

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

Criminal
Case No. 18/2771 SC/CRML

PUBLIC PROSECUTOR

v

PAKOA SAM ANDREW

Date: 21 September 2020
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Ms M. Tasso
Defendant – Mr F. Tasso

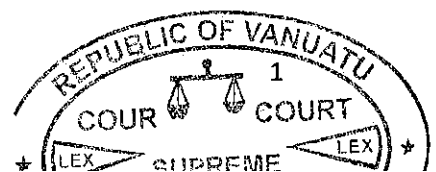
SENTENCE

A. Introduction

1. Mr Andrew pleaded guilty to two charges each of sexual intercourse without consent and acts of indecency.

B. Facts

2. The victim LA has a severe physical and mental disability and is confined to a wheelchair. She cannot speak and she cannot walk. LA's father is the complainant.
3. In 2015, after the community had held a devotion at the complainant's house on Tongoa island, Mr Andrew began to feel sexually attracted to LA. LA was sitting in her wheelchair outside the house and Mr Andrew started to touch her and inserted his finger into her vagina (Count 1).
4. On another three occasions in 2015, Mr Andrew pushed LA off her wheelchair and had sexual intercourse with her by inserting his penis into her vagina (Count 2).
5. On another occasion in 2015, Mr Andrew touched LA's breast when he came across her alone in her wheelchair (Count 3).



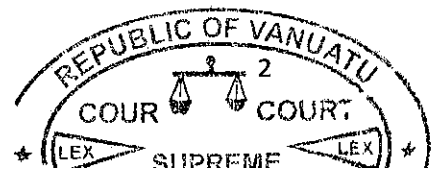
6. On 28 August 2018, LA's parents took LA to their neighbour's house as they did not want to leave her at home alone while they went to their garden. LA's father returned home to find Mr Andrew in the bush kitchen, showing his penis to LA who was seated in her wheelchair (Count 4).
7. On 30 August 2018, Mr Andrew was arrested and interviewed. He made full admissions.

C. Sentence Start Point

8. The maximum sentence for sexual intercourse without consent is life imprisonment, and for acts of indecency 7 years imprisonment.
9. There are no mitigating aspects to the offending. There are however aggravating factors:
 - The victim LA has a severe disability in that she can neither walk nor talk. She has used a wheelchair her whole life. There is an age differential of 31 years between LA and Mr Andrew. She is a vulnerable young woman who could not defend herself or report the behaviour.
 - Mr Andrew is an elder in the Lumbukuti Presbyterian Church on Tongoa so is a person of some authority in the community.
 - The force used – Mr Andrew pushed LA off her wheelchair and carried out the rape involving penile penetration, on three separate occasions.
 - Escalation and the degree of violation – the rape was by digital penetration of the vagina which progressed to penile penetration on three separate occasions.
 - The offending was repeated.
 - The sexual offending was premeditated – the offending occurred when LA was alone at home, and on one occasion Mr Andrew removed LA from where her father had left her to be looked after at their neighbour's house and pushed her in her wheelchair to the bush kitchen to conduct his offending.
 - The harm suffered by the victim – in the penile-vaginal penetration, Mr Andrew exposed LA to the risk of sexually transmitted infection and pregnancy.
 - The offending occurred at LA's home where she was entitled to feel and to be secure and safe.
10. The maximum penalties for Mr Andrew's offending and the aggravating factors of the offending require a global sentence start point of 11 years imprisonment.

D. Deduction for Guilty Plea

11. Mr Andrew pleaded guilty at the first opportunity. He also made full admissions to the Police two days after LA's father caught him in 2018. Without those admissions, it is unlikely that the offending would have been detected given that LA cannot speak. A one third deduction (44 months) is warranted.



E. Personal Factors

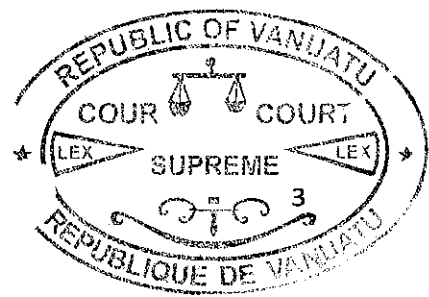
12. Mr Andrew is 59 years old. He is married and has nine children. His wife and children reside on Tongoa while he currently resides in Port Vila and is employed in a construction company. Mr Andrew has no previous convictions. However, in offences of sexual nature, a person's previous good character has very little relevance in mitigating a sentence.
13. Mr Andrew performed a custom reconciliation ceremony to LA's family and to the chiefs of Lumbukuti Village involving 2 pigs, yams, manioc, 10 mats and VT2,000. LA's father expressed that they had accepted the reconciliation ceremony as a form of 'klinim fes' but that it did not erase what Mr Andrew had done to his daughter who is a vulnerable person and living with disabilities.
14. For Mr Andrew's personal factors, I deduct 3 months.

F. End Sentence

15. The sentencing principles applicable in this case are holding Mr Andrew accountable for his conduct, to denounce the criminal conduct and emphasize public disapproval of such offending, to protect the community, and to deter him and others from acting in this manner in future.
16. Taking all of those matters into account, the end sentences imposed on the four charges concurrently are:
- a. Sexual intercourse without consent (Count 2) 7 years 1 month imprisonment;
 - b. Sexual intercourse without consent (Count 1) 5 years imprisonment; and
 - c. Acts of indecency (Counts 3 and 4) 12 months imprisonment.
17. The sentences are to commence from 10 August 2020 to take into account the 42 days that Mr Andrew has spent in custody.

G. Suspension

18. An immediate custodial sentence must be imposed. This reflects society's abhorrence for sexual offending which persons with disabilities can be particularly vulnerable to. I decline to exercise my discretion to suspend Mr Andrew's sentence.
19. Mr Andrew has 14 days to appeal this sentence if he disagrees with it.



20. The name and details leading to identification of LA are permanently suppressed.

**DATED at Port Vila this 21st day of September 2020
BY THE COURT**

..... *UMTrief*
Viran Molisa Trief
Judge

