

BETWEEN: Public Prosecutor

AND: Willie Namuli
Defendant

Date: 26 April 2022
By: Justice G.A. Andrée Wiltens
Counsel: Ms G. Kanegai for the Public Prosecutor
Mr H. Vira for the Defendant

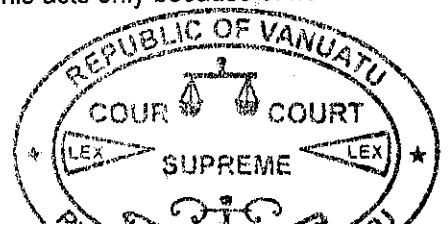
Sentence

A. Introduction

1. Mr Namuli was found guilty of 3 offences of sexual intercourse where consent was obtained by fear of bodily harm, and a further charge of threatening language.

B. Facts

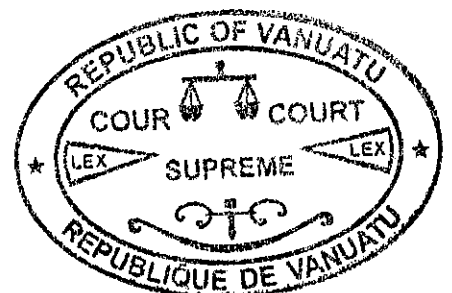
2. On 23 August 2020, Fricka Bule and Mr Namuli had frequented the Anchor Inn bar, and both had consumed alcohol. They later walked together from the Anchor Inn to Fatumauri Bay, where they scaled up a rocky hillside to the top of the waterfall/fountain beside a nabanga tree. Fricka Bule was forced to do this.
3. At the top of the fountain/waterfall, Mr Namuli told Fricka Bule to undress, but she refused. He then picked up a rock and threatened to hit her on the head with it if she did not remove all her clothes and allow him to have sexual intercourse. He threatened to hit her and throw her body down the rocky slope if she did not comply. He then forced her to remove all her clothes, made her perform oral sex on him, before he inserted his hand into her vagina. Subsequently, he sucked on her breasts before inserting his penis into her vagina and subsequently ejaculating inside her. Later, he sat on her chest and made her suck his penis again. All this interaction occurred without Fricka Bule's true consent. She acceded to his acts only because of her fear.



4. As they left, Mr Namuli followed Fricka Bule down the slope as she was looking for a bus to take her away from there, without success. He followed her back to the Anchor Inn, where he at least had more alcohol, before a group of their acquaintances went with them on a bus to go home. On the way, she told the driver to let her off at Tagabe Bridge, but Mr Namuli overrode her and told the driver to continue on to Blacksands without stopping.
5. At Blacksands, Fricka Bule had tried to run, to escape from Mr Namuli. However, he ran after her, and instructed her rudely to stop. He swore at her and called her "foreskin", so she stopped and he caught up with her. He then pulled her hair and went to a kitchen where he took up a small knife. He threatened her with the knife saying "You going to run away again or not?" She replied: "No." Mr Namuli then placed the knife on her stomach and told her that if she tried to run away again, he would sink the knife into her guts and push it up into her mouth. He would tear up her guts and slice her up to her mouth.
6. Mr Namuli then took her to a deserted house where he instructed her to remove all her clothes. She said she wanted to go home, but Mr Namuli insisted, so she did as asked. He then attempted to again make Fricka Bule suck his penis, but she kept moving her head away. He then forced her down and had sexual intercourse with her again. There was an interruption when someone called out, which caused Mr Namuli to stop. Again, Fricka Bule did not truly consent to these acts.

C. Sentence Start Point

7. 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.
8. The maximum penalty for sexual intercourse without consent is life imprisonment. The maximum sentence for threatening language is 3 years imprisonment. I am guided by the authority of *PP v Scott* [2002] VUCA 29 as to the appropriate start point.
9. The offending is aggravated by:
 - The age differential between them, as well the difference in physical size – he was larger and stronger 34 years old; she was 22, of smaller stature and inferior strength;
 - The repeated nature of the sexual assaults, all on the one evening;
 - The additional indignities imposed on Fricka Bule;
 - The lack of protection used, exposing Fricka Bule to unwanted pregnancy and/or sexually transmitted disease;
 - The quasi breach of trust – they were well known to each other, and Mr Namuli considered Fricka Bule's father to be his uncle;
 - Pre-meditation; and
 - The use of the knife and a rock to reinforce the threats.
10. There is no mitigating aspect to the offending.



11. I adopt a sentence start point of 10 years 6 months imprisonment on a global concurrent basis, taking all 4 offences into account. The authority advanced in mitigation, namely *PP v Willie* [2021] VUSC 346 has little application to this sentencing – the circumstances of that case are quite different to this matter. I attach more weight to *PP v Scott* [2002] VUCA 29 in setting the appropriate sentence start point.

D. Mitigation

12. Mr Namuli is now 34 years old, living with his de facto partner and their 3 children. He is sole breadwinner for the family, working as a driver for Port Vila Hardware
13. He has no previous convictions. That does not carry much weight given the nature of the offending.
14. Mr Namuli is said to be remorseful, but I cannot accept that, given he continues to deny his offending. Family members have taken part in a custom reconciliation ceremony with the complainant, and the gifts offered are said to have been accepted. This has not been confirmed by the PSR writer. In any event, such a ceremony carries far less weight when the offender does not participate.
15. For Mr Namuli's personal factors, I reduce the sentence start point by 6 months.

E. End Sentence

16. Mr Namuli's end sentence is 10 years imprisonment. I impose that concurrently on the 3 sexual offending charges. I impose 18 months imprisonment on the threatening language charge, also concurrently.
17. He has already served 15 days in custody prior to being granted bail; and he was incarcerated following the publishing of the verdicts on 2 March 2022. To preserve his parole rights his sentence will accordingly commence as from 15 February 2022.
18. It would be wrong to suspend any or all of the sentence: *PP v Scott* [2002] VUCA 29; *PP v Gideon* [2002] VUCA 7.
19. Mr Namuli has 14 days to appeal the sentence.

Dated at Port Vila this 26th day of April 2022
BY THE COURT


Justice G.A. Andree Wiltens

