

PUBLIC PROSECUTOR

v

FABIANO VINABIT

Date: 17 May 2023
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Ms M. Tasso
Defendant – Mr T.J. Botleng

SENTENCE

A. Introduction

1. Mr Vinabit pleaded guilty to domestic violence (Charges 1 and 2) and just before trial commenced, to sexual intercourse without consent (Charge 3). He was convicted on his own pleas and the admitted facts.

B. Facts

2. The complainant Loline Raptik was Mr Vinabit's *de facto* partner at all material times. He is 37 years old and she is 32. They have a 3-year old daughter.
3. The arrangement between Mr Vinabit and Ms Raptik was that he would drop their daughter to school every morning and she would pick her up every afternoon. On 17 February 2022, Mr Vinabit called Ms Raptik's phone but she did not answer. She went to school to collect their daughter and her teacher said that Mr Vinabit had already collected her. As she was leaving through the school gate, Mr Vinabit called her and asked about their daughter. Ms Raptik told him that the teacher had already told her that he had collected their daughter. He became angry and told her not to return home. She tried to reason with him but he turned his phone off on her. At that point, she knew that he was very angry with her so she went to the Seafront area and stayed there for hours as she was scared to go home as she knew she would be assaulted if she went home.
4. While at the Seafront area, Mr Vinabit used a friend of his to call her and say that he and their daughter were at the hospital because their daughter had had an asthma attack.

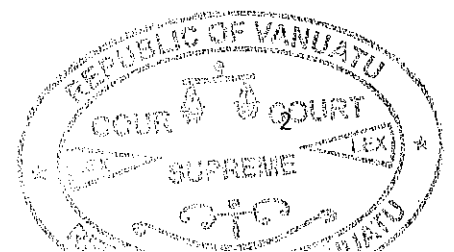


Ms Raptik rushed to the hospital but did not find them. Then Mr Vinabit got his nephew to call her and say that they were at home and she could come home now. She decided to go home, thinking that Mr Vinabit was no longer angry with her. When she arrived home, their daughter was already asleep and Mr Vinabit and his nephew were drinking kava outside. She showered and went straight to bed. Mr Vinabit finished his kava and entered their room and asked her for sex. She refused as she was very tired and because they had sex every night. Mr Vinabit insisted and asked her three times. She refused. He became angry, picked up a money box tin that was heavy with coins and threw it at her head. The money box landed on her head (Charge 1).

5. After throwing the money box at Ms Raptik, Mr Vinabit picked up a broken mirror from inside their bedroom and used it to cut her several times on her right buttock. She was wearing red shorts. Blood shot out of her buttock onto their bed sheet and only then did he stop the assault (Charge 2).
6. Even though Ms Raptik was bleeding from her buttock, Mr Vinabit pulled her outside. She begged him to stop as she needed to dress her injuries and change her clothes but he refused. He pulled her into an empty house which is still incomplete to a dark spot in there. He put a mat on the floor and told her to lay down on the mat. Ms Raptik was terrified but did not resist as she was too afraid of Mr Vinabit. She lay down on the mat as instructed and Mr Vinabit undressed her then sucked on her vagina. He penetrated her anus with his penis, sucked her breast, made her suck his penis, penetrated her vagina with his penis and ejaculated on her. All this happened one after the other and Ms Raptik was in pain all through the intercourse as a result of the injuries to her buttock. She did not resist because she knew that if she did, he would harm her more. She complied with his demands because of her fear of receiving more harm (Charge 3).
7. In the morning, Ms Raptik told Mr Vinabit that she needed to seek medical assistance as she was still bleeding from the injuries to her buttock. Mr Vinabit told her that if she was asked about her injuries, to lie that she fell and she agreed. Instead of going to get medical assistance, Ms Raptik went straight to the Vanuatu Women's Centre, reported Mr Vinabit and was offered a safe house to allow her to lodge her complaint at the Police Station and was given medical assistance by the Women's Centre.

C. Sentence Start Point

8. The sentence start point is assessed having regard to the maximum sentences available, and the mitigating and aggravating factors of the offending.
9. The maximum sentences provided are:
 - a. Sexual intercourse without consent – life imprisonment; and
 - b. Domestic violence – 5 years imprisonment or VT100,000 fine or both.
10. There are no mitigating aspects to the offending however, it is aggravated by the following:
 - a. Breach of trust;



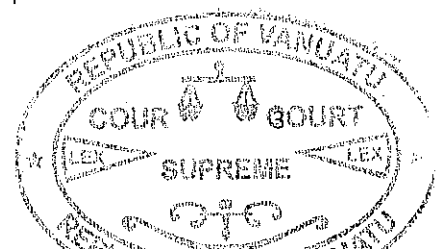
- b. The use of a broken mirror and a heavy money box as weapons;
 - c. The long, vicious attack on the complainant including to effect the rape;
 - d. The injuries and pain that the complainant had to endure during and after the assault and the rape;
 - e. The offending occurred at home where the complainant should have been able to feel safe and secure;
 - f. The offending occurred at night-time;
 - g. Telling the complainant to lie about the cause of her injuries; and
 - h. The effect on the complainant including the lack of protection used exposed the complainant to the risk of sexually transmitted disease and other infection from the anal penetration followed by vaginal penetration.
11. I adopt a sentence start point of 9 years 6 months imprisonment taking all the offending into account on a global basis.

D. Mitigation

12. Mr Vinabit did not plead guilty at the first opportunity to the lead offence but he has spared the complainant the need to give evidence against him. For these factors, I reduce the sentence start point by 15%.
13. Mr Vinabit is 37 years old. He has a 3 year old daughter. He is employed by the Reserve Bank of Vanuatu.
14. He has no previous convictions. However, in offences of sexual nature, a person's previous good character has very little relevance in mitigating a sentence.
15. Mr Vinabit has performed a custom reconciliation ceremony with the complainant involving mats, root crops valued at VT25,000, a slaughtered bull valued at VT60,000 plus cash of VT300,000 which was accepted. He is stated to be very remorseful. The complainant stated to the pre-sentence report writer that she accepted the reconciliation but she has moved on with her life and does not want anything more to do with Mr Vinabit.
16. For Mr Vinabit's personal factors, I further reduce the sentence start point by 12 months.

E. End Sentence

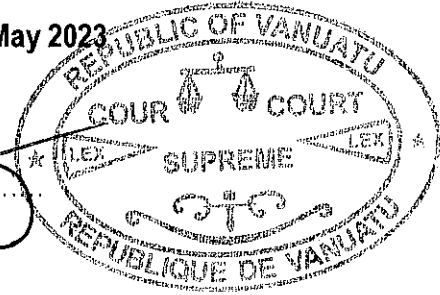
17. Taking all of those matters into account, the end sentences imposed concurrently are:
- a. Sexual intercourse without consent (Charge 3) – 7 years 1 month imprisonment; and
 - b. Domestic violence (Charges 1 and 2) – 1 year 6 months imprisonment.



18. The sentences are back-dated to commence as from 25 April 2022 to take into account the 12 months 24 days already served in custody.
19. There will be no suspension of sentence. The offending is too serious and there are no exceptional circumstances to warrant suspension of sentence.
20. Mr Vinabit has 14 days to appeal.

DATED at Port Vila this 17th day of May 2023
BY THE COURT

VM Trief
Justice Viran Molisa Trief



TO: The Director of Correctional Services Department

LOCATION: Republic of Vanuatu

WARRANT OF COMMITMENT UPON A CONVICTION
WHERE THE PUNISHMENT IS IMPRISONMENT
(Section 189)

WHEREAS **Fabiano Vinabit** of Port Vila Efate Shefa was convicted of various offences of:

1. *Domestic violence offence, c/s- 4(1) of the Family Protection Act No. 28 of 2008.*
2. *Domestic violence offence, c/s- 4(1) of the Family Protection Act No. 28 of 2008.*
3. *Sexual intercourse without consent, 90 (b) (iii) & 91 of the Penal Code Act Cap 135.*

AND WHEREAS on 17th May 2023, the said **FABIANO VINABIT** was sentenced to be imprisoned for 7 years 1 month;

NOW THEREFORE YOU ARE HEREBY COMMANDED to keep the said **FABIANO VINABIT** in custody for the period of 7 years 1 month.

This Sentence is deemed to be of effect as from 25th April 2022 to take into account the 12 months 24 days already served in custody.

DATED at Port Vila this 17th day of May, 2023.

BY THE COURT



Viran Molisa Trier

Judge

