

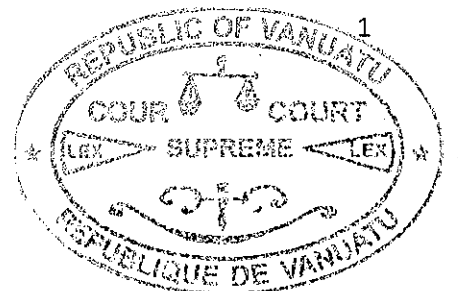
PUBLIC PROSECUTOR – VS – LENGHAN IERCET

Coram: Justice Dudley Aru

Counsel: Mr. Ken Massing for Public Prosecutor
Ms. Jane Tari for the Defendant

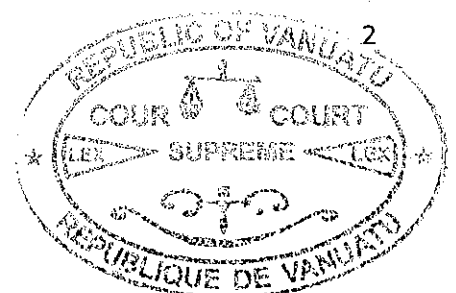
SENTENCE

1. Lengan Iercet you appear today for sentencing in this matter.
2. You were charged with one count of sexual intercourse without consent contrary to s 90 (a) and s 91 of the Penal Code [CAP 135]. On 4 February 2014 you entered a not guilty plea to the charge. The matter was then set down for trial. Following the trial hearing, on the 27 October 2014 you were found guilty and convicted of the charge.
3. Section 91 of the Penal Code provides that the maximum penalty for the offence of sexual intercourse without consent or rape is imprisonment for life.
4. A brief summary of the facts of your offending as found by the court is that on the night of 17 November 2013 you were looking for crabs along the main road to Port Olry with the victim, Menita Tasaru, your wife Shena and Sereline the victim's small mummy. You and the victim were ahead of your wife and Sereline. Upon reaching the blue hole you and the victim were returning by a different route by the coast and along the way you switched off the torch you held and holding the victim's hand pulled her towards you. Despite her clear protest that she was not happy with what you were doing, you told her to be quite and pushed her and you both fell down.
5. The victim struggled but you were lying on top of her stomach. You held her hands and pulled her skirt up to her stomach and loosened your belt and trousers then removed her



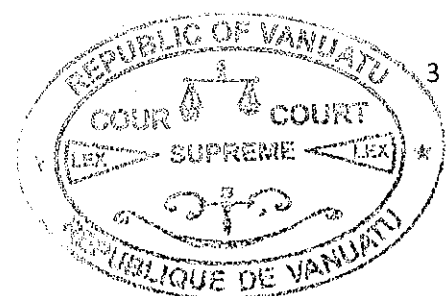
panty and rubbed her vagina before having sex with her. She cried and struggled but she was powerless because you were too heavy. You ejaculated onto her skirt then removed yourself from her. Upon returning home the victim told her small mummy that you tried removing her skirt. The next day they went to the police and the victim filed a complaint against you that you had had sexual intercourse with her the previous night. A medical report was obtained on 25 November 2013 that identified some skin injuries to her body and that she had had previous sexual intercourse .

6. In sentencing you today, I have taken into account the submissions made by the Prosecution and defence Counsel on your behalf and the Same Day Report prepared by your probation officer.
7. Lenganh lercet what you did to the victim is very serious as she calls you daddy lenghan and you accepted her as your daughter. You have a father daughter relationship but after the incident she had to collect her belongings from your house and left after what you did to her. At the time of the incident it was dark and you switched off the only torch you held and you took advantage of the victim. Despite her clear disapproval you had sex with her.
8. I am guided by established principles set out in **Public Prosecutor v Scott** [2002] VUCA 29 and **Public Prosecutor v Gideon** [2002] VUCA 7 which make it quite clear that rape cases or cases involving sexual intercourse without consent call for immediate custodial sentences and any suspension of the sentence in such cases must only be considered in the most extreme circumstances.
9. The appropriate sentence must therefore be a custodial one or imprisonment. I accept that there are aggravating factors in this case therefore I adopt a starting point of 6 years imprisonment. As an aggravating factor there is a clear age disparity. At the time of your offending you were 33 years old and much older than the victim who was 19 years of



age at that time. As the victim's small daddy you breached the trust she had in you as a responsible and caring father. I therefore increase your sentence to 7 years imprisonment.

10. Your Same Day Report says that you are originally from Hog Harbour village, East Coast of Santo and you are a first time offender with no previous convictions. You are now 34 years old and married and you have a 3 month old baby. You earn your income from farming activities such as copra, cattle and gardening and you are the sole breadwinner in your family. Your father and chief Yako speak highly of you as a person always willing to help at home and with the community and church activities.
11. No custom reconciliation has been performed as yet. The report says that you have been thinking of performing one but you say your bail conditions prevent you from contacting the victim. The victim also says that she is not ready to accept any custom reconciliation now but maybe in the future.
12. You told your probation officer that the contributing factor towards your offending was the fact that you were isolated in a particular area at night and you could not resist your sexual urges for the victim. This is not a factor which I can take into consideration as mitigation. You were a mature person of 33 yrs of age at the time of the offending and you are expected to behave like one. The isolation cannot be an excuse for your lack of self control over your sexual urges.
13. Defence Counsel submits on your behalf that you cooperated with the police and you were remanded in custody from 22 November 2013 to 11 December 2013. She further submits that there was a delay of around 11 months since the charges were laid before the matter was tried which warrants some consideration.



14. As this is your first offence and you cooperated with the Police I reduce your sentence to 5 years imprisonment. Time spent in custody prior to trial which I round off to 1 month is deducted reducing your sentence to 4 years and 11 months imprisonment. Although there has been some delay in hearing this matter, I note that during that time you were on bail and not in custody. I am not persuaded that any delay whilst you were on bail is a factor I can take into account in reducing your sentence apart from time spent in custody before trial. There were other avenues available which you could have pursued if you felt that there was unreasonable delay.
15. You were found guilty as a result of a defended trial therefore you will not be entitled to any discounts on your end sentence. Your end sentence is therefore 4 years and 11 months imprisonment effective from 27th October 2014 when you were remanded in custody prior to sentencing. Having noted what the court of Appeal has said in the above cases, this is not a case where suspension would be appropriate. It is not easy sending you to prison knowing you have a young family but this is the result of your own actions for which you bear sole responsibility. Hopefully it will deter you from re-offending in future and make you a better person.
16. You have 14 days to appeal this decision if you are not happy with it.

DATED at Luganville this 30th day of October 2014.

BY THE COURT

D. ARU
Judge

