

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

Criminal Case No. 14 of 2014

PUBLIC PROSECUTOR

-v-

JOHNNY PAUL

Coram: Justice Mary Sey

Counsel: Denson Damien Boe for the Public Prosecutor
Brian Livo for the Defendant

Date: 5 May 2014

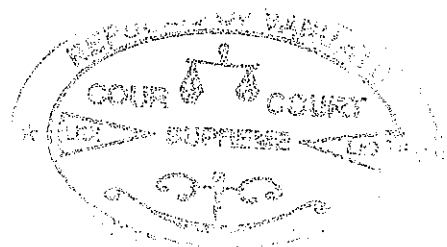
SENTENCE

1. The defendant is before this Court for sentencing having been convicted on his guilty plea to the following offences:

One count of **sexual intercourse without consent** contrary to section 91 of the Penal Code [Cap 135], one count of **Threats to kill** contrary to section 115 of the Penal Code [Cap 135], and one count of **Theft** contrary to section 125 (a) of the Penal Code [CAP 135].

2. The facts of the case are undisputed and may be briefly summarized as follows:

On Sunday 26th of January 2014, between 8 a.m. to 9 a.m. the victim, who was on her way to church at Pango rural community, followed a narrow path that passes Elluk Estate



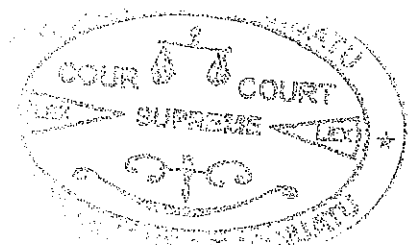
through the bush to Amalvi Court Apartments and all the way to Pango Village. On her way, she saw the defendant standing near the Apartments. She said good morning to him and he responded by saying good morning. Later, as she walked along the path, she felt that someone was following her and when she turned around she saw the defendant whom she had met earlier at Amalvi Court Apartments.

The defendant went straight to the victim and asked “*Yu kat kel?*” meaning “*do you have a daughter?*” The victim replied and said that she has no daughter but only sons. Then the defendant asked the victim to approach him and as she did so he held on to her hand and pushed her into the bush at the side of the road. He then informed her that she must not attempt to shout and he threatened to cut her with a knife which he was holding at the time.

The defendant forced the victim into the bush and threatened to cut her with the knife three times. The victim cried and wanted to shout but the defendant was holding the knife and threatened to slash her and said “*Yu no signout yu no makem noise yu wadem se yu no luk ol Families blong yu tedei*” meaning “*I will cut you with a knife if you shout or make any noise.*” The victim was in fear the whole time but she was unable to escape while the defendant proceeded to have sexual intercourse with her without her consent.

The defendant also stole the victim’s black purse with an amount of Vt1000 and her ATM card and he used all the monies for his personal use and no amount was recovered from him.

3. The offending of sexual intercourse without consent carries with it a maximum sentence of life imprisonment which reflects the seriousness by which Parliament requires it to be treated.
4. The authorities that have been identified by both counsel, within their written submissions, focused particularly upon the starting point to which I need to have regard.



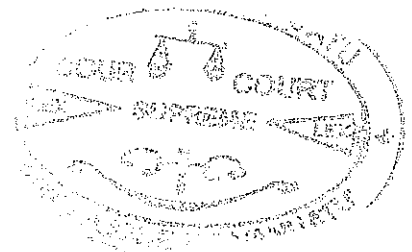
Particular reference is made to the leading case of **Public Prosecutor v Scott** [2002] VUCA 29 the Court of Appeal stated that:

“The offence of rape is always a most serious crime. Other than in wholly exceptional circumstance, rape calls for an immediate 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. Thirdly to serve as a warning to others. Fourthly to punish the offender, and last but by no means least, to protect women. The length of the sentence will depend on the circumstances. That is a trite observation, but these in cases of rape vary widely from case to case”.

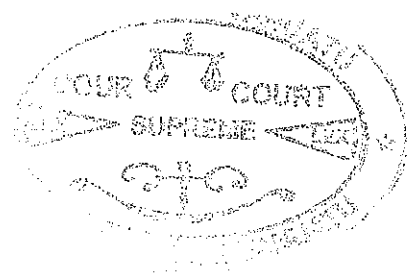
5. The Court went on to state that the offence of rape should in any event be treated as aggravated by any of the following factors:
 - (1) Violence is used over and above the force necessary to commit rape;
 - (2) A weapon is used to frighten or wound the victim;
 - (3) The rape is repeated;
 - (4) 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 effect upon the victim, whether physical or mental, is of special seriousness.

6. As was stated in **Public Prosecutor v Koata** [2009] VUCA 3 there is no dispute about the established principles as laid down in cases such as **Public Prosecutor v Gideon** [2002] VUCA 7 and **Public Prosecutor v. Scott** [2002] VUCA 29.

7. The starting point for the offence of sexual intercourse without consent is 5 years and where any one or more aggravating features are present, as in this present case, the sentence should be substantially higher than the figure suggested as the starting point.



8. Johnny Paul, in assessing your appropriate punishment I have considered matters raised in your Pre-Sentence Report, and submissions raised by both the Prosecution and Defence counsel. I note that you are 24 years of age and currently reside at Pango village with your defacto partner and two year old son. You have not performed any custom reconciliation ceremony as yet but you are willing to perform one whenever it is convenient.
9. However, I note with grave concern that you are a second time offender having been sentenced in 2011 to 100 hours community work and 12 months supervision for a sexual offending of Indecent Act.
10. It is my considered view that in this 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. Thirdly to serve as a warning to others. Fourthly to punish you and last but by no means least, to protect women. See **Public Prosecutor v Scott**. Furthermore, as stated by the Court of Appeal in **Public Prosecutor v Gideon**, "Men must learn that they cannot obtain sexual gratification at the expense of the weak and the vulnerable...."
11. In the circumstances, the Court convicts and sentences you as follows:-
 - (a) For the offence of sexual intercourse without consent, being the lead offence, 6 years imprisonment as the starting point.
 - (b) In order to reflect the aggravating factors I lift this starting point to an offending end point of 8 years imprisonment i.e. 96 months.
 - (c) I am prepared to allow you a full one third credit i.e. 32 months for your early guilty plea leaving a balance of 64 months. That saved the State the cost of a trial but more importantly it saved the complainant, who is married with children, from having to undergo the ordeal of a trial.
 - (d) You have also expressed remorse and I am entitled to take that into account. I reduce a further 4 months from the 64 months.



- (e) This brings me to a sentence of 5 years as an end sentence which I consider appropriate in this case for the offence of sexual intercourse without consent.
- (f) For the offence of Threats to kill, the starting point will be 3 years imprisonment which I will reduce to 1 year imprisonment to take into account your early guilty plea and mitigating circumstances.
- (g) For the offence of Theft, I will consider imprisonment for 8 months as a starting point and I would reduce this to 4 months to take into account your early guilty plea and mitigating circumstances.
12. The total concurrent sentence is therefore 5 years imprisonment backdated to 27 January 2014 which is the date when you were remanded in custody.
13. All your sentences are to be served concurrently with the 5 years imprisonment for sexual intercourse without consent.
14. You have 14 days to appeal this sentence if you do not agree with it.

DATED at Port Vila, this 5th day of May 2014.

BY THE COURT


M.M. SEY

Judge

