

PUBLIC PROSECUTOR

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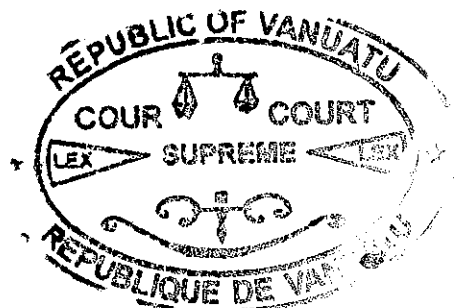
GEORGE BULESAP

Coram: V. Lunabek, CJ

*Counsel: Mr Ken Massing for the Public Prosecutor
Ms Jane Tari for Defendant*

SENTENCE

1. George Bulesap, you appear today for sentence for the offence of sexual intercourse without consent, contrary to section 91 of Penal Code Act. You are 20 years of age and you are from Lonorore village South Pentecost.
2. On 1st July 2015, you enter a guilty plea on one count of sexual intercourse without consent laid against you in the information charge dated 30 June 2015.
3. The brief facts of your offending are these. The complainant in this case is a 33 years old lady from Lonorore village, south Pentecost. She made a complaint against you that on 12th May 2015 at around 9.00AM o'clock in the morning, you had sexual intercourse with her without her consent.
4. The offence occurred in the area of Lonorore village in the southern part of the island of Pentecost.
5. On the day of the incident, she went to her garden which is about two(2) kilometers away from the main village.
6. On her way she met you. You were on your way back to the village. When she met you, she saluted you and you saluted her by saying good morning to each other and then you left.

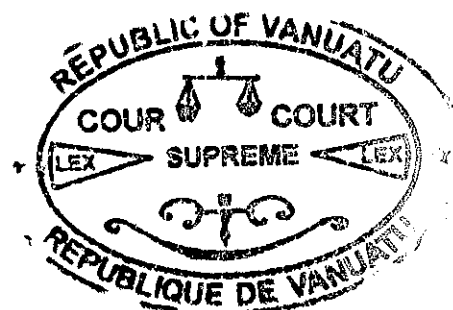


7. At about fifteen (15) meters away from her, you stopped and called back to her.
8. At that time, you were holding a bush knife in your hand.
9. You then moved close to the complainant and grasped her by her neck. You then grasped her hand and asked her to have sexual intercourse with you in the bush near the road. She refused. You also asked her to have oral sex with you and she refused.
10. You then grasped her left hand and dragged her into the bush. She was afraid because of the knife you were holding at that time.
11. She was also crying as you dragged her into the bush. She uttered the following words in bislama "Jesus help" but as she was shouting you told her not to cry aloud.
12. In the bush, you removed her skirt and panty and pushed her to the ground.
13. You penetrated her vagina with your penis and had sexual intercourse with her.
14. You ejaculated outside her body on the ground. You got dressed and returned to the village.
15. Later on she got dressed and went to her garden. On her way to the garden, she met her sister and she told her about what you did to her.
16. You were arrested by the Police later. You were cautioned and interviewed by the police. You admitted the allegation that was made against you.
17. Sexual intercourse with another person without that person's consent is prohibited by law as it is a serious offence. The law provides that:

*"90. Any person who has sexual intercourse with another person:
Without that person's consent; or*

(a) with that person's consent if the consent is obtained:

- (i) by force; or*
- (ii) by means of threats of intimidation of any kind; or*



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- (iii) by fear of bodily harm; or
- (iv) by means of false representations as to the nature of the act; or
- (v) in the case of a married person, by imprisoning that person's husband or wife; or
- (vi) by the effects of alcohol or drugs; or
- (vii) because of the physical or mental incapacity of that person,

Commits the offence of sexual intercourse without consent.

18. The law sets a punishment for the offence of sexual intercourse as follows:

"91. No person shall commit sexual intercourse without consent.

Penalty: Imprisonment for life

19. You must now realize that sexual intercourse with another person without that person's consent is a very serious offence as reflected by the maximum penalty of life imprisonment that the law imposes for this offence.

20. When I consider the appropriate sentence, I am going to pass on you for this offence, I read and consider the submissions of the Public Prosecutor and those made by your lawyer on your behalf. I further peruse and consider the pre-sentence report provided by the Probation Office to assist the court in your sentencing.

21. When I consider your sentencing, I consider and apply the following guideline judgments of the courts in this type of offending:

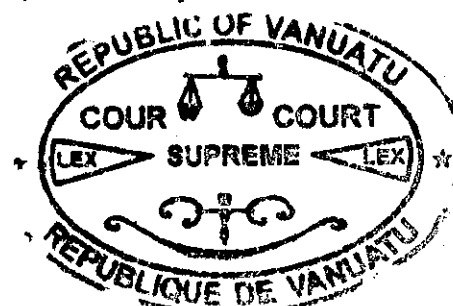
-Public Prosecutor -v- Scott [2002] VUCA 29; CA 02-02 (24 October 2002);

-Obed -v- Public Prosecutor [2004] VUCA 24; Criminal Appeal Case 07 of 2004 (4 November 2004);

-Public Prosecutor -v- Ali August [2000] VUSC 72; Criminal Case No.14 of 2000 and other cases

22. The above judgments set out the following relevant sentencing guideline on the offence of sexual intercourse without consent which is formally known as rape. I repeat the rules stated in the case of *PP -v- Ali [2000] VUSC 72* which are endorsed and applied in other cases:

"The offence of rape is always a most serious crime. Other than in wholly exceptional circumstance, rape calls for an immediate



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custodial sentence. This was certainly so in the present case. A custodial sentence is necessary for a variety of reasons. First of all to mark the gravity of the offence. Secondly to emphasize public disapproval. Third to serve as a warning to others. Fourthly to punish the offender and last but no means least, to protect women. The length of the sentence will depend on the circumstances...

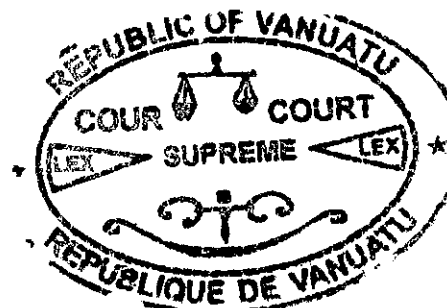
For rape committed by an adult without an aggravating or mitigating feature, a figure of five years should be taken as the starting point in a contested case. Where rape is committed by two or more men acting together, or by a man who has broken into or otherwise gained access to a place where the victim is living, or by a person who is in a position of responsibility towards the victim, or by a person who abducts the victim and holds her captive the starting point should be eight years.

At the top of the scale comes the defendant who has committed the offence of rape upon a number of different women or girls. He represents a more than ordinary danger and a sentence of fifteen years or more may be appropriate.

Where the defendant's behaviour has manifested perverted or psychopathic tendencies or gross personality disorder, and where he is likely, if at large, to remain a danger to woman for an indefinite time, a life sentence will not be appropriate.

The offence of rape should be in any event be treated as aggravated by any of the following factors:

- (1) Violence is used over and above the force necessary to commit rape;*
- (2) A weapon is used to frighten or wound the victim;*
- (3) The rape is repeated;*
- (4) The rape has been carefully planned;*
- (5) The defendant has previous convictions for rape or other serious offences of a violent or sexual kind;*
- (6) The victim is subject to further sexual indignities or perversions;*
- (7) The victim is either very old or young;*
- (8) The effects upon the victim, whether physical or mental, is of special seriousness*

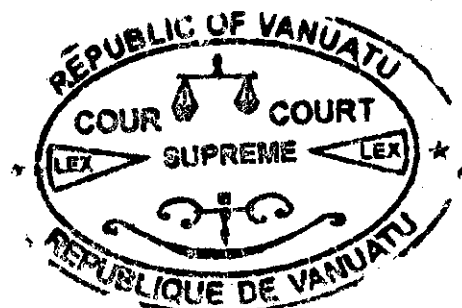


Where any one or more of these aggravating features are present, the sentence should be substantially higher than the figure suggested as the starting point.

If the defendant pleads guilty, the sentence should be reduced by 1/3 depending on the circumstances, including the likelihood of a finding of not guilty had the matter been contested.

The fact that the victim may be considered to have herself in danger by acting imprudently (as for instance by accepting by a lift in a car from a stranger) is not a mitigating factor, and the victim's previous sexual experience is equally irrelevant. But if the victim has behaved in a manner which was calculated to lead the defendant to believe that she would consent to have sexual intercourse, then there should be some mitigating of the sentence. Previous good character is of only minor relevance."

23. In the present case, a custodial sentence is necessary for a variety of reasons. First, to mark the gravity of the offence. Second, to emphasize public disapproval. Third, to serve as warning to others not to commit similar type of offences. Fourth, to punish you for your offending and the last but not the least is to protect women.
24. Adopting the above guidelines in the present case, I am satisfied that the seriousness of your offending is aggravated by the following factors:
- you had bush knife with you when you grasped the complainant's hand;
 - you grasped the complaint's neck and hands;
 - you dragged her into the bush; and
 - you forcefully removed her cloths despite her resistance to have sexual intercourse with you.
25. I sentence you to 6 years imprisonment as a starting point which include the aggravating factors.
26. In mitigation, you are a 20 years old. You are a first time offender. You do not have previous conviction. You admitted the offence after you were arrested cautioned and interviewed by the police. You repeat your admission to the crime when you enter an early guilty plea in this court. Such an early admission in a case of sexual assault is a strong mitigating factor in your favour. It demonstrates your early remorse and, most



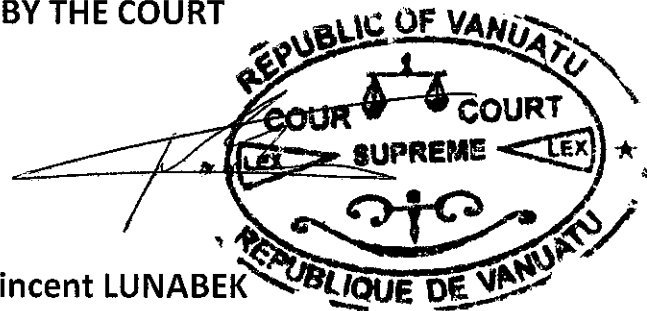
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importantly, saves the complainant the embarrassment and the additional trauma of having to relive her ordeal as a witness in court and being subjected to searching cross-examination.

27. I consider in all the circumstances that you should receive a substantial reduction for your guilty plea which I fix at 2 years.
28. In the result you are hereby sentenced to a term of 4 years imprisonment. I note that you are in the correctional services centre since 1 June 2015. Your pre-custodial period will be counted in your favour also.
29. In this case, your term of 4 years imprisonment is deemed to start from the date of your imprisonment, that is, 1 June 2015.
30. You have 14 days to appeal this sentence if you are unsatisfied with it.

DATED at Luganville, Santo this 10th day of July 2015

BY THE COURT



**Vincent LUNABEK
Chief Justice**