

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

Criminal
Case No. 16/3372 SC/CRML

BETWEEN: Public Prosecutor
Prosecutor

AND: Alfred Kelson
Accused

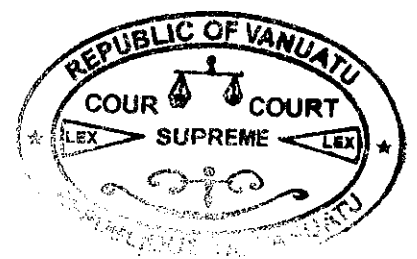
Date of SENTENCE: ***25th day of October, 2017 at 2:00 PM***

Before: ***James Paul Geoghegan***

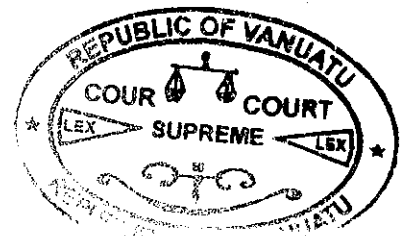
In Attendance: ***Counsel - Marie Taiki for the Public Prosecutor***
Counsel - Harrison Rantes (PSO) for the Accused

SENTENCE

1. Mr Kelson you appear for sentence today on one charge of sexual intercourse without consent contrary to section 90 and 91 of the Penal Code. As you are probably aware the maximum sentence in respect of that offence is one of life imprisonment.
2. You pleaded guilty to this charge on May 15th on Epi Island and you were remanded on bail for sentencing in Port Vila on June 16th. That sentencing was unable to proceed because you absconded, in breach of your bail conditions and it has taken until now to locate you and transport you to Vila for sentencing. That is why sentencing in this matter has been delayed.



3. You pleaded guilty to this charge on the basis of the brief of facts presented by the Public Prosecutor and it is appropriate to refer to that brief. That tells me that your victim was 18 years old at the time of this offence. The offence took place on Epi Island on July 14th 2014. Just prior to the offence the victim was with three female friends and they were walking home. It was dark. They were chased by a group of young men and that group included you. You have caught up with the victim and grabbed her and have removed her clothes forcibly. She resisted you and she tried to kick you but you have squeezed her neck and forced her to the ground after removing her clothes.
4. You have engaged in unprotected intercourse with her and when she continued to try to resist you, you simply continued to squeeze her neck also scratching her on the face at that time. Other young men who were with you, although it is unclear just how many, stood by and watched this occurring. It must have been an horrific and degrading experience for the victim who after you had finished with her ran off to find her friends. You were subsequently arrested and charged.
5. I have read the pre-sentence report prepared for your sentencing. That tells me that you are now 25 years old, the second youngest in a family of four brothers. You have not had anything other than primary level education. You have some basic skills in carpentry. You have no previous convictions. You have told the report writer that your lust for sexual intercourse led you to commit this offence and you have expressed regret for your actions.
6. You have not undertaken any custom reconciliation ceremony as the victim's family would not accept it and I understand their position completely. Unfortunately, the report writer has been unable to contact the victim so I know nothing of her circumstances. However one can safely assume that this offending will have a profound effect upon her for the rest of her life.



7. Both counsel for the Public Prosecutor and Mr Rantes have included in their submissions references to the appropriate authorities governing sentencing in respect of this type of offending. There is reference to the Supreme Court decision in PP v. Ali¹¹ where the Chief Justice stated the following:-

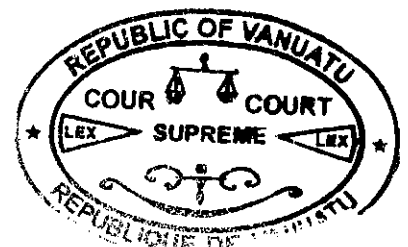
"The offence of rape is always a serious crime. Other than in wholly exceptional circumstances, rape calls for an immediate custodial sentence. A custodial sentence is necessary for a variety of reasons. First of all to mark the gravity of the offence, secondly to emphasize public disapproval, thirdly to serve as a warning to others, fourthly, to punish the offender, last but not least to protect women."

8. He further stated that:-

"For rape committed by an adult without an aggravating or mitigating feature, a figure of 5 years should be taken as the starting point in a contested case. Where rape is committed by two or more men acting together or by a man who is 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 holds her captive, the starting point should be 8 years."

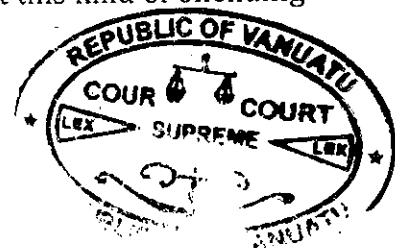
9. He also referred to a number of factors which might be regarded in any sentencing exercise as aggravating factors which serve to increase the starting point for sentencing. Those factors include where violence is used to frighten or wound the victim or a weapon is used to frighten or wound the victim, where the rape is repeated, where the rape is carefully planned, where a defendant has previous convictions for rape or other offences of a violent or sexual kind, where the victim is subjected to further sexual indignities or perversions, where the victim is either very

¹ [2002] VUSC 73



young or very old and the effect upon the victim whether physical or mental is of special seriousness.

10. The Public Prosecutor points to a number of factors which warrant a starting point, in their submission, of between five and eight years imprisonment. Those factors are that the offence occurred at night in an isolated area where you were among a group of young men who chased the victim, the victim sustained scratches to her face and eye and her neck was squeezed by you in an endeavor to reduce and lessen her resistance and that the offending involved unprotected sex with the associated risk of pregnancy of infection.
11. There is a reference to the fact that you were 22 years old and therefore a person of mature age, however, I do not think that that is a significant factor in this case.
12. I would add a further relevant factor and that is that you have subjected the victim to the further indignity of being raped in front of some of the other young men you were with that night. That in itself is a disgraceful situation.
13. I do not detect any disagreement with any of those factors in the submissions of your counsel Mr Rantes.
14. Taking into account the factors that I have referred to I consider a starting point of 8 years imprisonment as appropriate. It is impossible to comprehend how your victim must have felt during this offending and the fact that you are unable to control your sexual impulses to the extent that you felt able to undertake this offending exposes you as a danger to those women who live in your community. The fact that other men stood around and watch while you raped the victim is an appalling indictment on their character and reiterates the need for the Court to send a strong message to the community that this kind of offending will



be dealt with firmly by the Courts. Not only that but all men need to know that this type of behavior is utterly unacceptable and that women are entitled to feel respected and safe in their community.

15. There are no personal aggravating features which justify any uplift and the starting point of 8 years. Although you are only 22, you are entitled to some credit for the fact that you are a first time offender and accordingly I allow 6 months for that mitigating factor and for the remorse that you have shown for your offending.

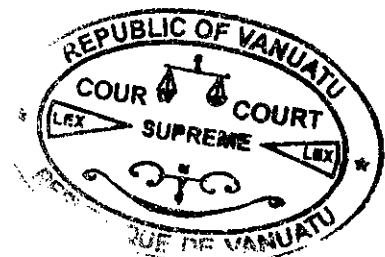
16. You are entitled to credit for your guilty plea which was entered at the earliest opportunity. That comprises a further allowance of 2 years and 6 months.

17. Accordingly your final sentence is one of 5 years imprisonment. Mr Rantes has made no application for a suspension of your sentence and that is an entirely responsible position to adopt. A suspension of your sentence could not be contemplated in these circumstances.

18. I make no allowance for the time spent in custody. That calculation can be made by Corrections in a consideration of your release and parole dates.

19. Accordingly you are sentenced to 5 years imprisonment.

20. You have 14 days to appeal.



DATED at Port Vila this 25th day of October, 2017

BY THE COURT

James Paul Geoghegan

Judge

