

**BETWEEN: Public Prosecutor**  
*Prosecutor*

**AND: Tino Meltek**  
*Defendant*

**Coram:** *V. Lunabek CJ*

**Counsel:** *Mr Simcha Blessing for the Public Prosecutor*

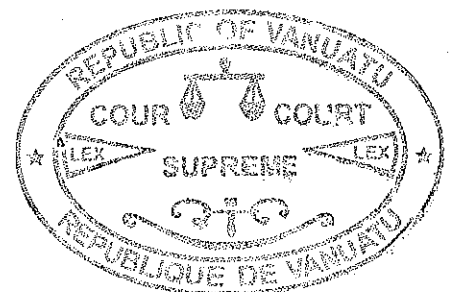
*Mr Henzla Vira & Ms Kylie Bakeo for Defendant*

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**SENTENCE**

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1. Mr Tino Meltek you appear for sentence today on 3 counts of sexual intercourse without consent, under ss.89A, 90 and 91 of Penal Code Act, against a complainant girl of between 14 and 15 years of age during the year 2006.
2. On Saturday 27 August 2016, you pleaded guilty to each of the three (3) counts charged in the information laid against you.
3. The brief facts of this case are that you originate from the island of Malekula in the village of Orap. There is no information about your age in your statement to the police. You are related to the complainant as she is your grand-daughter.
4. Sometimes in 2006, you lured the complainant to your house and forcefully inserted your penis into her mouth.
5. You then had sexual intercourse with her without her consent on two separate occasions thereafter in 2006.
6. The complainant was between 14 and 15 years of age during the incidents.
7. The Penal Code Act is the relevant law.



8. The law defines sexual intercourse in this way (section 89A):-

**“89A SEXUAL INTERCOURSE**

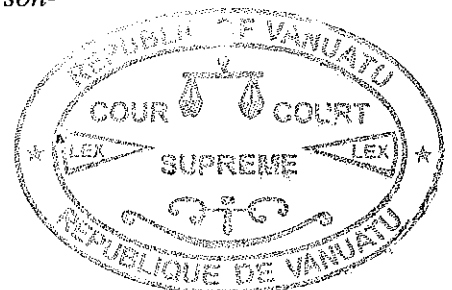
*For the purpose of this Act, sexual intercourse means any of the following activities, between any male upon a female, any male upon a male, any female upon a female or any female upon a male;*

- a) the penetration, to any extent, of vagina or anus of a person by any part of the body of another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorized by law, or*
- b) the penetration, to any extent, of the vagina or anus of a person by an object, being penetration carried out by another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorized by law; or*
- c) the introduction of any part of the penis of a person into the mouth of another person; or*
- d) the licking, sucking or kissing, to any extent, of the vulva, vagina, penis or anus of a person; or*
- e) the continuation of sexual intercourse as defined in paragraph (a), (b), (c) or (d); or*
- f) the causing, or permitting of a person to perform any of the activities defined in paragraph (a), (b), (c) or (d) upon the body of the person who caused or permitted the activity.” [Emphasis added]*

9. The law also defines sexual intercourse without consent as follows (s.90):-

**“90 SEXUAL INTERCOURE WITHOUT CONSENT**

*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 representation as to the nature of the act; or
- (v) in the case of a married person, by impersonating that person's husband or wife
- (vi) by the effects of alcohol or drugs; or
- (vii) ~~because of the physical or mental capacity of that person commits the offence of rape. The offence is complete upon penetration~~"

10. The law finally punishes the offence of sexual intercourse without consent (s.91). It provides:-

**"91. SEXUAL INTERCOURSE WITHOUT CONSENT**

*Punishment of Sexual Intercourse without consent*

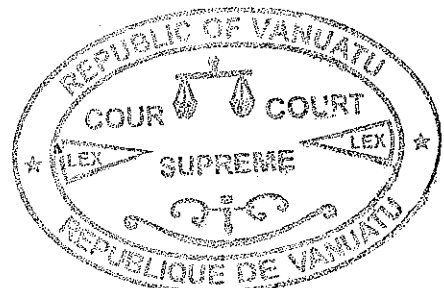
*No person shall commit sexual intercourse without consent.*

*Penalty: Imprisonment for life."*

11. The maximum penalty for sexual intercourse without consent is life imprisonment. It is a serious offence as reflected in the punishment imposed by law.

12. You must be accountable for what you did. The seriousness of this offending justifies a custodial sentence for variety of reasons:-

First to mark the seriousness and gravity of the offending; second to mark public disapproval; third to serve as a warning and deter others from committing this type of offending again in the future; fourth to punish you (offender) for your offending and the last but not the least is to protect girls in the community.



13. This is what the Courts have said repeatedly in sexual abuse cases against children (either girls or boys):

*'... there is an overwhelming need for the Court on behalf of the Community to condemn in the strongest terms any who abuse young people in our community. Children must be protected. ... they need protection from adults...*

*Men must learn that they cannot obtain sexual gratification at the expense of the weak and the vulnerable. What happened is a tragedy for all involved. Men who take advantage sexually of young people forfeit the right to remain in the community."*

14. In considering and assessing your sentencing, I take into account of the prosecution submissions and your lawyers submissions and any comments from the pre-sentence report filed (if any).

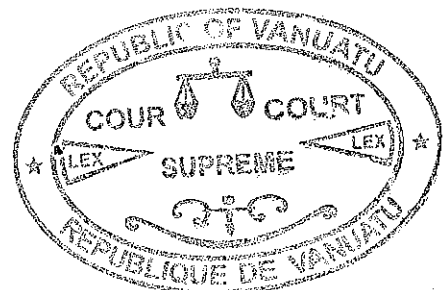
15. In this case, your offending is aggravated by the following features:-

1. A breach of trust between you and your grand-daughter. She looked upon you as her grand-father. You breach that trust.
2. The offending was repeated. You offended against her on 3 occasions in 2006.
3. You threatened the complainant with violence at the offending in 20016.
4. The age difference between you and the complainant. You are an adult and old man of 72 years. She was 15 at the time of incidents.
5. You exposed the complainant with the risk of unintended pregnancy and sexually transmitted deceases.

16. I note there is no further violence occurring beyond the commission of the offences themselves.

17. The prosecution refers the Court to guideline judgments in rape cases PP –v- Scott [2002] VUCA 29. The prosecution submitted that 10 years is the appropriate starting point.

18. I think 7 years is the appropriate starting point. I sentence you to 7 years imprisonment as a starting point after I consider the guideline judgment of the Court of Appeal in PP –v- Scott [2002], the aggravating features, the comparable Supreme Court rape sentencing



judgments and the submissions of the Prosecution and submissions made by your lawyers on your behalf.

19. In mitigation, your lawyers inform the Court that the following will be considered in your sentencing:

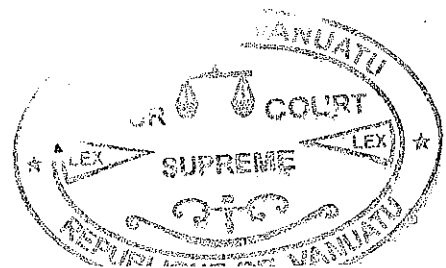
1. You pleaded guilty to the offences at the early opportunity given to you by the Court.
2. You cooperate with the police and you admitted your offending from the start.
3. You have no previous convictions.
4. You have insight and you express remorse from your offending.
5. You perform a custom reconciliation ceremony to the victim, family and the chiefs. You did this before the matter is reported to the police as you realized your mistake and that you knew you broke the law. The details of what you did in the custom reconciliation are as followed:

- Payment of VT10,000 to the mother of the girl victim
- This amount was never received and you paid another amount directly to the mother of the victim of VT25,000.

6. You have also a serious medical condition of hypertension. The recent medical report certifies the following:

- You need to be clearly monitored and provided good care to ensure you are always in good health.
- You need good environment and family support.
- You suffered some abnormalities as you have decrease vision on your left eye (ulcer).
- You are an old man of 72 years of age. You need support to walk as your body is fragile.

20. On balancing between the aggravating and mitigating features, I give an allowance of one third (1/3) to reflect your early guilty pleas. Your sentence is now reduced to 5 years imprisonment. I give an allowance of 1 year to reflect your other mitigating factors. Your sentence is reduced further to 3 years. I note the offending occurred in 2006. It is now 10 years before you are sentenced. This is a lengthy and inordinate delay. You are



entitled to some additional allowance to reflect that unfortunate situation. I give you an allowance of 1 year. Your end sentence is 3 years imprisonment.

21. I take into account of the time you have already spent in custody. You were remanded in custody on the 5 July 2016 to 26 August 2016. Less than 1 month, I round it up to 1 month.

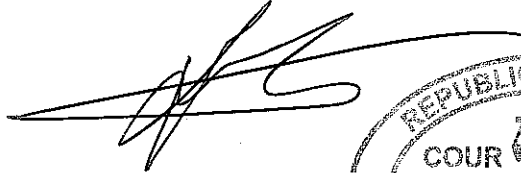
22. Your end sentence is 2 years and 11 month imprisonment on each of the three counts and to be served concurrently. This means that you shall serve the total terms of 2 years and 11 months imprisonment on the 3 counts at once all together.

23. The next question is whether I should suspend your term of 2 years and 11 months imprisonment. I consider your situation, your old age, your specific medical conditions. I suspend your term of imprisonment sentence of 2 years and 11 months.

24. You have 14 days to appeal this sentence if you are unsatisfied with it.

**DATED at Lakatoro, this 2<sup>nd</sup> day of September, 2016**

**BY THE COURT**



.....  
**V. LUNABEK**  
**Chief Justice**

