

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

Criminal Case No. 1013 of 2015

PUBLIC PROSECUTOR – VS – SAKA GIBIRI

Coram: Justice Saksak

Counsel: Simcha Blessing for the Public Prosecutor
Henzler Vira for the Defendant

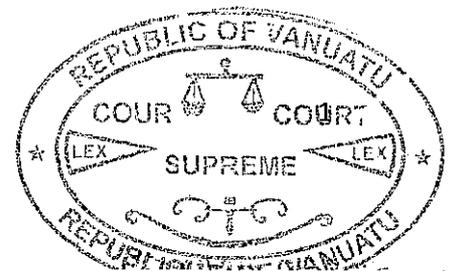
Date of Plea: 25th April 2016

Date of Submissions Hearing: 26th April 2016

Date of Sentence: 28th April 2016

SENTENCE

1. Saka Gibiri, on 25th April 2016 you pleaded guilty to an amended charge of inciting and soliciting sexual intercourse without consent contrary to Section(s) 35, 89A, 90 and 91 of the Penal Code Act CAP 135(the Act).
2. Section 35 of the Act provides that:
“It shall be unlawful to incite or solicit another person to commit any offence, whether or not that offence is committed. A person guilty of inciting or soliciting an offence may be charged and convicted as a principal offender.”
3. The principal offence in your case with Bwango Gole, Troveli Tahi and Tumu Takaro is sexual intercourse without consent contrary to sections 90 and 91 of the Act. This is a very serious offence which carries a maximum of life imprisonment.
4. On 5th February 2016 the Court sentenced your three colleagues to three years imprisonment and fully suspended the imprisonment terms. However the Court imposed



community work and supervision in addition to the imprisonment terms on your three colleagues.

5. The facts of your offending with your three colleagues are one and the same. They are contained in paragraph 8, 9, 10 and 11 of the Sentencing Order dated 5th February 2016 and I do not intend to restate them in your Sentence.
6. The only reasons the judge did not said your three colleagues to prison was because of their ages of 18 and 19 years. You were however 20 years old at the time of offending. And you were the forerunner. You opened the way for your three friends to follow suit and imposed themselves on you are victim without her consent, despite she may have consented to you having sex with her. And when each of them were taking turns, you stood by and watched as if it was a show. Had you not done it, it seems unlikely your three friends would have done it as well. That therefore places a slightly higher degree of culpability on your part as an aider.
7. For those reasons the appropriate Sentence the Court will impose on you is to be a custodial sentence without suspension. This is a case where this Court must resound the clear message of the Court of Appeal in Public Prosecutor v. Gideon that men who take advantage sexually of the weak and vulnerable members of the society forfeit their rights to remain in the community. And that except in wholly exceptional circumstances should a sentence of imprisonment be suspended. (See Public Prosecutor v. Scott and Tula). I do not see any exceptional circumstances in your case to warrant a suspension of sentence.
8. I therefore sentence you to a term of imprisonment to the starting point of 6 ½ years, the same starting point given to your three colleagues. The aggravating features accepted by the Court are a) the victim was young, b) the offence was repeated c) it involved more than one defendant. But there will be no further uplift.
9. In mitigation I accept that you are entitled to a ½ reduction for pleading guilty at first opportunity to the amended charge. Your Sentence is therefore reduced to 4 years and 4 months.



10. I consider it is necessary to reduce your Sentence further for remorse, customary reconciliation, young age and clean past record combined. I allow a further reduction of 16 months or 1 year and 4 months. Your end Sentence is therefore 2 years and 8 months to be served at the Correctional Centre in Luganville, Santo. Your term of imprisonment commences today, 28th April 2016.

11. You will be eligible to apply for release on parole after you have served up to half (½) of your 2 years and 8 months Sentence.

12. The purposes of imposing this custodial Sentence are –

- a) To mark the seriousness of your offending,
- b) To mark public disapproval of your unlawful actions,
- c) To deter you and other young men who might act in a similar sort of way in the future,
- d) To protect women and young girls,
- e) To punish you adequately.

13. That is the Sentence of the Court.

14. You have a right to appeal against this Sentence if you do not agree with it. You have 14 days to do that.

DATED at Lavatu, North Pentecost, this 28th day of April, 2016.

BY THE COURT


OLIVER A. SAKSAK

Judge

