

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

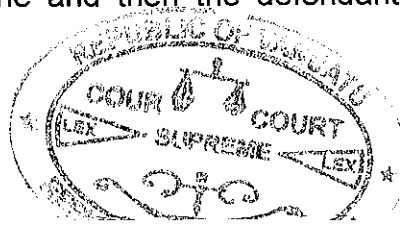
Criminal Case
No.18/1408 SC/CRML

PUBLIC PROSECUTOR
v
PETER GARAE

Before: Justice D. V. Fatiaki
Counsel: Ms M. Tasso for the State
Mr L. Moli for the Defendant
Date of Sentence: 31 August 2018

SENTENCE

1. On 5 June 2018 the defendant was arraigned on an amended Information that charged him with six (6) counts of Extortion contrary to Section 138(f) of the Penal Code. The particulars of each charge were that the defendant had sent text messages to the complainant demanding a sum of money and threatening that he would publish nude photographs of her on Facebook if she did not comply. The total sum extorted from the complainant was VT23,000. The matter was reported to the police after the defendant demanded a sum of VT50,000.
2. If I may say so, the selection of the offence of Extortion is unusual and unnecessarily complicated as is the choice of paragraph (f) in the Statement of Offence. In future cases, consideration should be given instead, to charging under paragraph (a) and/or an offence of Demanding Money With Menaces contrary to Section 132 of the Penal Code **see: Public Prosecutor v Kaloris [2002] VUSC 82 State v Stanley Prasad [2007] FLR 67** and, for the meaning of "menaces": Regina v Sura [1993] SBHC 33.
3. Be that as it may, the complainant and defendant were boyfriend and girlfriend for four (4) months before the offending began. During that time the defendant after much persistence, persuaded the complainant, foolishly, to send him photos of her vagina on the understanding that it was just for his personal use and enjoyment ("... mi wantem luk photo blo cunt blem nomo"). At the particular time the defendant was away in Santo and had requested the photos be taken and sent to his mobile phone.
4. The complainant naively complied with the defendant's request and sent a photo of her vagina and another of her whole naked body. Soon after receiving the photos the defendant began making demands of the complainant. At first, it was to buy credit for his mobile phone and then the defendant demanded cash transfers through Western Union.



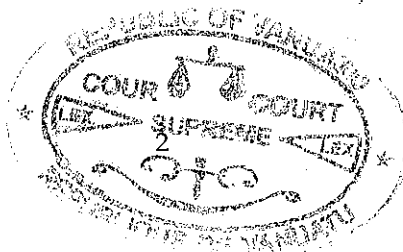
5. After the report was lodged with the police, the defendant was arrested and under caution he made and signed a voluntary statement in which he frankly admitted interalia:

"yes hemi true mi bin stap frenem woman ia Olin Lowonbu since last year 2017 and mi bin askem hem blong tekem photo blong private part blong hem mo sendem ikam long mi".

and later:

"Hemi true se mi bin textem Olin mo threatenem hem blong mas sendem VT50,000 long mi spos hemi no sendem money ia long mi bai mi postem of photos blong hem long Facebook".

6. Subsequently, the defendant confirmed his voluntary admissions in a caution interview conducted by the police including, receiving VT10,000 cash outside the Vila Central Police Station and a similar amount from the complainant at her home at Seven Star Area, Vila. He also claims he demanded the VT50,000 in anger because the complainant told him that she had watched porn movies with some boys at school. He claims at the time, he had already deleted all of the complainant's compromising photos and did not expect her to be able to find or pay the amount. He agreed that besides threatening to post the photos on Facebook he had also threatened to send the photos to a "Mr JJ" who is a teacher at the complainant's school.
7. The defendant's pre-sentence report discloses the following personal and mitigating circumstances:
- The defendant hails from Vuigalato Village on Ambae. He was born on 27 April 1991 and would have been almost 27 years at the time of offending;
 - He is single and the youngest of four siblings. He maintains good relations with his family members and with the wider community at Erakor Half Road, Vila where he resides;
 - He completed year 13 of secondary schooling and was undertaking science extension studies at USP. He has skills in building construction and has been involved in church mission groups;
 - The defendant and his family have offered twice to conduct a custom reconciliation to the complainant and her family but both attempts were rebuffed;
 - The defendant has participated in the RSE Seasonal Workers Scheme on 3 occasions;
 - The defendant is a first time offender who pleaded guilty at the earliest opportunity and has co-operated fully with police investigations;



- The defendant told the probation officer: "... (that) *he is deeply sorry to the victim and her parents*" and is keen to resume the relationship that he had with the complainant and "... (is) *willing to settle down with her in future*";
- The defendant has been in custody since 5 June 2018.

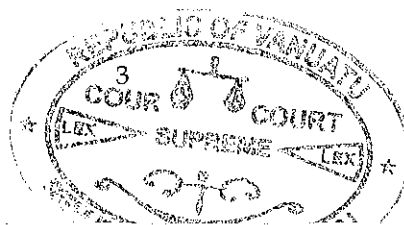
The probation officer assessed the defendant's offending as due to his inability to control his anger and "*was blaming the victim ... as well as justifying himself*".

8. For her part, the complainant says in her Victim Impact Statement that after she became pregnant to the defendant and told him about it, that was when the threatening texts started because in her words: "... *hemi wantem makem olsem long mi from se mi gat bel istap mo hemi wantem leko mi*". She was unable to concentrate at school and is anxious about her future schooling and who will care for her and her baby. She worries about being a burden on her parents. In summary, she said:

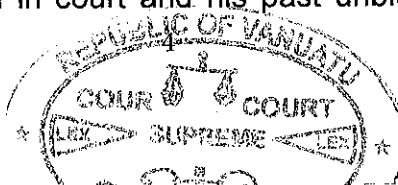
"... *mi no completem education blong mi from nomo we Peter ikiaman long mi se hemi lovem mi and mi trustem hem but taem hemi kivem pikinini long mi then hemi traem blong leiko mi mo wantem postem naked photo blong mi long facebook*".

9. Defence counsel was unable to find a precedent case but nevertheless submits that a concurrent suspended sentence and a restitution order "... *would be practical in this matter*".
10. Prosecution counsel accepts this is the first time this type of factual scenario is being considered in Vanuatu and counsel helpfully referred to the New Zealand case of: The Queen v Brandy Alan Steward [2013] NZHC 3152 where the defendant was charged with three offences of "*blackmail*" using the internet and two charges of doing an indecent act on a young person.
11. The defendant had created a fake account on Facebook and be-friended three young girls aged 16, 14, and 11. The defendant then persuaded the girls to send him compromising photographs of themselves in which they were either naked or dressed only in underwear. The defendant then threatened to upload the photographs online unless the girls complied with his demands which included a demand for more compromising photographs and, in respect of the eldest girl, that she should meet and have sex with him.
12. The sentencing judge described the case as involving premeditation and calculated behaviour that involved a high level of culpability. The judge had regard to the following sentencing principles and aggravating factors:
 - (a) *The defendant's relationship with the victims;*
 - (b) *The threats underlying the demands;*
 - (c) *Any sums or benefits obtained;*
 - (d) *Persistence;*
 - (e) *Whether demands were successful; and*
 - (f) *The impact on the victims*".

In that case, the defendant was sentenced to a total concurrent sentence of 11 months home detention and forfeiture of his cell phone.



13. The present case is similar in both the threat made to publish the complainant's compromising photographs on social media and the level of persistence exhibited by the defendant firstly, in obtaining the compromising photographs of the complainant and then, in successfully pursuing his demands for cash payments through numerous threatening text messages. This case also is aggravated by the serious abuse of a trusting relationship and the defendant actually succeeded in obtaining a sum of VT23,000 from a naive, unemployed student.
14. Extortion is a serious offence. It carries a maximum penalty of 14 years imprisonment. It entails the obtaining of something or some benefit by force, threat or other unfair and improper means. In this case the defendant obtained money by threatening to publish compromising photographs of the complainant on Facebook and to her school teacher. The offences were cruel, cowardly, and mean-spirited.
15. I have also considered the case of Public Prosecutor v. Troy Vinia and 2 others [2011] VUSC 265 where the court imposed an immediate consecutive sentence of 16 months imprisonment for a single charge of Publishing Child Pornography contrary to Section 147B of the Penal Code where, after intercourse, the defendant took 2 photos of the complainant's vagina and, despite his assurance that they were for "... private viewing only", the defendant circulated the photos to three of his friends.
16. In sentencing the defendant, the judge said:
- "For the charge of publishing child pornography I sentence you to imprisonment for a term of 2 years as a starting point. The purpose of this high penalty is to deter you and others from doing this sort of thing at this time and age when just about every youth and child has a mobile cell phone. It also marks the gravity of your offending and the public disapproval of such offending ..."*
17. In your case, Peter Garae, I adopt a concurrent starting sentence of 3 years imprisonment for each offence of Extortion which I reduce by 6 months for mitigating factors including your ready cooperation with police inquiries and this being your first conviction. I also accept you are genuinely remorseful and have unsuccessfully attempted to traditionally reconcile with the complainant and her family. This leaves a second stage sentence of $(30 - 6) = 24$ months imprisonment which is further reduced by one third in recognition of your guilty pleas leaving an end sentence of $(24 - 8) = 16$ months imprisonment. From that end sentence I am obliged to deduct the 3 months that you have already spent on remand leaving a final sentence of $(16 - 3) = \underline{13 \text{ months imprisonment}}$.
18. I turn next to consider whether to suspend the sentence and am satisfied from the circumstances of the case and the particular nature of the crime that this was an opportunistic offence and an unfortunate "*sign of the times*" which is unlikely to be repeated by the defendant who has deleted the complainant's compromising photos. I am also mindful that the defendant is unlikely to be accepted to work abroad under the RSE Scheme for the near future and that he has already served the equivalent of a sentence of 6 months imprisonment which hopefully has been a salutary lesson for the defendant such that he would not wish to repeat it. The defendant's consistent admission of wrong-doing when first confronted by police and in court and his past unblemished record and good

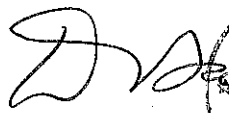
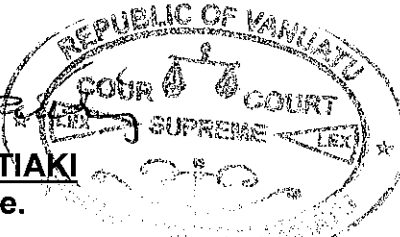


future prospects, also satisfies me that the defendant is deserving of some leniency and a personalised sentence as he is a person who is unlikely to re-offend and is not a danger to society.

19. Accordingly, the defendant's final end sentence is suspended for a period of 2 years. The defendant is warned that although he will not be returned to prison today, he still has the sentence hanging over him for the next 2 years and if he re-offends and is convicted of any other offence in the next 2 years then he will be returned to prison to serve this sentence of 13 months imprisonment in addition to any other sentence he may receive for his re-offending.
20. In addition, the defendant is sentenced to Supervision for twelve months with a special condition that he not own, use or access a mobile phone which has an internet connection or capability. The defendant is further warned that breach of the special condition is an offence which could result in the activation of his suspended sentence.
21. The defendant is also ordered to pay Compensation of VT23,000 to the parents of the complainant either in full by 15 September 2018, or in four (4) equal monthly instalments of VT5,750 commencing on 15 September 2018 and thereafter on the 15th day of October, November and December until fully repaid. The defendant is to choose his preferred payment option within 7 days and inform the probation officer who, in turn, is directed to monitor and verify any and all payments.
22. The defendant is advised he has 14 days to appeal against this sentence if he does not agree with it.

DATED at Port Vila, this 31st day of August, 2018.

BY THE COURT



D. V. FATIAKI
Judge.