

**IN THE SUPREME COURT OF THE
REPUBLIC OF VANUATU – Luganville,
Santo
(Criminal Jurisdiction)**

Criminal Case No. 25/3658 SC/CRML

**BETWEEN: PUBLIC PROSECUTOR
Santo**

The State

**AND: Kevena Levu Tatar
Santo**

Defendant

Date of Plea: 17 February 2026
Date of Sentence: 20 February 2026
Before: Justice B. Kanas Joshua
Counsels: Mr Christopher Shem, for the State
Mr Steven Garae (Jnr), for the defendant

SENTENCE

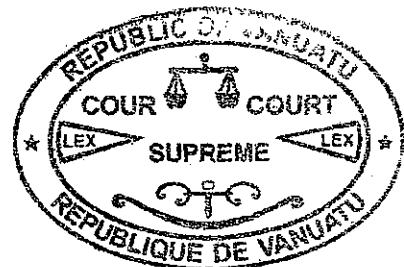
Introduction

1. Mr Kevena Levu Tatar you appear in court today because on 17 February 2026, you were re-arraigned and you pleaded guilty to the charge of sexual intercourse without consent. This offence is contrary to Section 90(b)(vi) and 91 of the Penal Code Act CAP 135. Previously, on 19 December 2025, you had pleaded not guilty and trial was set for this week.
2. This sentence is to hold you responsible for your actions so others, who also behave in this way, can see that it is against the law and has serious repercussions. It will help to stop their actions, as it causes social harm.

Facts

3. It was the complainant's ("SM") birthday in September 2024, and like any young person she celebrated it with others. The defendant was also there and alcohol was consumed. The birthday celebration took place around 5-6pm at a coconut plantation in Tanovisvis area, South Santo, some distance away from the residences. It ended a few hours and everyone started to make their way to their various homes. SM was so intoxicated that she could not walk properly and was staggering along the road when she fell to the ground. Her cousin brother tried to help her back up but was unsuccessful so he asked the defendant to assist. The defendant took advantage of the situation and it was at this point that he had sex with SM. Shortly after he had sex with SM, SM's mother came to the scene and the defendant and SM parted ways.
4. A month later, SM discovered that she was pregnant. After enquiring with the defendant, he confirmed that they had had sex on the night of the party and it became apparent that the pregnancy was the result of the sexual act. SM then reported the matter to the police. Under caution, the defendant admitted to the offending.
5. These facts were confirmed by the defendant in court.

Starting point



6. The starting point is the first step which must be determined. The aggravating and mitigating factors of the offending are taken into account, with the maximum penalty of the offence. The maximum penalty for sexual intercourse without consent is imprisonment for life.
7. The aggravating factors of the offending are:
 - a. Breach of trust – the defendant and SM are from the same area, and the act will cause distrust among their families;
 - b. The offending occurred at night in the bushes;
 - c. The offending was committed under the influence of alcohol;
 - d. The victim was completely intoxicated and the defendant took advantage of this;
 - e. The victim suffered psychologically from the humiliation and emotional pain; and
 - f. The offending resulted in pregnancy.
8. There are no mitigating factors of the offending.
9. Prosecution submits a starting point within the range of 4 – 7 years imprisonment. Guideline cases of *PP v. Gideon*¹ and *PP v. Scott*² were referred to show the severity of sexual offence cases. In comparison to the present case, *PP v. Tulili*³ was referred to, where the court gave a starting point of 5 years imprisonment. In that case, the defendant had dragged the complainant to the bushes away from the group she was in and he had sex with her. The complainant managed to escape. As in the present case, the offending occurred at night, however, SM was too intoxicated to escape.
10. Defence submits a starting point of 4 – 5 years imprisonment. A helpful guide was the case of *PP v. Ali August*⁴ which divides rape cases into 3 categories: (1) Rape committed by an adult without an aggravating/mitigating feature, 5 years should be taken as the starting point in a contested case; (2) Rape committed by two or more men together, or by a man who has broken into or otherwise gained access to a place where the victim is living, or person who is in a position of responsibility towards the victim, or by a person who abducts the victim and holds her captive – starting point should be 8 years; (3) Rape committed upon a number of different girls/women – starting point should be 15 years or more. In more recent cases, I found the three cases of *PP v. Samson*⁵, *PP v. Malalo*⁶ and *Tulili* helpful. The starting points in those cases ranged from 4 – 6 years imprisonment.
11. In considering the cases, I find that the present case would fall in the higher end of category 1 of *August*. It is more serious than *Tulili*, *Samson*, and *Malalo*, as SM fell pregnant from the sexual act. I give a starting point of 6 ½ years imprisonment.

Guilty plea and personal factors

12. From the starting point, deductions must be made for the guilty plea and personal factors. The defendant pleaded not guilty on 19 December 2025. After re-arraignment on 17 February 2026, he entered a guilty plea. Some discount should be given but not the full discount of 33%, as the offence is a serious one. The defendant is a young boy and it is his first encounter with the law. I give a discount of 30%, which brings the sentence to 4 years 7 months 18 days.

¹ [2002] VUCA 7.

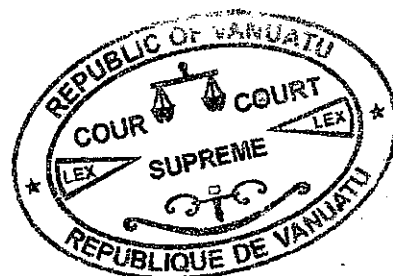
² [2002] VUCA 29.

³ [2024] VUSC 201.

⁴ [2000] VUSC 73.

⁵ [2024] VUSC 52.

⁶ [2023] VUSC 134.



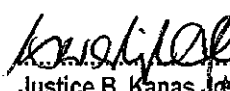
13. The personal factors considered are that you were 15 years old when you committed the offence. You were still in school, however, after the incident you have stopped going to school. You still live with your parents and you are described as a good boy who participates in activities in your community and church. You performed a custom reconciliation to SM and her family and fined VT1,000. This is the first time you have encountered the law and you are remorseful for your actions. I give a further deduct 2 months, bringing the sentence to 4 years 5 months 18 days.
14. I deduct a further 4 days from this sentence, for the time you spent in pre-trial custody.

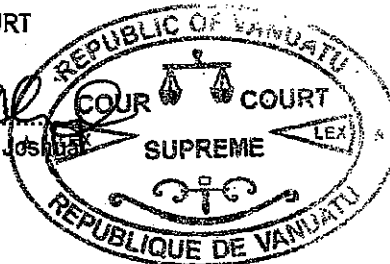
End sentence

15. Mr Kevena Levu Tatar, you are sentenced to 4 years 5 months 14 days imprisonment.
16. In considering a suspension, I turn to the cases *Gideon*, *Scott* and *August*. These cases state clearly that the offence of sexual intercourse without consent calls for an immediate custodial sentence. This is to mark the gravity of the offence, emphasize public disapproval, serve as a warning to others, punish the offender, and to protect women. It is only in the most exceptional of cases that suspension can be contemplated in a case of sexual abuse. Defence emphasized your age at the time of the offending and referred to the Convention on the Rights of the Child ("CRC"). You were 15 years old. You are now 16 years old. The Penal Code Act CAP 135, provides in Section 54(1) that "[a] person under 16 years of age is not to be sentenced to imprisonment unless no other method of punishment is appropriate."
17. The case of *Tulili*, that was referred to by counsels was appealed.⁷ In the appealed case, the Court of Appeal took into account these provisions in the CRC and the Penal Code Act, but also stated that the court must also look at the young age of the victim⁸. In the present case, the victim was 16 years old at the time of the offence. She is just a year or so older than the defendant. Sixteen years old is a tender age for girls and they must be protected from sexual abuse. Apart from the age factor, I do not find anything exceptional about your circumstance, so I must the principles in *Gideon* and *Scott* must be applied.
18. For these reasons, this sentence is not suspended. You must serve this sentence immediately.
19. You have 14 days to appeal this sentence, if you are not satisfied with it.
20. It is ordered that the name of the victim and all identifying details be suppressed.

Dated in Luganville, Santo on this 20th day of February, 2026

BY THE COURT


Justice B. Kanas



⁷ *PP v. Tulili* [2024] VUCA 54.

⁸ *Ibid*, at paragraph [37].