

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

Criminal Case No. 3868 of 2016

**PUBLIC PROSECUTOR**

**-v-**

**MALAO JEAJEA**

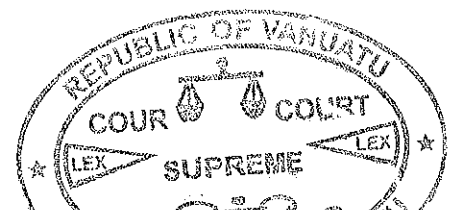
**Coram:** *V. Lunabek- CJ*

**Counsels:** *Mr Damian Boe for Public Prosecutor  
Mrs Jane Tari for the Defendants*

**Date of Delivery:** *14 September 2017*

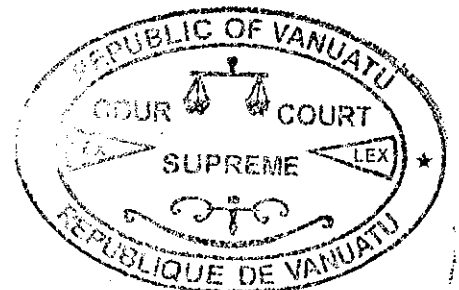
**SENTENCE**

1. Malao Jeajea you appear for sentence. You were charged with one count of sexual intercourse without consent contrary to section 90 and 91 of Penal Code Act.
2. On 7 August 2017, you were found guilty of the commission of that offence and convicted by this Court after 3 days trial.
3. Sexual intercourse without consent is one of the most serious crimes within the criminal law of Vanuatu. Section 91 of Penal Code Act is the relevant prohibiting and sanctioning provision. It provides for a maximum penalty of imprisonment for life.
4. The facts as found by this Court are contained in the reasons for Verdict delivered on 7 August 2017. Suffice it to say this.
5. Sometime or toward the end of the month of September 2016, you had sexual intercourse with the complainant girl without her consent. It was a day on the Sanma Provincial celebration week. You told your uncle Sylvie Abraham to fasten some natagura (thatches) leaves for you at the coprah shed in the bush.



Sylvie went to the coprah shed with the complainant on that day. While Sylvie went cutting bamboos, you came to the coprah shed. You hold the complainant tied. You fastened her mouth and her two hands with a white calico (tissue). You took her on the coprah shed. You took off her clothes. You removed your own clothes. You pushed her on the ground. You opened her legs and inserted your penis inside the complainant's vagina. You had sex with the complainant for some time. When you finished sex with her, you removed the white calico from her mouth and her two hands and you run away. She felt very painful, she cried and she saw blood coming out of her vagina (upon medical examination, the vulva was swollen with a diagnosis of laceration close to the clitoris). The vagina of the complainant was swollen up. She was taken to the Northern Hospital. She had spent two weeks in the hospital. During her time in hospital, her legs were opened as she could not close them. It was very painful and she was examined by the doctor on a wheelchair she was put in. She was admitted on 19 September 2016 and she was released from hospital on 30 September 2016.

6. After she was released from hospital, she refused to go back with her grandmother in her village at Malo. She went and spent a week with her mother at Shark Bay. It was during that week that she told her mother and others that you Malao Jeajea had sexual intercourse with her in the bush at the coprah shed causing the injury in her vagina. The complainant's mother took the complainant to the police station at Luganville, Santo. She lodged her complaint to the police on 26 October 2016. The police arrested you and detained you on 8 November 2016 before you were released on bail.
7. You were then tried, found guilty and convicted of that offence.
8. When I sentence you, I read and consider the pre-sentence report provided by the probation officer. I also read and consider the prosecution submissions. I further read and consider the submissions of your lawyer made on your behalf.
9. The prosecution refers the Court to the Guideline Judgment in *PP -v- Ali August [2000] 73*; *PP -v- Scott & Tula [2002] VUCA*; *PP -v- Gideon [2002] VUCA 7* and others.



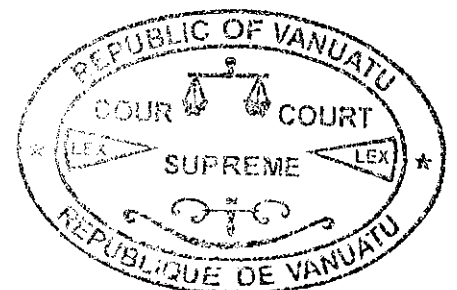
10. The rational of these cases is this:-

- (i) The offence of sexual intercourse without consent is always a most serious crime. Other than in wholly exceptional circumstances, sexual intercourse without consent calls for an immediate custodial sentence.
- (ii) The right of women and girls must be recognised, maintained and upheld at all times. It will only be in a most of extreme of cases that suspension could ever be contemplated in a case of sexual abuse. Men must learn that they cannot obtain sexual gratification at the expense of the weak and vulnerable people as it was tragedy for all involved in the community.

11. The prosecution referred to the culpability of the offending and the aggravating features and submitted that a starting point sentence of 9 years imprisonment should be appropriate. The prosecution submitted that an end sentence of 8 years imprisonment should be imposed on you in this case.

12. Your defence lawyer also submitted to the following effect. She referred to the same Guideline Judgments referred to by the prosecution. She acknowledged the seriousness of the offending. She submitted that a starting point sentence of 8 years imprisonment should be appropriate inclusive of the aggravating factors. In mitigation, the following factors are present:

- You are married and have 3 children;
- You are a classic six leaver but possess gardening skills to sustain your family;
- You pay for your children's school fees;
- You are a first time offender;
- You cooperated with the Police during the investigation; and
- You were remanded on 09<sup>th</sup> day of November 2016 at the Correctional Center and released on the 09<sup>th</sup> December 2016 on bail. It is remanded up to 1 month.



13. On your personal circumstances, you came from a family of 6 people. You are 41 years old at the time of offending. The pre-sentence report shows the following:

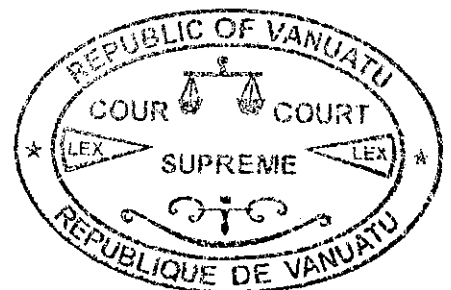
You are the sole bread winner of the family and you sustain the fees of your children education. Your wife (Mrs Jeajea) says she has occasional argument with you about the abuse of the family finances on kava drinking. Mrs Jeajea went on to say in Bislama: "hemi stap pas behaen lo mi." She added, she has been facing a lot of domestic violence from you without ceasing. She says she is sexually abused by you (her husband), taking other men to the house in your presence (Mr Jeajea), and without her knowledge why you are initiating these activities.

I treat the information as not favouring your credit. That is all I can do with the information from your wife. If she decides to make a complaint against you that is your wife's matter no the Court's.

For the purpose of your sentencing, I consider the prosecution submissions and in particular your lawyer submissions as to the extent the Court can use the information provided by your wife and the moral value judgment given by the Pastor of the church referred to in the report.

I note and sense that as a result of the damning report caution on the incriminating aspect of the information provided must be considered and alerted to. I think it is right to do that. The worst I can do is to consider that you are an irresponsible, violent man, a non contribute within the community or kava drinker, non christian, unfaithful husband apart from some good traits that form part of your character as I referred to them earlier in your sentencing.

14. Your lawyer submitted that the Court will impose a starting point sentence of 8 years and an end sentence between 4-5 years.



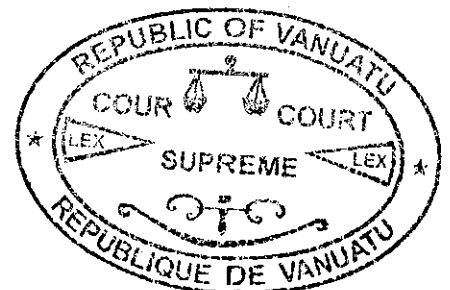
15. In the present case, I consider the culpability of the offending, the seriousness and circumstances of the offending and on balancing between the aggravating features and the mitigating ones, the following aggravating factors stand out:-

1. The force is used over to commit sexual intercourse without consent;
2. A victim was kept captive, she was fastened on both of her hands, her mouth and to the post of a copra shed;
3. A victim had seriously suffered as result she was hospitalizes for two weeks;
4. The sexual intercourse without consent has been committed with a degree of planning;
5. The victim is subject to further sexual indignities or perversions;
6. The victim is very young of 13 years of age which is over 30 years difference from you as you are 42 during the time of offending;
7. Unprotected sex (no used condom);
8. The effect upon the victim, both physical and mental, is of special seriousness.

16. I assess the situation and I sentence you to 10 years imprisonment as the appropriate starting point sentence. That is your starting point sentence based on all aggravating features, culpability and seriousness of the offending.

17. On mitigation, I take into account that you are a first time offender, you cooperated with the police. I reduce your sentence of 10 years imprisonment by 3 months making a balance of 9 years and 7 months imprisonment. I also take into account other mitigating factors and I reduce your sentence further of 3 months.

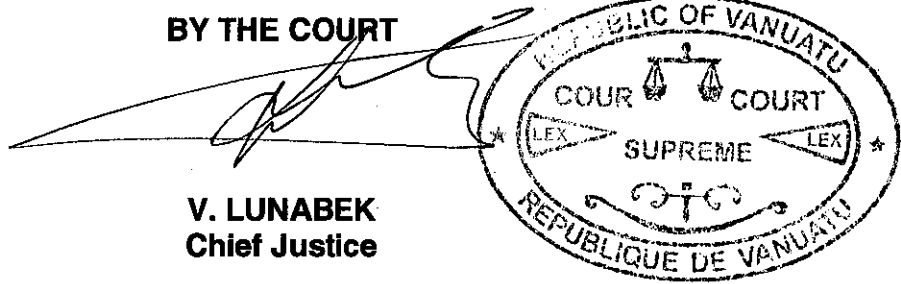
18. Your end sentence is 9 years and 4 months imprisonment. You have spent some time in custody before the trial (from 9 November 2016 to 13 December 2016). That period is 1 month. It is now deducted to your end sentence of 9 years and 4 months imprisonment. You have an effective sentence of 9 years and 3 months to serve in custody.



19. I consider the nature and the circumstances of your offending, I decline to suspend your 9 years and 3 months imprisonment sentence as they do not justify a suspension.
20. You shall serve this sentence with immediate effect.
21. You have 14 days to appeal this sentence if you are unsatisfied with it.

**DATED at Luganville, this 14<sup>th</sup> day of September, 2017**

**BY THE COURT**



**V. LUNABEK  
Chief Justice**