

PUBLIC PROSECUTOR
V
GIBSON IAMAK
ERIC JIMMY
GREM NANUA

Coram: *Hon. Chief Justice Vincent Lunabek*

Counsel: *J Aru for the State*
C Dehinavanua for the Defendants

Date of Plea: *8 March 2024*

Date of Sentence: *15 May 2024*

SENTENCE

I. Introduction

1. Gibson Iamak, Eric Jimmy and Grem Nanua, you appear each for sentence today.
2. On 8th March 2024, Gibson Iamak and Grem Nanua, you each pleaded guilty to one count of sexual intercourse without consent when you respectfully penetrated the complainant's vagina with your penis without her consent, contrary to Sections 90(a) and 91 of the Penal Code Act [CAP. 135] ("*the Act*") (Counts 1 and 2); and you each also pleaded guilty to one count of intentional assault causing no injury, contrary to Section 107(a) of the Act (Count 3).
3. Eric Jimmy, you pleaded guilty to one count of intentional assault causing no injury, and one count of theft, contrary respectfully to Sections 107(a) and 125(a) of the Act.

II. Facts

4. Mr Gibson, Eric and Grem, on 8th March 2024, when you pleaded guilty to the offences you were each charged with, you admitted the following facts.



5. The alleged offences occurred on the 29th of December 2023 at around 6pm to 8pm at Joint Court area, Port Vila. The complainant (AS) was an 18 years old girl from Aneityum Island and she resides at Blacksands area during the time of the offence. On the evening of the 29th December 2023, the complainant and her boyfriend Samuel were drinking alcohol on the road behind the Computer World and leading to Joint Court area, that is the road behind the Chief Justice's residence. They were consuming a bottle of Hanapier (Whiskey) when the defendants approached them. The defendants too were drunk with alcohol. Mr Gibson lamak, you were wearing a blue shirt and have rasta. Mr Grem Nanua, you wore a Tafea Provincial Games uniform. Mr Eric Jimmy, you wore a grey t-shirt. Another boy accompanied you as well and he wore a Vanuatu colour island shirt.
6. Mr Eric Jimmy, you walked directly to the complainant and her boyfriend and showed them your wounded leg and told them a rock cut your leg. The complainant's boyfriend then offered to apply herbal medicine. Thereafter, you all started to communicate in Tanna dialect. The complainant's boyfriend then told the complainant that they should accompany Mr Eric Jimmy to where the other defendants were, that is behind the Computer World. When they arrived where the other defendants were, the complainant saw that they were consuming a bottle of Napoleon and were passing the bottle around which they also took a sip of the alcohol. They too took a sip two times and the defendants started to smoke cigarette and the defendant's friend who wore the Vanuatu island shirt and Mr Grem Nanua smoked marijuana. The complainant knew that they were smoking the substance as she could smell the substance.
7. Whilst they were drinking they started to tease each other and swore at each other and the complainant's boyfriend swore at the defendants saying "*yufala fuckem apu blo yufala*". Mr Gibson lamak and Grem Nanua upon hearing that abusive language assaulted the complainant's boyfriend. The complainant tried to escape but they stopped her, pushed her to where her boyfriend was and started to assault them both. Mr Eric Jimmy was the one who assaulted the complainant on her face and continued to assault her on her hand and head and removed her phone. Mr Grem Nanua assaulted her on her back.
8. All defendants assault the complainant and her boyfriend and the complainant's boyfriend somehow escaped and the boy who wore the island shirt and Mr Eric Jimmy also went up the hill leaving the complainant with Mr Grem Nanua and Mr Gibson lamak. Mr lamak then told the complainant that "*because your boyfriend verbally abused us we shall take our revenge by having sex with you*". The complainant refused saying no but Mr lamak held onto her tightly and instructed her to remove her clothes. She did not do as instructed so Mr lamak pushed her onto the ground and told her not to move otherwise he will kill her. The complainant was afraid of her safety and life as they had already assaulted them that night so she kept still whilst Mr lamak removed her clothes and penetrated her vagina with his penis without her consent.



9. He was still penetrating her when Grem Nanua came and told the complainant he had a knife so he too had to penetrate her vagina. Grem Nanua too penetrated the complainant's vagina with his penis without her consent. She wanted to scream but was afraid of them and she then saw lights, torches and assumed they were police torches. She wanted to scream to the torches but they instructed her not to make a sound and held onto her not to move. A few minutes alter both defendants ran away fleeing the scene when the police were shining their torches towards their direction. The complainant then climbed up the road towards CJ's residence. He saw a man by the name of Tom Iaput who resides at Joint Court area and informed him of the incident and soon after the police arrived and assisted her.

III. Sentence Start Point

10. The sentence start point is determined by first referring to the maximum sentence available, then considering the aggravating and mitigating features of the current offending, and having also regard to the relevant comparable cases referred to the Court by counsel (if any) for consistency purposes (Philip v Public Prosecutor [2020] VUCA 40).
11. So, here, the offences committed and their respective maximum sentences are:
- Sexual intercourse without consent, contrary to Section 91 of the Penal Code Act [CAP. 135] ("*the Act*"); and the maximum sentence available is imprisonment for life;
 - Intentional assault causing no injury, contrary to Section 107(a) of the Act; and the maximum penalty is one (1) year imprisonment;
 - Theft, contrary to Section 125(a) of the Penal Code; and the maximum sentence is 12 years imprisonment.
12. In the present case, there is more than one charge what I do now is I consider that an overall assessment is required and, I do so on concurrent basis.
13. On the facts of the present case, the maximum sentence available is a term of life imprisonment for the offence of sexual intercourse without consent as the leading offending in this case.
14. There are no mitigating features of the offending. However, there are aggravating factors based on the authority of Public Prosecutor v August [2000] VUSC 73; Criminal Case NO. 014 of 2000 (28 November 2000) and Public Prosecutor v Scott [2002] VUCA 29; CA 02 – 02 (24 October 2002);



- Sexual intercourse without consent is committed by two men acting together (a gang or pack sexual intercourse without consent);
- Violence is used over and above the force necessary to commit sexual intercourse without consent;
- The complainant was assaulted by the three defendants (Kipson Yamak, Grem Nanua and Eric Jimmy), they held her captive in that bush of Joint Court area in the night of the incident until she was rescued by the police that night;
- A weapon is used (knife) by Grem Nanua to force his sexual intercourse with the complainant without her consent that night after Kipson Yamak had sexual intercourse with the complainant without her consent;
- The effect upon the victim.

15. The Supreme Court in August [2000] VUSC 73 stated the following which the Court of Appeal endorsed in Public Prosecutor v Scott [2002] VUCA 29:

"The offence of rape is always a most serious crime. Other than in wholly exceptional circumstance, rape calls for an immediate custodial sentence. This was certainly so in the present case. A custodial sentence is necessary for a variety of reasons. First of all to mark the gravity of the offence. Secondly to emphasize public disapproval. Thirdly to serve as a warning to others. Fourthly to punish the offender, and last but by no means least, to protect women. The length of the sentence will depend on the circumstances. That is a trite observation, but these in cases of rape vary widely from case to case.

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. Where a rape is committed by two or more men acting together, or by a man who has broken into or otherwise gained access to a place where the victim is living, or by a person who is in a position of responsibility towards the victim, or by a person who abducts the victim and holds her captive the starting point should be eight years [Emphasis Added].

At the top of the scale comes the defendant who has committed the offence of rape upon a number of different women or girls. He represents a more than ordinary danger and a sentence of fifteen years or more may be appropriate.

Where the defendant's behaviour has manifested perverted or psychopathic tendencies or gross personality disorder, and where he is likely, if at large, to remain a danger to woman for an indefinite time, a life sentence will not be appropriate.

The offence of rape should in any event be treated as aggravated by any of the following factors:



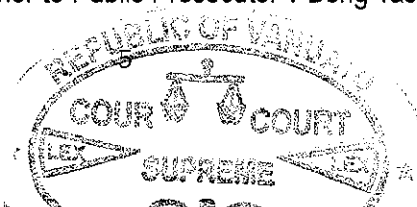
- (1) *Violence is used over and above the force necessary to commit rape;*
- (2) *A weapon is used to frighten or wound the victim;*
- (3) *The rape is repeated;*
- (4) *The rape has been carefully planned;*
- (5) *The defendant has previous convictions for rape or other serious offences of a violent or sexual kind;*
- (6) *The victim is subject to further sexual indignities or perversions;*
- (7) *The victim is either very old or young;*
- (8) *The effect upon the victim, whether physical or mental, is of special seriousness.*

Where any one or more of these aggravating features are present, the sentence should be substantially higher than the figure suggested as the starting point [Emphasis Added].

If the defendant pleads guilty, the sentence should be reduced by 1/3 depending on the circumstances, including the likelihood of a finding of not guilty had the matter been contested.

The fact that the victim may be considered to have herself in danger by acting imprudently (as for instance by accepting a lift in a car from a stranger) is not a mitigating factor, and the victim's previous sexual experience is equally irrelevant. But if the victim has behaved in a manner which was calculated to lead the defendant to believe that she would consent to have sexual intercourse, then there should be some mitigation of the sentence. Previous good character is of only minor relevance."

16. I peruse and consider the prosecutor's submissions on following comparable cases cited: Public Prosecutor v Less [2012] VUSC 258 and Public Prosecutor v Naki [2012] VUSC 97. In both cases, sexual intercourse without consent is committed by a defendant. In the present case, two men committed sexual intercourse without consent together and at the same time, place and on the same woman. We are in a situation of gang or pack sexual intercourse without consent (multiple sexual intercourse without consent). The prosecution submissions cannot assist the court on the sentence start point.
17. I also peruse and consider the defence's submissions on following comparable cases cited: Public Prosecutor v Molgos [2021] VUSC 172; Criminal Case 1555 of 2021 (23 July 2021). This case (Public Prosecutor v Molgos) was about indecency without consent and domestic violence. She referred further to Public Prosecutor v Bong Tasso [2021] VUSC 155, a case

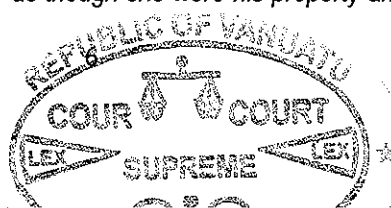


again on indecency without consent and domestic violence. The defence submissions are poorly made. They cannot assist the court either on the sentence start point.

18. The following three (3) cases are comparable type cases on multiple sexual intercourse without consent by two or more men acting together on a woman (victim).
19. The first case is the case of Public Prosecutor v Scott and Tula [2002] VUCA 29.
20. There was no dispute about the facts in this case. In the early hours of the morning of 27th December 2001 (apparently after they had been drinking kava together) the two respondents went near the victim's home. Maslea Scott asked her to come out and have sex with him which she had done in the past. She was willing to do so again on this occasion. After the activity had concluded the victim put her clothes back on but Maslea Scott told her to wait as his friend also wanted to have sex.
21. She immediately said no, and when Maslea Scott went off to summons Jeremiah Tula she tried to run away. Maslea Scott chased her and eventually restrained her by grabbing her bra which broke, Maslea Scott then pulled off the rest of her clothes and kicked her on the right side so she fell to the ground. Maslea Scott hit her again while on the ground on her right shoulder. He removed the rest of her clothes so she was naked. She was crying when Jeremiah Tula arrived on the scene. He immediately put his fingers between her legs and penetrated her vagina with his fingers. She told him that what he was doing was not right and was still crying. But he insisted that he must penetrate her. The victim was in great pain because of the attack on her by Maslea Scott. However she was eventually forced to climb on to the exposed penis of Tula Jeremiah while he was on the ground. She had asked him specifically not to have sex but he penetrated her and intercourse occurred. She was crying and in fear. When it was over she asked Tula Jeremiah to fetch her clothes which had been taken away by Maslea Scott. They then went to a nearby house where Tula Jeremiah helped dress her bruises he gave her a thousand vatu for her to go to hospital. She reported the matter to the police.
22. The Court of Appeal observed that:

“... on any view this was a serious attack by two men on a defenceless young woman. The fact that she chose voluntarily and consensually to have sexual intercourse with Maslea Scott says nothing about whether she would agree to having sex with his friend. The sentencing Judge in our view correctly decided that these two men were equally culpable in their behaviour. It was Tula Jeremiah who had intercourse with her when he knew that she was not consenting. She was crying and told him not to do it and he could not have believed on reasonable grounds that she was consenting.”

On the other hand Maslea Scott having had consensual intercourse with her himself had treated her as though she were his property and available to do



what he directed so the lustful needs of his friend could be met. The time has long come when all men must know and understand that women have the right to control what they do with their bodies and what sexual activity they involve themselves in. If they cannot or will not recognise that fundamental position then they cannot remain within the community."

23. The Court of Appeal further stated:

"Even giving them a substantial allowance because these two men eventually pleaded guilty, in our judgement a sentence of five or six years would not have been interfered with by this Court on appeal. That is the level of deterrence and condemnation which must be imposed on those who behave in this way.

...

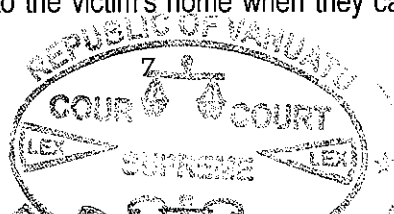
Regrettably in this case these two men were given false hope in a sentence which was manifestly inadequate and wrong in principle. Only because of the effect of that sentence and an unjustified but perhaps understandable feeling of injustice which the respondents may now feel, we have with a degree of reluctance decided that the sentence of imprisonment should not be increased but the order for suspension could not possibly continue.

We note that the sentencing Judge indicated that for all first offenders an immediate term of imprisonment was automatically ruled out. That is not the law. If people with no previous convictions get a first conviction for a serious matter then they must expect to go to prison and there can be no possible practice which says that everybody is dealt with on a first charge with not more than a suspended sentence.

Although the sentence is still much below that which would otherwise have been justified, we conclude that the appropriate and just course is to allow the appeal and confirm the three (3) years sentence but to quash the order for suspension.

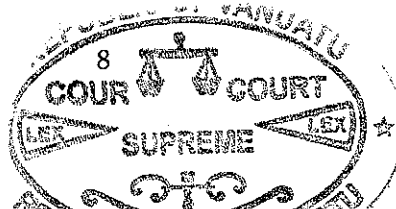
24. The second case is the case of Public Prosecutor v Frank [2005] VUSC 144; CRC 076 2005 (15 December 2005). There were two defendants in this case (Jimmy Frank and Charley Don).

25. Mr Charley Don and Mr Jimmy Frank, each had pleaded guilty to a count of rape, that is a particularly serious offence here in the Republic of Vanuatu because the maximum potential sentence is life imprisonment for each of them. This happened on 19 November 2005 at about 5am in Port Vila. The complainant is 23 years of age, Mr Charley Don, is 15 years of age and Mr Jimmy Frank, is 29 years of age. The victim had been to a wedding ceremony at Anamburu area, she did not want to come home in the early hours of the morning because she was scared of potentially drunken people. However about 4:30am, she and her aunt were making their way to the victim's home when they came across the defendants. The

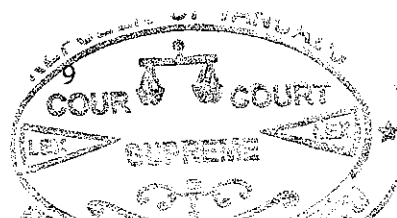


defendants offered to accompany the victim home and eventually Mr Charley Don went away with the victim and he was holding her hand firmly. She tried to get away from him but he blocked her mouth and threw her to the ground. She got up and ran away to a neighbour's yard but he located her again and dragged her back to the place where he had earlier been struggling. There he removed her trousers and her panties and penetrated her by way of rape. Mr Jimmy Frank was behind the couple when they were having that unlawful intercourse, he was half dressed, he took over when his co-offender committed the crime and penetrated the victim again. A taxi came across Mr Don. Mr Don made his way off, Mr Frank was apprehended and taken to the police station. Mr Don was allocated afterwards and was arrested.

26. The victim suffered some lacerations to the back of her elbows and the back of her buttock and she was also 21 weeks pregnant. A report and a statement from the victim provided by the prosecution. She said she did not feel good anymore and she felt shame as a result of what had happened. She said the incident kept on repeating in her mind. She never thought or expected that something like that would happen to her, she feels constrained now in going out walking and doesn't want even to visit her families as she did before, she said that she doesn't visit her friends anymore. She conferred that she would not accept any custom settlement although the defendants tried to deal with the matter by way of compensation by custom.
27. In that case, Treston J, said the lawyers have both referred in some details to the Chief Justice's decision in the Public Prosecutor v Ali August, Criminal Case 14 of 2000. In August, the Chief Justice, said, among other matters, that rape committed by two or more men acting together as you were the starting point should be 8 years imprisonment. Treston J. took that as the starting point. Treston J. also said, the Chief Justice in Public Prosecutor v Ali August [2000], pointed out various aggravating features which can increase the starting point from that 8 years term. Teston J. reasoned that, in Public Prosecutor v Frank [2005] case, that aggravating features include violence use over and above the force necessary to commit rape, because Mr Don threw the victim to the ground having held her very firmly, Mr Don blocked her mouth and proceeded to rape her, Mr Don stood by Mr Frank and a party to that, who raped again was repeated and the effect upon the victim in her everyday life has been significant.
28. Treston J. considered that the existence of the aggravating features mean that the starting point should be higher than the 8 years he considered that it should be 9 years imprisonment, from that he deducted the sentence for mitigating facts and the early guilty pleas to bring the appropriate sentence to 6 years imprisonment for each defendant and a further reduction of 2 months for willingness and attempt to deal with the matter by way of compensation by custom. He took into account of the time already spent in pre-custodial period, he sentenced the two defendants each for 5 years and 9 months imprisonment.

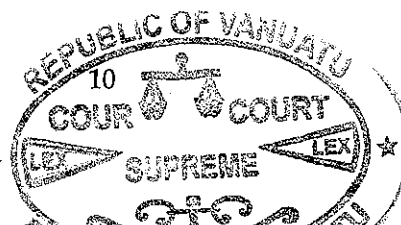


29. The third and last case is the case of Public Prosecutor v Rarua [2008] VUSC 16; Criminal Case 64 of 2007 (2 May 2008). This was a case of nine accused (Wilson Rarua, Barry Pakoa, Newa Kabea, James Kelly, Bule John, Maxime Lewawa, Philip Avock, Terry Sam and Jimmy Jonas) who appeared for sentence having pleaded guilty to the charges facing them on the 4th February 2007 when they were convicted of the offences they were charged with.
30. The offences which they have been convicted of are the following:
- a) Wilson Rarua has been convicted of being a party to sexual intercourse without consent which is called rape;
 - b) John Bule, Maxime Lewawa, Jimmy Jonas, Barry Pakoa and Newa Kabea have all been convicted of rape;
 - c) James Kelly, Philip Avock and Terry Sam have all been convicted of indecent assault.
31. All of these offences were inflicted on that same victim in one attack. The complainant was the former girlfriend of Rarua. She met Rarua in Tebakor and he lured her to a place where he had arranged for friends of his, the other defendants to rape her. The reason why he had done this was to punish her, because it had been reported to him that she had been drinking with some boys down on the beach and that apparently upset him.
32. The first man she found there came up behind her that was John Bule. He held her by the neck and told her to lay down and he was going to have sex with her. He was told by her that she did not want it. He held her neck and her nose and mouth with his other hand, she cried out but no one heard. He pushed her down onto the ground and had sex with her by force. Then he told her that everyone else who was there, all the other defendants, were going to have sex with her.
33. The second man then had sex with her. The third man then had sex with her, this time her legs were being held by another man and a knife being put against them. Then a fourth man raped her using a condom on that occasion. Then a fifth man raped her having slapped her beforehand. She was then indecently assaulted by three other men in various ways. This was a cowardly and cruel attack by a gang of young men, picking on one young girl. No less than eight men all raping or indecently assaulting one girl at once.
34. The victim impact statement is in Bislama, this is what the girl said:

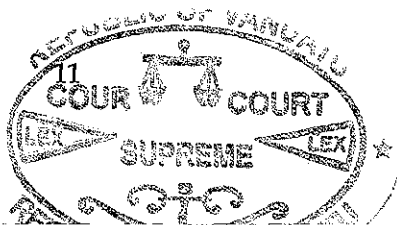


"During long taem blong incident ia taem ol boys ia oli holem tight mi, mi lusum hop wantaem, mi filim mi fraet, mi seksek, mi filim private part blong mi ipainful mo mi cry nomo, taem oli stap havem sex wetem mi mo even long taem ia mi no laikem fasin we oli mekem long me ia. Afta long taem blong incident ia long solwota ol boy ia oli ronwe long mi, mo mi wan nomo mi stap long tudak mo mi wokabaot igo blong washem bodi blong me long solwota, from bodi blong mi itoti long sperm blong olgeta. Taem ia mi draon igo insaed long solwota, be mi filim private part blong me ipainful tumas insaed mo even bel blong mi tu istap soa, mi bin cry me seksek mo mi fraet tumas mo mi no save pulum gud win while mi stap wokabaot follem road. Naoia igo, taem mi luk ol boy ia me feelim mi same tumas. Psychologically mi feelim olsem mbai isave affectem mi long skul mo long future blong mi. mi talem olsem ia from se samtaem taem mi stap sidaon mi wan me recallem back fasin we ol boy ia oli mekem long mi. Mi filim nogud tumas mo even samtaem mi filim skin blong mi ikolkol long hem, mo icausem mi drauma mom bai mi save kasem wan rabis sick long fasin we oli mekem long me ia long future. That's why mi stap fraet long hem naoia".

35. That is what she feels about what all the defendants did to her.
36. Tuohy J. stated the following in that case: Defendants did not treat her like a human being. This was very bad case of rape where defendants caused her pain and humiliation, physical and mental. What defendants would think if this was done to their mother or sister.
37. There are several aggravating features. Each of defendants raped her as part of a gang. Each of defendants when they raped her knew that she was to be raped by others after each defendant or just been raped by other because they saw her raped by their friends and then raped her or they raped her and then saw, knowing that their friends were going to come after them.
38. There is also the use of force, by Bule initially and then a knife was held to her leg. Also this was done not just for sexual gratification but to hurt her and humiliate her deliberately. In doing this they are all cowards and they should stand in shame for this, they should stand her in shame.
39. The excuses that some of them gave that they were pressured to do it by Rarua, or they were afraid of being thought weak if they did not join in, those excuses are pathetic. They just show even more how weak they are. Those of them who say now they did not want to do it were too weak, they did not have the courage to say "no" in front of their friends. Some of them say now that they have remorse but there has been little sign of that that he (Judge) has seen. Usually guilty pleas are a sign that maybe they are sorry. In this case the guilty pleas were entered at the last moment, on the morning the trial was to start, after they pleaded not guilty and then after they tried to change those pleas. So he (Judge) does not believe that any of them are very sorry at all except maybe they are sorry for themselves.



40. Tuohy J. then considered the overall circumstances of the offending with the criminal culpability of individual defendant. In that case, nearly everyone of these aggravating features is present in whole or in part. In that case, there was more violence used than just that involved in sexual intercourse without consent. This girl's neck was grabbed and mouth and nose held and she suffered pain in that way. In that case, a weapon was used to frighten her, a knife. In that case, the rape was repeated, in fact it was not two or more men acting together, it was eight men acting together. The rape was planned beforehand. As well as the actual completed rapes she was caused other indecencies for which other three defendants (Avock, Kelly and Sam) are charged. The complainant girl was only 17 years old, just starting her adult life or about to start. In addition, the mental effects of being tricked and raped by 8 men at the planning of the person she thought of as her boyfriend will have serious mental effects on her for a very long time.
41. Tuohy J. referring to the case of Public Prosecutor v Scott and Tula [2002] VUCA 29 in which the Court of Appeal upheld what the Chief Justice said in an earlier case in Public Prosecutor v Ali August [2000] VUSC 73. He applied those principle rules on rape sentencing considerations or approaches to the individual in Public Prosecutor v Rarua case as follows:
- Wilson Rarua – the sentence start point is 11 years, some 3 years reductions for guilty plea (which also apply for parole). There was further deductions for time already spent; Rarua has a final end sentence of 7 years 4 months and 10 days;
 - John Bule received the same starting point of 11 years and after relevant deductions for the guilty pleas and time already spent, Bule has a final end sentence of 7 years 4 months and 10 days;
 - Maxime Lewawa and Jimmy Jonas received each the starting point of 10 years and after relevant deductions for guilty pleas and time already spent in custody, each has a final end sentence of 6 years 4 months and 10 days;
 - Berry Pakoa received a starting point of 10 years and after appropriate deductions for guilty pleas and time already spent, he has a final end sentence of 5 years and 9 months imprisonment;
 - Newa Kabea received a starting point of 10 years and after appropriate reductions for guilty pleas and time already spent, he has a final end sentence of 6 years and 3 months imprisonment;
 - James Kelly (offence of indecent assault – close to attempted rape but not charged with), received a starting point of 7 years, after appropriate deductions for guilty pleas and time already spent, he has a final end sentence of 3 years 6 months and 26 days imprisonment;

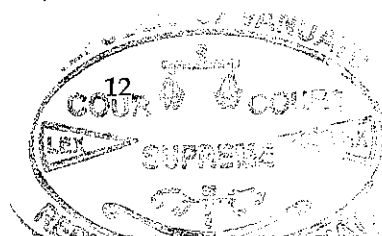


- Philip Avock received a starting point of 7 years, after appropriate deductions for guilty pleas and time already spent, he has a final end sentence of 3 years 7 months and 6 days; and
- Terry Sam received a starting point of 2 years and 9 months (offence of touching the girl's private part and was amongst the gang most of whom raped her) and after appropriate deductions for guilty pleas and time already spent, he has a final end sentence of 1 year 4 months and 10 days.

42. Here, I take all the above into consideration. I remind myself of the principle rules of sentencing on rape or sexual intercourse without consent as set out in *Public Prosecutor v August* [2000] VUSC 73 which was upheld in *Public Prosecutor v Scott and Tula* [2002] VUCA 29. I note the factual circumstances of the case of *Public Prosecutor v Scott and Tula* [2002] VUCA 29. They are and can be distinguished from the present case. I note also the factual circumstances of the case *Public Prosecutor v Rarua* [2008] VUSC 16, they are more serious than the present case. The factual circumstances of the case of *Public Prosecutor v Frank* [2005] 144 were more comparable and similar to the present case.

43. In the present case, most of the aggravating features identified in *Public Prosecutor v Ali August* [2000] VUSC 73 are present including:

- Rape or sexual intercourse without consent is committed by two men acting together over the same woman (a multiple rape or gang or pack sexual intercourse without consent);
- Violence was used over and above the force necessary to commit sexual intercourse without consent;
- The complainant woman was assaulted by three (3) defendants (Kipson Yamak, Grem Nanua and Eric Jimmy) with her boyfriend before he managed to escape that night. The 3 defendants held the complainant woman captive in that bush of the Joint Court area on that night of the incident, while two (2) of them (one after the other) had sexual intercourse with her without her consent;
- A weapon (a knife) was used by one of the two defendants (Grem Nanua) to force or threaten the complainant to have sexual intercourse with her without her consent;
- The complainant was rescued by the arrival of police officers that night at that corner of the Joint Court area;



- There is no doubt about the mental effects of this group sex perpetrated on her that will be with her for a long time in her life.

44. In the present case, I assess the sentence start point to be of 9 years imprisonment on the lead offence of sexual intercourse without consent based on Public Prosecutor v Frank [2005] VUSC 144.

IV. Personal Mitigating Factors to Mr Gibson and Mr Grem Nanua and End Sentence

45. I will deal with the individual situation of both defendants.

Mr Gibson lamak

46. Mr Gibson lamak, you are 20 years old and you come from Lounara Village, West of Tanna Island. You are currently residing at Independence Park Area, Port Vila. You have three brothers and one sister. You are the oldest child of the family. You are a single man. You said to have good relationship with your chief and community.

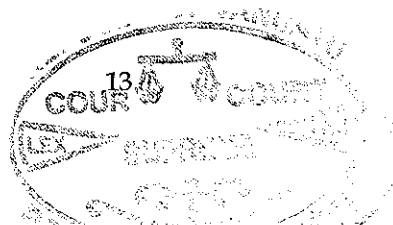
47. You attended Lounapkiko Primary School on Tanna. You continued your education at Seaside Junior Secondary School but did not complete it due to financial difficulties. You said you have skills in gardening and soccer playing. Your ambition is to develop your land back on your island. You are a member of the Presbyterian Church.

48. You are a first-time offender. You do have previous conviction. I do not sense any remorse or contrition from the pre-sentence report. I note that you have performed custom compensation ceremony to the complainant and the complainant and her family accepted it. Again, I sense that you did this to deduct some period from your total sentence but not expressing any remorse and contrition. Your past good record have little relevance for your sentencing.

49. I give you a credit reduction of 4 months to reflect the fact that you are a first-time offender and you have performed a custom compensation ceremony which is accepted by the complainant and her chief.

50. I give you a further credit reduction of 33% for your guilty pleas given at the earliest opportunity by the court.

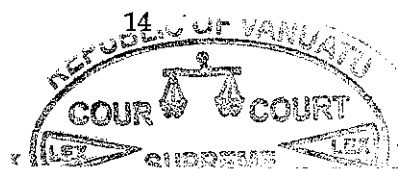
51. Your remaining sentence balance is 70 months i.e. 5 years and 10 months imprisonment.



52. You were remanded in custody for 2 weeks and 2 days commencing on 30 January 2024, and you were released on bail on 15 February 2024. This period of time already spent in custody shall be deducted in your favour.
53. The remaining balance of your sentence is now 5 years 9 months and 14 days imprisonment for the leading offence of sexual intercourse without consent.
54. You are also sentenced to 10 months for intentional assault contrary to Section 107(b) of the Penal Code. The sentences are to be served concurrently. Your end sentence is 5 years 9 months and 14 days. This is your end sentence. This sentence of imprisonment is not going to be suspended.

Mr Grem Nanua

55. Your date of birth is 14 September 2006. You were 17 years when you committed this offending, you are now 18 years of age. You come from Tanna Island but you now reside at Independence Park area, Port Vila with a relative of yours.
56. You said you completed your Year 10 secondary education at Tafea College. You are eligible to go to Year 11 but then you committed this offending and your academic journey discontinued.
57. You said you have abilities or skills of electrician, carpentry and capable of doing engineering work. Your ambition is to build houses (commercial purposes) to support your family in your custom land on Tanna Island. You want to become an engineer to support your family in the future. You have three brothers and three sisters. You are the second child of the family. You have good relationship with your family, chief and community. You are a single man. You stated to have rare medical status such as muscle weakness and chronic headaches. You go to hospital for treatment when you needed to do so. You are unemployed. You depend on your parents to support you financially. You said you are a Christian and worshipper of the Seventh Day Adventist (SDA) doctrine and attend church every Saturday. But you said you consumed alcohol and smoked cigarettes – which are not in accord with the SDA faith (your church).
58. You are a first-time offender with no previous offending history. You were drunk and you could not control your sexual desires for women (those excuses cannot be accepted). You stated that you are now regretting your actions and realized that your actions were unlawful. You said whenever you saw the victim, you are ashamed.
59. You said you have performed a custom compensation ceremony at Freshwater Round House with exchange of custom items. The victim attended and accepted the custom compensation ceremony. You stated that the victim, after the custom compensation

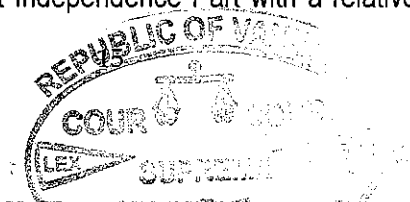


ceremony, attempted to write to the Public Prosecutor to withdraw the case but it was not possible.

60. I take all the above matters into account. I give you a credit reduction of 4 months to reflect all these mitigating factors.
61. I give you a further credit reduction of 33% for your guilty pleas given at the earliest opportunity.
62. The remaining balance of your sentence is 70 months i.e., 5 years and 10 months imprisonment.
63. I give you a further reduction of 3 months to reflect on your young age and immaturity.
64. The remaining balance of your sentence is now 67 months i.e., 5 years and 7 months imprisonment.
65. You were remanded for a period of six weeks and one day from 3 January 2024 to 15 February 2024. You are currently on bail waiting for your sentencing. The time you have already spent in pre-custodial period will be deducted in your favour.
66. Your final remaining balance of your sentence is 5 years 5 months and 11 days imprisonment. You are also sentenced to 10 months imprisonment for the offence of intentional assault contrary to Section 107(b) of the Penal Code Act.
67. The sentences are to be served concurrently. Your end sentence is 5 years 5 months and 11 days imprisonment. This sentence of imprisonment is not going to be suspended.
68. Your end sentence is 5 years 5 months and 11 days imprisonment.

Mr Eric Jimmy – Sentence start point, mitigating factors and end sentence

69. Mr Eric Jimmy, you are the one who assaulted the complainant on her face and continued to assault her on her hand and head and removed her mobile phone from her. You knew the plan of the offending because after you assaulted the complainant and removed her mobile phone, the complainant was held captive in that bush of the Joint Court area in the hands of the co-offenders when you come up the hill and escaped.
70. Your sentence start point is 4 years imprisonment.
71. In mitigation, you said you came from Lounilapen village, West of Tanna Island. You are 22 years of age. You reside at Independence Part with a relative Able Nako. You have four

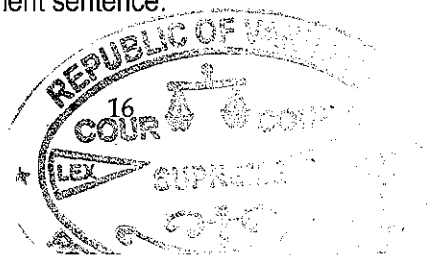


brothers and one sister. You are the eldest child of the family. You are a single man. You are unemployed. You are dependent on your guardian in Port Vila to support you in your daily life and financially while you are in Port Vila.

72. You attended Lounapkiko Primary School. You have skills in gardening and soccer playing. You have good relationship with your family, chief and community. You drink alcohol and smoke cigarettes.
73. You are a first-time offender. You stated that you were afraid and you assaulted the victim and took her mobile phone as an act of revenge. This excuse is not accepted. The main contributing factor to your offending was anger and overdose of alcohol liquor.
74. You felt sorry for what you did to the victim and you asked for forgiveness from the victim. You said also that you have performed a custom compensation ceremony to the victim and the victim accepted the custom compensation ceremony and the custom items exchanged at the ceremony.
75. I give you a credit reduction of 4 months to reflect on your mitigating factors.
76. I give you a further credit reduction of 33% of your sentence for your early guilty pleas given at the first opportunity.
77. The remaining balance of your sentence is 30 months i.e. 2 years and 6 months imprisonment.
78. You were remanded in custody for 1 months and 12 days commencing on 03 January 2024 to 15 February 2024. You are now on bail waiting for your sentencing. The time you have already spent shall be deducted from the sentence in your favour.
79. The remaining balance of your sentence is further reduced to 2 years 4 months and 15 days imprisonment.
80. Your end sentence is 2 years 4 months and 15 days imprisonment on both offences of theft and intentional assault causing no injury concurrently. The nature and seriousness of the offences do not justify a suspension of this imprisonment sentence.

SENTENCE ORDERED TO SERVE

81. Mr Gibson Iamak, Mr Grem Nanua and Mr Eric Jimmy, each of you is ordered to serve the following term of imprisonment sentence:




- Mr Gibson lamak – 5 years 9 months and 14 days imprisonment effective immediately;
- Mr Grem Nanua – 5 years 5 months and 11 days imprisonment effective immediately;
- Mr Eric Jimmy – 2 years 4 months and 15 days imprisonment effective immediately.

82. Each has 14 days to appeal his sentence if he is unsatisfied with it. The 14 days start on the date of this sentence.

DATED at Port Vila, this 15th day of May, 2024

BY THE COURT


Hon. Chief Justice Vincent LUNABE

