

**PUBLIC PROSECUTOR**

**VS.**

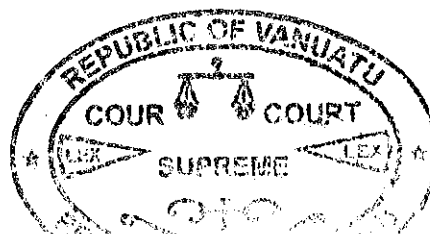
**HARRY RITE**

*Coram: Vincent Lunabek CJ*

*Counsel: Mr Kent Massing for Public Prosecutor  
Mr Tom Joe for Defendant*

**SENTENCE**

1. Harry Rite, this is your sentence, you are charged and you entered a guilty plea on one count of sexual intercourse without consent, contrary to section 91 of Penal Code Act [Cap 135].
2. The brief facts of this offence are these-
  - You were charged with the offence of Sexual Intercourse without consent. You committed this offence on the 14<sup>th</sup> day of April 2016.
  - The complainant or victim was 16 years old at the time of alleged incident. She was a student at NCYC (Youth Challenge).
  - You were 21 years old at the time you committed the act. You are a taxi driver. The description of the taxi you are driving is said to be a white taxi.
  - On the day of the incident the victim was on her way to NCYC to attend her classes at about 8.30am. On her way at Club de Sanma you, came by taxi and offered her ride to her school. She then entered the taxi. While you departed you did not turn the vehicle towards her school but instead followed a different route. A route that directed to the cemetery and towards eastern coast of Santo towards Surranda.
  - On the journey the victim stated in her police statement that as the taxi took off it was speeding very fast. She also stated the on the way you windup the windows of the taxi.
  - Once you reached Surranda area you turned and went to golf club. Then there you asked the victim for sex. She refused but you went on to satisfy

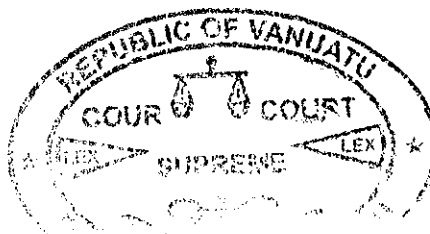


*[Handwritten signature]*

your sexual gratification despite her refusal. You also stated before sex that you will have sex with her from the morning till the afternoon.

- You removed her clothes and inserted your penis into her vagina. You then penetrated her vagina with your penis where you later found out that she was on her menstruation period. You then left her and you headed way back to town. Before you headed to town you told her that she should not reveal the happenings to anyone. Besides the victim also stated that even if she was not on her menstruation period she never had agreed to have sex with you. She also stated that she struggled at the time of sex and if she had called out for help there was no one there as the place was remote.
  - When you returned you dropped off her at the school. When she went to the school she admitted the offence to one of her friends Lewia. Where they both went to the clinic for medical examination of the victim as she was afraid and scared of being pregnant.
  - The medical examiner also stated that she was scared and afraid of what you had done to her. She also gave treatments to the victim.
3. You were later arrested by the police. You were cautioned and interviewed by the police on the 11/5/16 where you admitted the offence as alleged.
4. Section 90 defines sexual intercourse without consent. It provides:
- "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 to 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."*
5. Section 91 provides for punishment of sexual intercourse without consent in this way:

*"91. No person shall commit sexual intercourse without consent.*



A handwritten signature in black ink, consisting of a stylized, cursive letter 'A' followed by a flourish.

*Penalty: Imprisonment for life"*

Sexual intercourse without the consent of the other person is a very serious offence. The maximum penalty that you are liable to be sentenced with is life imprisonment.

6. In this case like any other case, the sentence reflect the circumstance of the offending.
7. I refer to the guideline judgment in Public Prosecutor –v- Scott and Tula [2002] VUCA 22 when the court stated:

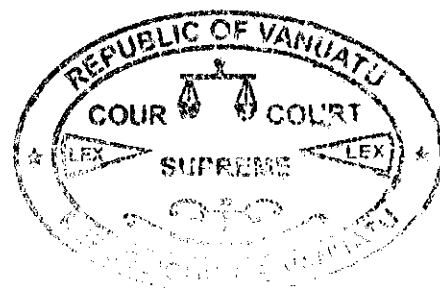
*"The offence of rape is always a most serious crime. Other than in wholly exceptional circumstance, rape calls for an immediate custodial sentence. This was certainly so in the present case. A custodial sentence is necessary for a variety of reasons: First of all to mark the gravity of the offence. Second to emphasize public disapproval. Third to serve as a warning to others. Fourth to punish the offender, and last but not the least, to protect woman. That is a trite observation, but those in cases of rape vary widely from case to case.*

*For rape committed by an adult without an aggravating or mitigating factor, 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.*

*At the top of the scale comes the defendant who has committed the offence of rape upon a number of women or girls. He represents a more than ordinary danger and a sentence of fifteen year or more may be appropriate.*

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

- (1) violence is used over and over 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 old or young;*
- (8) the effect upon the victim, whether physical or mental, is of special seriousness;*

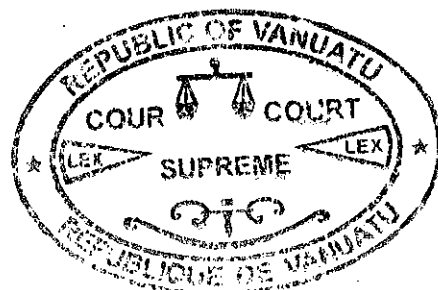


*Where any one or more of these aggravating factors are present, the sentence should be substantively higher than the figure suggested as the starting point.*

*If the defendant plead guilty, the sentence should be reduced by 1/3 depending on the circumstances including the likelihood of a finding of not guilty had to the matter been contested.*

*Thy fact that the victim may be considered to have herself in danger by acting imprudently (as for instance by accepting a lift in a car from a stranger) is not a mitigating factor, and the victim's previous sexual experience is equally irrelevant. But if the victim has behaved in a manner which was calculated to lead the defendant to believe that she would consent to have sexual intercourse then there should be some mitigation of the sentence. Previous good character is of only minor relevance."*

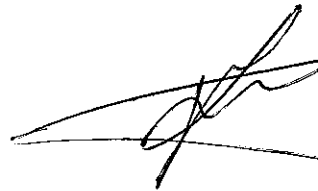
8. In this case, you offered a ride to the complainant to her school at 8.30am o'clock. When she entered into your taxi, you departed and instead of turning to her school, you took a different route. A route that directed towards the cemetery and towards eastern coast of Santo towards Surranda. You were speeding very fast. You also windup the windows of the taxi. You reached Surranda area and you turned and went to golf club. Then you asked the victim for sex. She refused. Despite her refusal, you removed her clothes and had penile intercourse with her.
9. I consider that you abduct the victim and hold her captive for the time of fulfilling your sexual gratification. I have the guideline judgment of Scott and Tula in mind (with reference to a starting point of 8 years imprisonment).
10. The only aggravation is the risk of getting sexually transmitted deceases or pregnancy because you had sex without using condom.
11. The appropriate starting point is 9 years imprisonment inclusive of the aggravating factors.
12. In mitigation, you are a young man of 21 years of age. You described your offending as a mistake. You regret your action. You intend and prepare to make a custom reconciliation ceremony but the victim and her family cancelled it as they are not interested.
13. Your starting point sentence of 9 years imprisonment is reduced to 1/3 to reflect your guilty pleas. Your actual sentence after 1/3 reduction is 6 years imprisonment. I reduced further for 3 months for other mitigating factors. This brings your sentence down to 5 years and 9 months imprisonment.
14. I note that you were first remanded in custody on 26 April 2016 and was released on 14<sup>th</sup> June 2016. I round it up to 1 month and I reduce your end sentence further for that 1 month.



15. Your end sentence is now 5 years and 8 months imprisonment.
16. This sentence, you shall serve it with immediate effect.
17. You have 14 days to appeal this sentence if you are unsatisfied with it.

**DATED at Luganville, Santo this 24<sup>th</sup> day of June 2016**

**BY ORDER OF THE COURT**



**VINCENT LUNABEK**  
**Chief Justice**

