

Registry

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

**Criminal Case No. 77 of 2014**

**PUBLIC PROSECUTOR**

**V**

**NALPINI STEVEN  
JACKSON JULIAN MOFFET  
HILTON DANIEL**

**Coram:** *Mrs. Justice M.M.Sey*

**Counsel:** *Mr. Damien Boe for the Public Prosecutor  
Mr. Francis Tasso for the Defendants*

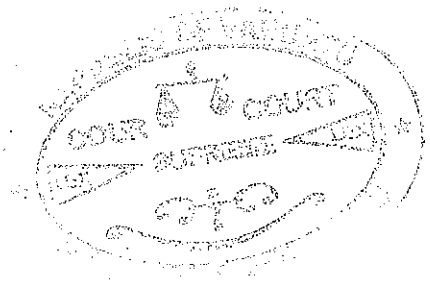
**Date:** *29<sup>th</sup> August 2014*

**SENTENCE**

1. The Defendants are before this Court for sentencing having been convicted on 5<sup>th</sup> August 2014 upon their own guilty pleas as charged. All three Defendants were charged in count 1 with the offence of Sexual Intercourse Without Consent contrary to section 90 and 91 of the Penal Code Act [CAP 135] and the 1<sup>st</sup> Defendant was charged with the offence of Threats to Kill contrary to section 115 of the Penal Code.
2. There is no dispute about the facts in this case and the defence concedes to the facts as outlined in the prosecution's sentencing submissions as being those that rendered the accused persons guilty.

**The Law:**

3. Section 90 (a) of the Penal Code Act [CAP 135] provides that any person who has sexual intercourse with another person without that person's consent commits the offence of sexual intercourse without consent.



Section 91 states that:

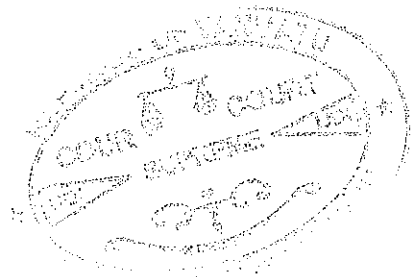
"No person shall commit sexual intercourse without consent.

Penalty: Imprisonment for life."

4. The offence of Sexual Intercourse without consent is one of the most serious charges here in Vanuatu and it carries a maximum penalty of life imprisonment. The offence of threats to kill carries a maximum penalty of 15 years imprisonment.
5. The applicable principles to be borne in mind when dealing with the offence of rape at the sentencing stage were set out by the Chief Justice in **Public Prosecutor v Ali August** [2000] VUSC 73 as follows:

*"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.*

*For rape committed by an adult without an aggravating or mitigating feature, 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 different women or girls. He represents a more than ordinary danger and a sentence of fifteen years or more may be appropriate".*

6. The Court went on to state that the offence of rape should in any event be treated as aggravated by any of the following factors:

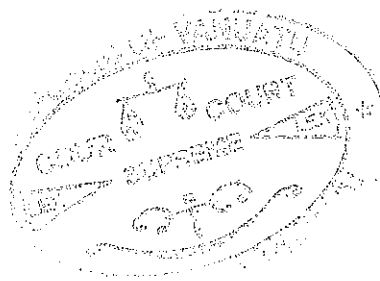
- "(1) Violence is used over and above the force necessary to commit rape;*
- (2) A weapon is used to frighten or wound the victim;*
- (3) The rape is repeated;*
- (4) The rape has been carefully planned*
- (5) The defendant has previous convictions for rape or other serious offences of a violent or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

7. The Court of Appeal repeated these same principles in **Public Prosecutor v Scott** [2002] VUCA 29 and then emphatically stated that:

*"There can be no room for any deviations from these fundamental and essential principles. The rights of women must be recognised maintained and upheld."*

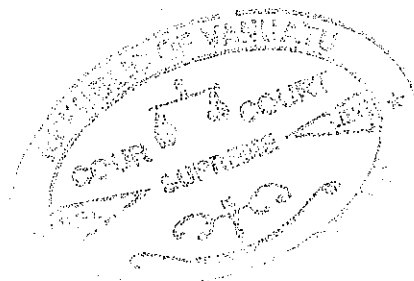
The Court then went on to emphasise the view which was expressed by Justice Coventry, in the case of **Public Prosecutor v Ivon Feriam** VUSC Criminal Case No. 32 of 2001, that there can be no issue of suspension in sexual abuse cases.



9. **Nalpini Steven, Jackson Julian Moffet and Hilton Daniel**, it is now necessary for me to pass sentence on you. In doing so, it is proper to bear in mind the chief objectives of criminal punishment, namely retribution, the prevention of crime, the deterrence of criminals, and the reformation of the offender. It is also necessary to impose a sentence which has a dispassionate regard for the nature of the offence, the interests of the offender and the interests of the society. Suffice it to say, however, that rape involves a severe degree of emotional and psychological trauma, in effect obliterating the personality of the victim.
10. It is for this reason that rape is regarded by Parliament, by the Courts and by society as a very grave offence which necessitates the imposition of a very severe sentence which would not only punish the offender but also act as deterrence to other would be offenders.
11. I have had the opportunity to peruse the pre-sentence reports filed by the probation officer. Mr. Hilton apparently seems to come from a broken family as he informed the writer that when he was still a baby, his parents got divorced. As a result of his parents' separation, his mother Mrs. Nauau Julia was then forced to take him away from his biological father and his other two brothers and they both moved back to reside at his mother's home island of Tanna.

With respect to Mr. Nalpini, he informed the probation officer that he was unemployed and he was planning to go to New Zealand under the Regional Seasonal Workers Scheme, and that he was here in Port Vila to apply for a passport and prepare other necessary documents.

Mr. Moffet told the probation officer that they were drinking and enjoying themselves at the Sea Front area when they decided to go to the Flaming Bulls Night Club. They were all very drunk and they were standing in the dark next to the Evergreen Bus stand when his brother Mr. Steven Nalpini grabbed the victim and dragged her up the stairs towards the Radio Vanuatu premises and that was when they all had sexual intercourse with her.



12. The appropriate starting sentence for an offence of sexual intercourse without consent where there are no aggravating features is 5 years imprisonment. In your case, there are aggravating factors in the sense that a weapon was used to frighten the victim and also physical force was applied by dragging her up the narrow concrete path leading towards Radio Vanuatu.
13. In the circumstances, I would consider a starting point of 6 years imprisonment to which I would add an extra year for aggravating factors making a sentence of 7 years (84 months) imprisonment. You pleaded guilty at the earliest opportunity and you are entitled to a full one third credit of 28 months for that. I would deduct a further 12 months in recognition of your age and the fact that this is your first offence making a total reduction of 40 months, which leaves you with an end sentence of 44 months i.e. 3 years 8 months. This sentence is backdated to 8<sup>th</sup> June 2014 which is the date you were remanded in custody
14. In the result, **Nalpini Steven, Jackson Julian Moffet and Hilton Daniel**, each of you is hereby sentenced to **3 years 8 months imprisonment**.
15. For the offence of "threats to kill", **Nalpini Steven** is hereby sentenced to 1 year imprisonment. Both your sentences in count 1 and 2 are to run concurrently.

**Dated at Port Vila, this 28th day of August, 2014.**

**BY THE COURT**

  
**M.M. SEY**

**Judge**

