

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

Bail
Case No. 22/659 SC/BAIL

BETWEEN: Public Prosecutor

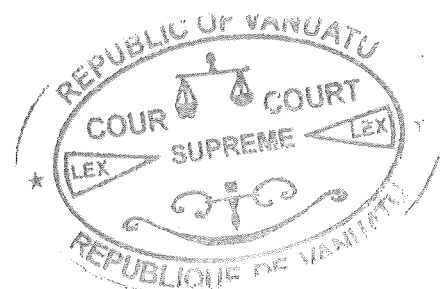
AND: Brian Ruben Estapas

Defendant

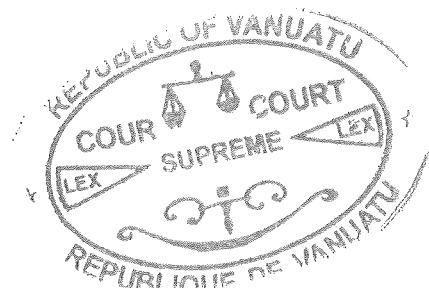
Date of PLEA: 13th day of June, 2022 at 9:00 AM
Date of Sentence: 17th day of June, 2022
Before: Justice Oliver Saksak
In Attendance: Ms Marie Taiki for Public Prosecutor
Mr Steven Garae for Defendant

SENTENCE

1. Brian Reuben Estapas pleaded guilty to one charge of Sexual Intercourse without consent contrary to sections 90 and 91 of the Penal Code Act [CAP.135] (the Act).
2. The maximum penalty of this serious offending is life imprisonment. Sections 91 of the Act.
3. The defendant is a 45 year old from Vatop Village on Vanualava, Torba Province. He is married with 2 children, one being 21 years old and one is 10 years old attending the Nelson Primary in Vatop Village.
4. On 17th February 2022 between 7:30am and 8:00am the complainant and victim and victim Nancy Alfred Tegleg, a 22 year old girl also from Vatop village had dropped off her sister's children at Nelson Primary school and was returning to the village. She met the defendant on the way wearing a black T-shirt and holding a cell phone and bush knife in his hands. The defendant blocked the victim's way and demanded she follow him into the bushes to watch a movie on his cell phone. In the bushes the defendant showed her a movie which was a pornographic clip.



5. After watching the video the defendant then forced the victim to have sex with him. She refused but the defendant continued to force her. She felt afraid because of the bush knife the defendant had in his hand. The defendant then removed the victim's shirt and panty and penetrated her vagina with his penis without her consent. He then tried to kiss her but the victim refused. She then returned home upset and crying. She reported the matter to her sister Sophia Budeley. The next day being 18th February 2022 the victim rang the Police at Sola Police Station to lodge her complaint against the defendant.
6. The defendant was cautioned on 1st March 2022 by the Police. He admitted forcing the victim to watch the video and admitted forcing her to have sex with him.
7. The defendant is related to the victim as uncle.
8. There were no mitigating circumstances warranting the commission of this offence. But there were aggravating circumstances such as the age difference of about 23 years, the serious breach of trust between an uncle and niece, the possession of a bush knife at the victim by the viewing of pornographic video prior to sex, the isolated place in which the offending occurred putting the victim's life at risk, the unprotected sex risking the victim to pregnancy and venereal diseases, and the mental impact on the victim.
9. This is a clear of a mature man taking advantage of a young girl for his sexual gratification. According to the classic case of **PP vs Gideon** [2002] VUCA 7 the defendant forfeits his right to remain in the community.
10. Further **PP vs Scott and Tula** [2002] VUCA 29 and **PP v Ali** [2002] VUSC 73 establish the principle that rape or sexual intercourse without consent is always a serious crime and calls for immediate custodial sentence, except in wholly circumstances.



11. I see no wholly exceptional circumstances available to the defendant.
12. I therefore convict the defendant on his own guilty plea and sentence him to a starting sentence of 8 years imprisonment.
13. In mitigation I take into account the defendant's early admission and guilty plea. However he has not shown any remorse at all about what he did to the young victim. He tried to tell a different story to the Probation Officer which is contained in his Same Day Report. He tried to shift responsibility onto the victim. He therefore is not entitled to the full 1/3 discount. He is entitled only to 1 year and 6 months reduction.
14. In note his previous clean record. I note his character and personal history in his pre-sentence report. I allow a further reduction of 1 year. His end sentence shall be 5 years and 6 months imprisonment.
15. I deduct 36 days for his pre-custodial period from 5 years and 6 months. The balance of his sentence is 5 years 4 months and 24 days to be serve at the Correctional Centre in Luganville.
16. That is the sentence of the Court imposed on the defendant. There is a right of appeal against this sentence within 14 days.

DATED at Luganville this 17th day of June, 2022.

BY THE COURT

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Oliver Saksak

Judge

