

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

Criminal Case No. 17 of 2006

PUBLIC PROSECUTOR –VS- JOE BILA

Coram: J. Weir

*Counsel: S. Blessing for the Public Prosecutor
J. Kausiama for the Accused*

SENTENCE

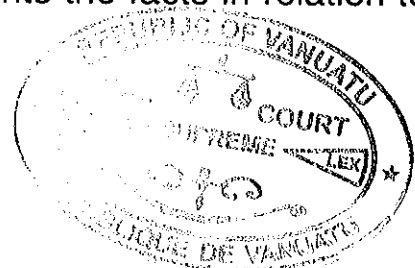
Mr Bila appears for sentence on three Counts of Indecent Assault, one Count of Intentional Assault and one count of Threats to kill. The briefs facts in relation to these charges are as follows –

On the 11th of November 2004, the complainant who is the wife of the defendant at that time lodged an official complaint against the defendant for threats to kill, intentional assault and indecent assault. This occurred on or about March 2003 continuing on through the year.

The assault is described as follows –

On the 7th of March 2003, the defendant and the complainant had a domestic argument. The argument resulted in the defendant assaulting the complainant on her head and face. She sustained severe injuries as a result of the assault. I note that the facts do not go into any details in relation to these severe injuries and I need to take account of that in sentencing.

Secondly on the 26th of March 2003, again after a domestic argument between the defendant and the complainant, the defendant assaulted the complainant, took hold of a knife and threatened to cut the complainant. As I understand it that represents the facts in relation to the charge of threats to kill.



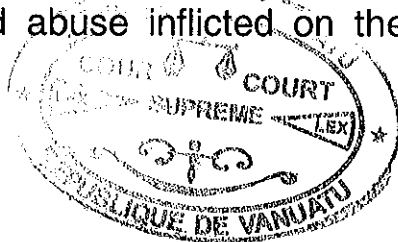
Thirdly in so far as the indecent assaults are concerned, the first incident for which the defendant was charged occurred on the 15th of July 2003. Sometime after 8.00 p.m. on that day the defendant requested the complainant to have sex with her. She initially declined his request but after some compromising and conciliation, she agreed to have sexual intercourse with him. Before actual penile penetration occurred, the defendant took hold of a screw driver and inserted it into the vagina of the complainant. The complainant resisted and begged the defendant to stop but the defendant disregarded the complainant's plea. After he finished and was satisfied with the initial feat, he took a bottle of Tusker beer and started inserting it into the complainant's vagina. Again she retorted and begged her husband to stop but he again ignored her request. She felt severe pain in her vagina and her external vaginal area.

The defendant again indecently assaulted the complainant on the 31st of October 2004. Again the complainant agreed to have sexual intercourse with the defendant on the defendant's request sometimes after 8:00 p.m. that evening. The complainant then noticed that the defendant had on him a Vics container. The defendant then scraped Vics on his fingers, rubbed it around the external area of her vagina and then he inserted the cream into the vagina of the complainant while concomitantly massaging the cream inside her vagina. The complainant beseeched her husband to stop as she felt pain in and around her vagina and the interior of her vagina felt unpleasantly chilly but the defendant ignored her plea.

The summary of facts also refers to the facts that between 1st of January 2003 and 31st of December 2004, the defendant repeatedly used foreign objects applied cream, including baby lotion, shampoo and soap on the complainant during sexual intercourse without her consent.

The Defendant was actually arrested on the 13th of December 2004 and temporary detained.

It is clear that the lead charge is the three counts of indecent assault. Factors to take into account on sentencing Mr Bila are firstly to hold him accountable for the physical harm and abuse inflicted on the victim.



Secondly, the effect on the victim. The probation officers report refers to the fact that the victim still has emotional distress from what happened to her and every time when she recalls what happened to her she feels guilty. The victim also stated that she was not willing to accept a custom ceremony from the accused as she wants the Court to deal with the matter.

Thirdly, the principal of the protection of the community is paramount. Women need to be protected from these types of assaults perpetrated by the defendant. The probation officers report refer to Mr Bila's history and refers to the fact that he now realizes what he did was wrong and he feels sorry for the victim. However, the probation report writer also said that despite his expressed remorse the probation officer questions its genuineness.

Aggravating factors about the offence, I have concluded are as follows –

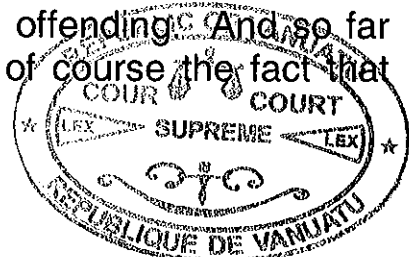
There was a serious breach of trust on the part of the defendant. The victim was his wife and she was entitled to be treated appropriately by him.

Secondly, the defendant employed and applied foreign objects during Sexual Intercourse.

Thirdly, there was a degree of force although this has not been gone into in any particular detail in the summary of facts.

Fourthly, the victim did not consent.

Fifthly, the offences were repeated between January 2003 and December 2004 and were clearly not an isolated incident. It also came to my attention that the defendant has a previous conviction for assault. On that occasion he received a sentence of imprisonment of 3 years and 9 months. I have no details of the seriousness of that incident. I am simply informed by the prosecution that this assault relates to the same victim but it predates this offending. And so far as mitigating factors are concerned, there is of course the fact that the accused has pleaded guilty.

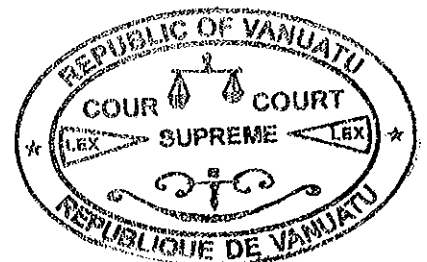


Having said that the prosecution submits that little account should be taken off that plea of guilty. The prosecution points out that at the 1st arraignment on the 13th of June 2006, the defendant pleaded not guilty to these charges. He decamped on or about the 2nd quarter of 2008 and for the whole of 2009. Attempts to arrest him were unsuccessful as he consistently relocated primarily to avoid arrest. He was arrested in 2010 and was remanded in custody on the 8th of October 2010. The defendant was re-arraigned on the 8th of October whereupon he again pleaded not guilty to the charge.

When the matter was called over in the Supreme Court on the 4th of February 2011, he again maintained his initial plea of not guilty. The defendant finally informed the Court of his intention to plead guilty to charges on the 1st of March 2011 after the state withdrew most of the original charges against him. He pleaded guilty finally to a freshly amended indictment containing 5 counts on the 21st of March 2011.

I accept therefore that the one third discount for a guilty plea should not apply in this case. The Prosecution in its sentencing submissions has relied principally upon the case of Public Prosecutor v. Rokoty reported 2009 VUSC91. Counsel for the accused having conferred with the prosecution now accepts that this is the leading authority and it was on a very similar factual basis to this offending. In that case while the lead charge was Rape a sentence of 3 years imprisonment was imposed for the Indecent Assault and that is the starting point which I intend to adopt for the purposes of this sentencing exercise.

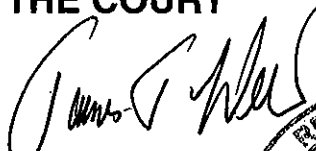
From the starting point of 3 years imprisonment in my view the accused is entitled to a reduction of 4 months to reflect his plea of guilty. However, the sentence should also be uplifted by 6 months imprisonment to take account of his previous conviction for assault bearing in mind of course that it is against the same victim. The sentence therefore is one of 3 years and 3 months imprisonment. That should be less the amount of time spent in custody which by my calculation is 4 months and 7 days. If there is a different calculation prepared by counsel by agreement then that calculation should be adopted.



In so far as the remaining charges are concerned the sentence is one of 6 months on those 2 charges which are concurrent terms. Mr Bila you have a right to appeal which must be filed within 14 days.

DATED at Port Vila this 16th day of April, 2011.

BY THE COURT


J. WEIR
Judge

