

**IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU**
(Criminal Jurisdiction)

Criminal
Case No. 17//3609 SC/CRML

BETWEEN: PUBLIC PROSECUTOR
Prosecutor

AND: TUKA LIU SUMPE
Defendant

Before: *Justice Oliver A. Saksak*

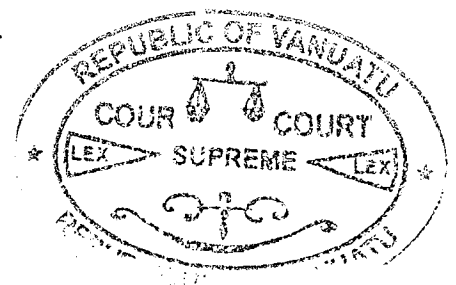
Counsel: *Damien Boe for Public Prosecutor*
Jane Tari Aru for Defendant

Date of Plea: *5th September 2018*

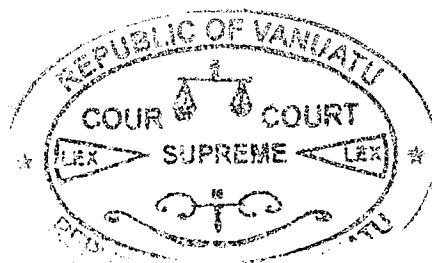
Date of Sentence: *7th September 2018*

SENTENCE

1. Tuka Liu Sumpe you are here for sentence for a charge of sexual intercourse without consent contrary to sections 90 and 91 of the Penal Code Act [CAP 135] (the Act). After a day's trial hearing the Court found you guilty of the charge on 5th September 2018.
2. Under section 91 of the Act the offence of sexual intercourse without consent is a very serious criminal offence because it carries a maximum penalty of life imprisonment.
3. The facts of your offendings are stated in the verdict of the Court dated 5 September 2018 and it is not necessary to restate them here.
4. The evidence as recorded in the verdict reveal the following aggravating features –
 - (a) The victim, a student of 18 years old was a year younger than yourself at the time of offending on 24 September 2017.
 - (b) You entered the yard where the victim and her student relatives were residing as a trespasser, without any lawful excuse or justification.

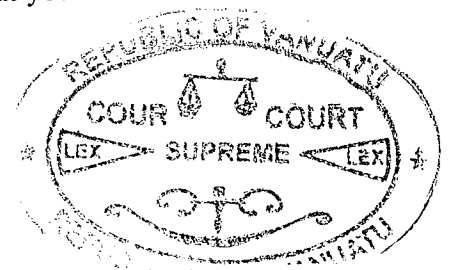


- (c) You took the law into your own hands by trying to sort out an allegation of theft of coconuts you claimed were yours by violence, threats and physical assault on two very young boys.
 - (d) You were violent and used threats against this group of young students.
 - (e) You overpowered one of them, the victim and complainant through threats and intimidation causing fear of bodily harm to make her succumb to your sexual desires and gratifications. You held her captive by holding her hands and pulling her to the banana patch.
 - (f) You were drunk at the time.
 - (g) You caused a breach of the peace through loud music through the music box you had with you at the time at 4.00am in the morning.
 - (h) You acted in a violent and disorderly manner.
 - (i) Your actions of sexual intercourse were repeated twice by the insertion of the penis into the victim's vagina first, and secondly by her sucking on your penis.
 - (j) Your actions caused distress and humiliation on the victim before her brothers and sisters.
 - (k) Her obvious distress indicated the mental effect on the victim.
5. The law on the sentencing principles of sexual offences and in particular of sexual intercourse without consent is not in doubt. The case of PP v. Gideon [2002] VUCA 7 is a classic case that establishes that men who take advantage sexually of young people forfeit the right to remain in the community. The case PP v. Scott [2002] VUCA 29 which endorsed PP v. Ali August [2000] VUSC 29 is another classic case which establishes that the offence rape is always a most serious crime that other than in wholly exceptional circumstances calls for an immediate custodial sentence. This case also lists other important sentencing guidelines which guide the Courts to decide the appropriate starting point in both an uncontested and a contested case. Some of those factors from the facts and evidence were present in your case. These add seriousness to the already serious offence that you committed.
6. From these cases it is clear that the only appropriate punishment this Court will impose on you is a custodial sentence without any suspension.



7. Taking all those aggravating features together with the seriousness of the offence and factors personal to you, I accept your counsel's submission that a starting point of 9 years imprisonment is appropriate and reasonable.
8. I therefore sentence you to imprisonment for a starting sentence of 9 years imprisonment.
9. I accept defence counsel's submissions that your case falls on a much lower end of the scale than the cases of PP v. Jeajea [2017] VUSC 145 and PP v. Kalo [2018] VUSC 86 in comparison to the circumstances of those cases to your case.
10. The purpose of sending you to prison for this lengthy period is to –
 - (a) Mark the seriousness of your offending.
 - (b) Mark the Court's disapproval and condemnation of your actions.
 - (c) Mark a deterrence for you and other like-minded men.
 - (d) Protect the young, the weak and the vulnerable members of our society.
 - (e) Adequately punish you.
 - (f) To assist you rehabilitate for reintegration back into the community.

The Vanuatu case law on these purposes is Morris Ben v. PP [1993] VUCA 3.
11. In mitigation I have considered the information contained in your Same Day Report. I note that the Report indicates you are a second time offender and that you served a sentence of supervision from 7 February 2017 to September 2017. However the Report does not specify what offence you were convicted for. In any event it was a non-custodial sentence. I therefore treat you as a first time offender for sexual intercourse without consent. You cooperated well with the police during investigations. You performed a customary reconciliation with the victim's parents showing remorse. You were remanded in custody from 25 September 2017 to 7 December 2017, a period of 2 months 8 days. This will be deducted separately. And I note you are a young man of 21 years old. I note also that you have struggled and faced challenges in life within your own family and with peers and with alcohol, smoke and the like. But I note also from your report that you are determined to move on and overcome those struggles and challenges.



12. Your going to prison today is done in the hope that you will make good use of this opportunity to rehabilitate by going through the rehabilitation programs offered in the Correctional Centre so you can get back into community a changed person. But you must have a positive attitude to your punishment today in order to achieve a positive change and outcome at the end your detention.
13. Having said all that I now deduct 2 years for the mitigating factors stated in paragraph 11. The balance remaining is 7 years. I deduct a further 2 months and 8 days from the 7 years leaving the balance at 6 years 9 months and 22 days as your end sentence.
14. You are therefore sentenced to an end sentence of 6 years 9 months and 22 days imprisonment with immediate effect.
15. You will be eligible to apply for parole after serving half of your end sentence.
16. You have a right of appeal against this sentence within 14 days if you do not agree with it. But you must begin serving the sentence today.

DATED at Luganville this 7th day of September, 2018.

BY THE COURT


OLIVER A. SAKSAK

Judge

