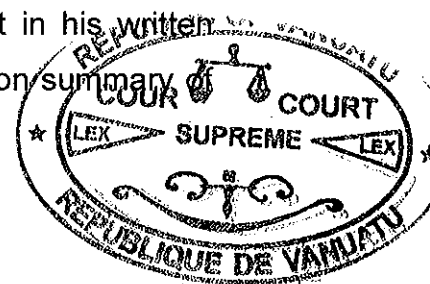


PUBLIC PROSECUTOR
V
SERAPHINE SERAKE

Coram: Judge Macdonald
Public Prosecutor: Mr G Csiba
Accused: Mr W Vira
Date of Sentence: 15 October 2010

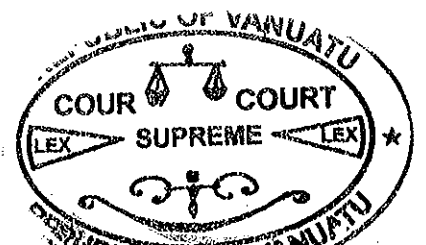
SENTENCING

1. Mr Seraphine on 17 September 2010 you pleaded guilty to one count of having sexual intercourse without consent, contrary to s.90(a) of the Penal Code. The maximum penalty is life imprisonment.
2. You were initially to stand trial in Malekula on 3 September 2010 but you failed to appear, absconding the day before your trial. I recall that the victim had come to court to give evidence but of course that did not happen. A warrant was issued for your arrest. You were taken into custody on 15 September 2010.
3. You had lived with the victim for two years and you had married her in kastom. This is a representative charge and reflects a course of conduct during 2007. You had sexual intercourse without her consent. This was penile penetration of her vagina and her anus. The actual number of times this happened has not been specified. Your counsel, Mr Vira, now suggests that it happened only once but in his written submissions he accepted the accuracy of the prosecution summary.



facts. I intend to proceed on the basis that it happened on several occasions.

4. Essentially you had sexual intercourse whenever you felt like it. You paid no regard to the wishes of the victim, let alone whether she might have consented. You overcame any resistance by the use of force. By that I mean that you assaulted her, and this was all to satisfy your sexual needs. You treated her as a possession. You owned her and you could do to her what you liked.
5. You also abused and threatened her to make sure that she did not complain to the police.
6. Regrettably I know little about the victim or about what impact your offending might have had upon her.
7. Your personal circumstances are set out in the pre-sentence report. You are aged 33. You live in Malekula where you are involved in the church and in community work. You are a farmer. You are prepared to offer a kastom reconciliation to the victim. It also appears that you are now ashamed and remorseful for what you did. You have come to realise that the victim had rights as an individual, and she was entitled to have them respected.
8. The dominant purposes of sentence must be to denounce what you did and it must deter you and others from acting in a similar way in the future. You must be held accountable for the harm to the victim, although having said that I have little information to go on.
9. As to sentence I have had regard to *Public Prosecutor v Scott & Tula* [2002] VUCA 29, where for a contested rape with no aggravating or mitigating features the appropriate starting point was said to be 5



years. Strictly speaking you do not fall into that category but I will nonetheless take 5 years as the starting point.

10. For the repeat nature of the offending and the associated violence, which went beyond that inherent in the rapes themselves, I add on a further two years.

11. As to mitigating factors I make a deduction of six months to recognise your status as a first offender and your remorse. There is then your guilty plea. Had it been earlier I would have allowed a one third deduction but in the circumstances I allow 18 months, which is a deduction of about 25 %. That brings it to 5 years, from which I deduct the month spent in custody.

12. You are convicted and sentenced to 4 years 11 months imprisonment.

13. You have the right to appeal against this sentence. That right must be exercised within 14 days.

Dated at Port Vila, this 15^h day of October, 2010

BY THE COURT



**J. Macdonald
JUDGE**

