

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

Criminal
Case No. 25/2187 SC/CRML

BETWEEN: Public Prosecutor

AND: Lee Joe David
Defendant

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

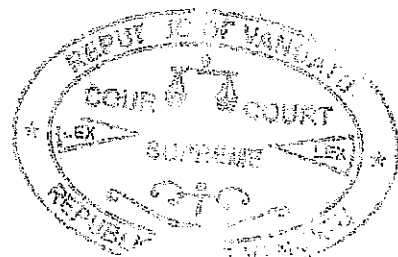
SENTENCE

Introduction

1. Lee Joe David you were charged with two counts of sexual intercourse without consent contrary to s90 and 91 of the Penal Code. You pleaded not guilty to count 1 and pleaded guilty to count 2. The prosecution then entered a nolle prosequi in relation to count 1. You are convicted on your guilty plea in relation to count 2 and the admitted facts. This is your sentence.

Facts

2. You are the biological father of the victim. At the time of the offending, the victim was 16 years old and you were all living at Manioc village.
3. On the night of 3 February 2025, you were all in the kitchen when a relative came and told the victim that her name was already registered in school. At that time you were scolding the victim on alcohol.
4. After that you sharpened a knife and told the victim to follow you. At that time you did not tell the victim where you were going. You led the victim and came to a fence and you began clearing a small bush whilst the victim stood there and watched. The victim observed that you took some leaves in your hand and walked towards her. You told her to lift her shirt so you could rub the leave on a cut which was the result of an operation she had had. The victim did so and rubbed the leaves on the cut then you moved to a small hill and laid a towel on the grass and called the victim to go and sit on it but the victim did not move and remained standing.
5. You then scolded her to go and sit on the towel which she did and you told her to remove her bra and panty. The victim refused and was crying.

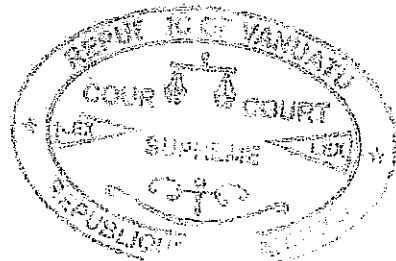


Count 2

6. You told her to lie down on the towel which she did then you put your penis to the victim's vagina and tried to push it in but you could not as you could not have an erection. You rubbed your penis on the victim's vagina trying to get an erection and tried pushing it again but you could not. You then removed your penis. It began raining so you headed home. On the way, you told the victim that you will go and seek shelter and sleep in a small house in the garden but the victim refused. You then suggested that when you get home you will both sleep in the kitchen but the victim refused. Next, you told the victim that you will go and see her in her room but she refused.
7. Whilst you were walking back home you told the victim to sit on a dry log and you prayed over her and told her that you have money in the bank and if she did not tell anyone about what happened until 2028, you will transfer the money to her name. The victim did not like what you had done to her and told her mother about it the next day.

Sentence start point

8. 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.
9. There are a number of aggravating factors namely:
 - There is a breach of trust as the victim is your daughter
 - There is an age disparity of 34 years
 - There is an element of planning involved
 - The victim was lured to a secluded area
 - The offending occurred at night
 - There will be psychological implications on the victim
10. There are no mitigating factors.
11. The prosecution referred to the principles of sentencing set out in *PP v Scott* [2002] VUCA 29 where the Court of Appeal observed with approval the decision of the Chief Justice in *PP v August* [2000] VUSC 73. The prosecution submits that the starting point should be between the range of 6 to 8 years to hold you accountable for your actions. Reference was made to a couple of cases of similar offending where the Courts have adopted a starting point of 8 years imprisonment.
12. Defence Counsel also referred to a couple of cases where the starting point of sentence for sexual intercourse without consent was between 6 and 7 years imprisonment where the offending is committed by an uncle or a step father of the victim.
13. The factual circumstances of cases submitted by Counsel are distinguished from the current case.



14. I adopt a starting point of 8 years imprisonment.

Guilty plea and personal factors

15. The defendant entered a guilty plea at the earliest opportunity as a sign of remorse therefore the sentence start point will be discounted by 33%.

16. The Same Day Report states that you are a second time offender and now 51 years old and residing with your family at Manioc area East Santo. You were married in 2001 and you have 5 children including the victim. This is you told your probation officer that you are a Deacon of the Seventh Day Adventist church in your area and you have faithfully carried out your responsibilities.

17. You earn your living by gardening and your wife sells your root crops and vegetables at the market in Luganville to sustain your family's daily needs.

18. Taking into account your personal factors I deduct 3 months from the sentence start point.

End Sentence

19. I sentence you to an end sentence rounded off to 5 years imprisonment with effect from 7 February 2025 when you were remanded into custody. A custodial sentence is necessary to mark the gravity of the offence and to emphasize public disapproval. It must also serve as a warning to others and serve as punishment for your offending. It also serves to protect women.

20. You have 14 days to appeal if you are not satisfied with the decision.

DATED at Luganville Santo this 3rd day of September, 2025

BY THE COURT

Dudley Aru
Judge

