

BETWEEN: Public Prosecutor

AND: Shem Bebe
Defendant

Date: 17 December 2021
By: Justice G.A. Andrée Wiltens
Counsel: Ms J. Tete for the Public Prosecutor
Ms I. Bakokoto for the Defendant

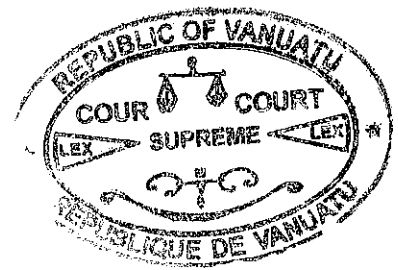
Sentence

A. Introduction

1. Mr Bebe pleaded guilty to sexual intercourse without consent and intentional assault.

B. Facts

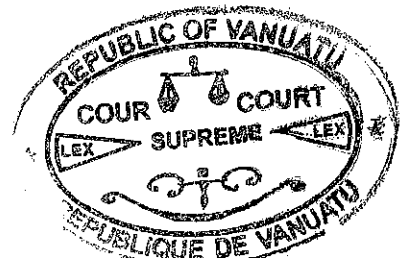
2. On 27 February 2017, Mr Bebe returned home in the evening and immediately confronted his de facto partner of 3 years, Leiman Shem. He demanded to know with whom she was having sex. Leiman Shem assured him she was not sleeping with anyone else, which annoyed Mr Bebe. He took up a piece of wood, which he used to attempt to strike his partner. She blocked the attempted blow, but Mr Bebe then bit her arm, which enabled Mr Bebe to strike Leiman Shem's arm with the piece of wood. He then pushed her out of their home, striking her on the head and then both her arms with the piece of wood as she went.
3. Mr Bebe continued to strike his partner while further demanding to know with whom she was sleeping. In order to appease him, Leiman Shem told him she was sleeping with another man. Mr Bebe then immediately left.



4. Leiman Shem was weak and unable to walk. Her daughter assisted her and gave her some water. Both her hands were broken in the course of the assault.
5. The next day, 28 February 2017, at lunchtime, Mr Bebe had sexual intercourse with Leiman Shem. When he penetrated her vagina he said: "Is this what you always get angry about?" Leiman Shem did not consent, and she was helpless to do anything about his advances due to her injuries following the assaults.
6. The next day, 1 March 2017, Leiman Shem managed to hobble to her parent's house and the matter was reported to the police. Mr Bebe elected to remain silent when interviewed.
7. When medically examined on 2 March 2017, Leiman Shem was found to have suffered the following injuries (as best as I can decipher the Doctor's handwriting):
 - Laceration at her left upper eye lid and temporal vein, both of which were swollen and bleeding and required stitching;
 - Bruises below her both knees, lower back and right forearm;
 - Swollen knee;
 - Swollen tender back, bilaterally;
 - Following x-rays, both hands were found to be fractured; and
 - Bilateral swelling of the orbital cavity.
8. Photographs show these injuries, as well as what are described as "forehead injury" and "head injury". There is a clear swelling in the forehead injury photo of a large swelling just above the left eye.

C. Sentence Start Point

9. The sentence start point is to be assessed by having regard to the maximum penalty available for the offending and factoring in the aggravating and mitigating aspects of the offending.
10. The maximum sentence for sexual intercourse without consent is life imprisonment. The maximum sentence for intentional assault is 5 years imprisonment.
11. There are no mitigating aspects to the offending. There are however aggravating factors which include:
 - The intentional assault involved a significant weapon being used;
 - The repeat nature of the offending in terms of the number of blows administered;
 - The weapon was used to strike the most vulnerable part of the human body, the head;



- The offending took place in Leiman Shem's home, a place where she should have been safe;
- No protection was used, exposing Leiman Shem to unwanted pregnancy and sexually transmitted disease;
- There was a breach of trust involved, as Leiman Shem had been in a de facto relationship with Mr Bebe for 3 years prior to the offending; and
- The offending involved the preying on a vulnerable female complainant, who was physically unable to resist.

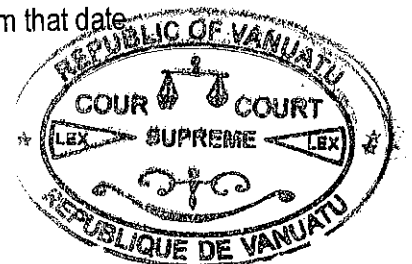
12. The sentence start point I adopt is 7 years imprisonment on a global basis, taking both offences into account concurrently.

D. Mitigation

13. Mr Bebe pleaded guilty at the earliest available opportunity. That indicates an acceptance of his wrong-doing, and it has spared Leiman Shem the ordeal of having to give evidence. However, the medical evidence was strongly supportive of the charges and the reality is that Mr Bebe had little option but to plead guilty. For the prompt guilty pleas, I reduce the sentence start point by 25%.
14. Mr Bebe is 34 years old, was previously in a de facto relationship, and with 4 children aged between 18 and 3. He is a farmer by occupation, and on good terms with his community.
15. He has no previous convictions. He stated that he is remorseful and acknowledged what he did was wrong, but his anger drove him to it. Given the number of blows administered it is difficult to accept his stated remorse.
16. There has been no custom reconciliation ceremony, although Mr Bebe states he is willing. He has attempted on 3 occasions, but each time Leiman Shem and her family have declined to accept any reconciliation.
17. For Mr Bebe's personal circumstances, the sentence start point is further reduced by 4 months.
18. This offending occurred in February 2017, some 4.5 years ago. The police interviewed him in relation to the offending on 3 March 2017. He was formally charged on 24 June 2020 and was able to first plead to the allegations on 5 November 2021. This delay is unfair and warrants a further reduction from the sentence start point of 4 months.

E. End Sentence

19. The end sentence I impose is 4 years 6 months imprisonment. I impose that on the sexual intercourse without consent charge. I impose a concurrent term of 1 year 6 months imprisonment for the intentional assault charge.
20. Mr Bebe has been incarcerated for this offending since 17 September 2021. Accordingly, to preserve his parole rights, his sentence will commence to run as from that date.

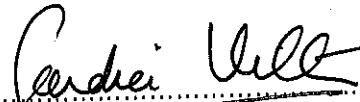


21. In certain circumstances the Court can suspend all or part of the sentence. However, that is not possible due to the seriousness of the offending and the type of criminal conduct involved: *PP v Gideon* [2002] VUCA 7. Even without this Court of Appeal authority I consider that the principles of deterrence and holding Mr Bebe to be accountable for his actions require to be met with a condign sentence.

22. Mr Bebe has 14 days to appeal the sentence.

23.

Dated at Port Vila this 17th day of December 2021
BY THE COURT


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Justice G.A. Andrée Wiltens

