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

CRIMINAL CASE No.130 OF 2009

PUBLIC PROSECUTOR -v- LAU NUARAU

Coram: *Chief Justice Vincent Lunabek*

Counsel: *Mr Gregory Takau for the Public Prosecutor*
Mr Jacob Kausiama for the Defendant

SENTENCE

This is the sentence of the Defendant, Lau Nuarau. After the 2 days trial held at Isangel, Tanna, on 25 and 26 February 2010, the Defendant was convicted and found guilty of one count of sexual intercourse without consent, contrary to Section 91 of the Penal Code Act [CAP.135].

The Defendant, Lau Nuarau, is a young man of 21 years of age. He comes from the village of Iapkapen, South Tanna. He is married with a child. He is a year eight French secondary school leaver. He is a businessman. He is self-employed, owning a transport for tourist tours and he is also serving his community.

There was no need to recount the detailed facts. Briefly on 18 December 2007, at night in the village of Iapkapen, Port-Resolution, South Tanna, the complainant woman attended a custom ceremony in regards to the shaving of a young man. She asked and the Defendant allowed her to leave her 2 years old son sleeping in his house during that night. On the third time of her checking on her child in the Defendant's house, the Defendant confronted the complainant woman in front of the door of his house. He pushed the complainant with the door inside the house. He held the complainant by her T-shirt near her neck with one of his hands. He pulled

her T-shirt close to her neck behind while he was also squeezing strongly on her neck. With his other hand, he used his elbow to push the woman by her backside down. She could not move out from him. He held her body strongly in that position as she said "her body was bent" when the Defendant penetrated her vagina from behind.

He knows the woman. She knows the Defendant. The Defendant is related to her husband. She recognized the Defendant at the door. She recognized the Defendant's voice during the conversations he had with her during the struggle before sexual intercourse. She recognized his clothing (the army trousers) he had wore on that day. Before the sexual intercourse, he had sent Sylvie to tell the woman to come and meet him on three different occasions. She had refused to meet with him. During the struggling stage before the sexual intercourse, he had tried to remove her skirt and panties and she pulled them back on three occasions. He succeeded to penetrate her vagina while he held her T-shirt squeezing her neck and so in that position, her head was held down and her back was bent down by his elbow on her backside. She refused and did not consent to have sexual intercourse with the Defendant on 18 December 2007 in the Defendant's house.

Sexual intercourse without consent is a very serious offence. Section91 of the Penal Code Act sets the maximum penalty of life imprisonment.

The guideline judgments are provided by the judgments of Court of Appeal in **PP v. Scott and Tula** [2002] VUCA 29, Criminal Appeal Case No.02 of 2002 (24 October 2002), and other cases.

Applying the rational and guideline judgments, the appropriate sentence must be a custodial sentence. In sentencing the Defendant, I take note of what the defence counsel says on behalf of the Defendant and I also take not of the pre-sentence report filed by the probation office.

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The Defendant is a first time offender. He shows no insight of his offending. He continues through the report to deny his offending and try to justify that he and the complainant woman are closely related.

I sentence the Defendant, Lau Nuarau to 10 years imprisonment.

The Defendant was remanded in custody since his convictions on 26 February 2010. So he has already served 1 month and 20 days. They will be deducted in his credit.

The Defendant, Lau Nuarau is ordered to serve 9 years and 10 months and 10 days imprisonment with immediate effect.

The Defendant, Lau Nuarau, has 14 days to appeal this sentence if he is not happy with it.

DATED at Port-Vila this 14th day of April 2010

BY THE COURT

Vincent LUNABEK
Chief Justice

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