitted facts. This is your sentence.

#### Facts

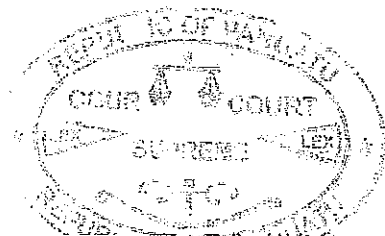
2. You are the victim's half brother. You have the same father but different mothers.

#### Count 1

3. The victim could not recall the exact date but recalls that the first time you had sexual intercourse with her was at their garden. The victim stated that after you had sexual intercourse with her she went home and saw blood on her panties and her vagina felt sore for two days.

#### Count 2

4. On 2 February 2025, there was a dance at the community hall at Avar village that that night. The victim danced until 10 pm that night and left and went back home to sleep. She was sleeping when she heard you calling her. She woke up and thought you wanted sleep as they all slept in an open space at their home since there were no rooms.
5. When she woke up you spoke to her and she could smell alcohol in your breath. You asked the victim to stand up and follow you which she did. You suggested that you go to a navele tree 3 yards away so people would not be able to see you. When you got to the navele tree you told the victim to lie down on the grass and you penetrated her vagina with your penis and had sexual intercourse with her. While having sexual intercourse with her the victim said "enough mi harem e nogud weh" as she did not want to have sexual intercourse with you. You removed your penis and at the same time people were coming back from the dance and you could see light from their



torch lights . You hid from the light and after the people had passed you both returned home separately. The victim was two months pregnant as a result of you having sexual intercourse with her when the matter was reported to the Police.

#### Sentence start point

6. The sentence start point is assessed by considering the maximum sentence available as well as any aggravating or mitigating factors of the offending. The maximum sentence available for sexual intercourse without consent is life imprisonment.
7. There are a number of aggravating factors namely:
  - There is a breach of trust as the victim is your half sister
  - There is an age difference of 4 years
  - There is some degree of planning involved
  - The victim got pregnant as a result of the offending
  - The offending occurred at night
  - There will be psychological implications on the victim
8. There are no mitigating factors.
9. The sentencing principles outlined in PP v. Scott [2002] VUCA 29 and PP v August [2000] VUSC 73 apply in this case:

*"The offence of rape is always a serious crime. Other than in wholly exceptional circumstance, rape calls for an immediate custodial sentence. "*
10. Considering the cases referred to by Counsel and noting that there a number of aggravating factors of the offending I adopt a starting point of 7 years imprisonment on each count. The total concurrent sentence start point is 7 years imprisonment.

#### Guilty plea and personal factors

11. The guilty plea was entered at the earliest opportunity as a sign of remorse therefore the sentence start point will be discounted by 33%.
12. The Same Day Report states that you are 21 years old and single and you come from a family of six and you are the eldest. You are a first time offender. You left school at class 5 but you have some experience in plumping as you were employed by a plumping business here in Luganville since you left Mota lava in 2020 to come and reside here. That's how you earn your living to support yourself. Taking into account your personal factors I deduct 3 months from the sentence start point



13. You told your probation officer that you performed a custom reconciliation to the victim by giving a fine of VT10,000, a stem of kava worth VT5,000 and VT17,000 cash. This could not be verified however, I will deduct a month from the sentence start point. A further 4 months is deducted to reflect time spent in custody.

**End Sentence**

14. I sentence you to an end sentence of 4 years imprisonment effective immediately. A custodial sentence is necessary to mark the gravity of the offence, secondly to mark public disapproval. Thirdly to serve as a warning to others. It must also serve as punishment for your offending and to protect women.
15. The Centre Manager at the Correctional Centre is to inform the Court should you fail to present yourself to the Correctional Centre by 4.00 pm today.
16. You have 14 days to appeal if you are not satisfied with the decision.

DATED at Luganville Santo this 3<sup>rd</sup> day of September, 2025

BY THE COURT

Dudley Aru  
Judge

