

IN THE SUPREME COURT
REPUBLIC OF VANUATU
(Criminal Jurisdiction)

Criminal Case No. 75 of 2015

PUBLIC PROSECUTOR

-v-

MATHIAS MAHIT

Before: Chetwynd J
Hearing: 14th December 2015

Ms Ngwele for the Public Prosecutor
Mr Vira for the Defendant

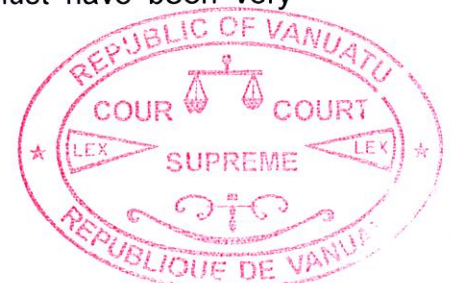
SENTENCE

1. The Defendant pleaded guilty to a charge of having sexual intercourse without consent and to a charge of intentional assault causing temporary injury. The details relate to a period of some 10 years where the Defendant has used objects to penetrate the complainant. There can be no doubt that the complainant did not consent to this activity and begged him to stop abusing her. He carried on using objects to penetrate her and when she tried to refuse to participate she was threatened with violence. Matters came to a head in April of this year when the Defendant hit the complainant on the head with a saucepan when she refused to have objects inserted in her vagina. The incident was reported to the police and the Defendant was arrested and interviewed. He made partial admissions.

2. The Defendant first appeared in court on plea day 1st September 2015. He entered pleas of not guilty. He maintained his not guilty pleas until 2nd December. At a hearing on that date he changed his plea to guilty in respect of two charges. He maintained a plea of not guilty to one other charge. The Public Prosecutor entered a nolle in respect of that remaining charge

3. The Defendant does not accept that he used all manner of objects to penetrate the complainant. He insists that he only used a small bottle and his finger. He is being sentenced on the basis of those accepted facts.

4. The starting point in this rape case is 6 years. There are aggravating factors namely the violence used, the length of time the forced penetration has been going on for and the breach of trust and confidence given the relationship between the Defendant and the Complainant. The 10 years of constant and violent abuse must have been very



traumatic for the Complainant. That picture is made worse by the palpably untrue belief and suggestion that what the Defendant was doing was for the Complainant's benefit. An additional 2 ½ years should be added making a total of 8 ½ years. The Defendant is entitled to a reduction in his sentence for his guilty plea. However, it cannot be said that he pleaded guilty at the first opportunity. Had he pleaded guilty at the first opportunity he would have been entitled to have had 34 months deducted from his sentence. In the circumstances of this case I am only prepared to deduct 15 months. That would leave a sentence of 87 months.

5. From that sentence there should be a further deduction to take into account the lack of previous convictions. It is difficult to say the Defendant is of good character because the offences have been going on so long. However, the length of time the Defendant has been abusing the Complainant has already been taken into account as an aggravating factor. There has been no custom reconciliation and the Defendant shows very little real remorse. However, there should be a deduction of 9 months because the Defendant has no previous convictions.

6. The Defendant has been in custody for 7 months and he is entitled to have that time taken into consideration. 7 months remand would equate to 14 months time served. The 14 months will be deducted leaving a sentence of 64 months or 5 years and 4 months imprisonment.

7. There is ample precedent to say that when the court is dealing with sexual abuse matters there should be no suspension of part or all of the sentence unless there are exceptional circumstances. I acknowledge the Defendant is 60 years of age and he has some health issues. However I do not believe that exceptional circumstances are apparent in this case and therefore no part of the sentence will be suspended.

8. For the offence of assault causing temporary harm or injury the defendant will be sentenced to 1 months imprisonment to be served concurrently

9. The Defendant is advised that if he is unhappy with the sentences passed on him, he has the right to lodge an appeal. An appeal must be filed in within 14 days. As this is a strict time limit and because there are other implications in filing an appeal the Defendant is advised that he should discuss this with his counsel as soon as he can.

Dated 14th December 2015 at Port Vila.


Ghelwynd J

