

PUBLIC PROSECUTOR

- v -

JEFFERY MANIPEN

Coram: Vincent Lunabek Chief Justice
Counsel: Mr Leon Malatugun (Acting) Public Prosecutor
Mr John Less Napuati Defence Counsel

REASONS FOR SENTENCE

INTRODUCTION: CHARGE AND INITIAL PLEAS

Mr Jeffery Manipen, you are initially charged with one count of sexual Intercourse without consent and one count of threats to kill, contrary to sections 91 and 115 of Penal Code Act respectively.

On 5 November 2013, you entered not guilty pleas on both counts. A trial was required and it was listed for 3 days (17, 18 and 19 February 2014). The trial was adjourned to 7, 8 and 9 July 2014 as the complainant was in New Zealand in the seasonal workers scheme.

On 7 July 2014, the trial was adjourned to the next date 8 July 2014 on the prosecution's application with the consent of your lawyer.

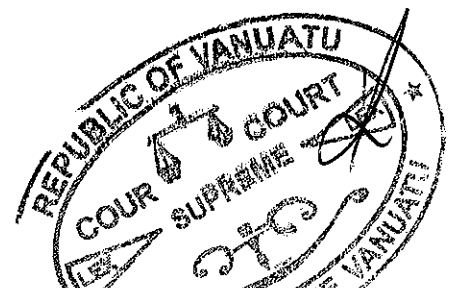
On 8 July 2014 before the trial began, the prosecution entered a nulli prosequi in respect to the offence of threats to kill charged against you in count 2. You were discharged of that offence accordingly pursuant to section 29 of Criminal Procedure Code [Cap136].

You maintained your plea of not guilty on the offence of sexual intercourse without consent, contrary to sections 90 and 91 of Penal Code Act. The trial proceeded on that basis on 8 July 2014.

LAW

The law is that the prosecution must prove each and all essential elements of the offence of sexual intercourse without consent, beyond reasonable doubt. I set out these elements thereafter:

1. That on Friday 27 September 2013, in Port Vila, Defendant Jeffery Manipen had sexual intercourse with the complainant woman (x).
2. That the complainant woman (x) did not consent to have sexual intercourse with the Defendant on Friday 27 September 2013.



3. That the Defendant did not reasonably believe that the complainant consented to sexual intercourse with him on Friday 27 September 2013.

PROSECUTION WITNESSES

The prosecution has called 3 Witnesses: the complainant prosecutrix (x), Leipakoa Willie and Police Officer Sandrina Bila.

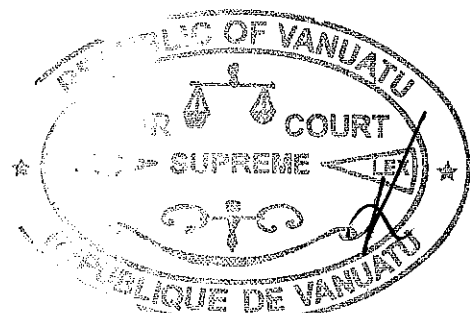
X is the complainant woman. She is the first prosecution witness. She gave evidence to the following effect. She is 41 years of age. She is from Ambae Island. She lives at Malapoa whitewoods at Port-Vila. She is married. She has five (5) children and she is also a grandmother. She was involved with the R.A.C workers scheme in New Zealand. She recalls that on Friday 27 September 2013, at about 7.00am o'clock in the morning, she wanted to go to Abattoir. She went with her husband at Tebakor to stop a bus. Her husband went to Tebakor shopping and she went to stop a bus at the bus stop.

Defendant Jefferey Manipen drove a bus and stopped at the bus stop. The Defendant told her: "Anty you wantem go where?". She replied: "Mi wantem go lo Abattoir". She showed and pointed to Defendant Jeffery Manipen in the defence dock that he is the man she accused he drove the bus and sexually abused her on 27 September 2013. She did not stop that bus. She did not know of the driver. He is not a member of her family. She never met him before. She said she went into the bus of the Defendant. The bus went at Blacksands and picked up some children. She did not know of the children. The bus dropped off the children at Vila North. The bus went around and back to Port-Vila town and picked up seven (7) tourists and dropped them at Mele Village Beach. The Defendant asked the tourists to pay 300VT bus fares each. He spoke loudly to the tourists to pay his bus fees 300VT each. Two female tourists refused to pay 300vt fares. The Defendant opened the door of his bus, came outside and wanted to assault the two female tourists. They paid the bus fare 300vt. The Defendant did not have change, he kept the change with him and he drove his bus off. She described the tourists were afraid and disappointed.

There were just the defendant driver and herself in the bus. She was asked and she said the driver told her that he will drive pass Abattoir road and go first at Mele beach before he could come back and drop her at Abattoir as the tourists were in a hurry.

She said after dropping off the tourists, the bus driver drove his bus to the tar sealed road taking the direction of Mele Maat. She said she was not happy because it was not her way. She told the Defendant: "you stap ron igo where?" He replied: "mi run igo olsem fastaem bifo mi go droppem you". She responded: "sipos you wantem go lo place ia. Bae mi go daon lo place ia nomo."

Then the Defendant driver stopped and reversed his bus and turned his bus back to Mele back to Abattoir direction. She was sitting behind. She saw the back of the driver. Then the Defendant told her to drop her off in town instead of Abattoir. Before they arrived at Abattoir road, the Defendant told her: "yumitu go mi fuckem yu fastaem bifo mi go droppem you".



She felt bad and frightened when the Defendant said that to her. She said she was afraid because the Defendant his bus in an excessive speed and she refused and did not want to have sexual intercourse with the Defendant. She said she told him: "Plis yu no mekem fashion ia lon mi. Mi married. Mi gat pikinini mo mi wan grandmother." Defendant replied: "I oraet nomo." He insisted: "you no save winim mi." She then noticed that the Defendant ran pass the road leading to Abattoir. She said she told the Defendant that she has her monthly periods. She explained she said that to the Defendant at that time because she knew that men are afraid of having sexual intercourse with women who had their monthly periods. The Defendant replied: "Hemi oraet nomo." Then he told her angrily: "you save mi o you no save mi. Bae mi go mi droppem you back again lo taon." She answered him: "Istret nomo go droppem mi back long taon." She thought the Defendant will drive her to town but when he drove pass Samasama Store, he swang his bus on the side of the road. It was on the right side of the road. He accelerated the speed of his bus followed a track into the bus. She was not happy. She was afraid. She felt she could not do any action or anything else. At all those times, she was crying. She did not call out. She was inside the bus. She talked to him and shouted at him. She was panicked. She forgot everything at that time, she felt bad and unhappy. The Defendant stopped the bus in the bush. He got outside the bus. She was sitting inside the bus. The Defendant told her: "Mi talem se you come outside. sipos you no come outside bae mi come inside."

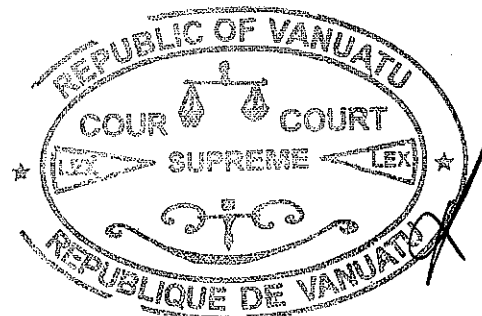
She said she looked in the bus at the forehead where the Defendant was she saw a small knife in the bus. He told her three (3) times to come outside and on the 3rd time she came outside the bus. She gave detailed evidence of what and how the Defendant told her to come outside the bus: "you come out lo bus. Mi talem lo you blo you came out lo bus." She said she was still sitting inside the bus. He told her: "Hey you come outside lo bus." She came out of the bus because she was afraid of the Defendant. He told her to go with him (have sex) on the side of the bus. He told her: "you takem aot panty blo you." She was in the bush with the Defendant. She was afraid. She was just standing up. She did not remove her panty. He shouted on her to remove her panty. This was the third time he told her to remove her panty and she said he told her that if she refused to remove her panty, he will kill her and throw her dead body in the bush and her family will not see her again. She said at that time, she said she thought about "girl blo mifala we oli cuttem hem ided lo Monmartre School. Mi tingbaot ol track blo naef lo body blo girl ia." She was afraid of the Defendant.

She removed her panty. She took a condom from her hand bag and gave the Defendant. She explained that she refused and she did not want to have sexual intercourse with the Defendant. She also said she did not want to feel or touch the Defendant's skin or body to be in contact with her skin or body, she did not like him. She said after she gave him a condom, the Defendant tore it and threw it into the bush. He did not want to use condom. He wanted skin to skin. He told her to lay on the ground. At the time she wore a skirt and t-shirt bra and panty. She removed only her panty. She did not remove the rest of her clothing.

She was asked why she removed her panty, she said the reason was because the Defendant threatened to kill her and threw her body in the bush and her family will never see her again. She did not make noise, she talked to defendant. She felt bad and frightened. She did not know what to do when she faced with this situation. She said after he tore the condom and threw it in the bush, he shouted at her and said: "you silip down." she refused to lay down on the ground. She said she told him she will bend herself as she did not want to face him and look at his face. She added she did not want to feel the smell from his body that is the reason why she told the Defendant instead of her laying down on the ground; she will bend herself to him. He told her three times to lie on the ground and on the third time, he pushed her and she felt on the ground. He slept on her and opened her legs. She tried to close her legs but he was too strong, he penetrated her with his penis. She felt bad and looked away on the side. She did not face him. He tried to kiss her on her mouth or tongue she swang her head on the opposite side. He tried again to kiss her on her mouth on the 3rd occasion and she moved her head away from him. She did not like him laying on her, she told him to hurry as she wanted him let her go. He ejaculated inside her body and after the sex, he accepted to go and drop her at the Abattoir.

She was asked she said she was crying when she asked the Defendant to release her. She cried when she was inside the bus. She started crying when the Defendant asked her for sex. She said when the Defendant said he will drop her off at Abattoir; she wore her panty back while she was still crying. The defendant told her: "you cry olsem yu smol". She did not say anything. He did not say anything else until he dropped her off. She said when he drove the bus to Abattoir; he drove normally at that time. She was still crying in the bus. The bus took 30-40 minutes to Abattoir.

At Abattoir, the bus stopped. She ran to Leipakoa who happened to be there. She did not pay the bus fare. There were other people there at the bus stop. She only recognised Leipakoa. She knew Leipakoa who is one of her friends. She lives in the same area at Malapoa with her. She knew Leipakoa since she rented out at Malapoa about 5 years ago. At the Abattoir, after she run outside the bus, she hanged on Leipakoa and cried. The Defendant left. Leipakoa asked her why she cried. She told Leipakoa of what Defendant did to her. She said she told her she was nearly lost her life and her family will not see her again. Leipakoa felt sorry for her and told her: "Man mi sorry lo you. I gud you letem body blo you sipos no bae one something bae i happen lo you." Leipakoa told her to stop crying. She stopped crying and they waited for a bus. A bus arrived. They took that bus back to Malapoa whitewoods. In that bus, she said, she was still crying. The driver of that bus asked her of what happened she also told him of what happened to her. She said she cried until the bus dropped her back at Malapoa whitewoods. When she arrived at her home, she decided not to tell her husband of what happened to her. She explained she decided not to tell her husband because he is a sick person. He has heart decease and she said she did not want to take the risk of telling him immediately.

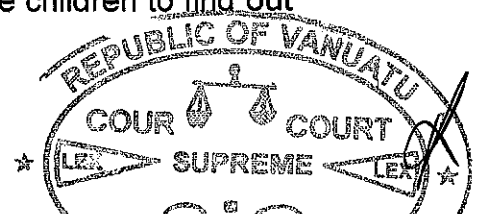


She said on Saturday 28 September 2013, she told Toara Thomas of what happened to her on 27 September. Toara Thomas is one of her Chiefs. She said she told Toara to tell her husband in a way that he could understand. She said Toara Thomas told her husband of what happened to her on Saturday 28 September 2013.

The complainant woman (x) was subject to almost two (2) lengthy hours of cross-examination by the Defence counsel. However, she maintained her evidence in chief and she has never been shifted to what she said in her evidence. She never saw the Defendant before. She did not know him. She did not recognise his bus. She never met him before. She confirmed her evidence that the Defendant kept the change of money paid by the tourists to him for bus fares as she recalled that 100 Vatu change was missing and the 2 female tourists argued with the Defendant about the change of money they paid for the bus fares. The Defendant drove his bus away. She confirmed her evidence that after they went to Mele, the Defendant drove his bus on the road toward Mele maat but after she enquired and asked him to drop off her just on the road, he swang his bus and come back to Mele towards Abattoir. Before Abattoir road the Defendant told her that he would have sexual intercourse with her before he will drop off her at Abattoir. She confirmed she did not want to have sexual intercourse with him. She refused to have sex with him. She confirmed her evidence that the Defendant told her that if he will not have sex with her, he will drive her again to town and drop off her back in Port Vila town. She confirmed she told the Defendant that it was alright he could drop her off back to town. She confirmed she cried and she started crying when the Defendant drove his bus towards Mele maat. She was crying when the Defendant drove pass the road to Abattoir near Samasama shop. After Samasama shop, she confirmed the bus turned on the right side of the road following a small road there in the bush. She could not jump out. She could not open the door of the bus when the bus was running. She could not even stand up inside the bus. When the Defendant stopped the bus, he quickly went outside. She was sitting in the bus thinking about the distance and she said she did not know of the distance. She said even if she went outside starting to run the Defendant will catch her and killed her. She did not know of the Defendant and she was afraid of him.

She confirmed the incident occurred on 27 September 2013. She reported the matter to the police on Monday 30 September 2013. She was asked why 3 days after? She explained she did not know the Defendant. She said she followed and discovered that the children and the woman that the Defendant took them and dropped them at Vila North on Friday 27 September 2013 were his wife and children. This was on Saturday 28 September 2013 that he got the confirmation that the name of the bus driver who had sex with her on Friday was Jeffery Manipen. Then on Monday 30 September 2013, she lodged her complaint to the Police. She confirmed her evidence that the Defendant threatened to kill her and throw her body in the bush and that her family will not see her again.

She was asked and she confirmed she was married to her husband on Ambae. They lived and slept in an open room. She was asked of her carrying condom in her bag in the bus and public places. She explained that everything for her including condoms she put them in her hand bag. She said because their sleeping room with her husband was an open room and they shared the room with her children and the children were grown up. She did not want the children to find out



that she used the condom with her husband that was why she had the condoms in her bag. She was asked she said her husband knew of the condoms in her bag. She said she used the condoms with her husband because they did not want to have any other child again.

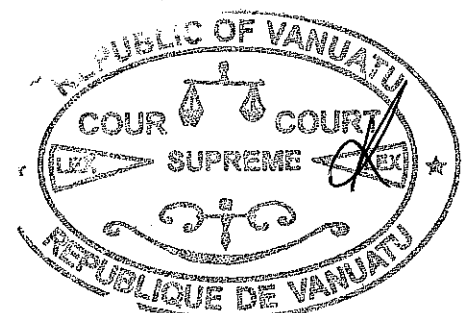
She was challenged even if the Defendant had accepted to use the condom, she said she will still lodge the complaint against him because she did not want to have sex with him and she did not like him. She repeated she is a married woman and she has children. She confirmed her evidence that she removed her panty after the Defendant threatened her that if he did not have sexual intercourse with her, he will kill her and throw her body in the bush. She confirmed she told the Defendant during the intercourse to hurry up because she did not want to have sex with him and she disliked him sleeping on top of her. She said she took the colour of the bus and its registration number but because of what happened to her she had just forgotten the colour and registration #. She confirmed she lodged his complaint on Monday 30 September because she had first to find out who were the defendant and his name before she lodged her complaint. She confirmed her evidence that when the Defendant threatened her, she was afraid and crying as she said "Mi cry from mi save sipos mi takem any mo step bae bae mi olsem girl ia blo Monmartre bae oli kilim mi mo sakem mi i go lo bush."

She said on Monday 30 September 2013, her chief Thomas Toara found out who the Defendant was and his name. She was challenged as to why she did not mention of the incident to her husband. She said her husband was sick. She could not tell him of what happened to her straight away. They are married. They have children. She did not want to take the risk of making him get shocked.

It was put to her that she had tried to withdraw the complaint once after a custom ceremony was performed by the Defendant, his chief and family to her and her husband and chief. She said the police refused to withdraw the complaint as there was no written letter from her.

Leipakoa Willie is the second prosecution witness. She is 37 years of years. She is a mother of five children. She is married. She is unemployed. On Friday 27 September 2013, she was at Abattoir. She was standing at the bus stop there. She said the complainant came out of the bus, ran toward her, hanged on her and cried. She asked her why she was crying. The complainant told her of what the defendant did to her. The complainant told her the defendant bus driver sexually abused her without her consent. She told the complainant to stop crying. She helped the complainant to take another bus to Malapoa Whitewoods, the place where the Complainant lives. She also lives at Malapoa Whitewoods. She knows of the complainant. They used to make market selling 20 vatu items. When they arrived at the complainant's house, her husband was not there as he was still at work. The complainant's husband is from Tongoa Island. She described that the complainant cried when she came out of the bus at Abattoir. The complainant continued crying while they waited for another bus to go back to Malaopoa Whitewoods. She cried in the bus until they arrived at Malapoa whitewoods.

She was cross-examined. Her evidence did not shift. She maintained her evidence.



Sandrina Bila is the last prosecution witness. She is a police officer. She was the interviewing police officer. She interviewed the Defendant in the presence of police officer Davis Saravanu. The Defendant refused to talk except in the presence of his lawyer.

That is the end of the prosecution evidence and the end of the prosecution case.

SECTIONS 164 (2) AND 88 CPC [CAP136]

The Court requires the defendant Jeffery Manipen to put forward his defence pursuant to s.164 (2) of Criminal Procedure Code (CPC). The right of the Defendant under s.88 was read and explained to him. He understood his rights here under.

DEFENCE: CHANGE OF NOT GUILTY PLEA TO GUILTY PLEA

The Defence asked for the Defendant to be re-arraigned on the charge of sexual intercourse without consent. The Defendant Jeffery Manipen was re-arraigned and he changed his original plea and entered a guilty plea on the count of Sexual Intercourse without consent, contrary to ss.90 and 91 of Penal Code Act. That is the end of the defence case.

FACTS AND CONVICTION

I have listened and observed the complainant woman in the witness box during her evidence in chief and cross-examination. Although, she went through some emotional period when she was forced through two (2) hours cross-examination to recount to all strangers in court the sexual indignities she went through, she is a creditworthy and powerful witness. Further, her evidence was corroborated by the evidence of Leipakoa Willie. Finally, Defendant Jeffery Manipen changed his not guilty plea into a guilty plea after the prosecution case ended and after his right under s.88 were explained to him and he was required to put forward his defence pursuant to section 164 (2) of the CPC [Cap 136].

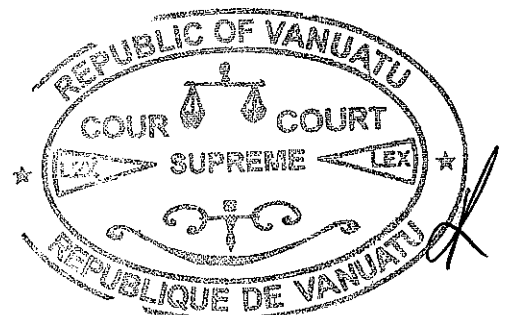
I believe and accept the complainant's evidence as the version of facts to be relied upon for conviction and sentencing.

The Defendant Jeffery Manipen is accordingly convicted of the offence of sexual intercourse without consent, contrary to section 91 of the Penal Code Act [Cap. 135].

SENTENCING CONSIDERATIONS

In considering your sentencing, I will rely on the detailed and undisputed evidence of the complainant woman. There is no need for me to recount these facts again here.

In considering your sentencing, I have the benefit of reading the Pre-Sentence Report provided by the Probation Office. I also read and consider the submissions of the Public Prosecution and authorities in support. I finally consider the submissions and case authorities submitted by your lawyer.



The submission of your lawyer that your case is a very exceptional circumstance and does not call for an immediate custodial sentence is wrong and is rejected. The reason being that the facts of this case do not justify a very exceptional circumstance of your offending on 27 September 2013 and the submission is also against the principle and guideline judgments applied by this Court and the Court of Appeal on this type of offending.

The offence of sexual intercourse without consent is defined and prohibited by the law of Vanuatu in the Penal Code Act (ss90 and 91). They are set out below.

SEXUAL INTERCOURSE WITHOUT CONSENT

90. Any person who has sexual intercourse with another person:

(a) without that person's consent; or

(b) 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

(iii) by fear of bodily harm; or

(iv) by means of false representations as the nature of the act; or

(v) in the case of a married person, by impersonating 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.

Section 91 provides:

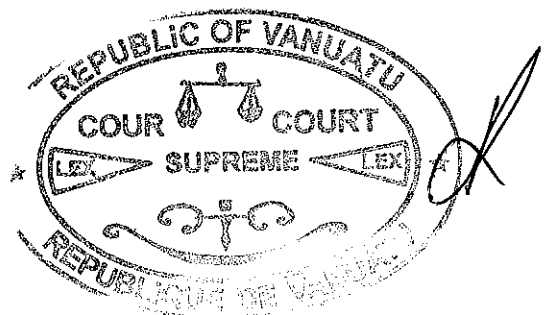
91. No person shall commit sexual intercourse without consent.

Penalty: Imprisonment for life

Sexual Intercourse without consent is a very serious offence as reflected in the maximum penalty imposed by law of imprisonment for life. On the facts of the present case, you had sexual intercourse with the complainant on 27 September 2013 without her consent.

Your offending in the present case coupled with its seriousness is aggravated by the following factors:

-There is some degree of planning and pre-meditation. The complainant took your bus in the morning. She told you to drop her at Abattoir. You did not drop her at Abattoir. You drove past Abattoir and you went first to Blacksand to take your wife and children and dropped them off at Vila North. You went back to town and picked up some tourists and dropped them off at Mele beach. You drove off and took direction of Mele Maat. The complainant enquired as to where you go this time and you told her to go to Mele Maat. She asked you to drop her at Mele road. You turned your bus and drove back to Mele leading to Abattoir road. You told her to drive her back to town. You drove past Abattoir road again and you passed Samasama road, you drove following a small road on the right side into the bush. These facts and conducts show some degree of planning and pre-meditation on your part.



-Breach of trust as a bus driver who is expected to provide a safe service of public transport to general public. You have breached that trust on 27 September 2013 when you deliberately failed to drive the complainant to her destination as requested by her.

-Related emotional and physical stress of being locked up in the bus and at some excessive speed with a deliberate intention of sexual offending.

-Use of force or threats by means of intimidating complainant; or by fear of bodily harm and threw her body in the bush and her family will not see her again.

-Selfish sexual greed by not considering the risk of exposing the complainant to sexual deceases or unwanted pregnancy when refusing to use condom.

-Use of primary male dominance attitude and arrogance on a vulnerable person (a woman) in the society.

The appropriate sentence is 6 years imprisonment as a starting point based on the guideline judgments of the Court of Appeal in:

-PP -v- Scott [2002] VUCA 29;

-PP -v- Gideon [2002] VUCA;

-PP -v- Hinge [2008] VUCA 30;

-PP -v- Andy [2011] VUCA 14;

and others.

The court condemns your offending in the strongest terms as it is unacceptable and intolerable in the society. Again as I mention earlier, the present case is not a case of exceptional circumstance warranting for other sentencing options than custodial. Therefore, only custodial sentence is justified in this case for the following reasons:

-It reflects the seriousness and gravity of your offending.

-The public disapproves this type of offending

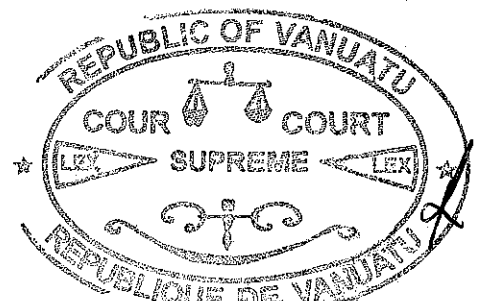
-It sends warnings to others in society including bus drivers who will intend to commit the same offence using their bus vehicle to go to custody.

-In your case, it punishes you for your serious offending coupled with the aggravating circumstances.

-Custody is a measure to protect women and vulnerable people in the society.

The report states that you are 35 years of age from Tanna Island and you reside at Black sands area, Port Vila. You have 5 children. You have good relationship with your family and community. It is reported you were contesting the 2012 general elections on Tanna constituency but you were not successful. You are a former teacher. You were in the teaching service for 12 years until you resigned to contest the general elections in 2012. It is reported you are planning to contest again in the next upcoming general elections in 2016 as it is your community and people's wish. However, as you recognised yourself in the report, your offending was a great mistake that could hinder your participation in the election campaign for 2016 and could lead your children and families to be victims of your selfish behaviour.

You are the only bread winner of your family. You provide food for your children and wife and also your old parents who live with you.



It is also reported that you consume kava and alcohol, you smoke cigarettes. You have no health issues. You state you are also a full time member of the Seventh Day Adventist Church. I do not quite understand that you can consume Kava, alcohol and smoke cigarettes and remain a full time member of the Seventh Day Adventist. But I guess you are your own best judge of this.

In mitigation, I accept that you are a first time offender; you do not have previous convictions. You did not enter a guilty plea at the First opportunity given to you by the court but you entered a guilty plea after the end of the prosecution's evidence and case by putting the prosecutrix in the ordeal of a criminal trial by telling the strangers in Court of the sexual indignities you have put her through. My preliminary view is that you will not be entitled to any guilty plea credit allowance. However on reflection, I assess I will give you some allowance because you have saved the court's time by changing your initial plea to a guilty plea and you have accepted your guilt and thus, the responsibility of your offending. I will give you an allowance of 3 months to reflect your guilty plea in the circumstance of this case. I also note that you have performed a custom compensation to the complainant, her family and chief and your Tanna supporters also have travelled to Vila and performed another custom ceremony to the complainant and her Family on your behalf before returning back to Tanna. The details of the custom items provided by you and your families and your Tanna supporters are set out below:

First custom compensation:

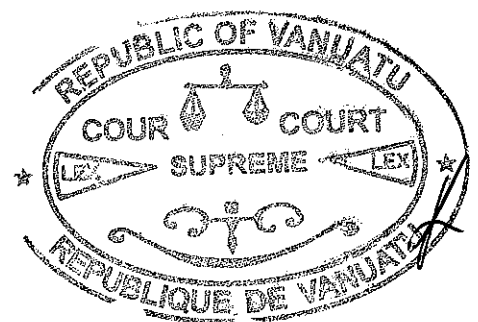
- A pig (estimated 50,000Vt)
- Some mats
- Baskets of Island food crops
- Calico / Garments
- Kava
- 50,000Vt cash money

Second custom compensation:

- A pig (estimated 50,000Vt)
- Mats
- Calico / Garments
- Kava
- Baskets of Island food crops
- 20,000vt cash
- One (1) 25Kg Bag Calrose rice.

The complainant accepts the custom compensation performances. These custom ceremonies enable your good people share your loss and to accept that we as humans make mistake to accept another indication of remorse, acceptance of responsibility and contribution and willingness to rectify a very clear wrong.

That requires on the part of your family and your people bearing the lost a rush of human kindness to understand that their loss is also your loss and your close family members.



I will give an allowance of 4 months to reflect these customary compensation performances. You have already spent some time in custody on remand from 4 October 2013 to 19 February 2014. I round up the period to 5 months pre-custody period which must be disallowed from your total imprisonment sentence.

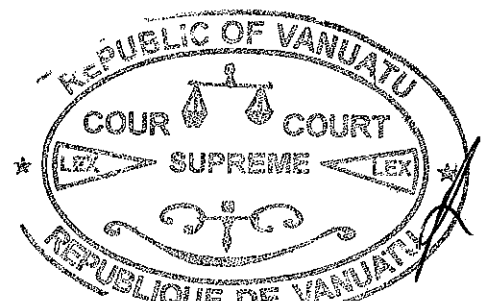
I note that your lawyer referred to some part of the evidence of the complainant (at paragraph 7(l) (ll) of his submissions) that the complainant had in her bags a bag of condoms and at some point just before they had sex, she offered condoms to the accused to use if he wants to have sex with her. The two pieces of evidence have to be understood in the context of the case which must be confined to the undisputed evidence of the complainant which was accepted by the court. The factual context is that the complainant and her husband share an open sleeping room with their grown up children. The complainant used her hand bag to put her personal things inside. Her personal things include condoms as she said she used the condoms with her husband because they did not want to have children anymore. Her husband knew that she had condoms in her bag. She said she put the condoms in her bag because she did not want her children to find out that she used condoms with her husband.

Further, she said she did not want to have sexual intercourse with you on 27 September 2013. She did not want you to touch her and she did not want your skin to be in contact with her skin. Because she was afraid of you coupled with your intimidations on her and also she feared she will be personally harmed by you in the bush, she took a condom from her bag and gave it to you. You refused to use it. You wanted "skin to skin" sex. You tore the condom and threw it into the bush. The complainant still refused to have sex with you. She did not want to touch you, smell your body or even look at your face, she asked you she will turn herself and bend her body by offering to you her buttock. That was where you pushed her on the ground. She fell on the ground and you had sex with her without her consent. That is the factual context under which the pieces of material evidence (condoms) referred to by your lawyer must be understood.

Your lawyer also referred to the fact that the complainant accepted the two custom ceremonies along with the cash money and had withdrawn the charges against the accused (at paragraph 7 (v) of his submissions). I make three short observations:

First, the acceptance by the victim of the custom compensation performances is an important element of the sentencing process in respect to the contrition and rehabilitation exercise in the society. In your case, it has been recognised as a mitigating factor with some allowance given as part of the mitigation process to your present sentencing as referred to earlier in the relevant part of this sentencing.

Second, I must inform you that the quantity of custom compensation and the amount of cash money provided fulfil the purpose of clearing and cleaning faces between you and the victim, your respective families, chiefs and communities. They mitigate the length of the sentence and the harshness of the penalties imposed but they cannot alter the nature and seriousness of your offending.



Third, I must inform you also that a complainant cannot withdraw the charges laid by the Public Prosecutor against an accused person. The charges contained in criminal information are part of the state public action machinery to vindicate the breach of the criminal law of the land and (unlike private action) they cannot be withdrawn by the complainant.

In the present case, the complainant woman cannot withdraw the charges laid by the Public Prosecutor against you based on the complaint of the complainant. It is wrong for your lawyer to submit or suggest or invite the court to infer anything to that effect.

In the present case, your sentencing is summarised in this way:

1. Starting Point (inclusive of Aggravating Factors)
 - You are sentenced to 6 years imprisonment as a starting point for your sentencing.
2. Mitigation
 - 3 months allowance for guilty plea entered after the prosecution evidence and case completed.
 - 4 months allowance for performance of custom compensation.
 - 5 months pre-custody period disallowed from the total imprisonment sentence.

Your end sentence is 5 years imprisonment. This sentence cannot be suspended. You must serve your sentence with immediate effect

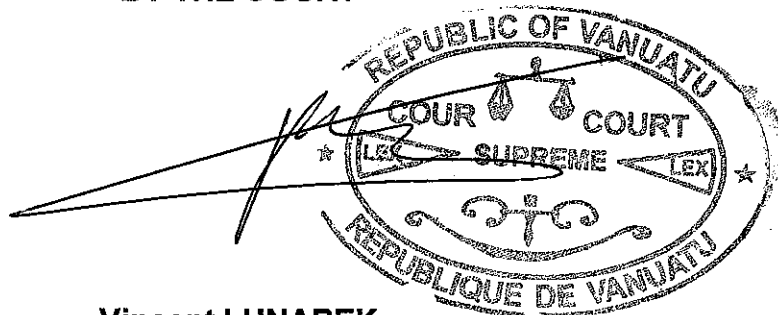
ORDER

You are sentenced to a term of 5 years imprisonment with immediate effect.

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

DATED at Port-Vila this 14th day of August 2014

BY THE COURT



**Vincent LUNABEK
Chief Justice**