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

CRIMINAL CASE No.07 OF 2011

PUBLIC PROSECUTOR -v- JEAN MICHEL JERRY

Coram: Chief Justice Vincent Lunabek

Counsel: Mr Tristan Karae for the Public Prosecutor
Mr Tom Loughman for the Defendant

SENTENCE

Defendant, Jean Michel Jerry, you appear before the Court today for your sentence. You are initially charged with one count of kidnapping, one count of sexual intercourse without consent, one count of threats to kill, contrary to section to ss.105(b), 91 and 115 of the Penal Code Act [CAP.135] respectively in counts 1, 2 and 4. On 18 April 2011, the prosecution filed nulli prosequi under s.29 of the Penal Code Act in respect to counts 1, 3 and 4 and you were discharged and acquitted of the offences in counts 1, 3, and 4 accordingly.

You pleaded guilty on one count of unlawful sexual intercourse, contrary to section s.97(2) of the Penal Code Act. You are sentenced today for that offence after you are convicted by the Court on that offence.

When the Court considers your sentencing, the Court peruses the submissions of the prosecution and those of your lawyer filed on your behalf and the pre-sentence report dated 10 May 2011.

Section 97(2) of the Penal Code Act says that:

"No person shall have sexual intercourse with any child under the age of 15 but of or over the age of 13 years.

Penalty: Imprisonment for 5 years.

(3) *It is no defence to a charge under this section that the child consented or that person charged believed that the child was of or over the age in question.*



(4) *The child shall not be charged as a party to an offence under this section."*

The facts of this case are set out in the prosecution brief of facts. Most of the facts are accepted by you save for some aspects. When there is a substantive difference between the version of the facts advanced by the prosecution and your version of facts your version of fact will be accepted. When there is no denial of some aspect of the facts by you, the Court will infer that you accept that version of facts of the prosecution.

The Complainant is a 14 year old girl and is living with her mother at Anabrou area. Her father no longer lives with them. The complainant attends school at Anabrou School.

On the 6th of February 2011 her mother told her to go to Esah Cooperation Shopping Centre and buy a washing soap. The complainant left at once. She went to one of her friend's house who lives in the same yard with her. She told her friend to go with her to the Esah Cooperation shopping centre. They both went and bought the soap. After buying the soap the complainant did not return home but hanged out with her friend and another for the rest of the day. Later in the evening the complainant friends decided to go out clubbing at Trader Viks. The complainant also went with her friends. At Trader Viks they danced until 2am in the morning to which they then left to head home on foot. On their way home, the complainant realized that she had forgotten the soap that she bought earlier that day at Trader Viks, so she went back to get it. She was making her way when she heard the defendant call out to her to stop and wait. The complainant did not walk further but stood there as the defendant threatened to throw a stone(s) at her if she ran.

The defendant approached the complainant and held on to her. The Defendant held a small axe which he had in his hand. The Defendant then got hold on the complainant hand and they both walked towards Bladinaire Estate. The Defendant and the complainant went to Bladinaire Estate to a small house. The Defendant opened the door and they both went into the house. The Defendant had with him the small axe. This made the complainant very frightened and she was crying. The defendant then got the complainant to lie on the floor on top of a white calico. Then the defendant



lifted the complainant's jean skirt and undergarments then inserted his penis into the complainant's vagina and had sexual intercourse with the complainant until he ejaculated. The defendant then got dressed and slept. The complainant then saw an opportunity to flee and she got out of the house and was outside when one Mr. Joel Lemayra saw her and she told him and others about what had happened to her. Mr. Joel then called the VMF to which they responded and apprehended the defendant and he was brought to the police station.

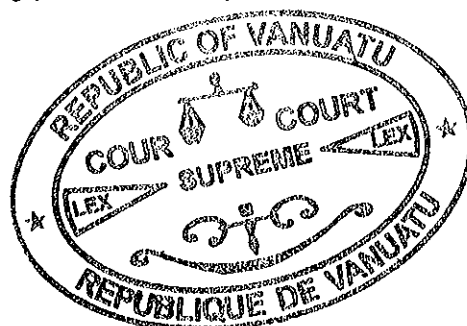
Sexual offences against children are serious offences and any offender who sexually abuse children must go to prison. A prison sentence is necessary for many reasons. First, is to mark the gravity of the offence. Second, is to emphasize that the public disapprove of such kind of offending in the society. Third, is to serve as a warning to other members of the community who will attempt to commit same offending on children in the future. Fourth, is to punish the Defendant for such a serious offending. Fifth, is to protect weak and vulnerable members of the community and in particular children. [PP v. Scott & Tula (2002) VUCA 29]. In PP v. Gideon [2002] VUCA 2, the Court places emphasis of the protection on the children in this way:

“Whatever may be said about this man personally having learned his lesson, there is an overwhelming need for the Court on behalf of the community to condemn in the strongest terms any who abuse young people in our community. Children must be protected. Any suggestion that a 12 year-old has encouraged or initiated sexual intimacy is rejected. If a twelve year-old is acting foolishly then they need protection from adults. It is totally wrong for adults to take advantage of their immaturity.

...

Men must learn that they cannot obtain sexual gratification at the expense of the weak and the vulnerable. What occurred is a tragedy for all involved. Men who take advantage sexually of young people forfeit the right to remain in the community.”

The question now is what is the starting point of an imprisonment sentence?



A handwritten signature in black ink, consisting of a stylized, elongated letter 'A' with a vertical line extending upwards from its top.

In the present case, the nature of your offending and the circumstance of your offending show that they are serious offending as reflected by the maximum penalty imposed by law. The seriousness of the offending is aggravated by the following factors:

- you threatened the girl to throw a stone at her in the night.
- you have a small axe with you when you asked the 14 years old girl complainant to stop and wait for you. You hold on her hand and asked her to walk with you. She was afraid and cried before you had sexual intercourse with her. It was during night. She is 14 years old while you are 23 years old. She was so afraid that she escaped when she had an opportunity to do so when you got asleep and she sought protection from neighbours.

I consider a starting point of 4 years imprisonment.

In mitigation I consider that you are a first time offender and you do not have previous conviction. You cooperate with police authorities and you are remorseful of what you did. I consider a discount of 15%. You pleaded guilty at the first opportunity given to you by the Court. I consider 1/3 discount plus 4 months pre-trial custodial time already spent

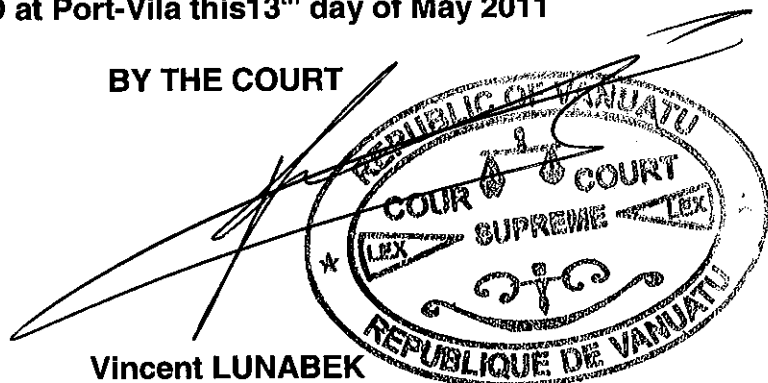
In this case, the starting point is of 4 years imprisonment. I consider an end discount of more than 50%.

You are sentenced to 1 year and 11 months imprisonment with immediate effect.

You have 14 days to appeal this sentence if you are unsatisfied with it.

DATED at Port-Vila this 13th day of May 2011

BY THE COURT



**Vincent LUNABEK
Chief Justice**