

BETWEEN: Public Prosecutor

AND: Samuel Wai Loli
Defendant

Before: Justice Oliver A. Saksak

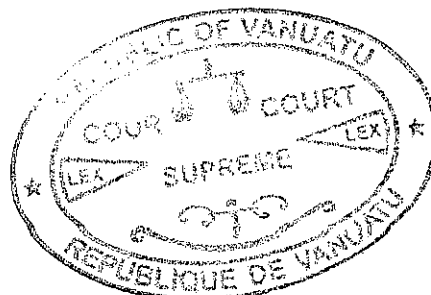
Counsel: Mr Ken Massing for Public Prosecutor
Mr Steven Garae Junior for Defendant

Date of Plea: 25th October 2024

Date of Sentence: 25th October 2024

SENTENCE

1. Samuel Wai Loli pleaded not guilty to one charge of sexual Intercourse without consent and guilty to one charge of act of indecency without consent.
2. Following his pleas Mr Massing informed the Court that Prosecutions would not proceed with the charge in Count 1 and that the Court enters nolle prosequi pursuant to section 29 of the Criminal Procedure Code Act [Cap 136] and to sentence the defendant only in relation to charge in Count 2.
3. Accordingly nolle prosequi was entered and the defendant discharged of the charge of sexual intercourse without consent in Count 1.
4. He is to be sentenced on is own guilty plea in respect of the offence of act of indecency without consent in Count 2.
5. This offence carries the maximum penalty of 7 years imprisonment. It is a serious offence.



6. The facts show the following aggravating factors of the offending-
 - a) The degree of planning and meditation by the defendant.
 - b) The degree of his domination, control and influence over his victim.
 - c) The degree of force used to pull her into the plantation.
 - d) The repetitive request for sex up to three times.
 - e) The touching of the victim without her consent on her breast and vagina and the result, effect and impacts on the victim, mentally and physically.
 - f) The breach of trust.
 - g) The age disparity between the defendant being 41 years old and victim at 19 years old at the time of offendings.

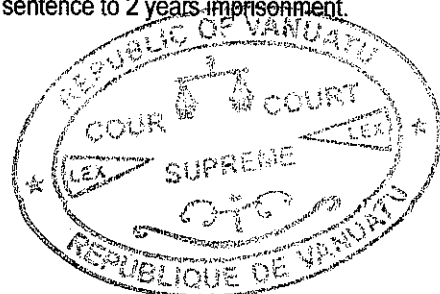
7. There was no mitigating circumstance for the offending. The defendant clearly took advantage sexually of abusing a young girl outside of his marriage covenant with his wife.

8. The case of PP v Gideon [2002] VUCA 7 is classic. The Court is bound to apply the principles laid down in that case in sentencing the defendant.

9. I have considered also the cases of Gigina v PP [2017] VUCA 15 and Tangiat v PP [2014] VUCA 15 and Wenu v PP [2015] VUCA 51. All these cases set out the established principles of sentencing for sexual offendings involving touching of the bodies of victims through their clothing. However every case is different in their facts and circumstances. The defendant's case differs in its facts and circumstances which made his case more serious than the Gigina and Tangiat cases.

10. Taking all the factors into account I adopt the start sentence of 3 years imprisonment for act of indecency without consent.

11. In mitigation, I allow 1/3 deduction for guilty plea reducing his sentence to 2 years imprisonment.



12. For his personal factors, including his reconciliation with the victim and her family, his clean past record, the delay in bringing his case to finality and the time he spent in custody which is some 21 days, I deduct his sentence by a further 6 months.
13. The end sentence shall be 18 months or 1 year and 6 months imprisonment. He is convicted and sentenced accordingly.
14. I Order that the sentence be suspended under section 57 of the Penal Code Act [Cap 135] for a period of 2 years on good behaviour. That means the defendant will not go to prison today but will remain in his community in good behaviour. He must not commit any other offences for which he would be charged and convicted. If he does, he will go to prison for 18 months.
15. In addition, I sentence the defendant to community work for 80 hours to be performed within 12 months.
16. That is the sentence of the defendant. He may appeal within 14 days if he disagrees with the sentence.

DATED at Lavatu, North Pentecost, this 25th day of October 2024

BY THE COURT


Hon. OLIVER A SAKSAK

Judge

