

**PUBLIC PROSECUTOR**

**-v-**

**ALEX VUTI**

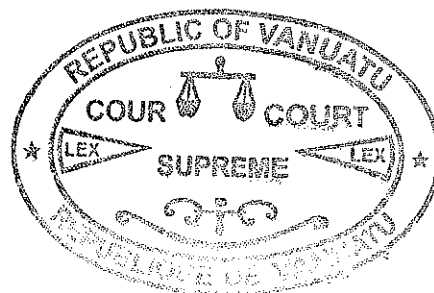
**Coram:** V. Lunabek- CJ

**Counsel:** Mr. Lenry Young for Public Prosecutor  
Mr. Henzler Vira for the Defendant

**Date of Sentence:** 15<sup>th</sup> June 2017

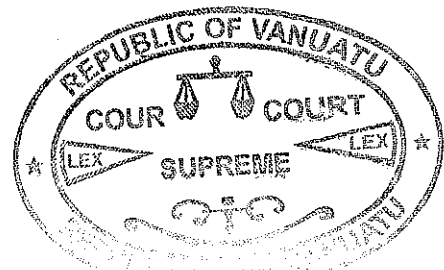
**SENTENCE**

1. Mr. Alex Vuti, you appear for sentence on the offence of Intentional Assault Causing Temporary Injuries and the offence of Sexual Intercourse Without Consent. Both offences are contrary to the provisions of the Penal Code Act.
2. Initially, on 3 May 2016, you were charged in an information containing more than 2 offences including the offence of sexual intercourse without consent and an offence of intentional assault causing temporary damage.
3. On 18 May 2016, when you appeared before the Court for pleas, you entered not guilty pleas in respect to each of them. A two days trial were set in June 2016. The trial dates were vacated. A warrant of remand was issued and extended.
4. You were dealt with and sentenced in other matters.

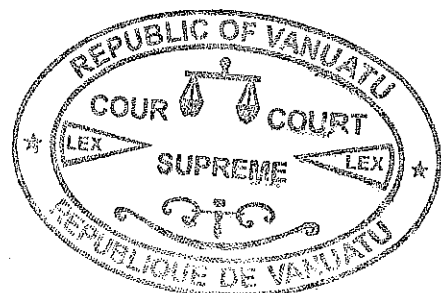


5. Another two days trial were scheduled on 16<sup>th</sup> – 17<sup>th</sup> May 2017 at 9.00 a.m. o'clock.
6. On 16 May 2017, your lawyer applied for you to be re-arraigned. On information dated 15 May 2017 containing just the 2 above offences. You were then re-arraigned and you entered guilty pleas on Count 1 of Intentional Assault Causing Temporary injury and on Count 2 of Sexual Intercourse Without Consent.
7. Section 107(b) deals with the offence of intentional assault causing damage of temporary nature/injury.
8. It provides for a maximum penalty of 1 year imprisonment.
9. Sections 90 and 91 deal with the offence of Sexual Intercourse Without Consent. s.90 defines Sexual Intercourse Without Consent as follows:

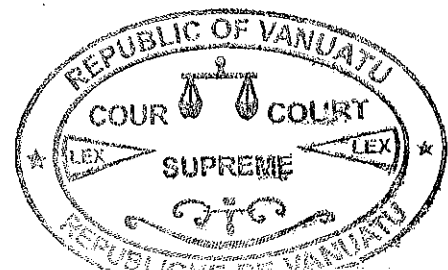
*“Any person who has sexual intercourse with another person:*  
*(a) Without that person’s consent; or*  
*(b) With that person’s consent if the consent is obtained –*  
*(i) By force; or*  
*(ii) By means of threats of intimidation of any kind; or*  
*(iii) By fear of bodily harm; or*  
*(iv) By means of false representation as to the nature of the act; or*  
*(v) In the case of married person, by impersonating that person’s husband or wife;*  
*Commits the offence of sexual intercourse without consent. the offence is complete upon penetration”.*
10. Section 91 imposes a maximum penalty for imprisonment for life.
11. The summary of facts of your offending are provided by the prosecution. They are set out below.



12. The complainant, lodged her complaint to the Police on 24 December 2014 against you, Mr Alex Vuti. She alleged that on Monday 22<sup>nd</sup> of December 2014 in the morning she was doing home chores at No. 2 Lagoon when to her surprise she felt something struck her back. She turned around and saw you (Alex Vuti) standing with a big knife.
13. You accused her of having an affair with another person. However she responded and she said no. you then held her hand and pulled her to the main road where you both caught into a bus of a person from Tanna. Inside the bus, you never let go off her hand. At that time she only wore home clothes without pair of slippers and cell phone. She was scared to jump out from the window of the bus because you were in possession of the big knife.
14. Along the ride the bus picked up two boys and their destination was at the police station. The complainant said that as soon as you heard this you asked the bus driver to drop you and the complainant at Wilco Hardware. There the complainant asked you to let go off her hand because people were watching you but you never did.
15. You stopped another bus. You and the complainant caught in and it dropped you both off at Salili area. You were still holding on to the complainant's hand. You both walked to a bamboo tree. Then you told her: "*yu ko reportem mi se mi repem yu, tede nao bae mi repem yu. Yu karem out klos blong yu kwik*". At the same time you hold out the big knife and said "*yu karemaot ol klos blo yu kwick spos no bae mi katkatem yu naia*".

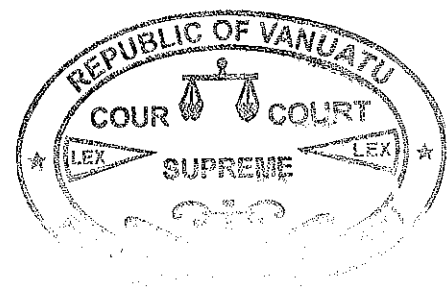


16. The complainant was scared of the big knife so she took of her panty. You took off your brown trousers with one of your hands while with your other hand, you hold on to the complainant. You told her to lay down on the grass where you slept on top of her and had sexual intercourse with her while the big knife was placed on her right side.
17. You then told the complainant: "*yu ring lo Corporal Lily mo talem oli kam from mi naia, yu ring*". Unfortunately she does not have a cell phone with her. You both returned home. You both arrived home in the late afternoon. You both slept in the kitchen. On that night you forced her to have sex with you twice again since she was scared of the big knife. You told her: "*spos yu putum mi iko long prison bai yu jes ded ia nao ... laef blong yu hemi long end blong finger ia nomo*".
18. On 23<sup>rd</sup> December 2014, you both went to Nambatu where you forced the complainant to write a cancellation letter to withdraw her complaints against you.
19. On 12 February 2016, Corporal Lily and Constable Mark Willy cautioned you and obtained an interview from you. In your record of interview, you confirmed that the complainant is your girlfriend. Further, you said you wish to only speak in Court.
20. Dr. Margaret Tarere from the Vila Central Hospital examined the complainant on 24 December 2014, a day after the incident. The medical report revealed substantial soft injuries and musculoskeletal injuries and bruise around the vagina. Also, the findings of the doctor revealed that the complainant suffered the injuries secondary to trauma, however could not rule out whether or not sexual intercourse



occurred. Furthermore the medical chart revealed injuries and bruises on the face, shoulder and back of the complainant.

21. Police Constable Cooks Thompson took photographs of the complainant in particular the part of her body you assaulted her with a knife.
22. The complainant said in her impact statement that after the incident she had difficulties to sleep and that she was having bad dreams at night about you that you wanted to stab her with the knife. She was having trauma and was so scared.
23. Before I consider your sentence, I need to tell you the following: You are the only person responsible and accountable for what you did to the complainant. It is a very serious crime. The maximum penalty for sexual intercourse without consent is life imprisonment. The Courts have spoken on this type of offending. They continue to speak against this type of offending and impose heavier penalty depending on the facts of each case. An imprisonment sentence is the sentence you are excepted in this case. The question is for how long you will serve in custody.
24. Here, I am reminded of the following guideline judgments by the Prosecution in their submissions:-
  - Public Prosecutor –v- Ali August [2000] VUSC 73; which was confirmed by the Court of Appeal in PP –v- [2002] VUCA 29, the Court stated:



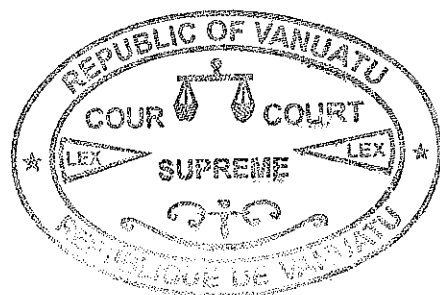
*“...For rape committed by an adult without an aggravating or mitigating feature, a figure of five years should be taken as the starting point in a contested case. Where a rape is committed by two or more men acting together, or by a man who has broken into or otherwise gained access to a place where 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.*

*Where the defendant's behaviour has manifested perverted or psychopathic tendencies or gross personality disorder, and where he is likely, if at large, to remain a danger to woman for an indefinite time, a life sentence will not be appropriate.*

*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 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.*

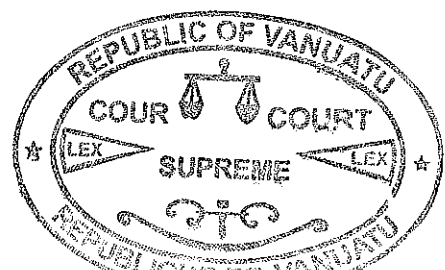
*Where any one or more of these aggravating features are present, the sentence should be substantially higher than the figure suggested as the starting point.*

*If the defendant pleads guilty, the sentence should be reduced by 1/3 depending on the circumstances, including the likelihood of a finding of not guilty had the matter been contested.”*

- Where the Defendant is sentenced for separate offences the Court assess the totality principle in this way:

*“The general rule in sentencing is that sentences for separate offences should normally be consecutive but this may be modified in two main ways. In the first case, a series of offences that form part of the same overall transaction and cause harm to the same person may be appropriately dealt with by a concurrent sentence.*

*The second basis for modification is where, having passed a proper sentence for each of a number of offences, the aggregate effect of making them consecutive will produce an inappropriate total. Thus in*



*any case where the Court has imposed a number of consecutive sentences, it should stand back, in effect, and look at the total. It was suggested in Smith v R (1972) Crim LR 124 that if, at such a point, the total is substantially above the normal level of sentence appropriate to the most serious offence for which the accused is being sentenced, the court should reduce that total to a level that is "just and appropriate."*

...

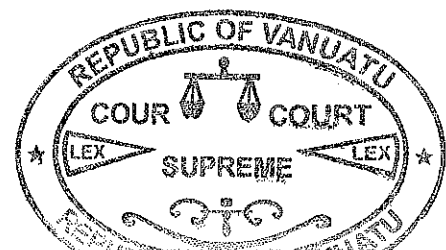
*Even where the total does not offend against that principle, the court may in an appropriate case reduce it if, in the circumstances of a particular accused, the effect would be crushing.*

*It should finally be pointed out that the reduction of the total is best achieved by making some or all the penalties concurrent rather than to reduce the sentence for any individual offence below the proper level."*

[Kalfau v. Public Prosecutor [1990] VUCA 9].

In 2011, in the case of Boesaleana v. Public Prosecutor [2011] VUCA 33, the Court of Appeal made comments on the sentencing approaches (at paragraph 6), held that: *"There can be substantial debate as to the approaches which can be applied in sentencing. But it is essential that the Court does not become lost in formulae or arithmetic calculations but rather looks in a general and realistic way at the entire offending, assessing all relevant aggravating and mitigating factors, and then reaches a sentence which in its totality reflects the culpability which has been established."*

- The Court in Public Prosecutor –v- Andy [2011] VUCA 14 sets out the starting point bearing in mind the maximum penalty for





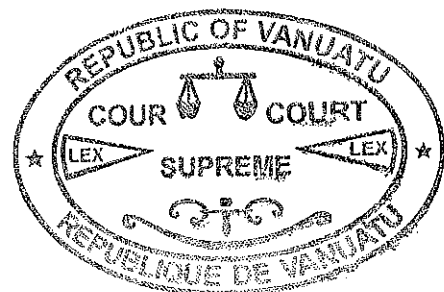
offending of the most serious culpability (sept), the assessment of factors personal to the offender (step 2), the guilty plea deduction (step 3):

25. When I consider your sentencing, I have the opportunity to read and peruse the pre-sentence report prepared and provided by the Probation Office.

26. I consider the submissions prepared on behalf of the Public Prosecution. I also consider the submissions prepared by your lawyer on your behalf. I consider the guideline judgments issued by the Court in the same type of case offending. I look and consider carefully the facts under which you committed the offences in this case.

27. On the facts your offending is aggravated by the following factors:

- (i) You went to the complainant's home uninvited on 22 December 2014;
- (ii) You were holding a big knife;
- (iii) You held her hand and pulled her to the main road where you caught a bus with her;
- (iv) She was scared because you were holding her hand and the big knife while you were in the bus;
- (v) You refused to let go off her hand as there were people watching you doing this to her;
- (vi) You were still holding on the complainant's hand in the second bus with the big knife;
- (vii) You forced her remove her clothes quickly while you held on the big knife;
- (viii) You threatened to cut her with the knife if she did no remover her clothes for you to have sexual intercourse with her;



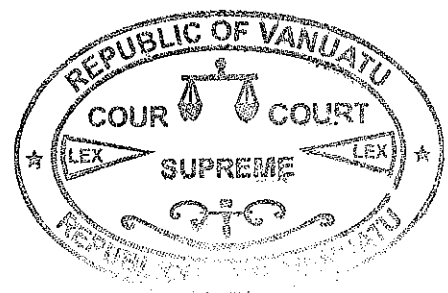
- (ix) You threatened to kill her when you stated: "*sipos yu putum mi iko long prison bai you jes ded ia nao ... laef blong you hemi long end blong finger ia nomo ...*".
- (x) You forced the complainant to write a letter to withdraw her complaints;
- (xi) You are a serial rape offender:
  - You were convicted for rape and sentenced for 3 years and 2 months imprisonment in 2008;
  - You were convicted for rape offence associated with violence and sentenced to 11 years imprisonment in November 2016 and you are still serving your sentence in custody.
- (x) There is a real impact of your offending on the complainant – bad sleeps – bad dreams of you stabbing her with knife. She is traumatised.

28. I must now consider a total term of your sentencing taken the seriousness, the aggravating factors of your offending and the aggravating factors personal to you, I have tried to capture above. I do this exercise by taking into account of guideline judgments: PP v. Ali Augut [2000] and PP –v- Andy and others.

29. You are liable to life imprisonment. A starting point sentence between 10 – 12 years imprisonment to reflect the seriousness and aggravating circumstances of your offending will be appropriate.

30. I impose on you a starting point sentence of 10 years imprisonment in this case.

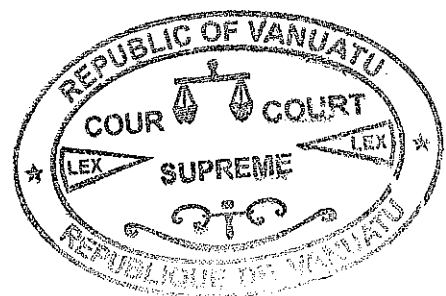
31. I now consider if there is any mitigating factors to be taken into account in your sentencing.



32. You express remorse and you regrets your offending. You said you realised your mistakes and your said you have changed from your repeating offending behavior and mindset. You have intention to perform custom reconciliation ceremony with the complainant and her family. The complainant refused any custom reconciliation and that is not surprising at all from her. I give you an allowance of 12 months for your remorse and regrets.
33. The other mitigating factor is your guilty plea. However, I note that you are not entitled to a full discount of 1/3 given to defendants who enter guilty pleas at the first opportunity given to them by the Courts. Here a 2 days trial were set in June 2016. There were vacated. Another 2 days trial were allocated in May 2017. The trial in May did not progress as you change your pleas into guilty pleas at the date of your trial on 16 May 2017. I will give you a discount of 20% of your total term of 10 years imprisonment.
34. Your end sentence is 7 years imprisonment.
35. The circumstance of this offending does not justify a suspending of the imprisonment sentence.
36. The Court makes the following orders:

### **ORDERS**

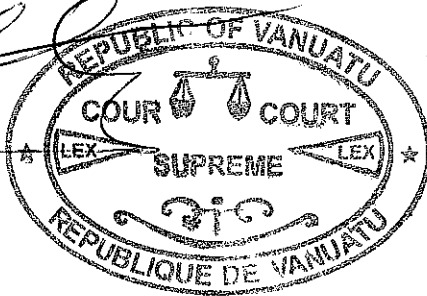
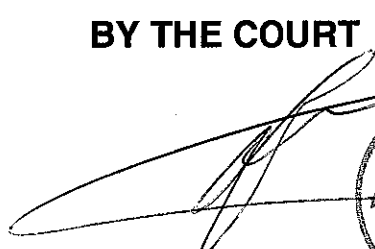
1. Alex Vuti is ordered to serve a term of 7 years imprisonment.



2. This sentence shall be consecutive to your current sentence of imprisonment of 11 years. This means that you shall serve 7 years imprisonment at the end of the sentence of imprisonment of 11 years you are currently serving.
3. You are entitled to appeal against this sentence if you are unsatisfied with it. You have 14 days to appeal beginning today.

**DATED at Port Vila, this 15<sup>th</sup> day of June, 2017.**

**BY THE COURT**



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

The seal of the Supreme Court of Vanuatu is circular. It features a central scale of justice. The text 'REPUBLIC OF VANUATU' is written along the top inner edge, and 'REPUBLIQUE DE VANUATU' along the bottom inner edge. The words 'COUR' and 'COURT' are positioned on either side of the scale, and 'SUPREME' is centered below it. The word 'LEX' appears on two small banners flanking the central text. A decorative flourish is at the bottom of the seal.