

**IN THE COURT OF APPEAL**  
**THE REPUBLIC OF VANUATU**  
*(Criminal Appellate Jurisdiction)*

**Criminal Appeal Case No. 316 of 2016**

**BETWEEN: EVELYNE MATANLALA**  
*Appellant*

**AND: PUBLIC PROSECUTOR**  
*Respondent*

**Coram:** *Hon. Chief Justice Vincent Lunabek*  
*Hon. Justice John von Doussa*  
*Hon. Justice Ronald Young*  
*Hon. Justice Oliver Saksak*  
*Hon. Justice Dudley Aru*  
*Hon. Justice Paul Geoghegan*  
*Hon. Justice Mary Sey*  
*Hon. Justice David Chetwynd*

**Counsel:** *Mr Eric Molbaleh for the Appellant*  
*Mr Simcha Blessing (PPO) for the Respondent*

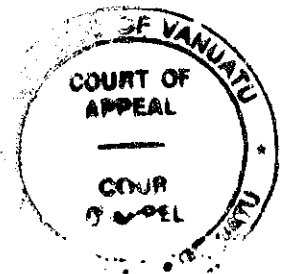
**Date of Hearing:** *Tuesday 5<sup>th</sup> April 2016 at 2:00 pm*  
**Date of Judgment:** *Friday 15<sup>th</sup> April 2016 at 4:00 pm*

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**JUDGMENT**

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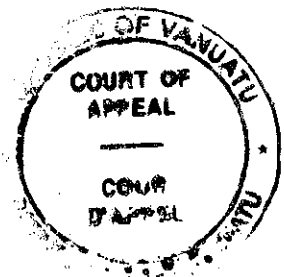
1. Ms Matanlala appeals from both conviction and sentence in respect of two counts of sexual intercourse without consent contrary to sections 89 (A), 90 and 91 of the Penal Code Act [Cap. 135].



2. Ms Matanlala had pleaded guilty to both charges and on December 11<sup>th</sup> 2015, was sentenced to 4 years imprisonment. She had been jointly charged with her husband who had also pleaded guilty and was sentenced at the same time as the appellant to 7 years imprisonment.
3. The notice of appeal contained 10 grounds of appeal. Some of the grounds were merely repetitions of others and after discussion with Mr Molbaleh it became clear that the ground for Ms Matanlala's appeal was that the sentencing Judge had not made sufficient allowance for the fact that Ms Matanlala had been forced or coerced by her husband to take part in the offending.
4. Having settled on that ground of appeal it was clear that there was no evidential basis upon which it could be argued and that it would be necessary for the Court to receive further evidence from Ms Matanlala in the form of a sworn statement. Mr Molbaleh was granted leave to file a further sworn statement and that statement was subsequently completed and filed.

### **Background**

5. The charges related to incidents involving two separate complainants aged 19 and 20 years respectively at the time of the offending and who appear to have been closely related to either one or both of Ms Matanlala and her husband. Both counts involved both defendants having coerced the victims and engaging in sexual activity with both defendants at the same time.
6. In sentencing the appellant's husband, the Judge adopted an end sentence of 12 years imprisonment taking into account all aggravating features which he reduced by five years to



take account of an early guilty plea and substantial custom reconciliation ceremony performed in respect of each complainant.

7. In the case of Ms Matanlala, the Judge adopted an end sentence of 8 years, not allowing for any mitigating factors and stated:

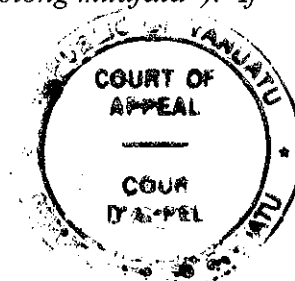
*"31. In light of your slightly lesser role in the commission of the offence and acknowledging that you may well have been acting under some pressure from your husband as reflected in the pre-sentence report of the probation officer, who assessed your "lack of insight and the pressures from the first defendant as the major contributing factors to your offending." I consider that as sentence of eight years properly reflects the total criminality of your actions".*

Four years were then deducted for an early guilty plea *"and to a lesser degree"* for the appellant's contribution in the customary reconciliation ceremony.

8. The Judge recorded that she had admitted her role in the assaults on the victims *"with one rider"* which was that she claimed that she was uneducated and had been taught by her husband how to perform such sexual acts. She also claimed that she was forced to do what she did to the victims by her husband.

9. With reference to that claim the Judge in his sentencing stated that:

*"23. I reject any suggestion of direct coercion by the first defendant. In both incidents the second defendant willingly played an initiating and/or persuading role even in the absence of the first defendant during the second incident involving DM. Furthermore there are her answers to questions 16 to 20 of her caution interview which are telling where in response to the first defendant's fervent request to have sexual intercourse with DM, the second defendant replied: "Mi bin talem yes, from mi gat bell o pregnant 9 months" (I told him yes because I was 9 months pregnant) and in answer 19, the second defendant says: "Mi bin tekem (DM) I kam" (I went and called DM to come) and finally, at answer 20, she is recorded as having told DM that the first defendant wanted to have sexual intercourse with DM on their marital bed ("....mi talem hem tati Marcel iwandem fuckem yu long bed blong mitufala"). If*



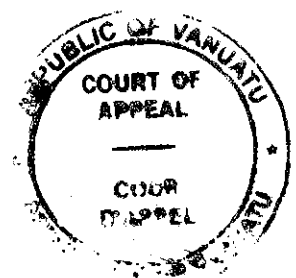
*I may say so these are not the answers of someone being forced to cooperate against their will.”*

*“24. This blame-shifting to minimize her part was repeated by the Second Defendant to the probation officer who prepared her pre-sentence report to whom she is reported to have said she was pressured by her husband. (“Hemia hemi festatem we mi mekem kaen samting fasin olsem, ating man blong mi lanem ol samting ia long internet”). However as in her police caution statement, the Second Defendant also expressed her sorrow and remorse to the probation officer for her actions against the complainants (“Mi sori long tufala from mi spoilem tufala”).”*

#### Ms Matanlala’s Statement

10. In the statement filed by Ms Matantala she claimed:

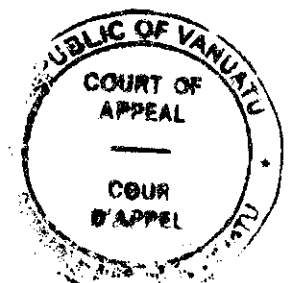
- a) Her husband would engage in sex with her either with her consent or not and that when she refused to engage in sex with him, he would “normally get very angry and assault [her] sometimes”.
- b) Her husband was very dominant and that she always did what he said;
- c) Her husband had assaulted her “several times” during their marriage to the extent where she “loss (sic) a lot of blood”;
- d) On the evening of the offending against the victim referred to as DM she had had an argument with her husband prior to the offending as she suspected that he and DM were having sex. During the course of that argument her husband squeezed her neck and threatened her to be quiet or he would drown her in the sea “like my father who was found death (sic) in the sea”. She stated that her husband had told her to come back to the house failing which he would assault her and that her husband was so aggressive that night that she was afraid. She had refused to see the victim DM but her husband had continued to make



threats to assault her as a result of which she did what he told her to do with respect to the victim DM.

- e) She had paid five red mats at a value of Vt 5,000 each to the victim DM in addition to the fines made to the chiefs and parents of the victims;
- f) With reference to the victim MR, her husband had suggested to her that MR sleep in the same room as she and her husband but she had refused to agree. She told her husband that if she had been aware of what he had intended she would have walked to her parent's village, however her husband had responded by threatening to assault her if she left the home. Her husband had then gone to drink kava and upon returning to their home he told Mrs Matanlala that if she did not agree to his having sexual intercourse with MR, he would assault her and make sure that she was admitted to the hospital. In addition, he threatened that if she called out for any help he would also assault her seriously.
- g) On a previous unspecified occasion, she had "runaway" and returned to her parent's village but that her husband had come to the village and had badly assaulted her in front of her mother;
- h) She expressed concerns for the welfare of her children as they were in the care of her elderly mother and she did not know whether they were being cared for adequately.

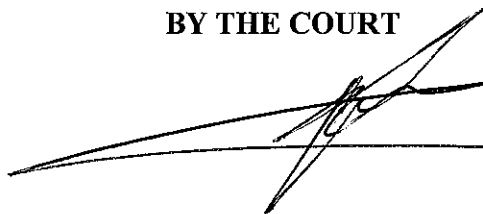
11. The Court accepts that, if what Ms Matanlala says in her sworn statement is true, and if such facts had been presented to the sentencing judge, there is a real likelihood that it could have had an impact upon the sentence passed on Ms Matanlala. None of this information was available to the sentencing Judge.



12. In many respects the complications in sentencing began by the representation of both defendants by the same counsel when those defendants had separate interests. None of these matters were fully apparent to the sentencing Judge at that time.
13. It would be quite inappropriate for this Court to endeavor to determine the truth or otherwise of the matters referred to in Ms Matanlala's sworn statement. For these reasons the appropriate course is to remit the matter to the Supreme Court for resentencing. Given that Ms Matanlala has filed her sworn statement it will be for the Public Prosecutor to call any evidence which is relevant to the issue of her claimed diminished responsibility. No doubt a conference will enable counsel to identify the mitigating and aggravating factors they wish the Court to rely on in sentencing and for the prosecutor to identify the witnesses the prosecutor wishes to call.
14. For these reasons the appeal is allowed, the sentence of the Supreme Court is quashed and the matter is remitted to the Supreme Court for re-sentencing. Ms Matanlala will remain in custody pending re-sentencing.

**DATED at Port Vila this 15<sup>th</sup> day of April, 2016**

**BY THE COURT**



**Vincent LUNABEK  
Chief Justice**

