

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

**Criminal
Case No. 21/3216
SC/CRML**

BETWEEN: Public Prosecutor

AND: Fred John Tasaruru and Belinda John
Defendants

Coram: Justice Aru

Counsel: Ms. M. Taikie for the Public Prosecutor
Mr. J. Garae for the Defendants

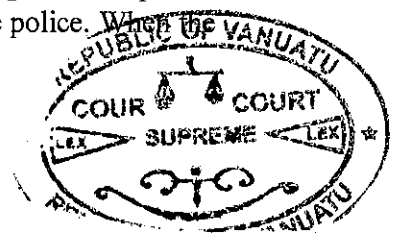
SENTENCE

Introduction

1. The defendants were charged with four counts .Following a trial, Mr Tasaruru and Belinda were found guilty of sexual intercourse without consent (count 1 and 4). Belinda was found guilty of complicity in aiding sexual intercourse without consent (count 2) and both defendants were found guilty of an act of indecency without consent (count 3).

The facts

2. The brief facts as found at trial are that sometime between 3 August and 4 August 2021 the defendants took the victim to the Solomon Hill Guest where they had kava and hanappier liquor. She had an upset stomach and lied down on a bunk bed. The defendants switched off the lights and sat at each end of the bed and started touching her body. They removed the victim's clothes then carried the victim to a married bed. She cried but they continued.
3. Mr Tasaruru inserted his penis into the victim's mouth but she refused to suck it. Belinda also pushed her breast in the victim's mouth but she closed her mouth. Mr Tasaruru then inserted his penis into the victim's vagina and had sexual intercourse with her. Following that Belinda also sucked the victim's vagina. Then Mr Tasaruru had sex with Belinda bending over whilst sucking the victim's vagina. All the while holding tightly to the victim's legs.
4. The victim was able to run away in the early morning hours of 4 August and reported the incident to her mother. Eventually the matter was reported to the police. When the



defendants were arrested and cautioned, they admitted to the sexual intercourse but said the victim agreed to everything they did.

Starting point

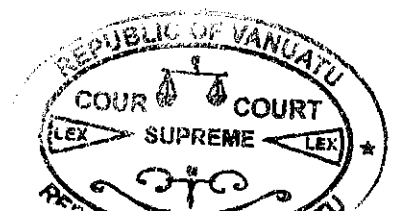
5. The sentence start point is determined by taking into account the maximum sentence available and factoring in any aggravating or mitigating factors of the offending. For sexual intercourse without consent the maximum sentence is life imprisonment. The same penalty applies to complicity to sexual intercourse without consent. An act of indecency without consent is punishable by a maximum sentence of 7 years imprisonment.
6. There are a number aggravating factors. First there was some planning involved. There was a breach of trust. The complainant refers to the defendants as her family, Belinda her sister and Mr Tasaruru her brother in law. There was more than one person involved in the offending and the offending was repeated. The complainant was not only exposed to the risk of contracting sexually transmitted diseases and unwanted pregnancy but sexual indignities.
7. There are no mitigating factors of the offending.
8. Sexual intercourse without consent is the lead offence and I adopt a starting point of 12 years imprisonment for each defendant.

Personal factors

9. There is no discount for a guilty plea as both defendants maintained their not guilty pleas until completion of the trial.
10. A pre-sentence report was directed to be filed by 26 November 2021 but none has been filed to date. In the absence of that consideration will be given to personal factors raised in Counsel's submissions. He submits that the defendants are first time offenders with no previous convictions. They are farmers and earn their income from gardening. They spent some time in custody from 6 August 2021 to 13 October before being bailed.
11. Bail was revoked on 25 November 2021 and the defendants were remanded awaiting sentence.
12. The sentence is reduced by 15 months for personal factors taking into account time spent in custody prior to revocation of bail.

End sentence

13. The end sentence for each defendant on the lead offence, sexual intercourse without consent is 10 years and 9 months imprisonment. For the offence of act of indecency without consent, each defendant is sentenced to 3 years imprisonment to be served



concurrently with effect from 25 November 2021 when they were remanded awaiting sentence.

14. The defendants have 14 days to appeal if they disagree with the decision.

DATED at Port Vila this 6th day of December, 2021

BY THE COURT

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D. Aru
Judge

