

PUBLIC PROSECUTOR -v- PETER WAYANE
BROWNEY TOM
MONI WAYANE
RICHARD NAUT
CHRISTIAN BOB
FREDERICK HARRIS

Mrs. Heather Lini LEO for the Public Prosecutor.
Mr. Stephen JOEL for the Defendants.

SENTENCE

In Count 1, 2 and 3 Defendant Peter Wayane, Christian Bob and Frederick Harris all aided Browney Tom, Moni Wayane and Richard Naut to rape Amone Arsen.

All 6 defendants pleaded guilty to all their respective counts.

In brief Peter Wayane who is Amone's boyfriend has sexual intercourse with Amone. For some unknown reasons, after Peter having sexual intercourse with Amone Peter then let the other five defendants to have sexual intercourse with Amone, of which Browney Tom, Moni Wayane and Richard Naut actually had sexual intercourse with Amone while Christian Bob and Frederick Harris aided such rape. Christian aided by holding tight Amone's mouth when she cried for help while Frederick was guarding at the door way of the rotten house.

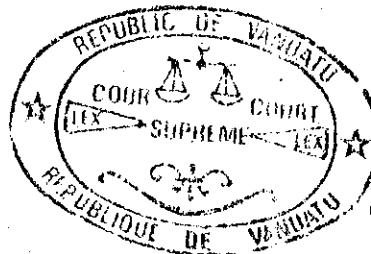
On the undisputed brief facts Amone cried, she felt much pain around her private part area and she was even very weak after being raped.

Law

Pursuant to Section 30 of the Penal Code, an accomplice or an aider to the criminal offence is treated no differently to the person committing the offence. In this case the Court will treat all the defendants in the same categories for rape but the sentence for punishment will be different in accordance with their involvement.

The punishment for rape under Section 91 is life imprisonment of the Penal Code.

Relationship



All the defendants plus the victim all from Erakor Village and have known each other very well. The situation arose when Peter invited Amone to see him at that rotten house. That's where the actual offence was committed by the defendants. Peter is the main culprit and that he was the one invited Amone, without his invitation the rape could not come about. He cannot be denied raping her also by standing by and sending the other boys to rape her.

Mitigation

No relevant prior conviction entered against the defendants. They all pleaded guilty to their respective charges. With note to the part evidence of Amone she was wanting to withdraw the charges against them, in other way she was condoning what they did to her. However that does not remove the criminal act of the defendants. What they did was they committed a forbidden act forbidden by the law and that is for raping her and aiding and they must be punished for what they did according to law. What she stated in her part evidence will benefit towards sentence but not the conviction.

Customary settlement

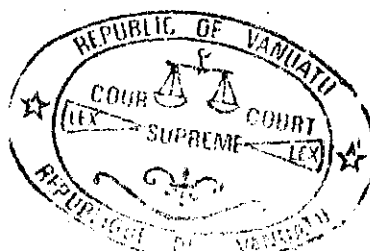
Amone's father arranged a meeting where the defendants made apologies to the victim followed with shaking hands and payments of ten mats, VT10,000, two pigs, kava and some more other island foods.

Reconciliation

The law under Section 118 of the C.P.C allows for reconciliation to take place between the parties on a criminal offence and section 119 the court is to take into account of any customary payment made by custom over the offence itself. The Court in sentencing cannot ignore customary settlement in assessing quantum of sentence as Section 119 allows that to take place between the parties. The Law recognize reconciliation and customary settlement and the Court must apply in terms of sentencing as that is the way of life accepted by the community and recognize by law.

In view of my stated reasons I will impose a custodial sentence as opposed to other form of sentencing. This may not go down well with the relatives of both parties and even the defendants as the matter had been settled by custom and they may ask why punish the offenders again when they had paid the price of what they did in the custom. A defendant commits an offence must pay the price for the penalty described by such offence and customary settlement cannot exchange such punishment but can only use to ease the ill feelings between the parties and their relatives and also as stated above it benefits sentence.

In consideration of the appropriate penalty to be imposed in this matter I have to draw a balance between the penalty under Section 91, the condolence by the victim herself and the customary settlement between the defendants and the relatives pursuant to section 119 of the CPC. In light of these considerations the



Court should not be in isolation of its from the community in consideration as to what is an appropriate sentence to impose. In view of this warning I will impose the following sentence:-

1. Richard Naut for Rape under section 91: is convicted and sentenced to three years imprisonment.
2. Moni Wayane for Rape under section 91: is convicted and sentenced to three years imprisonment.
3. Browney Tom for Rape under section 91: is convicted and sentenced to three years imprisonment. I will suspend such sentence pursuant to the restriction in law under section 38. As per record of the defendant in his statement he was born in 1984 and by 1999 he will be 15 years old. Year 2000 is not over as yet and for that reason this court treat him as still 15 years old which section 38 of the P.C applies to him as a minor. In suspending his sentence of three years he shall not commit any offence against any Act, Regulations, Order or Rule within the period of three years. If he commits any offence within the period of three years from today then he shall now serve his sentence of three years.
4. Peter Wayane for Aiding Rape under sections 30 and 91: is convicted and sentenced to two years imprisonment.
5. Christian Bob for Aiding Rape under sections 30 and 91: is convicted and sentenced to two years imprisonment.
6. Frederick Harris for Aiding Rape under sections 30 and 91: is convicted and sentenced to two years imprisonment. I will suspend such sentence pursuant to the restriction in law under section 38 of the P.C As per record in his statement he was born in 1984 and by 1999 he will be 15 years old which section 38 of the P.C applies to him as a minor. In suspending his sentence of two years he shall not commit any offence against any Act, Regulations, Rule or Order within the period of three years. If he commits any offence within the period of three years then he shall now serve his sentence of three years.
7. The above sentences the balance of customary payment and settlement, the condoning by Amone and other mitigating factors were taken into account for me to arrive at those penalties as appropriate penalties to impose by this court.

Dated at Port Vila, this 20th day of October, 2000.

