

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

Criminal
Case No. 21/2966 SC/CRML

PUBLIC PROSECUTOR

V

MORRIS NITAIN

Coram: *Justice O. Saksak*

Counsel: *Ms Micheline Tasso for the Public Prosecutor*
Ms Kylie Karu for the Defendant

Date of Plea: *22 October 2021*
Date of Sentence: *30 November 2021*

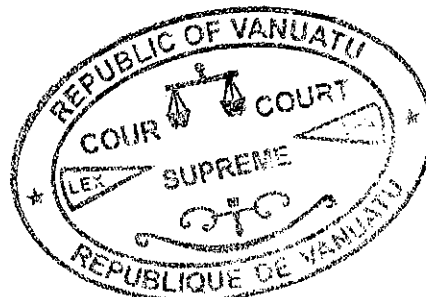
SENTENCE

Introduction

1. Morris Nitain pleaded guilty to one charge of sexual intercourse without consent contrary to Sections 90 to 91 of the Penal Code Act, and to one charge of escape from lawful custody, section 84 of the Act.
2. These are serious offences as sexual intercourse without consent carries the maximum Penalty of life imprisonment and escape carries the maximum penalty of 5 years imprisonment.

Facts

3. On 15 May 2021 the complainant followed her boyfriend to his house with other friends. They drank a carton of whisky cola and stayed up to 1-2.00 am. Her boyfriend then took her back to her house where she undressed and fell asleep under the influence of the liquor. Her boyfriend then left her to rejoin his friends to continue drinking. When he returned sometimes later, he saw a pair of slippers at the door. When he entered he saw the defendant sleeping on top of his girlfriend, having sexual intercourse with her without her knowledge and consent. The defendant was shocked when he was discovered in the act and he got up and ran away from the house. When the victim woke up, she realized she was fully naked and knew someone had had sex with her while she was asleep as a result of liquor drinks. Her boyfriend scolded her for what she had done.



4. The defendant has accepted those facts. There are no mitigating circumstances for the offendings.

Aggravating Features

5. You took advantage of the fact the victim was drunk and that her boyfriend had left her unattended. She was your niece, so there was a breach of trust. The victim was a young 17 year old girl exposed to a risks teenage pregnancy and vulnerable diseases. There was a degree of planning. You have had a previous conviction as recently as 19 May 2021. You are a second time offender. You lied to the Policeman and took advantage and escaped from custody. That revealed your negative attitude towards the system.

Sentence

6. These factors warrant a custodial sentence. I therefore convict you and sentence you as follows:-
- (a) for sexual intercourse without consent – count 1 – a sentence of 7 years imprisonment;
 - (b) for escape from custody – count 2- a sentence of 1 year imprisonment to be consecutive to the 7 years sentence for the offence in Count 1.

Your total sentence is 8 years imprisonment.

Mitigation

7. For guilty plea – I allow a 1/3 reduction and reduce your total sentence by 2 years 8 months. The balance is 5 years and 4 months.
8. I note you have been remanded in custody since 5 July 2021. So that you do not lose your parole privilege I order your end sentence to be backdated to 5 July 2021.
9. You have a right to appeal this sentence in 14 days.

DATED at Port Vila, this 30th November, 2021

BY THE COURT


Oliver.A.Saksak
Judge

