

PUBLIC PROSECUTOR

v

JEAN PASCAL TASS

Date: 5 September 2024
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Ms M. Tasso
Defendant – Mr S.G. Junior

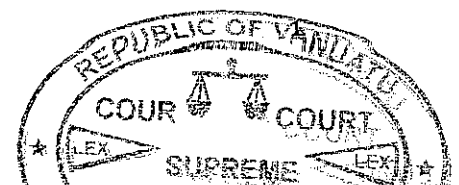
SENTENCE

A. Introduction

1. The Defendant Jean Pascal Tass pleaded guilty to domestic violence contrary to para. 4(1)(a) and s. 10 of the *Family Protection Act 2008* (Charges 1 and 2) and sexual intercourse without consent contrary to para. 90(a) and s. 91 of the *Penal Code* [CAP. 135] (Charge 3). He is convicted on his own pleas and the admitted facts.

B. Facts

2. The complainant Gloria Samson is Mr Tass' wife and the other complainant Kensly is their youngest biological son. The offending occurred at their family home at Big Bay area on Santo island.
3. In February 2024, Gloria fell asleep, exhausted after a long day at the garden. She was so tired that she did not feel anything when Mr Tass removed her underwear and pushed a small white skinny bottle with the lid on into her vagina. She woke up when the bottle lid scratched her vagina, to find that half of the bottle was already inside her vagina. She scolded Mr Tass and he replied that he did that because she refused to have sex with him. He then removed the bottle from her vagina and hid it (Charge 3).
4. On 5 May 2024, Gloria was preparing food for their family and Kensley was asleep on his oldest brother's bed. The latter wanted to go to sleep so Gloria asked Mr Tass to

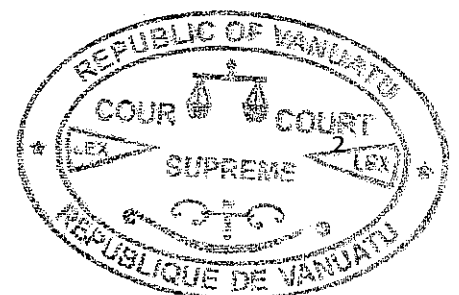


move Kensly to his (Kensly's) own bed. Mr Tass was already lying on a bed and he called repeatedly to Kensly to wake up until Kensly woke up. Kensly woke up but then was disorientated as he went outside and began crying. Gloria scolded Mr Tass by telling him that he drank too much kava which made him too lazy to get up from his bed and carry Kensly to his own bed. On hearing that, Mr Tass got up from the bed, went outside and slapped Kensly's head so hard that it caused him to fall on the ground (Charge 1).

5. After punching Kensly's head, Mr Tass went to Gloria and also punched her head with his hand four times. These assaults occurred in the presence of their other children who were all home at the time. After the assaults, Mr Tass told Gloria to remove her belongings from the family home (Charge 2).

C. Sentence Start Point

6. The sentence start point is assessed having regard to the maximum sentences available, and the mitigating and aggravating factors of the offending.
7. The maximum sentences provided are:
 - a. Sexual intercourse without consent – life imprisonment; and
 - b. Domestic violence – 5 years imprisonment or VT100,000 fine or both.
8. There are no mitigating aspects to the offending however, it is aggravated by the following:
 - a. Gross breach of trust;
 - b. The use of a plastic bottle to effect the rape;
 - c. The defendant was in a position of responsibility towards the victim that he raped;
 - d. The force of the assault on the boy child, with the blow to his head causing him to fall to the ground;
 - e. The domestic violence offending occurred in the presence of children;
 - f. The domestic violence offending involved punches to the complainants' head which is the most vulnerable part of the body; and
 - g. The injuries, pain and fear caused to the complainants.
9. The Prosecution submitted that a global sentence start point of 7-8 years imprisonment was appropriate, citing *Public Prosecutor v Scott* [2002] VUCA 2 and *Vuti v Public Prosecutor* [2017] VUCA 17.



10. Defence counsel cited *Public Prosecutor v Ali* [2000] VUSC 73, *Public Prosecutor v Morkro* [2017] VUCA 16 and a number of other decisions, and agreed that a global start point of 7-8 years imprisonment was appropriate.
11. In *Elson v Ayton* [2010] ACTSC 70 (15 July 2010) at 68-70, the Supreme Court of the Australian Capital Territory noted that domestic violence committed in the presence of children not only increases the victim's humiliation and sense of powerlessness but is also likely to cause real psychological damage to the children and risk creating offenders of the children themselves, which is unacceptable and to be condemned as such.
12. The global sentence start point that I adopt, taking all matters into account, is 8 years imprisonment.

D. Personal Factors

13. Mr Tass pleaded guilty at the first available opportunity. I reduce the sentence start point by one-third for the early guilty pleas.
14. Mr Tass is 30 years old, and has no prior convictions. He is married and has 3 children. He makes a living from gardening. I further reduce the sentence start point by 3 months for Mr Tass' personal factors.

E. End Sentence

15. Taking all of those matters into account, the end sentences imposed concurrently are:
 - a. Sexual intercourse without consent (Charge 3) – 5 years 1 month imprisonment; and
 - b. Domestic violence (Charges 1 and 2) – 3 years imprisonment.
16. The sentences are back-dated to commence from 13 June 2024, when Mr Tass was taken into custody.
17. There will be no suspension of sentence. The offending is too serious and there are no exceptional circumstances to warrant suspension of sentence.
18. Mr Tass has 14 days to appeal.

**DATED at Port Vila this 5th day of September 2024
BY THE COURT**


Justice Viran Molisa Trief

