

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

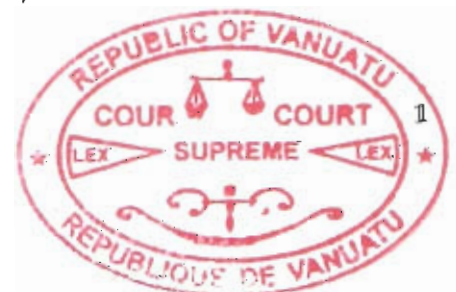
USI MOLI

Mr Justice Oliver A. Saksak
Mrs Anita Vinabit - Clerk

Mr P. Wirrick for the State
Miss J. Tari and Mr E. Molbaleh for the Defendant

SENTENCE

1. Usi Moli you were charged with one charge of Sexual Intercourse Without Consent Contrary to Section 91 of the Penal Code Act Cap 135. The maximum penalty for this offence is life imprisonment.
2. You pleaded No-Guilty and the case went to trial after which the Court found you guilty. The facts are stated under paragraph 3 of the Verdict and I need not re-state them here.
3. The Court accepts three aggravating features as submitted as follows :-
 - (a) There was a breach of trust since the victim is your brother's wife.
 - (b) You took advantage of her intoxicated state by kava.



(c) You exposed her to risk of infection and pregnancy.

4. In sentencing you today I follow the principles set out in the cases of Public Prosecutor v. Scott [2002] VUCA 29, and Public Prosecutor v. Gideon [2002] VUCA 7.

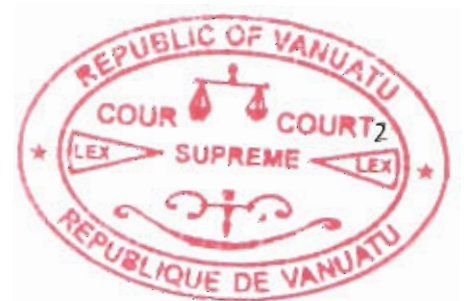
Your offending warrants an immediate custodial sentence. This is to serve as

- (a) A deterrence for you and others;
- (b) Marking the gravity of your offending;
- (c) A public disapproval of your behavior; and
- (d) An adequate punishment for you.

The Court hereby convicts and sentences you to 5 years imprisonment as the starting point. This sentence is increased by 2 years for the aggravating features – thus increasing the total to 7 years imprisonment.

5. I have had regard to your pre-sentence report and the defence submissions made on your behalf by Mr Molbaleh. I note the following mitigating factors :-

- (a) No previous convictions for sexual offences. But you do have previous convictions in the Magistrate's Court three times in 2010 for theft, (one count) and intentional assault (two counts) all on 18th November 2010. Although these are not related they indicate your not-so-positive attitude and disregard for the law.
- (b) Your good cooperation with the police.
- (c) Being a family man with wife and two children.



The Court allows a reduction of 2 years from your 7 years imprisonment bringing the sentence down to 5 years.

6. You are sentenced to a total of 5 years imprisonment at the Correctional Centre in Luganville. This sentence commenced on 30th November 2011 when you were first remanded in custody.
7. You will be entitled to apply for release on parole after having served 2 ½ years of your 5 year term.
8. You have a right of appeal against this sentence within 14 days, if you so choose.

DATED at Luganville this 20th day of February 2012.

BY THE COURT


OLIVER A. SAKSAK

Judge.

