

PUBLIC PROSECUTOR VS- RIDLEY LEO

Coram: Mr. Justice Oliver A. Saksak

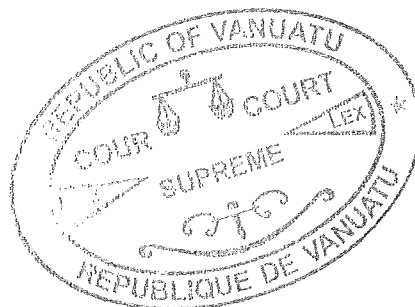
Counsel: Betina Ngwele for Public Prosecutor
Henzler Vira for the Defendant

Date of Plea: 2nd October 2018 and 19th June 2019

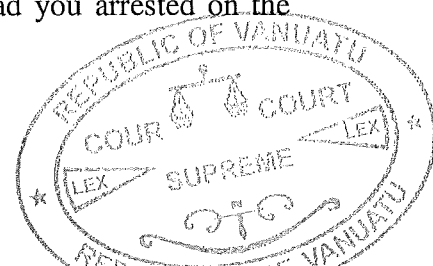
Date of Sentence: 14th August 2019

SENTENCE

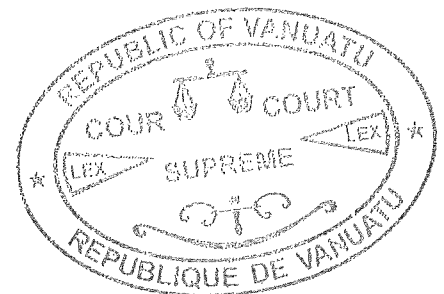
1. Ridley Leo you were charged with three counts of sexual intercourse without consent, sections 90 (b) (i) (iii) and 91 (Count 1), act of indecency without consent, section 98 (b) (i) (Count 2), and intentional assault, section 107 (b) (Count 4) of the Penal Code Act [CAP 135].
2. You pleaded not guilty to all 3 charges initially on 2nd October 2018 but changed your mind after the case was to have gone for trial. The trial was adjourned two times because you had failed to attend Court on the trial dates, first on 4 December 2018 and again on 13th May 2019. A warrant of arrest was issued and you were arrested and remanded for breach of bail conditions.
3. On 19th June 2019 when trial was to have started you and your two friends sought leave to be re-arraigned. Leave was granted and you were re-arraigned. You then pleaded guilty to sexual intercourse without consent, to act of indecency without consent, and to intentional assault on the victim. Your two friends who were charged with aiding and abetting in Count 3 were acquitted of the charge because the prosecution decided not to continue to prosecute them. Nolle prosequi was entered under section 29 of the Criminal Procedure Code Act [CAP.136]. You have been remanded in custody since 19 June 2019.



4. That is a short background of your case. And you are here for sentence in respect of those three charges.
5. The charge of rape under section 90 and 91 is always a very serious offence because it carries a maximum punishment of life imprisonment. The offence of act of indecency without consent carries the maximum punishment of 7 years imprisonment and the offence of intentional where damage of a temporary nature is caused carries a maximum punishment of 1 year imprisonment.
6. Your offendings happened on 9 August 2018 and a formal complainant was lodged with the police on 10 August. The victim and complainant was Melissa Nabanga, a 20 year old girl from Mele Village. Her friend Pamela called you on the phone in the afternoon of Thursday 9 August 2018 and proposed that you join them for a drink. At 4:30pm you and your friend picked up the complainant, her sister Edwina and Pamela and started driving around town. You stopped at different shops buying alcoholic drinks and cigarettes. You went to the main wharf and drank there. Later you went off to Stade to pick up your other friend. You then went to buy more alcoholic drinks at Weng Store, Tebakor then went on to Kawenu bay to continue drinking. It was there you then began asking the complainant for sex but she refused. You then took her for a driving lesson around the area and you continued to ask her for sex and she still refused. It was getting dark and she got off and walked back to her friends and sister. You were angry by then and started swearing at them. They walked up the road to the Malapoa college junction. You followed them in the car which ran out of fuel and could not continue. You asked them for assistance to push the car to the side. The girls kept on walking. You then followed them, caught up with them and took a stick and started hitting the complainant on her right hand and buttock. She fell down and cried. Edwina and Pamela ran off in fright. You then threatened the complainant that you would kill her dead if she refused to have sex with you. You then forcibly pulled her to the side of the road and tried removing her pants. She was afraid of being injured so she removed her pants after which you pushed her to the ground and had sex with her until you ejaculated. You then got off. She put her clothes back on then you pulled her back down to the beach. It was there you then forced her to suck your penis against her will. The police arrived by this time and had you arrested on the spot.



7. A medical examination made on 10 August 2018 showed a hyman fragment and reddish spot on the introitus which was tender but with no tear.
8. The aggravating features of your offendings were that there was force and violence used on her to cause her fear of injury or bodily harm. There was an obvious breach of trust. There was risk of pregnancy and transmission of sexual diseases. The offence occurred in the bush in an isolated area with risk of losing her life if the complainant did not comply. The offence was repeated more than once.
9. The cases of PP.v. Scott [2002] VUCA 29, PP.v. Ali [2002] VUSC 73 and PP.v. Gideon [2001] VUCA 3 lay down clear sentencing principles for these types of sexual offendings. It is clear from these classic cases that the only appropriate punishment the Court will impose on you today is to be a custodial sentence.
10. I therefore convict and sentence you to the starting sentence of-
 - a) 7 years imprisonment for sexual intercourse without consent in Count 1 as the lead offence.
 - b) 3 years imprisonment for act of indecency without consent in Count 2, concurrent, and
 - c) 6 months imprisonment for intentional assault in Count 4, concurrent.Your total sentence is 7 years imprisonment.
11. I now consider reduction of sentence due to your mitigating factors. I have seen your pre-sentence report showing your character and personal history and your version of how the offendings occurred. I note your willingness to perform custom reconciliation but with reluctance by the victim and her relatives. I have seen the submissions made by Mr Vira on your behalf.
12. For your previous clean record, good family and community relationship and readiness to perform custom reconciliation, I deduct 1 year from your 7 years, reducing it to 6 years imprisonment.



13. For guilty plea you are not entitled to the full 1/3 reduction but only to half or 50% of it, which another 1 year. Your sentence is now reduced to 5 years.
14. For your pre-custodial period, I find the periods stated by Mr Vira confusing in regard to the dates. I am prepared to deduct 6 months only for your pre-custodial period from 13 May 2018 to 13 November 2018. I deduct 6 months from 5 years leaving your end sentence at 4 years and 6 months.
15. You are therefore sentenced to an end sentence of 4 years and 6 months imprisonment as a concurrent sentence for the three charges laid against you in this case. I order that this sentence be backdated to 19 June 2019.
16. That is the sentence of the Court. You have a right of appeal against this sentence within 14 days if you do not agree with it.

DATED at Port Vila this 14th day of August 2019

BY THE COURT


OLIVER.A.SAKSAK

Judge

