

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

**Criminal**  
**Case No. 20/1083 SC/CRML**

**BETWEEN: Public Prosecutor**

**AND: Jonathan Boesaleana**  
Defendant

Date: 21 July 2020  
By: Justice G.A. Andrée Wiltens  
Counsel: Mr L. Young for the Public Prosecutor  
Mr R. Willie for the Defendant

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**SENTENCE**

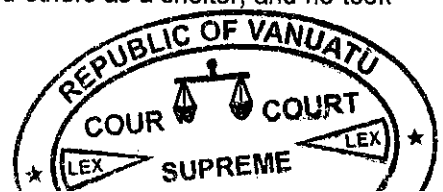
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**A. Introduction**

1. Mr Boesaleana pleaded guilty at the first opportunity to a charge of threat to kill (x2) and a further charge of sexual intercourse without consent. The maximum sentence for that offending is a term of 15 years imprisonment for the threats to kill and life imprisonment for sexual intercourse without consent.

**B. Facts**

2. Mr Boesaleana is married to Muriel, and they have a daughter Katerose, born on 10 February 2003.
3. In August 2018, having been released on parole on 2 March 2018, Mr Boesaleana found a text message on Katerose's phone which angered him. He cut a tent used by Katerose and others as a shelter, and he took

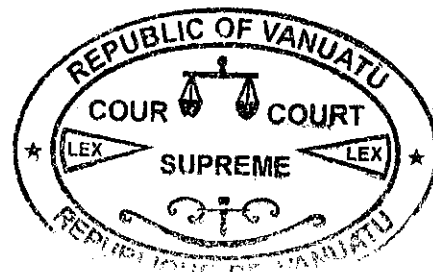


to both Muriel and Katerose with a piece of wood and a knife. He placed the knife on Muriel's neck and asked if she wanted him to kill her. The matter was not reported to the police, although the probation officer was made aware of it.

4. On another occasion in August 2018 Mr Boesaleana sent Muriel to fetch Katerose so that he could have sexual intercourse with Katerose, then aged 15 years. Both Muriel and Katerose were too frightened to not comply with his demands. They went to Mr Boesaleana who threatened Katerose to remove all her clothes – he threatened to kill her and Muriel if she did not comply and permit him to have sexual intercourse with her. Katerose relented to protect her mother. Mr Boesaleana inserted his penis into Katerose's vagina before he ejaculated into the bed – he then instructed Katerose to not tell anyone. Katerose was too ashamed at the time to permit her mother to report the matter to the police.
5. The police were eventually told. When they interviewed Mr Boesaleana, he made full admissions to all 3 offences.

C. Sentence Start Point

6. The new approach to sentencing, as opposed to that suggested in *Andy v PP* [2011] VUCA 14 is the authority of *Moses v R* [2020] NZCA 296, which sets out a 2-step process. Firstly, the criminal culpability of the offending is to be assessed, followed by then considering the offender's personal situation in arriving at the appropriate end sentence.
7. The criminal culpability assessment involves considering the maximum sentences available, and then factoring in the aggravating and mitigating factors of the offending. Where there is more than one charge involved, an overall assessment is required, usually on a concurrent basis.
8. In this case, the maximum term available is a term of life imprisonment. There are no mitigating aspects of the offending. However, there are numerous relevant aggravating factors, having regard to the authority of *Scott v PP* [2002] VUCA 29, as follows:
  - The age differential between Mr Boesaleana (then 45) and Katerose (then 15);
  - The breach of trust involved – in respect of his wife and his biological daughter;
  - The offending took place in their home, where the complainants ought to be able to feel safe;
  - The violence used, over and above that necessary to achieve non-consensual sexual intercourse;
  - The use of weapons – knife and piece of wood;

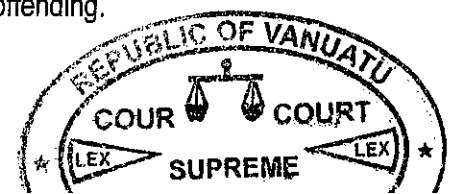


- The effects on the victim, who was highly traumatized by the offending – she continues to be in fear of her father;
- Instructing Katerose to not tell anyone;
- threats which were an integral part of the offending; and
- The repeat nature of the offending – involving 3 charges and 2 complainants.

9. Taking all of those matters into account, on a global basis taking account of all the offending, Mr Boesaleana's sentence start point is set at 9 years imprisonment.

D. Personal Factors

10. Mr Boesaleana pleaded guilty to all 3 charges at the earliest available opportunity. Given that this obviates the need for his wife and daughter to have to give evidence, and is an acknowledgment of his wrong-doing, coupled with the saving of Court time and expense, I am prepared to reduce the sentence start point by 25% for this factor. I do not for one moment consider there is any remorse, given that this is repeat offending of a similar kind that resulted in Mr Boesaleana's previous incarceration. Had there been genuine remorse, then the maximum discount for a prompt plea would have been available.
11. The discount for prompt pleas is to be calculated at this point of the sentencing exercise, in order to adhere to the sentencing principle of imposing the least restrictive outcome appropriate.
12. Mr Boesaleana has relevant previous convictions. In September 2011 he was convicted of rape (x8), incest (x8), attempted rape (x1) and acts of indecency with a young person (x3). In October 2011 he was further convicted of rape (x3), attempted rape(x1). This offending was against his adopted daughter, who at the time was aged between 13 and 16, and one of his biological daughters (not Katerose) who at the time was aged between 8 and 12 years. Following an appeal the end sentence imposed for this offending was a term of 12 years imprisonment.
13. Mr Boesaleana is not to be further punished for this previous offending, but an uplift to his sentence is required. Additionally, the current offending occurred while he was serving parole. These two factors require an uplift of sentence in the order of 16 months imprisonment.
14. The PSR reports that Mr Boesaleana is currently 47 years of age. He considers his marriage to be chaotic and blames his wife for his offending. He maintains he took revenge on his youngest daughter as she assisted his wife to be unfaithful to him. After interview, the report writer assessed Mr Boesaleana as being at risk of further similar offending.
15. There is nothing in Mr Boesaleana's personal circumstances that mitigates his offending.



E. End Sentence

16. Mr Boesaleana is accordingly sentenced to 8 years imprisonment in respect of the sexual intercourse without consent charge, and 2 years imprisonment on each of the threat to kill charges. The sentences are to be served concurrently.
17. The sentences are to run from 27 October 2023. Having been released on parole, Mr Boesaleana has been recalled and is required to complete his previous sentence by the Community Parole Board. That sentence will expire on 27 October 2023. There is no justification for this sentence not following on from his previous sentence.
18. The nature and seriousness of the offending dictates that suspension of any or all of the sentences is inappropriate. The principles of deterrence, and holding the offender accountable for his actions are the paramount sentencing principles in this instance. The public needs to be protected from this recidivist offender. Rehabilitation is not a priority consideration in Mr Boesaleana's case.
19. Mr Boesaleana has 14 to appeal this sentence if he is unhappy with it.

**DATED at Luganville this 21<sup>st</sup> day of July 2020**

**BY THE COURT**

*G.A. André*

Justice G.A. André Wilkens

