

CF

BETWEEN: PUBLIC PROSECUTOR

**AND: AMZY APIA
Defendant**

Date of Verdict: 22nd February 2024

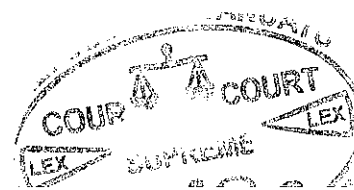
Date of Sentence: 23rd February 2024

Before: Justice Oliver A Saksak

Counsel: Ms Marie Meltebury for Public Prosecutor
Mr Kalo Shem for Accused

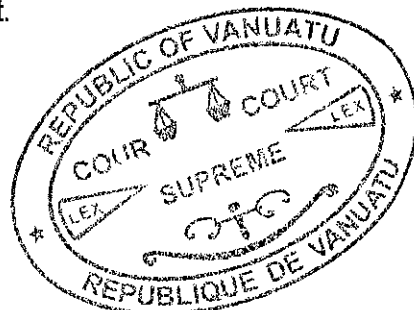
SENTENCE

1. The defendant was found guilty by the court yesterday after a trial hearing and he is for sentence today.
2. He was charged with one count of sexual intercourse without consent pursuant to sections 90 and 91 of the Penal code Act (CAP 135)
3. The maximum penalty for the offence is life imprisonment.
4. On 22 July 2023 at about midday, at Espigels Bay the defendant entered the complainants house uninvited he asked the complainant where her partner was and he was told the partner was at a football game at Matanvat, the defendant started demanding for sex. The complainant despite telling the defendant twice to leave the defendant proceeded to hold her hands and forced her to her room and pushed her onto her mattress after undressing her. He then lay on top of her and had sex with her without her consent. He then put his clothes back on and left telling the complainant not to tell on him or he would shoot them with a gun. The defendant had a bush knife tagged under his armpit when he was holding her and removing her clothes.
5. The complainant felt depressed and cried until her partner Andrew returned around 7:00pm. He saw her crying and asked her what happened. She told him about what the defendant had done to her in his absence. Her partner became angry and assaulted the complainant. Later on



2nd August 2023 they both agreed to lodge a complainant with the Police at Lakatoro, who took the complainant's first statement. The second statement was made on 11th September 2023.

6. The Court will follow the guideline cases of PP v Scott [2002] VUCA 29 and PP v Scott [2002] VUCA 29 and PP v Tabi [2015] VUSC 65 in assessing appropriate sentence for the defendant. In both these cases the starting points was 8 years imprisonment.
7. The aggravating features of the case were a serious breach of trust, threats used with the use of a knife and a gun, the occurrence of offence within the confines of the private house of the complainant, her pregnancy of 4 months, the risk of venereal diseases and the damage done to the complainant's relationship with her partner.
8. There were no mitigating circumstances. The complainant was only new to Espigels Bay having only arrived there with her partner in June 2023. She deserved love and care from relatives, instead she was taken advantage of by a ravenous predator who does not deserve to remain in the community.
9. In view of the seriousness of the offence and the aggravating features of the offences, without any mitigating circumstances, I assess the appropriate punishment for the defendant to be a custodial sentence. I adopt the global starting sentence of 8 years imprisonment.
10. In mitigation I note the written submissions by defence counsel Mr Amos. I also note the pre-sentence report filed by the Probation Officer on 22nd February 2023. I accept the defendant is entitled to a reduction of sentence for the following mitigating factors-
 - a) His young age of 22 years, (b) His previous clearance clean record and being a first time offender.
 - b) His health issues although not certified (d) His other personal character and history.
 - c) The 3 weeks spent in custody prior to bail.
11. For all those factors, I deduct his start sentence of 8 years by 3 years.
12. That leaves his end sentence at 5 years imprisonment.



13. This sentence will commence after 14 years from today on 7th March 2024 when he will report to the Probation officer at Lakatoro for his transfer to the Correctional Centre in Luganville, Santo.

14. Within those 14 days, he may appeal this sentence if he so wishes.

DATED at Lakatoro this 23rd day of February 2024
BY THE COURT


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Hon. Oliver A Saksak
Judge

