

IN THE SUPREME COURT  
REPUBLIC OF VANUATU  
(Criminal Jurisdiction)

Criminal Case No. 141 of 2016

**PUBLIC PROSECUTOR**

-v-

**BAKON JACK**

Before: Chetwynd J  
Hearing: 15<sup>th</sup> March 2016

Ms Ngwele for the Public Prosecutor  
Mr Tasso for the Defendant

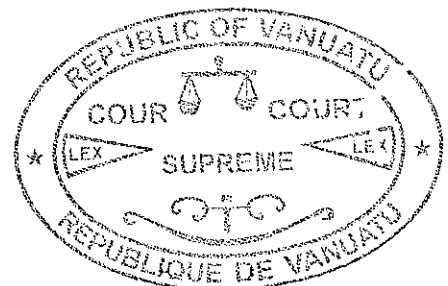
Sentence

1. The Defendant has pleaded guilty to a charge of having sexual intercourse without consent. The Complainant is the Defendant's step daughter. The facts are agreed. In November 2015 the Defendant asked the Complainant (Ms "A") to go to the garden with his children. At the time she was working at the copra bed with him. She did not want to go and this apparently angered the Defendant. He stayed at the copra bed with her. Later in the morning he told her to go to an area of bush close by. She refused and he walked towards her with a knife in his hand. He swore at her and she was frightened and so walked into the bush. The Defendant followed and he told her to remove her clothes. He was still carrying his knife and she continued to be frightened of him and, through fear, took her clothes off. He then took his clothes off and had sexual intercourse with her. She did not agree with the Defendant having sexual intercourse with her. The matter was reported to the police and on 4<sup>th</sup> December the Defendant was arrested. He was arraigned on 2<sup>nd</sup> February 2016 and entered a plea of guilty. His case was adjourned for reports and sentencing to today.

2. A helpful Pre-Sentence Report has been provided by the Probation Services. I have also received written submissions from Defence counsel and from the Public Prosecutors office. I have taken careful note of all that has been said about or for the Defendant.

3. Sentencing guidelines for rape have been around for some time in Vanuatu. In the 2002 case *PP v Scott*<sup>1</sup> the Court of Appeal repeated, with approval, the guidelines

<sup>1</sup> *Public Prosecutor v Scott* [2002] VUCA 29; CA 02-02 (24 October 2002)



which had been set out by the Chief Justice in earlier cases including *PP v August*<sup>2</sup>. His Lordship said in *August's* case:

*"For rape committed by an adult without any aggravating or mitigating features, a figure of five years should be taken as the starting point in a contested case. Where a rape is committed by two or more men acting together, or by a man who has broken into or otherwise gained access to a place where the victim is living, or by a person who is in a position of responsibility towards the victim, or by a person who abducts the victim and holds her captive the starting point should be eight years."*

He later added:

*"The offence of rape should in any event be treated as aggravated by any of the following factors:*

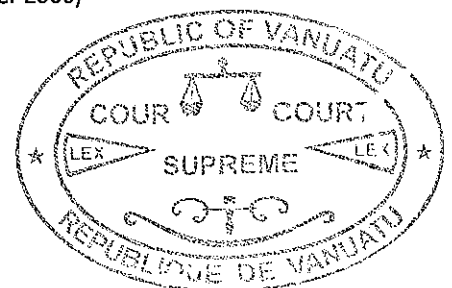
- (1) Violence is used over and above the force necessary to commit rape;*
- (2) A weapon is used to frighten or wound the victim;*
- (3) The rape is repeated;*
- (4) The rape has been carefully planned;*
- (5) The defendant has previous for rape or other serious offences of a violent or sexual kind;*
- (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.*

*Where any one or more of these aggravating features are present, the sentence should be substantially higher than the figure suggested as the starting point."*

4. The Defendant was in a position of responsibility towards Ms A. He is her step-father and stands in place of her biological father. He has all the obligations and responsibilities of a biological father. In view of the guidelines set out above the starting point is 8 years.

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<sup>2</sup> *Public Prosecutor v August* [2000] VUSC 73; Criminal Case No 014 of 2000 (28 November 2000)



5. The Defendant had a knife with him which was used to intimidate the Complainant. Whilst there may not have been an actual threat directed at Ms A by with the knife, she was put in fear by the defendant's manner and by the fact he was carrying the knife. The knife was no doubt intended to intimidate her and cause fear. This is clearly an aggravating factor and the sentence should be increased to reflect that. The maximum sentence the Defendant should serve is 10 years.

6. In mitigation of that sentence the Defendant has been responsible enough to admit his guilt at a very early stage. Whilst he may not have been particularly forthcoming to the police when interviewed, he has certainly entered an early plea of guilty in the Court. He is entitled to have the sentence discounted by a full one third. That will reduce his sentence to 6 years and eight months.

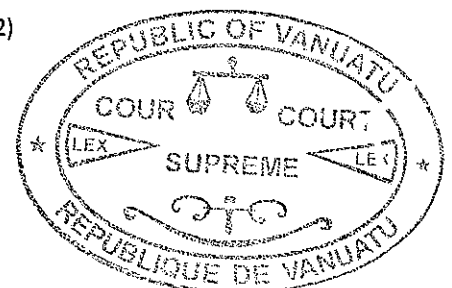
7. The Defendant is also entitled to a further reduction for his previous good character. He is now 35 and has not been in trouble with the law previously. He is due some credit for that. His sentence will be reduced by a further 9 months to 5 years and 11 months.

8. Unfortunately the Defendant has not shown himself to be truly remorseful. He has sought to shift blame for the offence from himself to his wife, saying she stayed away too long in Port Vila. He also appeared to blame the Complainant as well. This attitude came close to aggravating the offence further but rather than add to his sentence it will be sufficient denouncement of that attitude to decline to reduce the sentence further. There has been no reconciliation attempt and so the final sentence to be served by the Defendant is 5 years and 11 months imprisonment.

9. In passing I should mention that there is a letter supposedly from the Complainant. I have taken no account of that letter. Apart from not being able to read the only copy I have seen because it is illegible, there are dangers in accepting a letter which may not have been written for the right reasons or indeed written for all the wrong reasons. If a victim of crime wants to mitigate a defendant's sentence that should be done through means other than just a letter. At the very least a sworn statement should be provided but in reality the victim will need to appear in court so the Judge can satisfy him or herself that the support is genuine.

10. In accordance with section 37 of the Penal Code I have considered whether or not the sentence can be suspended. In my view and given the guidance in the case of *Gideon*<sup>3</sup> this is not an extreme case which would allow the sentence to be suspended.

<sup>3</sup> *Public Prosecutor v Gideon* [2002] VUCA 7; Criminal Appeal Case 03 of 2001 (26 April 2002)



11. There is ample precedent to say that when the court is dealing with sexual abuse, and rape is sexual abuse, there should be no suspension of all or part of the sentence unless there are exceptional circumstances. I do not believe that exceptional circumstances are apparent in this case and therefore no part of the sentence can be suspended.

12. The Defendant will serve the sentence imposed on him immediately. The sentence shall be deemed to have commenced on 4<sup>th</sup> December 2015 when he was first taken into custody.

13. The Defendant is advised that if he is dissatisfied with the sentences passed on him, he has the right to lodge an appeal. An appeal must be filed in within 14 days. As this is a strict time limit and because there are other implications in filing an appeal the Defendant is advised that he should discuss this with his counsel as soon as he can.

Dated 15<sup>th</sup> March 2016 at Port Vila.

