

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

Criminal
Case No. 20/3450 SC/CRML

PUBLIC PROSECUTOR

V

KASIKEN TARI

Date of Plea: 25th February 2021
Date of Sentence: 26th day of March, 2021 at 8:30 AM
Before: Justice Oliver Saksak
In Attendance: Ms Michelline Tasso for Public Prosecutor
Ms Kylie B Karu for Defendant

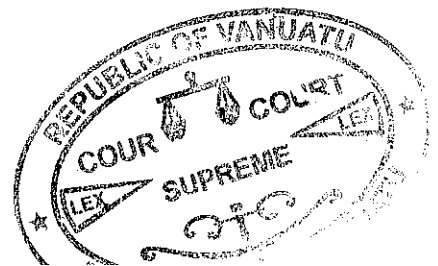
SENTENCE

Introduction

1. The defendant, Kasiken Tari is for sentence today for having pleaded guilty to one charge of sexual intercourse without consent contrary to section 90 of the Penal Code Act [CAP.135].

Facts

2. The victim and complainant is 21 years old. On 11th October 2020 the complainant was in her house with her 7 months old baby. Her parents were not at home. It was around 9:00pm when the defendant opened the door and entered the house. He forcefully demanded to have sex with her and that if she refused he would kill her dead and later surrender to the police. The complainant refused but the defendant persisted in his threats and demand for sex. These made her afraid and eventually she gave in to his demands.
3. The defendant then instructed the complainant to undress and to lie down on the bed. He too undressed and spread the victim's legs and inserted his penis into her vagina. He ejaculated. Sex took place in the absence of the complainant's husband and against her free will.



4. The complainant lodged a police complaint on the next day being 12th October 2020. The police interviewed the defendant 2 days later on 14th October 2020 and he freely admitted forcing the complainant and having sexual intercourse with her. He admitted ejaculating over her body.

Maximum Penalty

5. The offence of sexual intercourse without consent is a very serious offence. Under section 91 of the Penal Code Act, it carries the maximum penalty of life imprisonment.

Aggravating Features

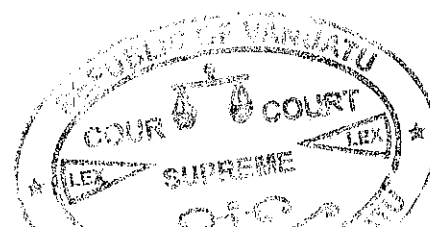
6. The complainant was clearly threatened and intimidated by the defendant by his words "*bae mi kilim yu ded*". There was a degree of planning as the offence occurred when her parents and husband were not in the house. The offending took place in the presence of a 7 months old baby and within the confines of the complainant's own house where she was entitled to be safe. The defendant intruded into the complainant's house without any invitation. And he exposed the complainant to unwanted pregnancy and to the risk of sexually transmitted diseases. And finally the mental stress and humiliation and trauma the complainant experienced especially when she is married and her husband was away in Australia for seasonal work.

No mitigating circumstances

7. Despite there was no violence or weapons used, there were absolutely no mitigating circumstances warranting the commission of this serious offending.

Sentencing Guidelines and Case law

8. The offence of rape or sexual intercourse without consent is always a serious crime. And except in wholly exceptional circumstances, this offence calls for immediate custodial sentence. See PP v Scott & Tula [2002] VUCA 29 and PP v Ali [2002] VUSC 73. These cases lend support to the fact that where rape is committed without aggravating or mitigating features the starting sentence in a contested case is 5 years imprisonment.



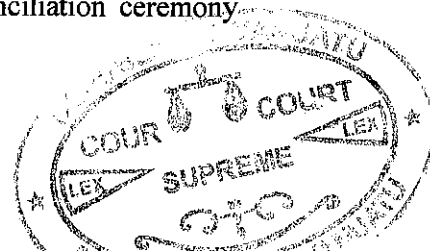
9. This was not a contested case. And it was a case with numerous aggravating features and no mitigating circumstances. So a higher starting sentence is warranted.
10. Further the case of PP v Gideon [2001] VUCA 3 clearly establishes that men who take advantage sexually of young women forfeit the right to remain in the community. The defendant clearly took advantage of the fact the complainant's parents and husband were not at home, leaving the complainant in a very vulnerable situation.

Starting Sentence

11. Applying the sentencing guidelines and principles in the cases referred, and taking into account the very serious nature of the defendant's offending together with the aggravating features, I set the starting sentence of the defendant at 7 years imprisonment.

Mitigation

12. First the defendant's guilty plea. I accept he is entitled to the full 1/3 reduction. In admitting the offending to the police early at investigation and by pleading guilty on the plea date, the defendant has contributed to the Court's curtailing of time and costs which would have otherwise been spent on a trial. Further it has saved the victim from the trauma of having to retell all that happened in an open Court.
13. I therefore reduce his start sentence of 7 years by 2 years, 4 months leaving the balance to be 4 years, 8 months.
14. I do not accept the defendant has shown any remorse at all for his offending. But I note his pre-sentence report showing his previous good character and unblemished record, his willingness to perform a reconciliation ceremony.



and his young age of 20 years, I deduct a further 6 months from his balance of sentence of 4 years and 8 months.

End Sentence

15. That leaves his sentence at 4 years and 2 months imprisonment.

16. The Court sentences the defendant to an end sentence of 4 years and 2 months imprisonment for one charge of sexual intercourse without consent.

Pre- custodial Period and Parole Privilege

17. I take account of his pre-custodial period from 16th October 2020 when he was first remanded in custody.


18. For the purposes of parole privilege, I order that the defendant's end sentence be backdated to 16th October 2020.

Right of Appeal

19. The defendant has a right of appeal against this sentence within 14 days if he does not agree with it.

DATED at Port Vila this 26th day of March, 2021.

BY THE COURT


A handwritten signature in black ink, appearing to be 'O. Saksak', is written over a horizontal dotted line. To the right of the signature is a circular official stamp of the Supreme Court of Vanuatu. The stamp features a central emblem with scales of justice and a book, surrounded by the text 'COUR SUPREME' and 'REPUBLICQUE DE VANUATU'. The word 'LEX' is written on either side of the central emblem. The stamp is slightly tilted and has a textured, embossed appearance.

Oliver Saksak

Judge