

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

Criminal Case No 17/1939 SC/CRM

PUBLIC PROSECUTOR

V

BOB TEVI

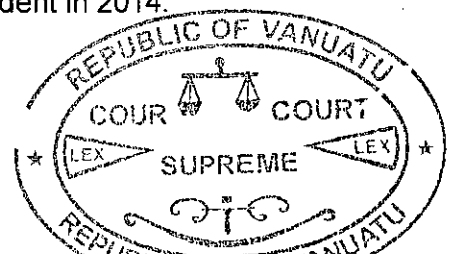
Before: Chetwynd J
Hearing: 11th July 2018 at Port Vila
Counsel: Ms Pakoasongi for the Public Prosecutor
Mr Vira for the Defendant

SENTENCE

1. The defendant Bob Tevi was convicted following a trial held over two days, 18th and 19th June, at Loltong on Pentecost Island. The convictions are in respect of two charges of rape, more properly called sexual intercourse without consent, one act of indecency and abduction. The facts were not much in dispute and the only issue a trial was whether or not the victim consented.

2. Briefly what happened was that in 2014 the victim was, whilst out shopping, accosted by the defendant and pulled into his house. There she was forced to the ground, her clothes were removed and she was raped by the defendant. Afterwards she was told that if she spoke about what had happened to anyone the defendant would beat her.

3. In a second incident in 2015 the defendant asked the victim to purchase some matches for him from the store. She did so and when she attempted to hand over the matches the defendant took hold of her, pulled her behind the church, removed her panties and had sexual intercourse with her. The victim maintained throughout her examination in chief and cross-examination that she did not consent in any way to what went on, either on that occasion or the previous incident in 2014.



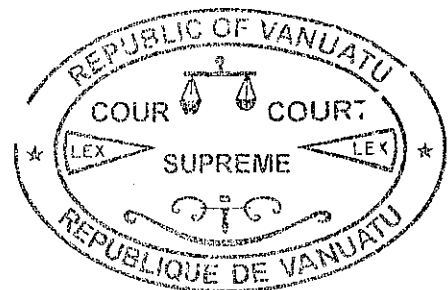
4. The charges of an act of indecency and abduction relate to what went on prior to the rapes. The act of indecency was the defendant kissing the victim against her will. The abduction related to the defendant pulling the victim into his house on the first occasion. As I indicated in my judgment of the 19th of June the circumstances of the offences were such that they are subsumed into the more serious charge of rape. They were part of the rapes. As such, although the defendant has been convicted of an offence of indecent assault and one of abduction no separate penalties will be imposed.

5. Much guidance on sentencing in rape cases has been given by the Court of Appeal. In particular there is a case of *Scott*¹. In that case the Court of Appeal said that the offence of rape is always the most serious crime. The Court also indicated that other than in wholly exceptional circumstances, rape called for an immediate custodial sentence. Whilst acknowledging that the length of any custodial sentence would depend on the circumstances of a case, the Court indicated a contested case involving an adult and which did not have any aggravating or mitigating factors would normally result in a sentence of five years imprisonment.

6. In this particular case the rape was repeated, albeit there was some time between the two incidents. The last rape resulted in the victim becoming pregnant. In all the circumstances I would agree with the defence submissions on sentence that the starting point in this case requires a sentence of eight years imprisonment. A sentence of eight years reflects the culpability of the defendant and the nature of the offending.

7. So far as any mitigating factors are concerned, the defendant has no previous convictions and is otherwise a man of good character. The pre-sentence report notes that the defendant has taken part in a reconciliation ceremony. The defendant should be given some credit for these factors. However, it has been said by the Court of Appeal that a man's previous good character in cases such as this is not of great value in mitigation. However, taking into account the defendant's previous good character and his involvement in a custom reconciliation ceremony I am prepared to reduce his sentence by nine months.

¹ *Public Prosecutor v Scott* [2002] VUCA 29



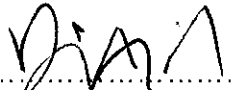
8. I might have considered a greater reduction if the defendant had shown any remorse. It would appear from the pre-sentence report that he does not accept that he raped the victim and he still insists she was a willing partner. This complete lack of remorse does not allow me to reduce the sentence further as his attitude significantly negates any other mitigating circumstance. I bear in mind that the victim has been greatly embarrassed by what has happened and feels unable to fully integrate back into the community. The pre-sentence report mentions that whilst the victim was aware of the reconciliation ceremony (she did not actually attend) it did not make the shame go away.

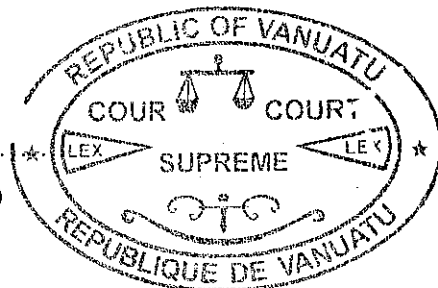
9. The defendant will be sentenced to 7 years and 3 months imprisonment on each count of rape, the sentences to be served concurrently.

10. Given the comments in the *Scott* case and the further guidance found in the *Gideon*² case there is no scope for suspending any part of the sentence. The defendant will serve his sentence of seven years and three months immediately. I understand the defendant spent no time in custody prior to his arrest on warrant on Monday 9th of July 2018. However, any time spent in custody must be taken into account and the sentence imposed upon the defendant today will be deemed to have started on the 9th of July 2018.

11. The defendant is entitled to appeal against this sentence if he is unhappy with it. He has 14 days in which to do so and time will start to run when his counsel has been provided with a copy of these written reasons for sentence.

Dated at Port Vila this 11th July 2018


D. CHETWYND
Judge



² *Public Prosecutor v Gideon* [2002] VUCA 7; Criminal Appeal Case 03 of 2001 (26 April 2002)