

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

Criminal Case No.59 of 2015

**BETWEEN: PUBLIC PROSECUTOR**

**AND: ALEX TEOL**

Defendant

Date of SENTENCE: 19 December 2016 at 9:00AM  
Before: Justice D. V. Fatiaki  
In Attendance: Counsel – Damien D. Boe for the State  
Counsel – Harrison Rantes for the Defendant

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**SENTENCE**

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1. The defendant Alex Teol was charged in an amended information with two offences: Sexual Intercourse Without Consent (Count 1) and Threats to Kill (Count 2). At his arraignment the defendant pleaded not guilty to Count 1 and guilty ("*i tru*") to Count 2. The defendant was subsequently tried over 3 days in October 2016 at Craig Cove, Ambrym Island on Count 1 and was convicted on 21 November 2016.
2. It is unfortunate that for reasons only known to the defendant, he absconded after the trial and before the Court's verdict could be delivered. An arrest warrant was issued and the defendant was finally arrested after being at large for over a month, and he was escorted to Port Vila where the verdict was delivered.
3. In convicting the defendant, the Court clearly preferred the complainant's evidence and rejected the defendant's sworn denials and exaggerated claims. In particular the Court stated:

*"The physical circumstances and personal condition that (the complainant) found herself in at the time of the incident viz faced with strong winds from a rapidly advancing category 5 hurricane and concerned to pack and secure her kitchen contents and utensils as well as being 4 months pregnant, makes it highly improbable in my view, that her mind would turn to sexual intercourse and cause her, in her condition, to reach out and touch the defendant's penis at the kitchen doorway where they could have been seen".*



4. Upon the defendant's conviction the Court ordered a pre-sentence report and sentencing submissions. Although filed late, the Court is grateful for the assistance provided by the probation officer and defence counsel.
5. The offence of Sexual Intercourse Without Consent is the most serious offence of sexual violation in the Penal Code. It carries a maximum sentence of life imprisonment which is comparable with intentional homicide. Although the defendant pleaded "*not guilty*" he was convicted after a trial. This Court rejected the defendant's wild claims of having an on-going adulterous relationship with the complainant.
6. Despite your conviction you continue to blame the complainant and you claimed to the probation officer that the complainant was a "... *former girlfriend*" and that "... *it was OK and that there was nothing wrong*" with what you did. Alex Teol let me make this very clear to you. There is nothing OK or right about forcing yourself on a helpless woman. Sexual intercourse is not just an activity like eating or physical exercise. It is the most intimate loving activity that can occur between a man and a woman. Even former girlfriends are entitled to say: "*No*" and the law requires every act of sexual intercourse with any woman to be with her full knowledge and consent freely given.
7. There is no possible excuse for your disgraceful behavior. You are in a steady defacto relationship with young children of your own and the complainant is a married mother of 2 young children and was 4 months pregnant to her third child at the time of the offence. Furthermore not satisfied with having sexually violated the complainant you also threatened to kill the complainant's husband with a bush knife.
8. The Court of Appeal in the leading case of Public Prosecutor v. Scott and Tula [2002] VUCA 29 endorsed the sentencing principles outlined by the Chief Justice in Public Prosecutor v. August Ali [2000] VUSC 73 where he relevantly said of the offence of Sexual Intercourse Without Consent:

*"The offence of rape is always a serious crime. Other than in wholly exceptional circumstance, rape calls for an immediate custodial sentence. 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 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 any aggravating or mitigating features, a figure of five years should be taken as the starting point in a contested case. ...**

- (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 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 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. ....

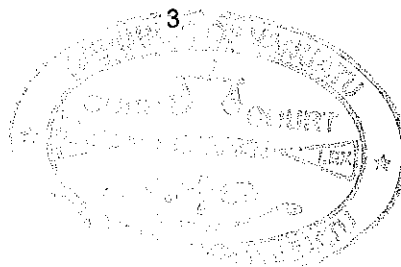
*The fact that the victim may be considered to have put herself in danger by acting imprudently (as for instance by accepting a lift in a car from a stranger) is not a mitigating factor, and the victim's previous sexual experience is equally irrelevant. ... Previous good character is of only minor relevance."*

(my emphasis)

9. In Scott's case the Court of Appeal also reaffirmed the sentencing principles with the observation:

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

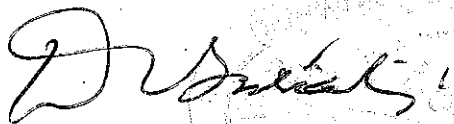
10. In your case Alex Teol your offending is aggravated by the use of a knife to threaten the complainant into submission and the fact that you persisted in the offence even after the complainant had informed you she was 4 months pregnant. There was also an element of planning and opportunism in that you took advantage of the approaching hurricane and knowing of the absence of the complainant's husband at a neighbour's house some distance away and under the pretext of being concerned for the safety of her kitchenware you got the complainant to enter her kitchen wherein you followed her and committed the offence. The probation officer also observes that "... (you) showed no sign of remorse or insight to the offending (and) you are: "... not ashamed of the offending". You should be. What you did to the complainant was shameful and cowardly and you clearly are a danger to women as long as you remain at large.



11. Although it may be of little concern to you the complainant told the probation officer she has not recovered from her ordeal and "... *there is still fear within her ...*". She says since the incident she has had to "*follow her husband everywhere he goes*" with his walking sawmill as she "*emotionally affected*".
12. On the basis of the above-mentioned guideline judgments, I adopt a starting sentence of 8 years imprisonment. I reduce that figure by 3 years for mitigating factors including that this is your first offence and you have made a customary cash payment of VT15,000 to the complainant. I am also mindful that you have already spent almost 12 months remanded in custody.
13. Alex Teol the final sentence of this Court is that you will serve a sentence of 5 years imprisonment for the offence of Sexual Intercourse Without Consent. For the offence of Threats to Kill in Count 2 this Court imposes a sentence of 9 months imprisonment to be served concurrently with the sentence imposed on Count 1 making a total sentence of 5 years imprisonment for both offences.
14. You have 14 days to appeal this sentence if you do not agree with it.

**DATED at Port Vila, this 19<sup>th</sup> day of December, 2016.**

**BY THE COURT**

  
**D. V. FATIAKI**  
**Judge.**

