

PUBLIC PROSECUTOR

v

OWEN ARU

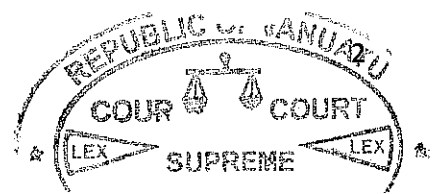
Date: 2 February 2024
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr R.G. Simeon
Defendant – Ms B. Taleo

SENTENCE

1. Mr Aru pleaded guilty to sexual intercourse without consent contrary to subs. 90(1) and s. 91 of the *Penal Code* [CAP. 135] (Charge 1) and to threats to kill contrary to s. 115 of the *Penal Code* (Charges 2 and 3).
2. At the time of the offending, Mr Aru was 24 years old and the complainant Doreen Tor was 18 years old and a student at Santo East School. They were both living at the time with Mr Aru's older sister, Ethel Aru, at Bombua area on Santo. Mr Aru is Ms Tor's uncle.
3. On 3 November 2023, at around 1am, Mr Aru came home drunk and went straight to Ms Tor's room. He called her and asked her to follow him to the store. She got up and followed Mr Aru outside and onto the main road. Mr Aru grabbed her and pulled her towards some elephant grass. Ms Tor tried to escape but Mr Aru held onto her hand tightly. She tried to call out but he blocked her mouth with his hands. He pushed her down onto the grass and removed her pants after he wrestled with her several times. She tried to escape but he held tightly onto her. He inserted his penis into her vagina while holding onto her neck (Charge 1).
4. After having sex, Mr Aru threatened to kill Ms Tor if she told anyone what had happened. She put her pants back on and went home. It was daylight when she arrived home. Her grandfather asked her where she had been. She replied that she was with a friend and went to her room because she was afraid and felt pain all over

her body. She was too scared to tell her grandparents what had happened because the threat by Mr Aru (Charge 2).

5. On 9 November 2023, Mr Aru came home drunk and began threatening his family. He went up to his older sister Mrs Aru, pointed at her forehead and told her that he will go to prison but first he will kill 5 of them and will also burn their houses. He also said that he had not meant to rape her niece but because he was under the influence of alcohol and marijuana. He broke the kitchen building, punched holes into their truck and threw his father's mobile phone into the water (Charge 3).
6. He admitted his offending to the Police.
7. The sentence start point is assessed having regard to the maximum sentences available, and the mitigating and aggravating factors of the offending.
8. The maximum sentences prescribed in the *Penal Code* are:
 - a. Sexual intercourse without consent (s. 91) – life imprisonment; and
 - b. Threat to kill a person (s. 115) – 15 years imprisonment.
9. There are no mitigating aspects to the offending however, it is aggravated by the following:
 - a. Breach of trust (uncle and niece; brother and sister);
 - b. 5-year age differential with first complainant;
 - c. The offending occurred at night;
 - d. The defendant took the opportunity of the first complainant being alone and to lure her to an isolated area where he committed the offending;
 - e. The violent attack on the first complainant to effect the rape, including holding onto her neck throughout the act of rape;
 - f. Skin-on-skin contact;
 - g. The effect on the first complainant including the injuries and pain that the complainant had to endure during and after the rape, the mental effects on the complainant, and the lack of contraception exposing the complainant to the risk of sexually transmitted infection and pregnancy; and
 - h. Telling the first complainant not to tell anyone what had happened.
10. Taking all of the offending into account, I adopt a global sentence start point of 7 years imprisonment.
11. One third is deducted from the sentence start point for Mr Aru's early guilty pleas which have saved time and the need for the complainants to give evidence.



12. Mr Aru is 24 years old. His girlfriend is studying at university in New Caledonia and is expecting their baby. He completed Year 12 and has a certificate in tourism. He earns a living through selling kava and copra, and seasonal work in Australia. He assists his older sister financially. He has the support of his chief. He is stated to be remorseful. He is willing to perform a custom reconciliation ceremony with the complainants.
13. He has no previous convictions. However, in offences of sexual nature, a person's previous good character has very little relevance in mitigating a sentence.
14. For Mr Aru's personal factors including his youth, I further reduce the sentence start point by 4 months.
15. Taking all of those matters into account, the end sentences imposed concurrently are:
 - a. Sexual intercourse without consent (Charge 1) – 4 years 4 months imprisonment; and
 - b. Threat to kill a person (Charges 2 and 3) – 2 years 7 months imprisonment.
16. The sentences are back-dated to commence from 10 November 2023 when Mr Aru was taken into custody.
17. The sentences are imposed to denounce such criminal conduct against women and against the values of society, to protect the community, to hold Mr Aru accountable for his criminal conduct, and to deter Mr Aru and others from such offending.
18. The end sentences will not be suspended as there are no exceptional circumstances warranting suspension. An immediate custodial sentence must be imposed for this serious sexual offending.
19. Mr Aru has 14 days to appeal the sentence.

**DATED at Luganville this 2nd day of February 2024
BY THE COURT**


Justice Viran Molisa Trief

