



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

Criminal Case No. 11 of 2010

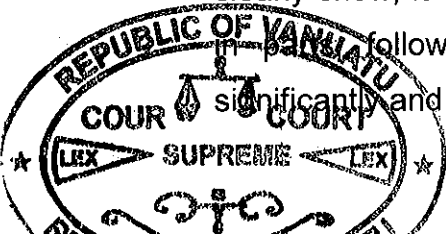
PUBLIC PROSECUTOR
V.
ISHMAEL JEFFREY

Coram: Justice D. Fatiaki
Counsel: Mr. Tristan Karae for the State
Mr. Tom Loughman for the Defendant
Date of Sentence: 9 June 2010

SENTENCE

On 2 March 2010 the Defendant Ishmael Jeffrey pleaded guilty and was convicted for an offence of Sexual Intercourse without consent contrary to section 90 and 91 of the Penal Code Act [CAP. 135]. The particulars of the offence admitted by the Defendant alleges digital penetration: "*Pushum finger blong you iko insaed long vagina blong hem*" which is a sufficient *actus reus* in the amended definition of 'sexual intercourse'. [see: section 89A (a) of the Penal Code which came into effect on 1 March 2007].

The brief facts of the case which were admitted by the Defendant are that on 9 January 2010 the complainant finished work and was walking home at about 3 p.m. On the way she decided to follow a 'shortcut' which led past the Beach Volley Ball Court, around the back of the Stade Correctional Centre and through to the Fresh Wota Area where she lived. The 'shortcut' as the police photos clearly show, is an unformed dirt track which runs through overgrown grass and, follows a concrete wall and chain line fence where it narrows significantly and is hidden behind overgrown vines and trees.



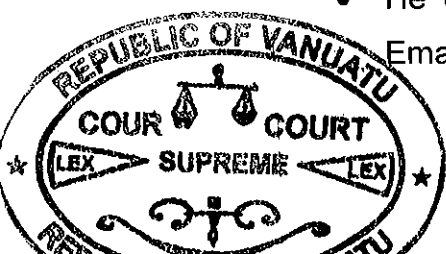
It was near this narrowest part of the track that the complainant met the Defendant who asked her where she was from. The complainant told him she was from Tanna and as she continued on her way, the Defendant got hold of her. The Defendant tried several times to kiss the complainant on the mouth but she managed to avoid his attempts by turning her head. The Defendant then pushed his left hand into the complainant's panties and she felt the Defendant's fingers penetrating her vagina. The complainant called out but no one came to her aid. She was at this time, pinned hard against the chain link fence and, despite her efforts to free herself, she could not overcome the Defendant's tight grip on her. Eventually, the Defendant was disturbed by 2 approaching men and he released the complainant who immediately complained to the men. The men then pursued and caught the Defendant and confronted him with the complainant and the Defendant apologized to her for his actions.

The Defendant was later arrested and interviewed by the police and he admitted indecently assaulting the complainant in the manner described.

To the Probation Officer who prepared the pre-sentence report, the Defendant is recorded to have said that there was no planning involved in the commission of the offence which happened on the spur of the moment. The Defendant claims that when he first laid eyes on the complainant, he was so overcome with sexual desire towards the complainant that he could neither control himself nor resist the temptation. In the Defendant's own words to the Court: "*I had rubbish thoughts*".

The other relevant personal characteristics disclosed in the Defendant's pre-sentence report are:

- He is 23 years of age, single and the only son in a family of five siblings;
- He completed his primary school education at his home island of Emao and started secondary school at Ambae but did not finish;



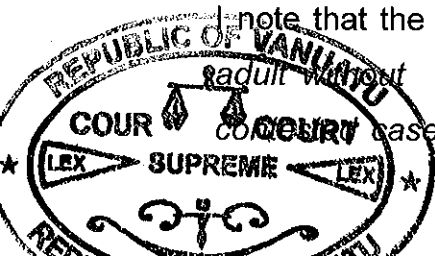
- He returned home and lived a subsistence existence which he supplemented by fishing;
- He successfully completed a certificate in fishing from the Vanuatu Maritime College;
- He was employed as a security guard at the time of committing the offence;
- He regularly consumes alcohol and cigarettes and was a user of cannabis;
- He has a previous conviction for Indecent Assault committed in 2006 for which he was sentenced to 2 ½ years imprisonment.

I have also considered the helpful submissions provided to the Court by defence counsel and have noted the following mitigating factors urged on your behalf:-

- Your guilty plea which is acknowledgment of your wrong-doing and shows some remorse on your part. It also, importantly in a case of this nature, spares the complainant/victim from the additional trauma and embarrassment of having to relate the sordid details of the incident in Court;
- You also cooperated fully with the police and admitted the offence when interviewed.

The Public Prosecutor has also assisted in drawing the Court's attention to several sentencing precedents including, PP v. Ali August (Criminal Case NO. 14 of 2000); PP v. Scott Appeal Case No. 2 of 2002 and PP v. Ronsly Criminal Case No. 8 of 2009. From perusing these cases I am satisfied that an immediate custodial sentence is the only appropriate sentence for an offence of sexual intercourse without consent which carries a maximum sentence of life imprisonment.

I note that the cases establish that "*the starting point for rape committed by an adult without aggravating or mitigating features is 5 years imprisonment in a case*", namely, one where there has been a not guilty plea and the



matter has gone to trial. That however, is not the situation in this case albeit that the Defendant is not being sentenced as a first offender.

The complainant in her police statement passionately pleads:-

"Mi wantem talem se mi no laekem fasin we man ia imekem long mi mo mi wantem se Court imust punishim ol kind man olsem from sapos no bae mifala ol girl mo ol woman ino save walkabout safe long ol road long Vila ia from bae hemi save mekem fasin ia bakigen long wan narafala woman, girl or pikinini".

Her plea will not go unheeded.

Women and girls in Port Vila are entitled to feel safe when they walk along public streets and pathways at anytime of the day or night, and the Court has a duty to ensure that men who violently prey on them are removed from the streets and deterred from such unacceptable predatory behaviour.

Ishmael Jeffrey, the most lenient sentence that this Court is able to impose on you is a sentence of 3 years imprisonment which is further reduced by the period you have been remanded in custody ie 3 months and a week making an effective sentence of 2 years 8 months and 3 weeks imprisonment.

You have 14 days to appeal against this sentence if you do not agree with it.

DATED at Port Vila, this 9th day of June, 2010.

BY THE COURT



D. FATIAKI
Judge.

