

PUBLIC PROSECUTOR
v
TONNY KASSO

Coram: Hon. Chief Justice V. Lunabek
Counsel: M Taiki for Public Prosecutor
R Rongo for the Defendant
Date of Plea: 22 August 2022
Date of Sentence: 18 September 2023

SENTENCE

Introduction

1. Mr. Tonny Kasso ("Mr. Kasso"), you appear for sentence having pleaded guilty to one count of acts of indecency, contrary to Section 98(2) of the Penal Code [CAP. 135] on 22 August 2023.
2. Section 98(1), (2) provides:
 - "98(1) No person shall commit any act of indecency with any other person under the age of thirteen years.
Penalty: Imprisonment for 10 years.
 - (2) No person shall indecently and forcibly assault any other person not under the age of thirteen years.
Penalty: Imprisonment for seven years." [Emphasized].

Facts

3. Mr. Kasso, you are from Tanna Island and you live in the Erakor Half Road area, Efate. You were 45 years old at the time of the offending. You are an assisting chief in your community. You live in a de



facto relationship with Emma Emula and you both have three (3) daughters and a son. You are a member of the Apostolic Church.

4. The complainant woman is also from Tanna, she lives in the Teouma Avoca area.
5. Mr. Kasso, you are related to the complainant as you are her uncle. She is also a sole mother of two girls 9 and 10 years old respectively.
6. On Friday 2 April 2021 in the morning the complainant went shopping at Esah Shop in Freshwater. When she finished, she went to the bus stop to stop a bus to return home to Teouma.
7. While waiting at the bus stop, Mr. Kasso, you drove a dark blue Hyundai bus and you saw the complainant and stopped. You called out to her. The complainant refused to take your bus. She told you that she will stop another bus to go to Teouma. You insisted that you would drop the complainant. The complainant then went into your bus and sat in the passenger seat behind.
8. You dropped off passengers at Ohlen, the airport, and then the Black Sands areas. After Black Sands, you drove on the road where the Mormon Church area is located, you stopped the bus and asked the complainant to sit with you at the front of the bus.
9. The complainant thought that you were her uncle and that there was nothing wrong, and went and sat at the front of the bus with you.
10. While the complainant was sitting at the front of the bus with you, you began talking to the complainant saying to her (in Bislamar): "*Uncle kan blong yu ibigwan, mi kakai kan blong yu*" (English translation: "*uncle your vagina is big, I will eat your vagina*").
11. While saying those words to the complainant at the same time driving the bus you used your right hand you touch the complainant's mouth, pulling her tongue, the complainant turned away afraid that people would see. The complainant turned away and faced outside but you continued and held the complainant's hand, you took the complainant's hand and put her hand on your trousers where she noticed your penis was already exposed. you told the complainant (in Bislamar): "*Uncle yu titi kwik long kok blong mi, mi harem gud bai yu no mas talem aot long aunty blong yu Emma*" (English translation: "*Uncle hurry up and suck my penis, I'll feel good, you must not tell your aunty Emma*").
12. You tried to make the complainant suck on your penis but she refused and she closed her mouth and she tried to avoid it. You continued to touch the complainant's breast and vagina but the complainant kept crossing her legs trying to block you.
13. You then stopped the bus. You went outside and you called out to the complainant to come outside the bus so you could have sex with her. The complainant refused and remained inside the bus crying.



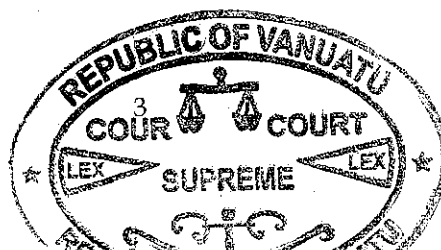
14. You received a phone call the complainant heard you telling a person named Solomon on the phone to wait you will have sex first then you will return his call.
15. You then told the complainant to come outside the bus when the complainant continued refusing your advances, you returned to the bus, drove the bus to the Korman area, and dropped the complainant at Korman. The complainant stopped another bus and returned to the Teouma Avoca area.
16. Anita Jimmy resides in the same area as the complainant at the Teouma Avoca, she was cooking simboro when she noticed that the complainant looked upset and unhappy, she called the complainant to take some simboro to eat, the complainant refused but told Anita Jimmy what happened to her, that you had taken her to an area, spoke indecently and asked her for sex, told her to suck on your penis but she refused.
17. The complainant cannot recall exactly the date but recalls you had provided VT80,000 to a person named Konal to give it to the complainant. The complainant's family stated that you should come to a meeting and make a fine in public.
18. You were arrested on 22 November 2022 and cautioned. You understood your rights and the allegations against you in your caution statement. You chose to speak with your lawyer.

Sentence Start Point

19. The maximum penalty for this offense is 7 years imprisonment. There are no personal factors leading to the offending but the aggravating factor is the repetition of the offending (from indecently talking to the complainant about the size of her vagina and wanting to eat it to holding her hand put it on your trousers when you exposed your penis and bent her head to suck your penis).
20. The appropriate sentence start point is 30 months imprisonment in line with the Court of Appeal judgment in Wenu v Public Prosecutor [2015] VUCA 51 and comparable cases provided by Counsel in their submissions such as Public Prosecutor v Livae [2014] 126 and Public Prosecutor v Natiang [2021] 116 and others.

Mitigating Factors

21. The pre-sentence report reveals the following mitigating factors: - you have a good relationship with your family, chief, and community. You operate a business of public transport. You gain money from



your business and you sustain the daily needs of your family. You pay for light and water for your family.

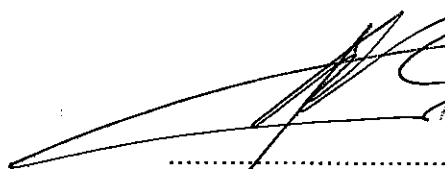
22. You are a first-time offender and you have a previous clean record. You felt sorry for your wrongdoing and you said this is your last one, you will not re-offend again. You performed a custom reconciliation to the complainant and your chief Jimmy K. confirmed the victim accepted the custom reconciliation and received the custom items provided for that purpose an amount of 100,000 vatu, 2 mats, and 1.5 liter of plastic kava. A member of the victim informed the Writer of the Report that she did not want to be interviewed about this.
23. I reduce your sentence by 10 months to reflect these mitigating factors.
24. I reduce your sentence further by 33% for your earliest guilty pleas. Your remaining sentence is 13 months imprisonment.

End Sentence

25. 13 months imprisonment is your end sentence. In this instant case, I consider the circumstance of the offending, the nature of this particular offending, and your character as an offender (you say sorry and it is your last offense and you will not re-offend again), I will give you this opportunity to rehabilitate and give back to the community by suspending your imprisonment sentence of 13 months for a period of 2 years consistently with the case authorities.
26. In addition, you are ordered to perform 60 hours of community work.
27. The suspension of your sentence and its effect by section 57 of the Penal Code is explained to you at the time of your sentence and you understand them.
28. You have 14 days to appeal this sentence if you are unsatisfied with it. The 14 days start at the date of this offense.

Dated at Port Vila, this 18th day of September 2023

BY THE COURT


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Hon. Chief Justice Vincent LUNABEK

