

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

Criminal
Case No. 20/3122 SC/CRML

BETWEEN: Public Prosecutor

AND: Obed Mariwota
Defendant

Coram: Judge Aru

Counsel: Ms. J. Tete for the Public Prosecutor
Mr. F. Tasso for the Defendant

SENTENCE

Introduction

1. Mr Obed Mariwotta was charged with two counts of sexual intercourse without consent. He was found guilty of both charges following a trial and is now appearing for sentencing.

The facts

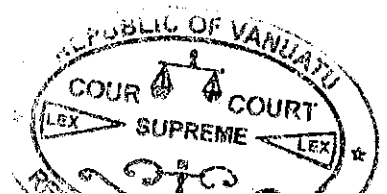
2. The brief facts as found at trial are as follows:-

Count 1

3. On the 4th July 2020 the defendant sent his daughter to tell the complainant that they will go to the garden. Upon arriving at the garden he told his daughter to dig taro whilst he told the complainant to follow him to cut laplap leaf. At the relevant time he had a knife with him. After walking some distance he told the complainant to remove her clothes. She refused but he forced her. Because he had a knife she feared for her life and did not scream for help or run as they were far out in the bush and she did not know where they were. He had sexual intercourse with her before they returned to where his daughter was.

Count 2

4. On 5th July 2020 which was a Sunday, the defendant sent his daughter to get the complainant but the complainant refused to follow her. The defendant then followed his daughter and both came back to see the complainant. The defendant told the complainant they were going to get some nangai nuts and the complainant joined them. They then went to Kaylinson's house to get her to join them. She is a friend of the



defendant's daughter and the complainant. Kaylinson was still in church so they waited for her. Kaylinson returned from church and joined them. They made their way to the main road then the defendant told Kaylinson to follow his daughter down the road to the sea and he told the complainant to follow him to the bush. He told people they met along the way that they were going to look for pigs.

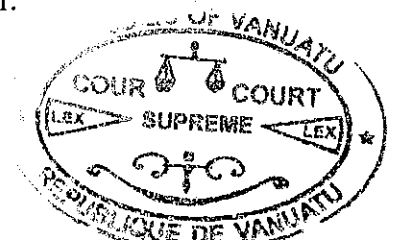
5. He had a knife with him and after walking some distance he told the complainant to remove her clothes. She refused but he forced her. Because he had a knife she feared for her life and did not scream or run because she did not know the roads. The defendant had sexual intercourse with her before they returned to Kaylinson and his daughter.

Starting point

6. The starting point of sentence is determined by considering the maximum sentence available for the offending and taking into account any aggravating or mitigating factors.
7. The maximum sentence available for the offence of sexual intercourse without consent is life imprisonment. The offending is aggravated by a number of factors. There is an age disparity of 13 years. At the time of the offending the defendant was 31 years old and the complainant was 18. The offending was repeated and there is some degree of planning involved to commit the offences. There was a weapon involved and the complainant was exposed to contracting sexually transmitted diseases and unwanted pregnancy. The psychological impact on the complainant will remain a scar on her life.
8. There are no mitigating factors.
9. Taking into account these factors I set the starting point of sentence in this case at 8 years imprisonment to be concurrent.

Personal factors

10. There are no considerations for the guilty plea as the defendant maintained his not guilty pleas on both charges until conclusion of the trial.
11. The Same Day Pre-Sentence Report sets out a number of factors personal to the defendant. He is a first time offender and originates from Tongoa and resides at Mangarisu. He is married with four children.
12. He is a faithful and hardworking member of his community. His chief speaks highly of him and confirms the defendant helps out with construction works in his community and is skilful in construction work. He completed his education at class 6. He is the breadwinner in his family and as a farmer, earns his living by growing and selling food crops and also rearing animals for sale to support his immediate family and also members of his community.
13. The defendant told the writer he regrets his offending and blames it on his inability to control his sexual desires. No custom reconciliation has been undertaken as the complainant has refused to accept it given what happened to her.



14. Counsel submits that the defendant spent 1 month and 16 days in custody before being bailed.
15. Taking into account the above factors, the sentence is reduced by 2 years.

End sentence

16. The end sentence has to be a custodial one. In **PP v Scott** [2002] VUCA 29, the Court of Appeal endorsed what was said by the Chief Justice in **PP v Ali August** Criminal Case No 14 of 2000 concerning rape cases that:-

“the offence of rape is always a most serious crime. Other than in wholly exceptional circumstances, rape calls for an immediate custodial sentence.....A custodial sentence is necessary for a variety of reasons. First of all to mark the gravity of the offence. Secondly to emphasis public disapproval. Thirdly to serve as a warning to others. Fourthly to punish the offender and last but by no means least to protect women...”

17. There are no exceptional circumstances for a suspended sentence in this case, the end sentence is therefore 6 years imprisonment to be served concurrently with effect from today.
18. The defendant has 14 days to appeal if he disagrees with the decision.

DATED at Morua, Tongoa this 19th day of October 2021

BY THE COURT

.....
D. Akis
Judge

