

PUBLIC PROSECUTOR

VS

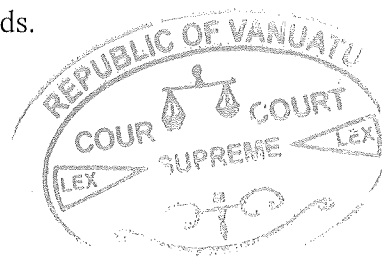
SAO CHRISTOPHER

Defendant

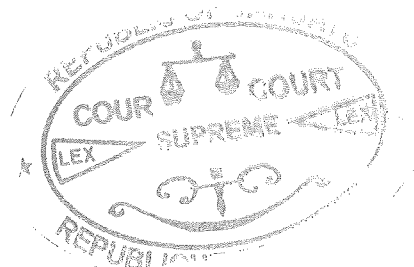
Date of Trial: 8th March 2021
Date of Verdict: 12th March 2021
Before: Justice Oliver Saksak
In Attendance: Mr Damien Boe for Public Prosecutor
Mr Rollanson Willie for Defendant

SENTENCE

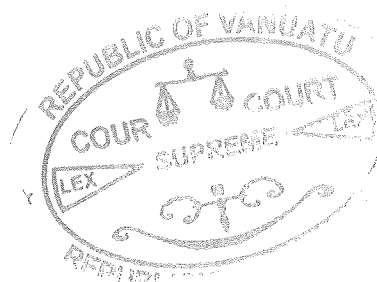
1. The defendant Sao Christopher pleaded guilty to one charge of sexual intercourse without consent contrary to section 90 (b) (vii) of the Penal Code Act [CAP 135] (the Act). He is appearing for sentence today.
2. The penalty for this offence under section 91 of the Act is life imprisonment.
3. The victim and complainant is Jinneth Sine, a 25 year old single woman living with physical incapacity. She is a handicapped person, living under the care of her mother.
4. On 15th November 2019 at Apotonhiyoha village, North East Pentecost the defendant had sexual intercourse with the complainant. Prior to sex taking place the defendant had approached the complainant and told her he liked her and that he wanted her to go out with him and that he would marry her, understanding her situation as a handicapped person. All these talk made the complainant give in to the defendant's demand for sex.
5. Prior to sex taking place the complainant was able to walk and work. After sex had taken place the complainant now crawls on her knees and hands.



6. The complainant was examined at the Vila Central Hospital on 11th November 2020. The medical report records-
*“ Genital examination- Normal findings
General examination- spastic muscles- since childhood.
Normal genitals findings- cannot rule out sexual assault as examination is done well outside forensic window.”*
7. The Vanuatu Society for People with Disability issued a reference concerning the status of the complainant on 12th November 2020. The reference certifies that the complainant **“ has physical disability, slight speech difficulty and a lot of difficulty standing and balancing herself when standing and holding things in her hands.”**
8. The history of her disability shows that the complainant fell sick after 10 years of age for a period of 3 months, resulting in her not being able to walk and unable to use her left hand.
9. The defendant well knew that the complainant is a disabled person. He sweet-talked her into the sexual intercourse. He took advantage of her physical disability and deceived the complainant into the act of sexual intercourse with him. It was therefore an act against her free-will.
10. There was no force, threats or violence involved. Sexual intercourse occurred just once. The complainant appeared to have acted inappropriately prior to the sexual activity occurring. Those are the mitigating circumstances.
11. Article 16 of the Convention on the Rights of Persons with Disabilities provides for the right to freedom from exploitation, violence and abuse.
12. The action of the defendant was a clear breach of that right. Further it was an offence contrary to section 90 (b) (vii) of the Penal Code Act. It is a very serious offence. His action warrants a custodial sentence.



13. This principle is well established in cases such as PP v Scott and Tula [2002] VUCA 29, PP v Gideon [2002] VUCA 7, and PP vs Boita [2002] VUCA 8. The Court adopts these sentencing principles in the defendant's assessment of appropriate sentence.
14. Taking the seriousness of the offence, together with the aggravating features and the mitigating circumstances of the case, I set the starting sentence for the defendant at 7 years imprisonment. There is no uplift.
15. This is to mark the seriousness of the defendant's offending, to mark public disapproval of his action, to set a deterrence for him and other like-minded persons, to protect the vulnerable members for the society and to punish the defendant appropriately. These principles are well established in cases such as R v Radich [1954] NZLR86 at 87, and Veen v The Queen (No.2) [1998] HCA 14, (1988) 164 CLR 465.
16. In mitigation, I take into consideration the information provided in the defendant's pre-sentence report and his written submissions filed on 10th March 2021 by Mr Willie.
17. The defendant is a young man of 17 years old. He left school at Year 4 unable to continue his education due to his sick father. He loves his family and has to work in the garden to plant kava and taro to sell for income. He has a medical condition of Hepatitis B but no medical report is provided. He attends church regularly on Saturdays as a Seventh Day Adventist.
18. For his offending he accepts he had sex with the complainant and appears to be shifting the blame to the complainant. He accepts sex occurred normally. No threats, force or violence was used and sex occurred only once.
19. He apologies in open Court upon entering guilty plea to the charge showing deep remorse on his part. He accepts he knew the complainant is a disabled person. And he has performed custom reconciliation ceremony involving an exchange of 6 red mats and 1 pig with the complainant.



20. I note his early guilty plea and his early admission to the police on investigation. I note also the time he has already spent in custody since 13th November 2020.
21. All those factors are taken into consideration in reducing the defendant's sentence.
22. Accordingly for his guilty plea, a full 1/3 reduction is allowed. That means 2 years and 4 months are deducted from his start sentence of 7 years imprisonment. The balance is 4 years and 8 months imprisonment.
23. For custom reconciliation showing remorse and other personal factors, I allow a further reduction of 1 years. That leaves the defendant's end sentence to be 3 years and 8 months imprisonment.
24. I take into account the time he has spent in custody on remand. So he does not lose his parole entitlement, I order that his end sentence of 3 years 8 months be backdated to 13th November 2020, when he was first remanded in custody.
25. The defendant is convicted of one charge of sexual intercourse without consent and sentenced to an end sentence of 3 years and 8 months imprisonment with immediate effect. The sentence will not be suspended. There are no exceptional circumstances.
26. The defendant has a right of appeal against this sentence within 14 days if he disagrees with it.

DATED at Luganville this 12th day of March 2021

BY THE COURT

OLIVER.A.SAKSAK

Judge

