

BETWEEN: Public Prosecutor

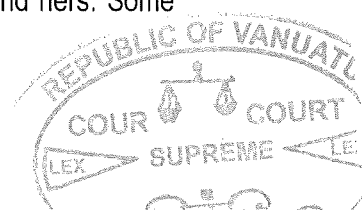
AND: Ham Sandy Shing

Defendant

Date of Plea : 9th December 2019
Date of Sentence: 13th December 2019
Before: Justice Oliver.A.Saksak
In Attendance: Damien Boe for Public Prosecutor
Steven Garae for Defendant

SENTENCE

1. Ham Sandy Shing, you are for sentence today for having pleaded guilty to one charge of sexual intercourse without consent contrary to section 90 and 91 of the Penal Code Act Cap 135. This is a very serious offence because it carries the maximum of life imprisonment.
2. Your victim was a student and only 15 years old when you raped her on 31 July 2019. This happened at Taremb Village, Malekula. This girl was innocently walking home after school. She walked past some men by the village. You were with those men talking. You then rode off on a bicycle and ran past her. You obviously stopped at some distance ahead of her and waited. When she came around, you then called her and told her to stop but she kept walking. When she looked back she saw you behind her. You approached her on your bicycle and stopped in front of her. You got off and pulled her into the bush away from the road. You forced her to lie down. She did not want to and struggled. You pushed her to the ground, removed her panty and your own trousers and had sexual intercourse with her. During the process she just struggled and cried. Sex lasted for some 6 minutes. After sex the girl dressed again and went back to the road and continued walking and crying. She saw blood flowing from her vagina. When she arrived home she was still crying and reported the incident immediately to her mother. Her mother took her to the police at Lakatoro to make a formal complaint. When the police took you in for interview, you freely admitted committing the offence.
3. You are 29 years old and married with 2 young children. Your wife is currently pregnant. You have had a good and stable relationship with your wife who is prepared to maintain that when she states to the Probation officer that she is prepared to forgive you. Your sister and chief both speak well about your help and contributions to the community but both were surprised at your behaviour. What you did is a disgrace and amounts to a breach of the trust placed on you as a mature and reliable father. There is a 14 years difference between your age and hers. Some



degree of force was used against her. Sex was unprotected putting the girl at risk of venereal disease and teenage pregnancy. It happened at an isolated place where the girl's life was in danger of being harmed or killed if she did not give in to your sexual list and desires. Herself esteemed was ruined. And she will live with this in her memory for the rest of her life. That is the physical and mental impact of your selfish action on her life.

4. The principles of sentencing for rape are clearly in numerous Court of Appeal cases. The classic cases are PP v Scott [2002] VUCA 29 and PP v Gideon [2002] VUCA 7. Following those principles the only appropriate punishment for you is to be a sentence of imprisonment.
5. Taking all the aggravating features together with the seriousness of the offence, the appropriate starting sentence is 8 years imprisonment.
6. I have seen your pre-sentence (Same Day) report and the submission of your lawyer providing a list of mitigating factors. The relevant factors will be (a) that you cooperated well with the police and made early admission, (b) your previous clean past and (c) your remorse and acceptance of responsibilities by offering to perform a custom reconciliation ceremony although this has been refused. For all these factors together I allow a reduction of 2 years leaving the balance of sentence at 6 years imprisonment.
7. For your early guilty plea at first opportunity I allow a further reduction of 1/3 which is another 2 years. The end sentence is now 4 years imprisonment.
8. I now sentence you Ham Sandy Shing to an end sentence of 4 years imprisonment. To include your pre-custodial period. I order that your sentence of 4 years imprisonment be backdated to 5th September 2019 when you were first remanded into custody.
9. Your remand on bail ends today. You must begin your sentence today but it is backdated to 5 September 2019 so you do not lose your parole privilege.
10. That is your sentence. You have a right of appeal within 14 days if you do not agree with it.

DATED at Luganville this 13th day of December 2019

BY THE COURT


OLIVER.A.SAKSAK

Judge

