

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

Criminal
Case No. 21/886 SC/CRML

BETWEEN: Public Prosecutor

AND: Asal Eloie

Date: 23rd April 2021
By: Justice G.A. Andrée Wiltens
Counsel: Ms D Boe for the Public Prosecutor
Mr R Willie for the Defendant

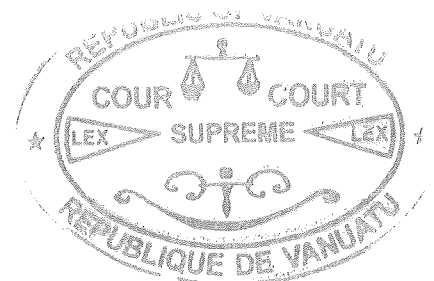
SENTENCE

A. Introduction

1. Mr Eloie pleaded guilty to a charge of sexual intercourse without consent.

B. Facts

2. Mr Eloie and EN, then aged 13 years, resided in Vanua Lava village.
3. On 13 February 2020, LS and EN went to swim in a river near LS's house. After that they had lunch and headed off toward Chief Samuel's house down a narrow path.
4. Mr Eloie followed them down the path and grabbed EN's hands and held her firmly. EN struggled while LS ran off. Mr Eloie told EN to not struggle or make any noise or he would assault her. EN was crying.
5. Mr Eloie pulled EN into a plantation where he took off her trousers and underpants. He instructed EN to lie down, but she refused. He pushed EN down onto the grass and held her lgs apart as he inserted his penis into EN's vagina and had sexual intercourse with her.
6. It felt very painful for EN and she cried throughout. There was also bleeding from her vagina. Mr Eloie threw EN's clothes at her when he finished, and EN dressed herself before running to report the incident to her mother.
7. When interviewed Mr Eloie made a full confession to the police.



C. Sentence Start Point

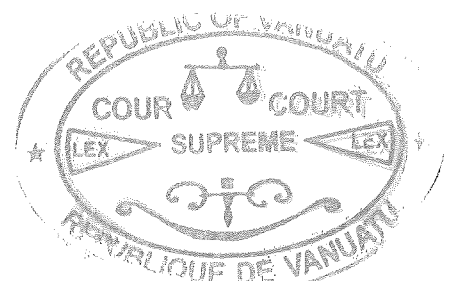
8. The sentence start point is assessed by having regard to the maximum sentence for sexual intercourse without consent and factoring in the aggravating and mitigating aspects of the offending.
9. The maximum sentence is life imprisonment.
10. There are no mitigating aspects to this offending. However there are aggravating factors which include:
 - The age disparity between them – he was 25, she was 13;
 - the young age of EN;
 - degree of planning was involved;
 - the element of abduction involved;
 - the unprotected nature of the act, which exposed EN to sexually transmitted disease and unwanted pregnancy; and
 - the breach of trust – he is her uncle.
11. The sentence start point I adopt is a term of imprisonment 7 years.

D. Mitigation

12. Mr Eloie has pleaded guilty at the first available opportunity. That acknowledges his acceptance of his wrong doing. It also saves Court time and expense. Importantly, it spares EN the need to have to give evidence in a court room of strangers.
13. For his prompt plead, I reduce the sentence start point by 33%.
14. Mr Eloie is 25 years old, single. He is a gardener. He has no previous convictions. He claims he has apologised and compensated EN at a peace ceremony.
15. Mr Eloie's personal factors I further reduce the sentence start point by 4 months.

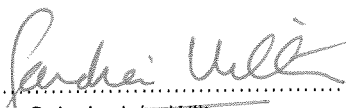
E. End Sentence

16. The end sentence I impose is a term of 4-years and 4 months imprisonment. The sentence is to run from 12 February 2021 to take into account time already served.
17. There is no possibility of suspending any/all of the sentence due to the seriousness and nature of the offending.
18. Mr Selwyn has 14 days to appeal the sentence if he disagrees with it.



19. All particulars leading to identification of EN are permanently suppressed

Dated at Luganville, this 23rd day of April 2021
BY THE COURT


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Justice G.A. Andrée Wiltens

