

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

Criminal  
Case No. 21/69 SC/CRML

**BETWEEN: PUBLIC PROSECUTOR**

**AND: SAMANTHA SETH**  
Defendant

*Date of Plea :* 2<sup>nd</sup> February 2021  
*Date of Oral Sentence:* 26<sup>th</sup> day of March, 2022 at 8:30 am  
*Date Issued:* 29<sup>th</sup> March 2021  
*Before:* Justice Oliver Saksak  
*In Attendance:* Mr Ken Massing for the Public Prosecutor  
Mr Tom Joe Botleng for the Defendant

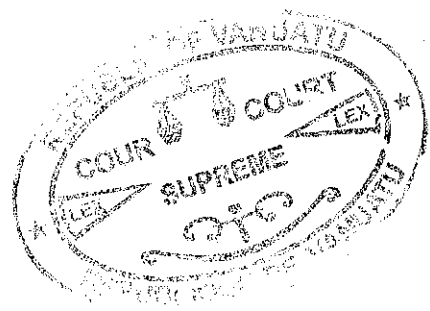
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**SENTENCE**

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**Introduction**

1. The defendant entered guilty pleas to 4 counts of –
  - (a) Intentional Assault causing injuries of a temporary nature section 107 (b) Penal Code Act [CAP. 135] (the Act).
  - (b) Malicious Damage to Property, section 133 of the Act.
  - (c) Acts of Indecency without consent, section 98 of the Act, and
  - (d) Criminal Trespass, section 144 of the Act.
2. The defendant is appearing for sentence today.



## Facts

3. The complainant and victim Rachel Mangau worked on a cruise ship in 2019. The defendant's husband worked on the same cruise ship. They started a relationship and had affairs which came to the attention of the defendant.
4. The complainant's contract ended and she returned to Vanuatu. The defendant started searching for her. She ultimately found the complainant at a house at Club Hippique on 10<sup>th</sup> August 2020. The complainant was at her house with her 2 children when the defendant approached her and started harassing and accusing her of having an affair with her husband. That led to the assault of the complainant by the defendant. The defendant used her hands to hit the complainant all over her body. She then used her hands to tear off the clothes of the complainant, leaving her standing naked in front of neighbours and on-hookers. The complainant had to run for a towel to cover herself. The defendant then went away.
5. The complainant reported the assault and damage to the police who investigated. The complainant made admissions to the police. The Police then laid the charges against the defendant.
6. The only reason given by the defendant for the assault was that her husband was having an affair with the complainant and this made the defendant very angry.

## Maximum Penalties

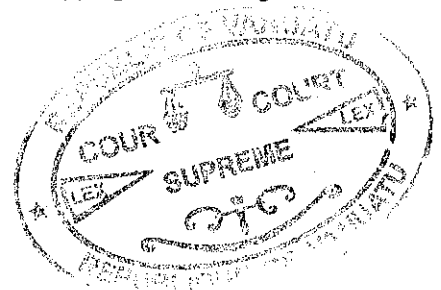
7. An assault under section 107 (b) of the Act carries the maximum penalty of 5 years imprisonment. Malicious damage to property carries the maximum penalty of the fine of VT 5.000 or 1 year imprisonment or to both. The offence of criminal trespass carries the maximum penalty of 1 year imprisonment. And Acts of indecency under section 98 of the Act carries the maximum penalty of 7 years imprisonment.

## Aggravating Features

8. The defendant took matters into her own hands instead of referring the matter to the chiefs or her church pastor for assistance. The assault occurred in front of neighbours and within the confines of the complainant's home. She exposed the complainant to shame and humiliation. She damages the complainant's clothes to total destruction and caused some bodily injuries on the complainant's arm, elbow, neck and shoulder which were of temporary nature.

## Mitigating Circumstances

9. The defendant was understandable angry over her husband overstepping and having extra marital affairs with the complainant, who is married herself.



### **Start Sentences**

10. Taking all those circumstances and features together with the seriousness of offending, I set the start sentences as follows-
  - (a) For intentional assault causing temporary injuries – Count 1, the defendant is sentenced to 16 months imprisonment concurrent.
  - (b) For malicious damage to property – Count 2, the defendant is sentenced to 12 months imprisonment concurrent.
  - (c) For acts of indecency – Count 3, the defendant is convicted on the basis of her plea of guilty but discharged without sentence.
  - (d) For criminal trespass – Count 4, the defendant is sentenced to 6 months imprisonment concurrent.

### **Concurrent Sentence**

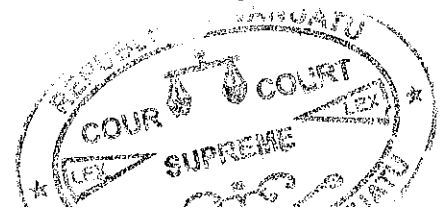
11. The defendant's lead offence was intentional assault. The other offences were done simultaneously and in a package. Therefore the total concurrent sentence for all 4 offences is 16 months imprisonment.
12. There was no separate sentence for the act of indecency charge in Count 3. In my view it was the wrong charge. The defendant did not commit an act of indecency. She at best might have aided or abetted it. The defendant having pleaded guilty, all the Court could do was enter conviction but without sentence. Her sentence for the other 3 offences made concurrent will absolve her for her act resulting in the Count 3 charge.

### **Mitigation**

13. There will be no reduction for the defendant's guilty plea as to do so in the circumstances of the case, would be an encouragement for others in her situation to abuse, instead, the non-reduction will serve as a deterrence.
14. I note the defendant's clean record and other personal factors including the reconciliation ceremony she performed to the chief of the complainant. But no further reduction should be made for these.

### **Suspension of Sentences**


15. Instead, I order that the defendant's concurrent sentence of 16 months imprisonment be suspended for a period of 2 years from the date of sentence.
16. The suspension is made under section 57 of the Penal Code Act on condition the defendant must keep the peace and must not reoffend by committing the same offences, or any other criminal offences for which she would be charged and convicted. If she does, she will go to prison for 16 months.

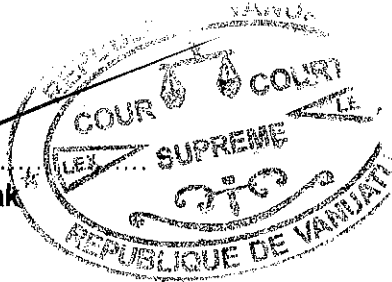


**Right of Appeal**

17. The defendant has a right of appeal against this sentence within 14 days if she is unhappy with it.

**Dated at Port Vila this 29th day of March 2021  
BY THE COURT**

  
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**Oliver Saksak**  
Judge



The seal is circular and contains the text: "REPUBLIC OF VANUATU" at the top, "COUR SUPREME" in the center, and "REPUBLIC DE VANUATU" at the bottom. There is a central emblem featuring a scale of justice and a book.