

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

Criminal Case No. 22 of 2013

**PUBLIC PROSECUTOR**

vs.

**JAMES KAKIKI**  
**BOB ANDREW**

Coram: Judge Aru

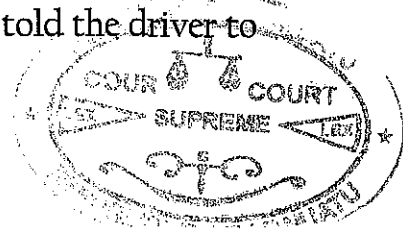
Counsel: Mrs. T. Harrison for Public Prosecutor  
Mrs. C. Thyna for the Defendants

**SENTENCE**

1. On 22 April 2013 both Defendants were each charged with one count of sexual intercourse without consent contrary to section 91 of the Penal Code.
2. Section 91 provides as follows:  
  

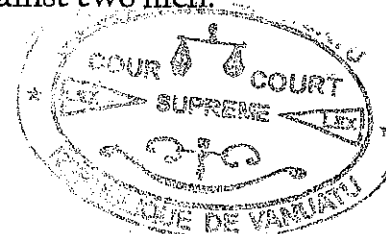
*"91.No person shall commit sexual intercourse without consent.*

*Penalty: imprisonment for life."*
3. On 7 May 2013 both Defendants entered not guilty pleas to the charges and trial was listed for three days starting on 30 May 2013. This trial date was vacated due to the Defendants wish to instruct another counsel to act for them. The trial was then relisted to 31 July 2013. After having started the trial with the Prosecution calling the Complainant as its first witness, the Defendants then indicated to the Court that they wished to change their pleas.
4. After a short adjournment, the Defendants were then re arraigned and on 1 August 2013 entered guilty pleas on both charges.
5. The brief facts of this case are that on 17 February 2013 the Complainant came out of Rumours night club at around 4.00 am and saw a white bus parked outside the night club. She entered the bus and told the driver to



take her to Tasiriki where she lived. Inside the bus she saw three people, one passenger was asleep at the front of the bus.

6. As she sat inside the bus she realized that the bus was travelling to Ifira Wharf and she began to feel frightened. Although the Complainant again told the driver to take her home, the bus continued on and stopped along side the stalls next to a cargo container at the wharf area. The Defendants then took her money from her and when she tried to run away they held her and pushed her to the ground. When she cried one of the Defendants strangled the Complainant on her neck and she struggled to breathe as she almost fainted. At the same time she noticed a yellow bus stopping nearby but it then drove off when she tried calling for help. The Complainant was held tightly preventing her from moving and the driver of the bus James Kakiki raped her first with her clothes still on and also biting her many times.
7. When he finished raping her, the second Defendant Bob Andrew also raped her and asked the Complainant to kiss him. When he finished raping the Complainant he tried to take her to his house. He dragged her by the arm but the Complainant was terrified and was also shaking at the same time. The Complainant managed to escape and ran down to the sea and swam for 30 minutes when she saw the wharf and swam ashore. She then went through a fence and walked for around 10 minutes and met a man who waited with the Complainant for 30 minutes before the man's employer arrived who then took the Complainant to her house at around 6 am.
8. Her flat mate then called the police but there was no answer. The Complainant then changed her clothes but did not take a shower then went to the hospital and was attended to by a doctor. The Defendants were arrested on 19 February 2013.
9. Sexual intercourse without consent or rape is a very serious offence as it carries a maximum penalty of life imprisonment. The seriousness of the offending in this case is that the Defendants misled the Complainant into thinking that they were providing a bus service to take her home but instead abducted her and took advantage of her when they took her to an unknown location, assaulted her and took turns raping her despite her pleas to take her home. She was helpless by herself against two men.

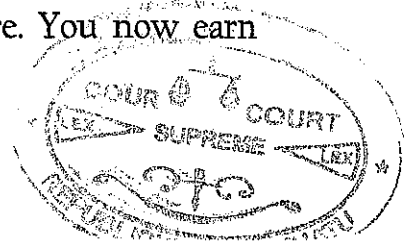


10. In *Public Prosecutor v. Scott* [2002] VUCA 29, the Court of Appeal said:-

*"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.*

*.....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."*

11. The sentence I impose on you today is not only punishment for your crime, but it marks the gravity of the offence and emphasizes public disapproval of such offending. It must serve as a deterrence to others and to your future offending. Women be they of whatever, background, or nationality must be and deserve to be respected and their rights recognized and protected. They cannot be treated any less than men.
12. As a starting point I sentence you both to 8 years imprisonment. Factors which aggravate the offending are firstly that you misled the Complainant and abducted her then held her captive against her will and assaulted her then each of you took turns in raping her. Being a visitor to Vanuatu the experience has not only caused her physical harm but mentally it will remain a scar on her for the rest of her life.
13. Taking this factors into consideration I increase your sentence to 11 years imprisonment. Your pre sentence reports state that James Kakiki you are 23 years old and you are a first time offender. You are married with 2 children. Your educational background is that that you completed grade one to eight at Komera primary school and did a three year training with the laurakau Rural Training centre. You now earn

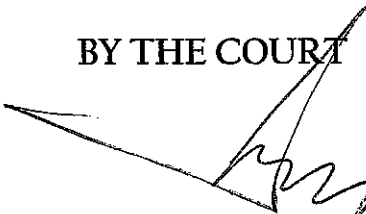


your living as a bus driver. Bob Andrew you are 21 years old and you are single. You are also a first time offender. You completed three years at Fresh Wota Primary school and left as you had no interest in school. You were employed as a farm worker before being arrested. You blame the consumption of alcohol for your offending.

14. As first time offenders I reduce your sentence to 10 years imprisonment. You both say that you are remorseful for your actions but no custom reconciliation or attempts at performing a custom reconciliation was done when you had the opportunity before the Complainant returned to France.
15. For your guilty pleas, you are entitled to a reduction of your sentence however in this case it will not be a one third discount as you initially entered not guilty pleas allowing for this matter to be listed for trial and causing additional stress to the Complainant in giving evidence before changing your minds to enter guilty pleas. For your late guilty pleas, I reduce your sentence by 1 year leaving you with an end sentence of 9 years imprisonment which is effective from the date you were remanded in custody and that date being 20 February 2013.
16. You have 14 days to appeal this decision if you are not happy with it.

DATED at Port Vila this 5 day of September, 2013

BY THE COURT

  
D. ARU  
Judge

