

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

LALA ELICIEN APUVOKE

Mr Justice Oliver A. Saksak
Mrs Anita Vinabit - Clerk

Mr P. Wirrick for the State
Miss J. Tari and Mr E. Molbaleh for the Defendant

SENTENCE

1. Lala Elicien Apuvoke you pleaded guilty to one charge of Sexual Intercourse Without Consent Contrary to Section 91 of the Penal Code Act Cap 135. The maximum penalty for this offence is life imprisonment.
2. Your victim is a mother of two children. On 16th December 2011 the complainant and her two children went to collect firewood in the bush away from the village. She then sent the children back to the village to bring a wheel barrow. It was then that you approached their mother when she was bending over and tying up a bundle of firewood. She was shocked to see you there. You then told her you wanted to have sex with her but immediately she refused and told you so. She then began to run away from you. But you chased her and grabbed her by her shoulders tearing her



shirt. You forcefully subdued her and in that process you tore her shirt, bra, skirt and underwear. The victim called for help to her mother but you slapped and punched her in the face. You asked her where she had put her bush knife and threatened to use it against her if she did not have sex with you. You then pulled her back to the place where her bundle of firewood was. She was naked, crying and calling out to her mother for help but you continued to slap her and demanded for sex. You then picked up a piece of wood and hit the victim on the back of her head. She fell down and then you threw a rock into her rib cage area. She felt dizzy as a result. You then went on top of her and proceeded to have sexual intercourse with her. After some time you withdrew and left the scene. The victim found her clothes, put them back on and returned to the village in pain and crying. Her son saw her crying. She told her mother why she was crying. They then went to report the matter to her uncle, Noah. In the afternoon of the same day the victim came to Luganville to lodge a formal complaint with the Police.

3. You realize that you have committed a very serious offence. These are the features that add to the seriousness of your offending :-

- (a) The degree of force and violence used before sex was performed.
- (b) Physical injuries as shown by the Medical Report dated 16th December 2011.
- (c) Threats to cut the victim with a knife if she did not have sex with offender.



(d) Unprotected sex exposing the victim to risk of infection and pregnancy.

4. In sentencing you today the Court adopts the principles in the cases of Public Prosecutor v. Scott [2002] CUCA 29, and Public Prosecutor v. Gideon [2002] VUCA 7.

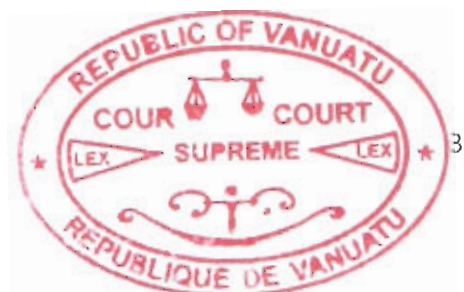
Your offending warrants an immediate custodial sentence. The Court hereby convicts and sentences you to 5 years imprisonment as the starting point. For the aggravating features, this sentence is increased by 3 years to 8 years imprisonment. This punishment is to serve as –

- (a) A deterrence for you and other men.
- (b) The public's disapproval of your behavior.
- (c) Marking the gravity of your offending.
- (d) An adequate punishment for your offending.

5. I have had regard to your pre-sentence report and the defence submissions made on your behalf by Mr Molbaleh. I accept the following mitigating factors -

- (a) Your early guilty plea.
- (b) Being a first time offender with no previous record of convictions.
- (c) Good cooperation with the police and admissions, showing remorse.

6. For your early guilty plea 1/3 is allowed and deducted from your total of 8 year term. A further 4 months are allowed for good cooperation with police and for being a first time offender, bringing the balance to 5 years imprisonment.



7. You are sentenced therefore to a total of 5 years imprisonment at the Correctional Centre in Luganville. This sentence commenced on 3rd January 2012 when you were first remanded into custody.
8. You will be entitled to apply for release on parole after having served 2 ½ years of your 5 year term.
9. You have a right of appeal against this sentence within 14 days if you so choose.

DATED at Luganville this 20th day of February 2012.

BY THE COURT


OLIVER A. SAKSAK

Judge.

