

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Criminal Jurisdiction)

Criminal Case No. 95 of 2007

PUBLIC PROSECUTOR

-V-

TIMOTHY DANIEL

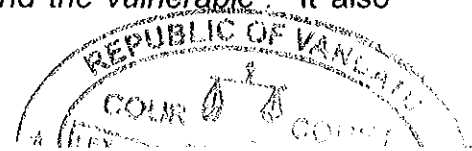
Coram: Justice N. R. DAWSON

Date of Sentencing: 14th December, 2010

*Counsel: Mr. P. Wirick for Public Prosecutor
Mr. E. Molbaleh for Accused*

SENTENCE

1. Mr. Daniel appears today for sentencing on a charge of Unlawful Sexual Intercourse Without Consent.
2. Between the years 2006 and 2007 the Defendant was having sexual intercourse without the consent of the victim. This happened on several occasions in the village of Burao. It usually took place when the Defendant had kava at the victim's house with her parents and when they finished drinking kava he would pretend to walk back home but hide and then jump through the window and go inside the bedroom of the victim and then forcibly hold her and have sexual intercourse with her against her will. This occurred on many occasions.
3. I note Mr. Daniel you are 58 years of age and you have no previous convictions. You also have some medical conditions that cause you some concern. I have read the sentencing submissions from the prosecution and also for the defence and have also perused the probation report. In sentencing you today Mr. Daniel, it is necessary that you are held accountable for the harm that you have caused by your offending. It is necessary for me to denounce your behaviour. It was noted in the Court of Appeal in PP v. Scott App 02 of 2002 that "*men must learn they cannot obtain sexual gratification at the expense of the weak and the vulnerable*". It also



notes that only in the most exceptional circumstances would imprisonment not follow offending of this type. Women in the community are entitled to be protected from sexual predation, they should be able to live their lives normally without the fear of people such as yourself going into their house at night and forcing them to have sex. Your behavior is appalling and is very grave.

4. There are aggravating features to your offending, the first aggravating feature is, you used force to commit your ongoing offending. There was also an abuse of trust in that the victim was a close relative. You also offended in this way on a number of occasions.
5. In mitigation, you entered an early guilty plea and you have conducted a custom ceremony. In the probation report it notes that you are classified as a low risk detainee at the remand center. You also have apparently performed a custom ceremony to the victim's family and made the following gifts to that family, a pig with tusks worth VT 60,000, 5 mats, kava, island food and VT 1,000 in cash.
6. Mr. Daniel your offending is very serious and it must result in a sentence of imprisonment. In my view the starting point of 5 years needs to be increased by 1 year, after taking into account the aggravating factors, taking to total of 6 years imprisonment. I then take into account the mitigating factors and you are convicted and sentenced to a term of imprisonment of 4 years. I note that you have served 11 days in prison in March 2007 and you have been remanded in custody since 1st November, 2010. You have therefore already served 45 days. You therefore have a balance to serve of 3 years 1 month and 15 days to serve from today.
7. You have the right to appeal this sentence. For any appeal, you must lodge a notice of appeal within 14 days of today's date.

Dated at Port Vila, this 14th day of December, 2010

BY THE COURT


N. R. DAWSON
Judge

