

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

Criminal
Case No. 19/1553 SC/CRML

BETWEEN: Public Prosecutor

AND: Tom lotil
Defendant

Date: 20 December 2019
Before: Justice V.M. Trief
In attendance: Public Prosecutor – Ms L. Lunabek
Defendant – Mr H. Vira

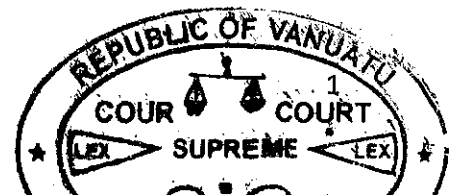
SENTENCE

A. Introduction

1. After completion of the complainant's evidence, Mr lotil pleaded Guilty ('I tru') to the charge in the Information and Brief of facts filed on 22 July 2019 of sexual intercourse without consent. The maximum sentence available for this offence is life imprisonment.

B. Facts

2. In the year 2009, the complainant asked Peter Tao to clean his garden for a payment which would help her pay for her passport. While she was in Mr Tao's garden, Mr lotil arrived and asked to have sex with her. She refused. The complainant described Mr lotil as 'apu' (granddaughter); they are closely related.
3. Mr lotil left but then returned this time wearing only a piece of cloth around his waist with no other clothes on and holding a VT5,000 note. He sat in front of the complainant showing her his genitals and told her to have sex with him. She was then too afraid and Mr lotil pulled off her clothes and had sexual intercourse with her. Mr lotil gave the complainant the VT5,000 note and told her not to tell anyone what had happened. He continued reminding her until 2017 not to tell anyone else.
4. The complainant has subsequently lived on Efate in order to put distance between herself and Mr lotil.



C. Offending Starting Point

5. This offence is serious which is reflected in the maximum sentence of life imprisonment.
6. The complainant was 25 years old when the offending occurred. There is an age difference of 25 years between them.
7. There was a breach of trust as the complainant and Mr lotil are closely related. He is her apu.
8. There was premeditation and sophistication involved in Mr lotil coming to the garden with VT5,000 with the intention to tell the complainant he would give her the money so that she must not tell anyone what had happened. He has prolonged her trauma by reminding her until 2017 not to tell anyone what had happened. The complainant has been so fearful of Mr lotil because they lived near each other on Tanna that she has lived on Efate since 2009 to put distance between herself and Mr lotil.
9. The aggravating factors set out above require a starting point of five years imprisonment.

D. Factors Relevant to the Offender

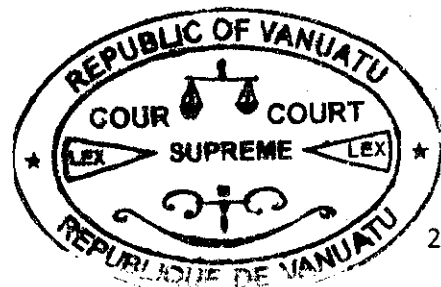
10. There are no other aggravating factors personal to Mr lotil.
11. The pre-sentence report provided states that Mr lotil is 59 years old, married and living with his wife, their two children and four grandchildren. He has a good working relationship with his chief and community. He is a subsistence farmer and a member of the Muslim faith. He ended his education in year eight due to school fee difficulties. Mr lotil is described by Mr Noel Noklam, church leader as a resourceful person in his community. He has skills in leadership and building construction and uses most of his time in voluntary work to their rural technical school and community water projects. Mr John Bill, community leader described Mr lotil as hard working, with an open heart in allowing his land for community small fisheries and agriculture project.
12. Mr lotil has no prior convictions. He is remorseful for his offending. Prosecution submit that if he was truly remorseful he would not have subjected the complainant to the re-trauma of giving evidence in the trial. He has not performed a kastom reconciliation ceremony. The complainant stated to the report writer that she is willing to accept a kastom reconciliation from Mr lotil if he is willing to perform one in future.
13. Those factors warrant a deduction of twelve months from the starting point.

E. Deduction for Guilty Plea

14. The guilty plea was entered at the conclusion of the complainant's evidence. It meant the rest of the trial did not have to be held however demonstrated that Mr lotil has now accepted responsibility for his offending against the complainant. I deduct six months for his guilty plea.

G. Sentence

15. Mr lotil is sentenced to 3 years 6 months imprisonment.



H. Suspended Sentence

16. In view of the circumstances, and in particular the nature of the crime and Mr lotil's character, I consider that it is not appropriate to make him suffer an immediate imprisonment. I order the suspension of the execution of the imprisonment sentence on the condition that Mr lotil commits no further offence within the next 12 months.
17. Although Mr lotil will not have to go into Correctional Services' custody today, I must warn him that if he commits an offence in the next 12 months and is convicted, that he will be required to serve this sentence of 3 years 6 months imprisonment in addition to any other penalty that may be imposed on him for the further offending.
18. In addition, I also impose a community work order of 100 hours community work.
19. Mr lotil has 14 days to appeal his sentence if he so chooses.

DATED at Isangel, Tanna this 20th day of December 2019
BY THE COURT

V.M. Trief

V.M. Trief
Judge

