

PUBLIC PROSECUTOR

-v-

OBED KALWATMAN

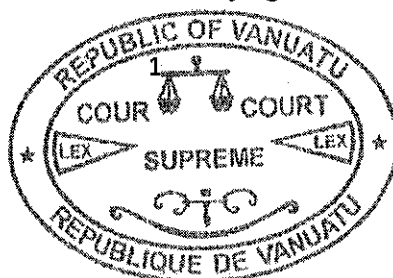
Coram: *V. Lunabek – CJ*

Counsels: *Ms Micheline Tasso and Ms Marie Taki for Public Prosecutor
Mr Wilson lauma for Defendant*

Date of Delivery: *21st November 2017*

SENTENCE

1. Obed Kalwatman you were convicted on two counts of intentional assaults and indecency without consent, contrary to ss. 107 (b) and 98 (a) of Penal Code Act respectively.
2. On 14 April 2017, between 3.00am and 3.30am o'clock in the morning, you and Nolan Albert were drunk. Complainant Manoah also was drunk at that time. You threw a tusker bottle behind a car on the road at Pango Village at surf side area.
3. The complainant was in that car. He came out of the car. He said abusive words, you approached him and talked to him. You apologized for throwing and breaking the bottle behind the car on the road. Manoah, the complainant, did not accept your apology.
4. A fight occurred. Nolan Albert threw the first punch on the complainant and assaulted the complainant. He was fallen unconscious on the road. You assaulted the complainant while he was laying on the road. In addition, you took



~~four (4) bottles of the tusker beers which were still full of tusker beers and have them broken on the complainant's head.~~

5. The complainant's head and face were covered with blood. He had sustained injuries on his eyes, face and head.
6. While laying on the road, you removed his trousers; you indecently touched and pulled on the complainant's private parts (penis and groins).
7. The complainant was brought to the hospital. He had spent four (4) days in the hospital. The injuries sustained were temporary nature.
8. Sections 107 (b) and 98 (a) are the relevant provisions of the Penal Code. Section 107 (b) provides:

"No person shall commit intentional assault on the body of another person.

*Penalty: (b) if damage of a temporary nature is caused,
imprisonment for 5 year,*

S. 98 states:

"A person must not commit an act of indecency on, or in the presence of 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

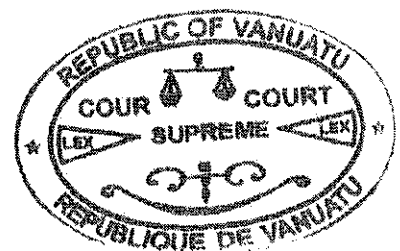
(iv) by means of false representations as to the nature of the act; or

(v) in the case of a married person, by impersonating that person's husband or wife; or

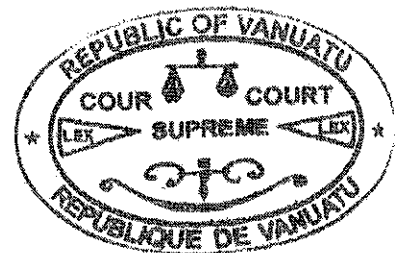
(vi) by the effects of alcohol or drugs; or

(vii) because of the physical or mental incapacity of that person.

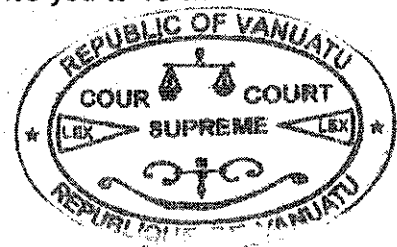
Penalty: Imprisonment for 10 years.



9. In sentencing you today, I read and consider the pre-sentence report provided by the probationer dated 12 November 2017. I also read and consider submissions made by the prosecution on behalf of the Public Prosecutor. I finally read and consider the submissions made from your own lawyer on your behalf.
10. In their submissions, the prosecution refer to two cases on the offence of intentional assault causing temporary damage: Public Prosecutor v. Simon Boe [2014] VUSC 34: CR08 of 2014, the defendant pleaded guilty of assaulting the complainant on her head with two bricks, which caused the complainant to be disoriented and confused when seen at the hospital. He was sentenced to 9 months imprisonment suspended for a period of 2 years under s. 52 of the Penal Code. The second case is Public Prosecutor v. Atisson Alvea [2013] VUSC 82. The Defendant pleaded guilty to a single count of intentional assault causing temporary injury. The defendant was intoxicated and assaulted the complainant with a knife which caused a wound on the complainant's mouth. He was sentenced to 10 months imprisonment suspended for 3 years and 12 months supervision.
11. In relation to the offence of Acts of indecency without consent, the prosecution also refer the Court to the following cases: PP v. Gideon [2002] VUCA 7, the Court of Appeal stated that: *"It will only be in a most extreme of cases that suspension would ever be contemplated in a case of sexual abuse ..."*; PP v. Banoro [2012] VUSC 13, CR Case 82 of 2011, the defendant was found guilty of acts of indecency without consent. The acts of indecency involved a master Boar and his student. The offending acts consist of touching the penis and sucking it until he ejaculated. He was sentenced to 2 years suspended for a period of 3 years. In PP v. Weweu [2015] VUSC 75, CR Case 149 of 2014, the defendant was found guilty of one count of acts of indecency without consent and one count of indecency with a young person after three days trial. Two complainants (girls) aged 11 to 15 years. The offending acts involved touching the complainants' private parts and allowing the complainants to masturbate the defendant's penis until he ejaculated. He was sentenced to 4 years and 5 months imprisonment concurrently on both offences.



12. The Prosecution submit, based on the above similar cases of intentional assault causing temporary injury, an end sentence range from 9 – 10 months imprisonment and suspended for 2 – 3 years plus community work. In relation to the offence of acts of indecency without consent, an end sentence range from 2 years imprisonment with or without suspension depending on the circumstances of each case.
13. The Prosecution further submit as the offences occurred close in time and were part of an ongoing set of offences, the sentences should be concurrent but the length of each sentence should reflect the seriousness of each offence. The prosecution finally submit the most serious offence is the assault with the bottle, while the act of indecency without consent is a serious offence, they accepted that this was at the lower end of this type of offending while the assaults with the bottles were on the upper end.
14. Your defence lawyer in his submissions refers to PP v. Andy [2011] VUCA 14. He submits that on the facts of this case, you be sentenced to 9 months imprisonment as a starting point but no case was relied on for this submission.
15. I assume he relies on the same cases as referred to earlier in the prosecution, submissions. He accepted the prosecution submissions in respect to intentional assault given a suspended sentence for 2 – 3 years plus community work. For a suspension of an imprisonment sentence, your lawyer, Mr. Wilson lauma relies on PP v. Masemel [2017] VUSC 90.
16. In the present case, the nature and circumstances of your offending are serious. The seriousness is reflected on the high level of penalties imposed by law; the incidents involved assaults before the complainant fell on the ground and those when the complainant was laying on the road unconscious and four bottle of the tusker beers on the complaint's head causing injuries on his eyes, face and head.
17. I sentence you to 15 months imprisonment on each count of intentional assault in Counts 1 and 2 and to be concurrent to each other. I sentence you to 15 months

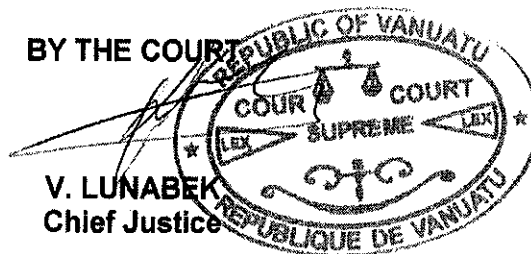


~~imprisonment on Count 3. All to run concurrently to each other. This means you have a starting point sentence of 15 months imprisonment.~~

18. In mitigation, you are a 35 years old young man. You have a young family. You are a first time offender. You told the writer of the report that you agree with the verdict of the court in your case and you accept that you have committed a serious offence. You also told the writer that you have realized your mistake and will not re-offend in future. You indicate to the writer that you are willing to undertake any rehabilitation programs to address your offending behavior and also to undertake any community based sentences.
19. I give a credit of 3 months for your mitigating factors.
20. Your end sentence is now 12 months. I decide to suspend it and it is suspended for a period of 3 years. In addition you are sentenced to 12 months supervision with the following special conditions:
 - (a) That you are refrained from alcohol drinks for the entire period of supervision;
 - (b) That you undertake anger management counselling as directed by a probation officer; and
 - (c) That you undertake and complete the Niufala Rod Program.
21. You have 14 days to appeal this sentence if you are unsatisfied with it.

DATED at Port Vila, this 21st day of November, 2017

BY THE COURT



V. LUNABEK
Chief Justice