

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

Criminal  
Case No. 23/1989 SC/CRML

**BETWEEN: THE PUBLIC PROSECUTOR**

**AND: SAKIE MANPIT**  
Defendant

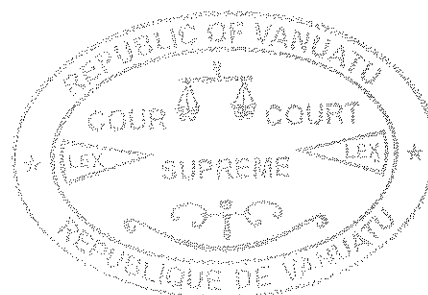
*Date:* 22<sup>nd</sup> September 2023  
*By:* Justice W.K. Hastings  
*Counsel:* Mr G Simeon for the Public Prosecutor  
Mr R Rongo for the Defendant

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**SENTENCE**

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1. Sakie Manpit has pleaded guilty to one count of sexual intercourse without consent contrary to ss. 90(a) and 91 of the Penal Code. The maximum sentence for this offence is life imprisonment.
2. This morning, Mr Rongo filed additional submissions. On the basis of a medical report that stated there was no swelling, laceration or evidence of sperm or infection of the complainant's vagina, Mr Rongo submitted that "it is very clear that there is no actual penetration". That submission is problematic in at least two respects. First, the submission means that his client pleaded guilty to an offence he did not commit. Second, the aspects of the medical report Mr Rongo relies on do not necessarily support his submission "that there is no actual penetration." It is possible for penetration to occur without evidence of swelling, lacerations, sperm or infection. Mr Rongo explained that his intention in writing the additional submissions was to minimise the physical injury to the complainant, not to undermine his client's guilty plea. He accepted there was penetration to a minor extent, which satisfies the definition of sexual intercourse in the Penal Code. In a conference this morning with Mr Simeon present, Mr Rongo said he would rewrite the additional sentencing submission to remove his submission that there was no actual penetration, but I will keep both versions on the Court file. I will proceed to sentence on the basis that there was penetration to some extent.



3. On 14 July 2023, the victim was helping Mr Manpit's de facto partner with her work. The victim is a 16 year old student and is related to Mr Manpit. As it was late, the victim decided to sleep over instead of going home in the dark. She and the defendant's partner went to sleep in the defendant's bedroom. Mr Manpit entered the room and had sex with his partner. He then removed the victim's trousers and underwear and put his penis on and slightly into her vagina. His partner saw this and scolded him, but he got angry and threatened to hit them with a bottle. The victim resisted until he stopped and resumed having sex with his partner. The victim left the house and ran home in the dark.
4. The sentence must denounce this conduct, deter the defendant and others from the same or similar conduct, hold him accountable for the harm he has caused, and provide for his rehabilitation.
5. There are no mitigating aspects of this offending.
6. I identify the following aggravating features of this offending:
  - a. There is a breach of trust. The victim is related to the defendant and ought to have felt secure in his house.
  - b. The sex was unprotected, exposing the victim to the risk of sexually transmitted disease and pregnancy.
  - c. The sex was accompanied with a threat against both the victim and the defendant's partner of assault using a bottle as a weapon.
  - d. There would have been a significant emotional and psychological effect on both the victim and the defendant's de facto partner, as was made evident when the defendant's wife scolded him and when the victim ran away in the dark. The pre-sentence report states that his partner does not trust him anymore.
7. Mr Simeon for the prosecution relied on *Public Prosecutor v Scott* [2002] VUCA 29 which established that for rape committed by an adult without an aggravating or mitigating feature, a figure of five years should be taken as the starting point in a contested case. One of the aggravating factors listed in *Scott* is a weapon used to frighten the victim. In this case, the defendant threatened to assault both the victim and his wife with a bottle. Mr Simeon also referred me to *Public Prosecutor v Gideon* [2002] VUCA 7 in which the Court of Appeal said "men who take advantage sexually of young people forfeit the right to remain in the community." He submitted that a starting point of between 5 and 6 years is appropriate.
8. Mr Rongo for the defence relied on judgments in which sentences for sexual offending were suspended notwithstanding *Gideon*. In *Public Prosecutor v Tolish* [2015] VUSC 182, a starting point of 3 years was adopted on a charge of sexual intercourse without consent for offending involving penile penetration of the victim's mouth. The end sentence of 10 months imprisonment was entirely suspended for two years as a result, in part, of a delay in bringing the prosecution and the defendant's hypertension. In *Public Prosecutor v Moise* [2016] VUSC 5 a starting point of 4 years was adopted on a charge



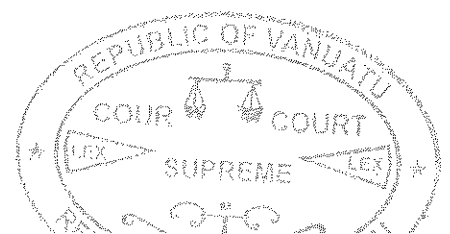
of sexual intercourse without consent for offending involving digital penetration of a 12 year old by a 16 year old. The end sentence of 22 months was suspended for 2 years as a result of the defendant's youth and clean record. In *Public Prosecutor v Mawa* [2016] VUSC 180, a starting point of 6 years was adopted on a representative charge of sexual intercourse without consent for offending involving 2 instances of penile penetration of the 11 year old victim's vagina by the 16 year old defendant. The end sentence of 2 years and 9 months was suspended for 3 years because of the defendant's youth. In *Public Prosecutor v Aru* [2014] VUSC, a starting point of 2 years and 6 months was adopted on a charge of unlawful sexual intercourse involving penile penetration of the 13 year old victim's vagina by the 25 year old defendant. The end sentence of 1 year imprisonment was suspended for 2 years.

9. Taking the aggravating factors into account, the slight degree of penetration and the cases referred to me by counsel, I consider a starting point of 4 years and 6 months imprisonment to be appropriate.

10. I turn now to personal factors:

- a. Mr Manpit is 33 years old and has no previous convictions. His previous good character warrants a reduction of 10%, or 5 ½ months, from the starting point.
- b. The pre-sentence report writer writes that Mr Manpit regrets his actions and acknowledged his wrongdoing at a custom reconciliation ceremony on 5 August 2023 in the presence of paramount Chief Kalmay Hoshimanda and four other chiefs representing the four clans in the community. Also present were the victim and her family. One pig, 7 mats, 7 yams and VT 50,000 were given to the victim and her family. The defendant's expression of regret and the successful custom reconciliation ceremony warrant a discount of 15%, or 8 months, from the starting point.
- c. Mr Manpit lives in a de facto relationship with his partner and they have adopted a son. He is a member of the Presbyterian Church committee and the local youth committee. He has helped with many community projects. He is one of seven siblings, all of whom attended school at the same time. As a result, their father removed Mr Manpit from school so that he could pay for the other siblings' education. Mr Manpit was left to take care of their parents and properties. He continues to care for his now elderly parents. These personal factors warrant another 10%, or 5 ½ months, reduction from the starting point.
- d. Mr Manpit was remanded in custody for 17 days between his arrest on 17 July 2023 and his release on bail on 3 August 2023. A further 3 weeks are deducted from the sentence starting point. This brings me to 34 months and 1 week.

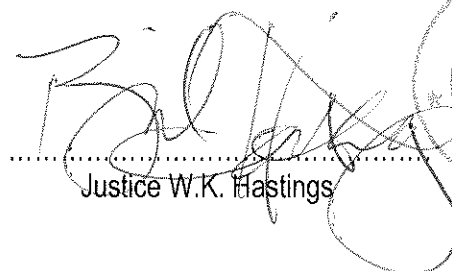
11. Mr Manpit pleaded guilty at an early opportunity. This saved the state the expense of a trial and the victim having to give evidence. He is entitled to a further 33%, or 11 months and 1 week, reduction for his guilty pleas. This brings me to an end point of 23 months imprisonment.



12. I turn now to consider whether Mr Manpit's sentence should be suspended under s 57 of the Penal Code. Section 57 requires the Court to consider the circumstances, the particular nature of the crime, and the character of the offender in deciding whether it should suspend the sentence.
13. The youth of the defendants was a significant common reason for sentence suspension in the cases referred to by counsel. Mr Manpit is 33 years old and cannot be said to be young. This offending is serious. He has lost the trust of his wife which, in itself, is special punishment. It will take Mr Manpit some time to redeem himself in her eyes. On the other hand, Mr Manpit is not to blame for the decision his parents took to withdraw him from school, denying him the opportunities his siblings had. His wife has a tumour on her breast, his son has asthma, and his father has cancer. Mr Manpit is the only sibling who takes their father to hospital for treatment; the other siblings are unable to provide the same level of support because they are all working in Port Vila and Santo.
14. On balance, I will exercise my discretion to suspend Mr Manpit's sentence for 2 years as a result of his personal circumstances, clean record, remorse, and his participation in a successful reconciliation ceremony. Mr Manpit must understand though that he needs to remain offence-free for 2 years in order to remain in the community. I considered a partial suspension, but there is no telling how long his aged parents might have before they reach their heavenly reward. It is important that Mr Manpit continues to care for them, and his own family.
15. Mr Manpit is also sentenced to 12 months supervision with a special condition to undertake rehabilitation modules on sexual offending to give him better insight into his offending and the effect such offending has on victims.
16. Mr Manpit has 14 days to appeal the sentence.
17. All details leading to the identification of the victim are permanently suppressed.

Dated at Luganville this 22<sup>nd</sup> day of September 2023

BY THE COURT

  
Justice W.K. Hastings

