

PUBLIC PROSECUTOR
v
MOSES SAU

Dates of Plea: 20th August 2024 and 21st October 2024
Coram: Hon. Chief Justice V. Lunabek
Counsel: B. N. Tamau for the Public Prosecutor
R. Rongo for the Defendant
Date of Sentence: 2 December 2024

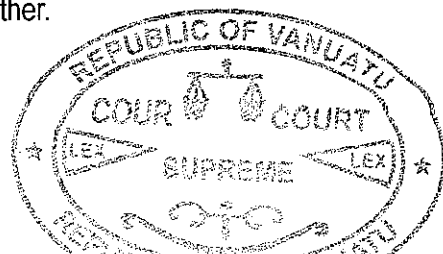
SENTENCE

I. Introduction

1. Mr Moses Sau ("Mr Sau"), you appear today for sentence having pleaded guilty on 20 August 2024 and 21 October 2024 to the offences of:
 - Sexual intercourse without consent, contrary to Sections 90(b)(ii) and 91 of the Penal Code Act (Count 1);
 - Intentional assault of temporary nature, contrary to Section 107(b) of the Penal Code Act (Count 2); and
 - Two counts of Domestic violence, contrary to Sections 4(g)(a) and 10(1) of the Family Protection Act No. 28 of 2008 (Counts 3 and 4).

II. Background – Facts

2. Defendant, Mr Sau, you had relationship with two different women and had children with those two women and lived with each and/or both of them at times in defacto relationships.
3. Brigitte Lawac was the first complainant. She had previously lived with you, Mr Sau, since 2010 and you both have three (3) children together.



4. In 2016, Ms Lawac left you because you were having an affair with another woman. Between 2016 and February 2024, Mr Sau, you had an affair with Ms Epouser Phillip (the second complainant) and you also both had one child (a son) together.
5. In February 2024, your mother asked Ms Lawac to return to the house and come live with you to take care of the children.
6. On 13th March 2024, Ms Lawac decided to come back and live with you at your house for the sake of the children. Upon her return, she realised that Ms Epouser Phillip was still living with you at the house as defector partners.
7. So, although, Ms Lawac said she was not comfortable with the idea of having Ms Phillip and her at the house at the same time, she decided to stay for the sake of her children.
8. That night (of 13 March 2024) when you all went to bed, Ms Lawac slept in another room with her children while you and Ms Phillip slept in another room.
9. On the night of 13 March 2024, Ms Lawac was already asleep when she heard you came into the room. You forced her (Ms Lawac) to follow you into the room that you and Ms Phillip slept in.
10. Ms Lawac refused to follow you but you kicked and slapped her to follow you. You also pulled her into the other room. The other complainant (Ms Phillip) was sleeping at that time.
11. You forced Ms Lawac to remove her clothes but again she refused to do so. You insisted and intimidated her by telling her that she was not a virgin to be ashamed of being naked.
12. Ms Lawac was scared of you so she removed her clothes.
13. Ms Phillip, on the other hand, was asleep when you went to fetch Ms Lawac from the other room.
14. When you woke Ms Phillip up, she was surprised to see Ms Lawac there, naked and sitting on the bed next to her.
15. You then forced Ms Phillip to remove her clothes as well. You told her (Ms Phillip) that she must do what you told her to do.
16. So, Ms Phillip removed her clothes and then obeyed all the orders that were made by you.
17. You forced the two women (Ms Lawac and Ms Phillip) to suck on each other's breasts and vaginas; and you then had sexual intercourse with both of them. You had vaginal sex with Ms Lawac and then you had anal sex with Ms Phillip.
18. Both of the women (complainants) did not consent to the sexual intercourse activities you had with each of them; they were each and both forced to carry out the acts you ordered them to perform because they were intimidated by you.



19. The same sexual activities occurred again on the night of 14 March 2024 and 15 March 2024 (Count 1).
20. On the 19th March 2024, at Erakor area, you were receiving phone calls from another woman from Tanna Island. Ms Lawac made some comments towards you to which you became angry; you took a broom and whipped Ms Lawac on her hand and backside. She was in pain and her body was swollen (Count 2).
21. You also then grabbed a knife and wanted to cut Ms Lawac with it but she ran and jumped over the fence to hide (Count 3).
22. You then used the knife and cut the windows of the house, dish, plates and cups (Count 4). After this, you left the house.
23. The complainant then lodged a complaint to the police.
24. On 21 March 2024, at the police station, Forensic Officer Police Constable Luciana Wells observed bruises on the body of the complainant Lawac; she took photographs (13 photographs) of the bruises and she compiled the photographs into the forensics album.
25. On the 22nd of March 2024, the complainant Ms Lawac, was medically examined at the Vanuatu Family Health clinic, the findings were that she had:
 - (a) Bruises all over her body, arm and thigh;
 - (b) Numbness of elbow; and
 - (c) Behind upper back.
26. You were interviewed by the police on the 14th of May 2024. You said you understood your rights and obligations. Your record of interview showed that:
 - (a) You admitted assaulting the complainant (Ms Lawac) because you were angry;
 - (b) You admitted having sexual intercourse with both complainants and you said that it was consensual. You were under the impression that you were treating them both as your de-factor partners;
 - (c) You apologised to Ms Lawac after assaulting her with a broom and causing all the damages in the house.
27. You were remanded in custody on the 1st of May 2024 and was released on bail on the 31st of May 2024.
28. This case was committed to the Supreme Court on 20th August 2024, you pleaded guilty to the offences of intentional assault and domestic violence in Counts 2, 3 and 4. You entered



not guilty plea in relation to the offence of sexual intercourse without consent in Count 1. A trial was fixed on Count 1. But on 21 October 2024, you changed you "not guilty" in Count 1 into a "guilty plea".

III. Sentence start point

29. The offence of sexual intercourse without consent, contrary to Section 91 of the Penal Code carries a maximum sentence of life imprisonment. The offence of intentional assault, contrary to Section 107(b) of the Penal Code, carries a maximum sentence of 5 years imprisonment. The offence of domestic violence, contrary to Sections 4(1) and 10 of the Family Protection Act No. 28 of 2008, carries a maximum sentence of imprisonment not exceeding 5 years or a fine not exceeding VT100,000.
30. The maximum sentence that is available in the present case is a sentence of life imprisonment on a global consideration and concurrent basis as there is more than one offence in the present case.
31. The prosecution, in their submissions, referred to Public Prosecutor v August [2000] VUSC 73 and Public Prosecutor v Scott and Tula [2002] VUCA 29 where the following statements were made:

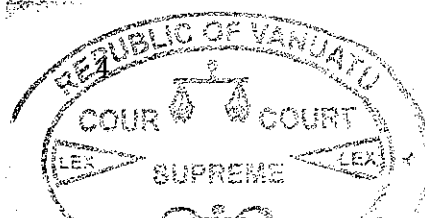
"The offence of rape is always a serious crime. Other than in wholly exceptional circumstance, rape calls for an immediate custodial sentence. This was certainly so in the present case. A custodial sentence is necessary for a variety of reasons. First of all to make the gravity of the offence. Secondly, to emphasise public disapproval. Thirdly, to serve as a warning to others. Fourthly, to punish the offender, and last by no means least, to protect women. The length of the sentence will depend on the circumstances. That is a trite observation, but these in cases of rape vary widely from case to case.

For rape committed by an adult without any aggravating or mitigating features, a figure of five years should be taken as that starting point in a contested case. Where a rape is committed by two or more men acting together, or by a man who had broken into or otherwise gained access to a place where the victim is living, or by a person who is in a position of responsibility towards the victim, or by a person who abducts the victim and hold her captive the starting point should be eight years.

At the top of the scale comes the defendant who has committed the offence of rape upon a number of different women or girls. He represents a more than ordinary danger and a sentence of fifteen years or more may be appropriate.

Where the defendant's behaviour had manifested perverted or psychopathic tendencies or gross personality disorder, and there he is likely, if at large, to remain a danger to woman for an indefinite time, a life sentence will not be appropriate.

The offence of rape should in any event be treated as aggravated by any of the following factors:



- (1) Violence is used over and above the force necessary to commit rape;
- (2) A weapon is used to frighten or wound the victim;
- (3) The rape is repeated;
- (4) The rape has been carefully planned;
- (5) The defendant had previous convictions for rape or other serious offences of a violent or sexual kind;
- (6) The victim is subject to further sexual indignities or perversions;
- (7) The victim is either very old or young;
- (8) The effect upon the victim, whether physical or mental, is of special seriousness.

Where any one or more of these aggravating features are present, the sentence should be substantially higher than the figure suggested as the starting point.

If the defendant pleads guilty, the sentence should be reduced by 1/3 depending on the circumstances, including the likelihood of a finding of not guilty had the matter been contested.

The fact that the victim may be considered to have herself to danger by acting imprudently (as for instance by accepting a lift in a car from a stranger) is not a mitigating factor, and the victim's previous sexual experience is equally irrelevant. But if the victim has behaved in a manner which was calculated to lead the defendant to believe that she would consent to have sexual intercourse, then there should be some mitigation of the sentence. Previous good character is of only minor relevance.

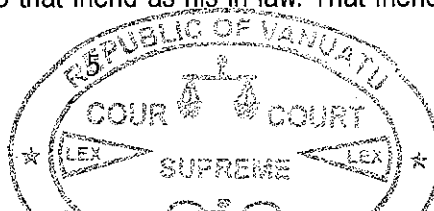
In this case, upon assessing all the facts, the appropriate sentence is 4 years imprisonment." **(Emphasis is mine)**

32. On a comparative base, the prosecution referred to two cases:

- (i) The first case is Public Prosecutor v Mahit [2020] VUSC 289. In that case, the defendant was charged and pleaded guilty to 2 counts of acts of indecency, one count of abduction, one count of sexual intercourse without consent, 2 counts of domestic violence and one count of threats to kill a person.

The defendant offended against his 17 year-old daughter and his wife on separate occasions. The first offending occurred in 2016 when the wife was overseas; the defendant exposed his penis to his daughter and masturbated in front of her and showed her pornographic video. The second incident occurred on the same year. The defendant entered his daughter's room one night and undressed himself and then touched her breasts. He then masturbated in front of her until he ejaculated.

In 2019, the defendant's wife returned from New Zealand. Before her return, the defendant told her that upon her arrival, he would take her to a friend of his so that that friend would have sexual intercourse with her. Upon her arrival, the defendant took her to Kalfabun Guesthouse and his friend was there waiting. The defendant introduced his wife to that friend as his in law. That friend had sexual intercourse



with her while the defendant watched. That night the defendant spent the night with his wife at the guesthouse and he had sexual intercourse with her without her consent.

The court in that case adopted a global starting point of 12 years imprisonment. After giving some allowances to reflect the mitigating factors, the court arrived at an end sentence of 8 years and 6 months imprisonment.

- (ii) The second case is Public Prosecutor v Ansen [2021] VUSC 217. In that case, Mr Ansen pleaded guilty to 2 charges of sexual intercourse without consent and 1 charge of incest. The victims were the defendant's wife and his biological daughter of 14 years old. The offending occurred over a period of one year. The first offending was against the 14-year-old daughter when the defendant indecently touched her breasts, kissed her lips, breasts and vagina and then proceeded to penetrating her vagina.

On another occasion, the defendant had sex with both his wife and his 14 years old daughter. This happened at night. He took them to a separate house. He instructed his daughter to watch him while he had sex with his wife and then he made his wife watch him while he had sex with their daughter. Before he had sex with their daughter, he made her lie down, he kissed her breasts, vagina and lips before he penetrated her vagina. The first and second incident occurred in 2020.

The third offending occurred in March 2021. The daughter was asleep. She woke up to hear her mother speaking angrily and calling her to their bedroom. When she entered the room, she saw her parents naked. She wanted to leave but the defendant stopped her. The defendant made his wife and daughter lie down on the bed. He proceeded to licking the daughter's vagina, breasts and lips. Then he penetrated her vagina while his wife watched. After that he had sex with his wife in the presence of their daughter. At the end he apologised to both and instructed them not to tell anyone.

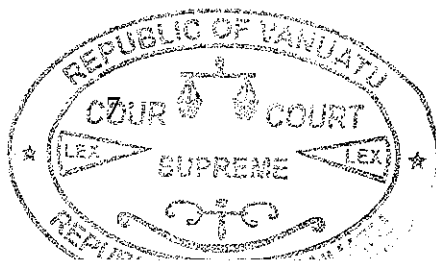
The Court adopted a starting point of 16 years imprisonment. After allowing some deduction to reflect the mitigating factors, the court arrived at an end sentence of 10 years and 4 months imprisonment.

33. In this case, the prosecution submits a starting point range between 6 – 8 years imprisonment for the offence of sexual intercourse without consent; a starting point of 1 year for domestic violence and a further starting point of 1 years for the offence of intentional assault. A custodial sentence is warranted to reflect the seriousness of the offences.
34. The defendant counsel (Mr Rongo) relied on the case of Public Prosecutor v Manpit [2023] VUSC 169; criminal case 1989 of 2023 (22 September 2023). The victim is a 16 year old student and is related to Mr Manpit (the defendant). On 14 July 2023, the victim was helping Mr Manpit's defato partner with her work. As it was late, the victim decided to sleep over instead of going home in the dark. She and the defendant's partner went to sleep in the defendant's bedroom. Mr Manpit entered the room and had sex with his partner. He then



removed the victim's trousers and underwear and put his penis on and slightly into her vagina. His partner saw this and scolded him, but he got angry and threatened to hit them with a bottle. The victim resisted until he stopped and resumed having sex with his partner. The victim left the house and ran home in the dark. The defendant was 33 years old and cannot be said to be young. The offence is serious. He has lost the trust of his wife ... His wife has a tumour on her breast, his son has asthma, and his father has cancer. Mr Manpit is the only sibling who takes their father to hospital for treatment, the other siblings are unable to provide the same level of support because they all are working in Port Vila and Santo.

35. The Court in that case, has adopted a starting point of 4 years and 6 months to be appropriate. However, in that case, the Judge exercised his discretion to suspend Mr Manpit's sentence for 2 years as a result of his personal circumstances, clean record, remorse, and his participation in a successful reconciliation ceremony.
36. Mr Rongo submitted that in the light of all the above, the appropriate sentence start point is 3 years imprisonment, and to be suspended for a period of 2 years pursuant to Section 57 of the Penal Code Act.
37. The case of Public Prosecutor v Manpit [2023] VUSC 169 is to be distinguished from the present case as the facts are different.
38. In the present case, there are no mitigating factors of the offending, but the following aggravating features exist:
 - The offences are serious;
 - The defendant has sexual intercourse with both victims at the same time;
 - The repeated nature of the sexual offending;
 - The victims were subject to further sexual indignities or perversion;
 - There is a degree of pre-meditation on the part of the defendant;
 - The emotional impact this had on both victims;
 - All the offending occurred in the family home where the victims were supposed to feel safe and protected;
 - The use of a weapon (lethal knife);
 - The loss caused to the family as a result of the property damage caused by the defendant (domestic violence);
 - The pain and injuries suffered by Ms Lawac as a result of the assault on her body (intentional assault).
39. In the present case, I reject the prosecution submission on the starting point of 6 – 8 years imprisonment as not appropriate. I fix the sentence start point to 15 years imprisonment based on Public Prosecutor v August [2000] VUSC 73 for the offences in Count 1. I set 1 year imprisonment for the offence in Count 2 and 1 year imprisonment for each offence in Counts 3 and 4. The sentences are to be served concurrently. Your sentence start point is 15 years imprisonment.

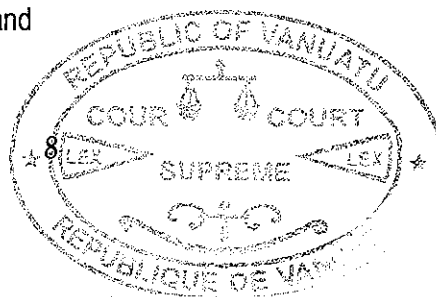


IV. Personal Mitigating Features to the Defendant

40. Mr Sau, you were born on 25 March 1989. You are now 35 years of age. You are from Tanna Island and you reside at Erakor Half Road in Port Vila.
41. You stated you completed your Year 12 Secondary School at Tafea College. You continued your studies at INTV in Port Vila pursuing electricity courses from 2007 – 2008. You worked in various companies. You now work at Ezzy-Kill in Port Vila. You are a first-time offender with no previous convictions.
42. You regretted your offending, you say sorry for your wrongful actions towards the victims. So, you were remorseful to your offending.
43. You performed a custom compensation which includes VT5,000 cash, 1 local chicken, banana, manioc, and kava to the victim Ms Lawac. Ms Lawac accepted the custom compensation.
44. I take all that into consideration. I give you a discount allowance of 3 years.
45. Your sentence is reduced to 12 years imprisonment.
46. I give you a further discount allowance of 33% for your earlier guilty pleas. Your sentence is further reduced to 96 months ie., 8 years imprisonment.
47. You have already spent 2 weeks from 15 May 2024 to 29 May 2024 which is an effective period of 4 weeks (1 month) in pre-custodial period. This period will be deducted from the balance of your sentence.
48. Your sentence is further reduced to 7 years and 11 months imprisonment.

V. End Sentence

49. Your end sentence is 7 years and 11 months imprisonment.
50. This imprisonment sentence is not going to be suspended. This is a very serious crime. The custodial sentence is necessary for the following reasons:
 - 1) To mark the gravity of the offence;
 - 2) To emphasize public disapproval;
 - 3) To serve as warning to others;
 - 4) To punish the offender; and



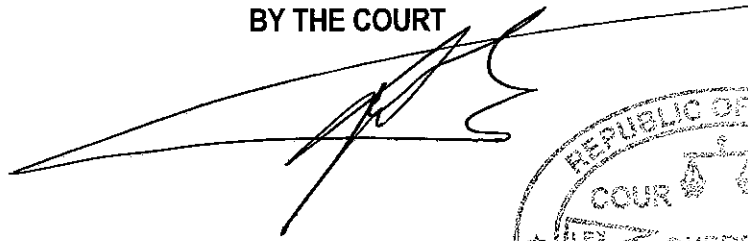
5) To protect women (see Public Prosecutor v August [2000] VUSC 73 and Public Prosecutor v Scott and Tula [2002] VUCA 29).

51. You are ordered to serve 7 years and 11 months imprisonment with immediate effect.

52. You have 14 days to appeal this sentence if you are unsatisfied with it.

DATED at Port Vila, this 2nd day of December, 2024.

BY THE COURT



Hon. Chief Justice Vincent LUNABEK

