

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

Criminal Case No. 4000 of 2016

**PUBLIC PROSECUTOR**

-v-

**ALAIN GARAE**

*Before Justice David Chetwynd  
Hearing 16<sup>th</sup> March 2017 (Written reasons published 22<sup>nd</sup> March 2017)  
Mr Boe for the Public Prosecutor  
Ms Tari for the Defendant*

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## Sentence

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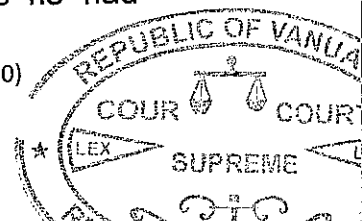
1. The defendant Alain Garae pled guilty to one count of sexual intercourse without consent and not guilty to one count of incest. The prosecution have entered a *nolle prosequi* in respect of the latter charge. The offence took place in 2012 and involved an adopted relative. The defendant accepts that he was affected by alcohol and kava when he raped his relative. It happened at night and the defendant accepts "some force" was used during the incident. There is no real explanation why the complainant only reported the offence in 2016 some 4 years later. There had been a custom reconciliation ceremony involving the victim and other family members as well as the community in 2012. There is some suggestion the victim has some disabilities but exactly what is by no means clear from what is before the court. The medical report in the PI bundle says she suffers from mental illness and that she has special needs. There is also a possibility she has physical disabilities as well but there is no clear evidence of that. The maximum sentence is life imprisonment.

2. Previous cases together with guideline decisions of the Court of Appeal<sup>1</sup> make it clear that a rape with no aggravating circumstances should attract a sentence of 5 years imprisonment. In *Scott* the court also said that if any aggravating features were found they would merit a substantial increase over and above the 5 years.

3. There are aggravating factors to be seen in this case. It is accepted there was "some force" used in the rape and this seems to be holding a hand over the mouth and using the defendant's superior strength to subdue the victim. More importantly threats were made and the victim was told not to tell anyone else what had happened. There is also a significant age difference between the two of 17 years. It is also apparent the defendant had unprotected sex with the victim. There is also the effect of alcohol on the defendant. The most aggravating factor is the gross breach of trust involved. The defendant was in a position of responsibility as he had

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<sup>1</sup> See *Public Prosecutor v. August* [2000] VUSC 73; Criminal Case No 014 of 2000 (28 November 2000) and *Public Prosecutor v. Scott* [2002] VUCA 29; CA 02-02 (24 October 2002)



accepted the victim into his house as part of the family. That breach was exacerbated by the victim's mental disability and the effect on her would have been quite profound. The appropriate sentence in this case is 7 years imprisonment.

4. The defendant Alain Garae has a position of responsibility in his community both in custom and in the church. He is described in one letter as an outstanding leader. Whilst it could be said his position in the community makes his offending even worse, on balance he should be given some credit for his previous good character. I caution myself again in that regard and bring to mind the words of the Court of Appeal in *Scott*, "*Previous good character is of only minor relevance*". There is evidence that the defendant was remorseful to a degree (in his interview with the police he seems to blame the victim) but he did initiate a custom reconciliation ceremony with his wife and the victim. He will be given credit for these matters and his sentence will be reduced by 18 months.

5. The defendant is also entitled to a significant reduction in his sentence for the delay that has occurred between the offence being committed and its prosecution. As indicated earlier, no explanation is available for the delay. It is not suggested the defendant was responsible in any way. Nor is it suggested the prosecution is responsible. No matter the reason for the delay it has to be acknowledged that had the case been dealt with nearer the time of the offence any sentence passed would probably have been served by now. In the particular circumstances of this case the sentence should be reduced by 18 months.

6. There is then left a sentence of 4 years. The defendant has acknowledged his guilt and entered a guilty plea in this court at the earliest opportunity. The sentence is reduced by a further 1/3<sup>rd</sup> to 2 years and 8 months.

7. There are no particular circumstances that allow me to suspend the sentence. The defendant will serve his sentence immediately. The sentence will be deemed to have started on the day he was first remanded into custody, the 15<sup>th</sup> December 2016.

8. Finally, I will remind the defendant of what I said in court, namely if he is unhappy with the sentence handed down then he has the right to appeal. The time for appeal will start to run when his counsel receives a copy of these written reasons.

**Dated at Luganville this 16<sup>th</sup> day of March 2017.**

**BY THE COURT**

  
D. CHETWYND  
Judge

