

**PUBLIC PROSECUTOR**

**V**

**FATY JIMMY**

**Hearing:** 25 October, 2012

**Before:** Justice Robert Spear

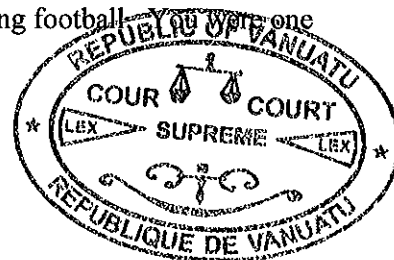
**Appearances:** Ken Massing for the Prosecution  
Henzler Vira for the Defence

---

**SENTENCE**

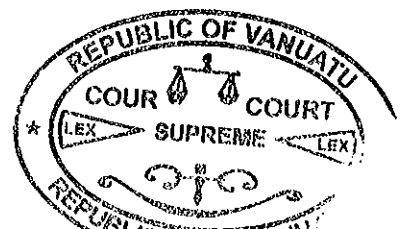
---

1. Faty Jimmy, you are for sentence having been found guilty of 1 charge of having sexual intercourse without consent. The trial took place at Isangel on Tanna over 21 and 22 August 2012.
2. The facts on which I found you guilty, and which must form the basis of your sentence, are essentially that you forced yourself on a young woman who was walking along the road and had sex with her without any concern at all for her welfare or her feelings. She was a stranger to you.
3. This offending occurred on 18 January 2010 in a rural area on Tanna. This young woman (who was then 18 years of age) was walking to her big sister's home that was nearby. She was accompanied by her much younger brother and an even younger cousin. They passed a group of young men playing football.



of the men playing football. The complainant left the road to take a short cut to her sister's home when she became aware that a man was following her. You came up to the complainant and the two small boys and engaged them in conversation for a short period of time. You were carrying a bush knife although the reason for that is not clear. At some stage you asked the complainant if you could have sex with her. She said No, that she did not want to have sex with you. You then tried to kiss her but she pushed you off – or at least she attempted to do so. You then grabbed hold of her and pulled her in to the bush. The complainant was very frightened particularly as you were carrying the bush knife

4. The complainant became concerned as to what could happen to her if you became angry with her. At one stage, you put your hand over her mouth to stop her from yelling out.
5. You forced the complainant onto the ground, lifted up her dress, removed her underpants and had full sexual intercourse with her involving the penetration of her genitalia by your penis. The force used by you to put her on the ground was reflected in the damage to her clothing; in particular, rips to her tee shirt and her skirt.
6. You were interrupted during the course of having sexual intercourse with her as the young boys had gone off to obtain help and you heard the complainant's big sister calling out for her. You then dressed yourself quickly and ran off. The complainant was found in a tearful and distressed state.
7. Your explanation at the trial was that this was consensual sexual intercourse; or, at least that was the mutual intention but that you never reached the point of actually penetrating her. You say that the complainant lay down on the ground and, lifted up her skirt in preparation for the two of you to have sex. She was not wearing underpants and you say that you saw that she was pregnant and that there was blood around her genitalia. About this time you also heard her big sister calling out for her. You then lost interest and walked away.
8. So your evidence in your defence was that sexual intercourse never took place although it was what the complainant wanted. I rejected your evidence. I note that



you still maintain your innocence and claim that the complainant has fabricated this allegation of rape against you.

9. There is some slight uncertainty in respect of your age at that time. The probation officer notes that your date of birth is not exactly known but that you are now 20 years of age. It is also stated that you were 16 years of age at the time of the offending. This offending occurred in January 2010. Your correct age appears to have been 17 years at the time of the offending. Mr Vira had taken instructions from you and he now confirms that you accept that you were 17 years of age at that time.
10. The sentence that I must impose upon you must be one that emphasises the seriousness of this offending. It must recognise that this was predatory conduct on your part. You preyed on a young woman who was obviously vulnerable being with just two very young boys in a remote area. You were able to instil fear in her because of the bush knife that you were carrying, and obviously carrying it in a way that it was noticed by her. You had sexual intercourse with her without any concern at all for the effect that this offending would have on her. Unfortunately, I do not have a victim impact statement and so I am unable to determine exactly how the complainant has managed to cope with this offending but it can be safely accepted that she would have been traumatised to a significant degree by your offending.
11. A further aggravating feature to this offending is that you were aware at the time you had sexual intercourse with her that the complainant was pregnant but you still went ahead that notwithstanding.
12. I adopt a starting point of 5 years imprisonment and then lift that by one year to an offending end point of 6 years to reflect the aggravating features to the offending. They include the predatory nature of the encounter, the presence of a bush knife and that you knew the complainant was pregnant before you had sex with her.
13. I then turn to matters more personal to you. There are unfortunately aggravating features that relate to you personally. You have a criminal record having being convicted on two occasions of burglary and indeed imprisoned for that offending.



Disturbingly, you were on parole at the time of this offending. For that aggravating feature, I lift the sentence further by one more year to 7 years.

14. I do need to recognise that you were only 17 years of age at that time and for that allowance I reduce the sentence by a year to one of six years imprisonment.
15. You are not remorseful, you show no insight into the harm which you have done to this young woman and so there can be no further deduction from this sentence. At 17, you can be considered to be a young man who should have been in greater control of your desires rather than just picking on a strange girl who was walking along the road and deciding that you would fulfil your sexual desires by using her without regard to her at all.
16. So, this sentence is one that must tell you that this is serious offending and it must sent out a strong and consistent message to the community that this Courts will not be lenient with men who attack and rape defenceless women.
17. You are accordingly sentenced to 6 years' imprisonment which will be deemed to have commenced on 31 May 2012 being the date that you are taken in to custody.
18. You have 14 days to appeal this sentence if you do not accept it.

**BY THE COURT**

