

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

**Criminal Case No. 66 / 2012**

**PUBLIC PROSECUTOR**

**V**

**SIMON PIERRE**

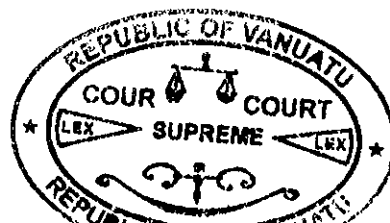
*Hearing: 11 October 2012 at Lakatoro*  
*Before: Justice Robert Spear*  
*Appearances: Simcha Blessing for the Public Prosecutor*  
*Eric Molbaleh and Roger Tevi for the Defence*

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**SENTENCE**

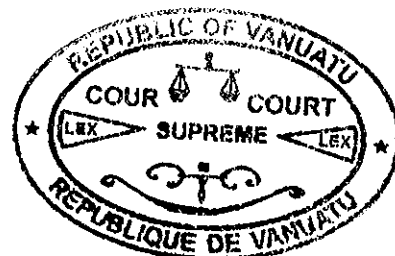
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1. Simon Pierre, you are for sentence today having pleaded guilty to 1 count of committing sexual intercourse without consent. You were due to stand trial on that charge yesterday but you pleaded guilty when your case was first called. You are entitled to some reduction for your guilty plea but not the full reduction that would have been available if you had pleaded guilty at the first reasonable opportunity.
2. The facts of the offending are set out in the summary that has been presented by the prosecution. No dispute is taken with it by you.
3. On the morning of 15 December 2012, the 21 year old female complainant, from your village on Malekula, was walking home with a friend having gathered food at her family's garden. The two young women were confronted by you standing in the middle of the road and brandishing a pocket knife. You were wearing blue jeans but you had not clothing on your upper body. When the complainant's friend asked what you were doing or what you were about you said nothing. That unsettled those 2 young women

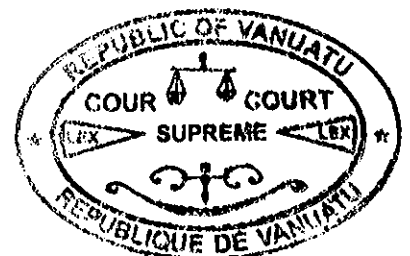


and they became frightened. They took flight. You ran after them and grabbed hold of the complainant. Her friend came back to where you were with the complainant and witnessed her begging you to release her. The friend then went off to the village to get assistance.

4. You told the complainant that you intended to have sex with her. She told you that she did not want to have sex with you. You then forcefully removed her clothing, initially inserted your finger into her vagina and then had full sexual intercourse with her. This caused the complainant considerable pain. She told you that you were hurting her but you would not stop.
5. After you finished with the complainant, you told her to get dressed and you then walked off.
6. By this time, the complainant's friend and others were hurrying from the village to the complainant's assistance. They came upon a very distressed young woman. She complained of extreme pain and, when she got back to the village, she fainted. She was examined by a medical practitioner at Norsup hospital later that morning and he confirmed that there had been blunt force trauma to the vaginal wall, tears to her urethra and bleeding from her genitalia. That is entirely consistent with her account of being forced to have sexual intercourse against her will.
7. You were arrested on 25 June 2012. You admitted the allegations made at that time. That notwithstanding, no plea of guilty emerged until yesterday. Your plea of guilty was accompanied by a statement that you made to me at the time that you were sincerely remorseful for what you had done. While I can understand that you are remorseful now for what you have done to this young woman, the fact remains that you could have entered a plea of guilty at a much earlier stage. That you did not do so simply indicates that you were prepared to test the prosecution and have the matter brought through to trial here in Malekula. Your plea of guilty was not entered until you became aware that the complainant had arrived here in Lakatoro and that she was prepared to give evidence against you.



8. Mr Blessing's submission is that the Court should adopt an offending end point of 8 years imprisonment to reflect all aggravating features to this offending. First, there is the age difference between you (36) and the complainant (21). There is the use of a weapon as you displayed the pocket knife to the complainant as she approached you on the road. Mr Blessing argues that there was the use of force over and above what was necessary to commit the rape although that perhaps needs to be put in the context that it was the force that the defendant obviously felt necessary to subdue the complainant so that he could rape her. However, it was certainly a brutal rape as evidenced by the injuries seen by the Doctor later that same morning and the pain you caused to the complainant.
9. Mr Molbaleh reminds the Court that the defendant is a first time offender, and that he is now a married man with 1 child at school. Furthermore, he is remorseful and that while he has tried to initiate a custom ceremony so that there can be forgiveness between the families, that has been rejected by the victim's families.
10. I want to say something very briefly about the complainant's family rejecting custom reconciliation. It is well understood and accepted by the Courts that custom reconciliation is a most important feature to life here in Vanuatu. However, it is not obligatory for a family or a person who has been wronged to accept custom reconciliation particularly when the criminal law has been activated and a person is being prosecuted for a criminal offence. There can be difficulties that can arise when the focus becomes directed more towards reconciliation than towards the determination of the criminal complaint and the imposition of an appropriate penalty.
11. Accordingly, while I accept that the defendant would like to make peace with the complainant and her family, it is entirely a matter for her and her family as to whether they are prepared to accept that. Perhaps, more importantly, a criminal justice system has been adopted by this country and, while it recognises the place of custom reconciliation, the outcome of a criminal prosecution should not be diverted or subverted by custom processes.



12. This is an appalling crime, it is a case that was clearly predatory in nature as you set up a 21 year old woman on her way home from gathering food in her family's garden and you subjected her to violent sexual abuse to the point of full sexual intercourse. This offending will unquestionably have a marked effect upon her life. While you will do your time in prison and you will then move on with your life, what you have done to this young woman will stay with her for the rest of her life.
13. You have dealt the complainant a life sentence. Unfortunately, in some quarters she will always be known as a rape victim. She will unquestionably have difficulty forming relationships of trust with men. Her life will not be as happy it would have been if you had not taken her that day.
14. This is serious offending and it needs to be treated as such. The simple protestation of remorse is inadequate. As I have mentioned, this Court would have been more inclined to respect your expression of remorse if it had come as soon as you had been committed into the Supreme Court for trial as the opportunity was there for you to plead guilty when you first appeared in the Supreme Court.
15. When considering a starting point, I have had particular regard to the decision of the Court of Appeal in *Public Prosecutor v. Scott*<sup>1</sup> which approved the approach set out in *Public Prosecutor v. August*<sup>2</sup>

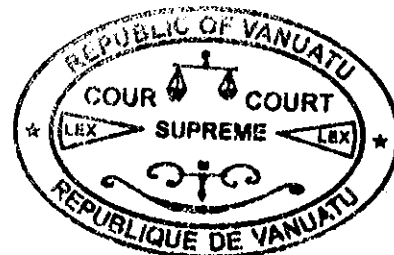
*"A number of decisions were referred to in the Supreme Court including Public Prosecutor v. Ali August of Criminal Case No. 14 of 2000 where the Chief Justice set out the applicable rules. To assist in the understanding of those rules we repeat what he said:*

*"The offence of rape is always a most serious crime. Other than in wholly exceptional circumstance, rape calls for an immediate custodial sentence. This was certainly so in the present case. A custodial sentence is necessary for a variety of reasons. First of all to mark the gravity of the offence. Secondly to emphasize public disapproval. Thirdly to serve as a warning to others. Fourthly to punish the offender, and last but by no means least, to protect women. The length of the sentence will depend on the circumstances. That is a trite observation, but these in cases of rape vary widely from case to case.*

*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*

<sup>1</sup> [2002] VUCA 29; CA 02-02 (24 October 2002)

<sup>2</sup> [2000] VUSC 73; Criminal Case No 014 of 2000 (28 November 2000)



*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.*

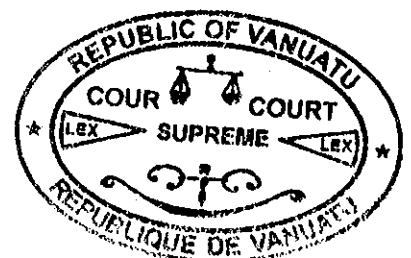
*Where any one or more of these aggravating features are present, the sentence should be substantially higher than the figure suggested as the starting point.*

*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.*

*The fact that the victim may be considered to have herself in danger by acting imprudently (as for instance by accepting a lift in a car from a stranger) is not a mitigating factor, and the victim's previous sexual experience is equally irrelevant. But if the victim has behaved in a manner which was calculated to lead the defendant to believe that she would consent to have sexual intercourse, then there should be some mitigation of the sentence.*

*Previous good character is of only minor relevance."*

16. I adopt the 5 years starting point but I lift- that to 8 years to reflect the various aggravating features to this offending that I have already mentioned and which have been urged on me by Mr Blessing.
17. I am prepared to recognise that you have no previous convictions, that you appear otherwise of good character and, in particular, you appear to be remorseful. I allow you 12 months credit for these matters. The fact that you



say you were drunk at that time is no excuse at all and cannot operate as a mitigating circumstance.

18. I allow you 25% credit for your guilty plea which came before the trial commenced and which has meant that the complainant does not have to relieve her ordeal by giving evidence.
19. That leaves me with a sentence of 5 years 3 months imprisonment. In my view that is an appropriate sentence to be imposed here.
20. You are sentenced accordingly to 5 years 3 months imprisonment which will be deemed to have commenced on 5 June 2012 when you were first taken into custody.
21. You have 14 days to appeal this sentence if you do not accept it.

**BY THE COURT**

