

**BETWEEN: Public Prosecutor**  
**Appellant**

**AND: Timothy Kavila**  
**Accused**

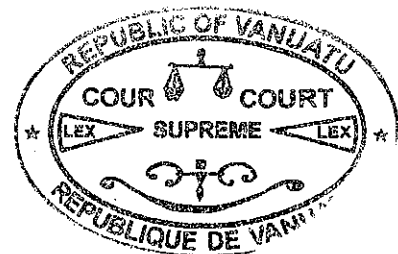
***Date of SENTENCE:***            ***4th day of October, 2017 at 11:00 AM***  
***Before:***                        ***James Paul Geoghegan***  
***In Attendance:***            ***Mrs Matariki for the Public Prosecutor***  
   ***Mr Napuati for Mr Kavila***

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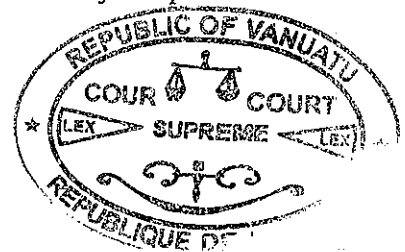
**SENTENCE**

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1. Mr Kavila you appear today for sentencing in respect of five counts of sexual intercourse without consent, one count of an act of indecency without consent, one count of threat to kill and one count of intentional assault. These are all serious offences, sexual intercourse without consent carrying a maximum term of life imprisonment, an act of indecency without consent carrying a term of seven years, a threat to kill carrying a maximum term of 15 years and the count of intentional assault carrying a maximum term of one year.
2. Having initially pleaded not guilty to these charges you entered a guilty plea at the commencement of your trial. You entered that guilty plea on the basis of the brief of facts presented by the Public Prosecutor and dated March 30<sup>th</sup> 2017.

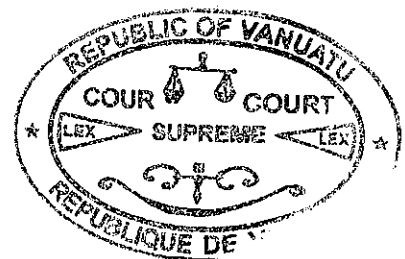


3. That brief tells me that the victim in this case is related to your wife. Accordingly she is a member of your extended family. She is an adult but she is considerably younger than you.
4. I need to spend some time going through the brief of facts because that provides the basis upon which you are being sentenced.
5. The brief of facts tells me that on February 13<sup>th</sup> this year the victim of your offending approached you and your wife to assist her financially to get a passport. You accordingly travelled from your home in the Teouma Valley to the victim's home in the Salili Area. At that time it is clear that you had intended to take the victim back to your home and you persuaded her that she should return to your home with you and your wife. There was some resistance to that on the part of the victim's sister but the basis for that resistance is not clear.
6. You then took the victim to Teouma and that evening the victim went off to bed after the evening meal. While she was sleeping she was approached by you and your wife. Your wife asked the victim if the both of you could touch her body. You were standing in front of her at that time completely naked. Not surprisingly, the victim was frightened about this and told you that she did not want to do that. The victim was then threatened that if she did not permit you to do what you wanted with her you would hit her and you use a knife on her. This threat forms the basis of the charge of threatening to kill and although the words were spoken by your wife, you accept that they were at your instigation.
7. You told the victim to take off her clothes and at the same time you were assaulting your wife. Not surprisingly, the victim was fearful for her safety and so she removed her clothing. You then sucked on her breasts and her vagina and you inserted your fingers into her vagina while your wife also sucked on her breasts and vagina. You then made the victim suck your penis and your wife's vagina. You told the victim to suck your penis and

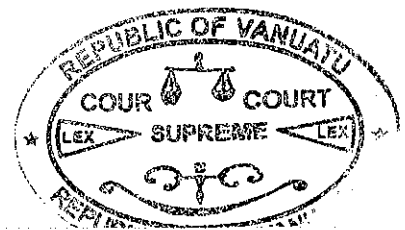


your wife's vagina which the victim did, fearing for her safety. These incidents form the basis for the charge of an indecent act without consent. You then forced your penis into the victim's vagina and had sexual intercourse with her while your wife continued to touch her breasts.

8. You have continued to sexually assault her and engage in intercourse with her later than evening.
9. The next day February 14<sup>th</sup> you again had sexual intercourse with the victim without her consent.
10. On February 15<sup>th</sup>, the victim attempted to leave your home but she was assaulted by you and threatened that you would use a knife on her and throw her into the nearby river if she attempted to leave. You then pulled the victim into the house and locked her in the house.
11. On the evening of February 15<sup>th</sup>, you again had sexual intercourse with the victim without her consent.
12. On Thursday February 16<sup>th</sup>, your wife left the property after an argument between you and you were alone at the property with the victim. You again had sexual intercourse with her without her consent.
13. The following day February 17<sup>th</sup> you took the victim back to her home at Salili. It is clear that when she returned her sister was unhappy and made further enquiries regarding the matter.
14. The brief of facts tells me that you then took a bag of rice, two blankets and two 20 yard pieces of calico to provide as a peace offering. The brief of facts tells me that it was at that moment that your wife confessed as to what had happened to the victim stating that it was at your instigation. These charges have followed.



15. In short this was offending of the most appalling kind. You engaged in deception to lure this young woman to your home and you have then used violence and threats to force her to engage in sexual acts with you against her consent over the course of four days. She was effectively held by you against her will and isolated from any means of obtaining help or assistance.
16. I have read your pre-sentence report and of course you have read it as has your counsel Mr Napuati. You accept the contents of that report. The report tells me that while you speak of having a happy relationship with your family, your wife, who is still to have her part in this offending determined by the Court, has referred to a relationship with you involving violence, dominance and control by you. She has referred to receiving physical assaults from you. Those matters of course are not before me and you will not be sentenced on the basis of her assertions but your offending would certainly be more consistent with her depiction of your relation than yours.
17. You are referred to by your Chief as a hard working community member who has assisted extended family in Tanna and in Port Vila. If anything that description simply highlights the sinister nature of domestic violence and sexual offending which, as in your case, occurs behind closed doors and is perpetuated against vulnerable woman beyond the eyes and ears of the local community.
18. The pre-sentence report described you as a first time offender. While you have expressed a degree of remorse there appears to be large question marks over whether it is genuine. The report refers to you shifting blame onto your wife and refers to you having no insight into your offending. That fact alone is deeply concerning and marks you out as a person who may present a continuing danger to those women who may be around you. The report refers to the performance of two custom ceremonies at the cost reported by you to be some Vt 107,000. It appears however that the second custom ceremony was blighted by an alleged assault of the



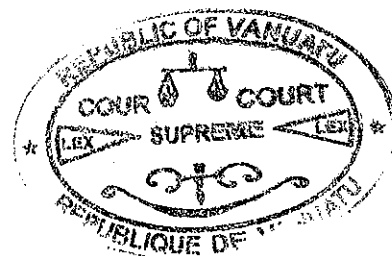
victim by your wife. If that occurred then that is simply disgraceful, however the actions of your wife will not, in the absence of any other information, affect your sentencing today.

19. I do not have any report on the impact of your offending on the victim. However I can safely assume that its effect is likely to be profound and lifelong. While you will receive a finite sentence today you have more than likely imposed a lifelong sentence on your victim and that is something which you need to think about.
20. I have received helpful submissions from both counsel and I am very grateful for them. Both Mrs Matariki and Mr Napuati properly acknowledge the seriousness of this offending and have referred to a number of aggravating and mitigating factors to be taken into account.
21. I do not accept however, Mr Napuati's submissions that the only aggravating factor is the fact that the victim was the subject of a repeated rape. There are other aggravating factors and I shall mention those shortly.
22. It will also be clear from what I have said to Mr Napuati and what I am about to say, that I reject Mr Napuati's submission that I should adopt a starting point of six years. While Mr Napuati referred to the authorities of the Public Prosecutor v Nemtem<sup>1</sup> and the Public Prosecutor v. Pierre<sup>2</sup> to justify that submission, they involve significantly less charges than your offending and factual backgrounds which were fundamentally different.
23. Mr Napuati's submissions also ignore that this was repeated serious offending that alone justifies a significantly greater starting point.
24. At this point I wish to record that Mr Napuati sought further time to file submissions on your behalf on an appropriate starting point. However, I

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<sup>1</sup> [2017] VUSC 126

<sup>2</sup> [2013] VUSC 147



have declined to grant him an opportunity to do so. Fundamentally this matter must be dealt with on the basis of the charges that you face and the facts that you have accepted as underlying them. Delay will serve no further purpose.

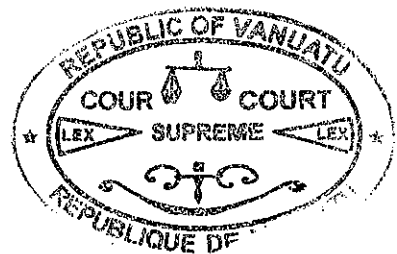
25. Looking at the aggravating features of your offending I consider them to be the following :

- (a) This was clearly planned offending. You had persuaded the victim to come to your home on the pretence of your being able to assist her with obtaining a passport. In fact, your real intention was to have sex with her whether she wanted to or not.
- (b) The offending involved a considerable degree of deception and a significant breach of trust involving as it did a member of your wider family who was significantly younger than you.
- (c) You forced the victim to engage in sexual activity with your wife in your presence to further satisfy your sexual gratification.
- (d) You threatened the victim through you wife, you told the victim that unless she did what you wanted you would assault her and use a knife on her.
- (e) When the victim tried to leave your home some two days after having arrived there, you assaulted her and again threatened that you would use a knife on her and throw her into the river she attempted to leave.
- (f) You have effectively held this victim hostage for a period of four days.

26. In a Court of Appeal decision of Public Prosecutor v. Scott<sup>3</sup> the Court stated that for rape committed by an adult without an aggravating or

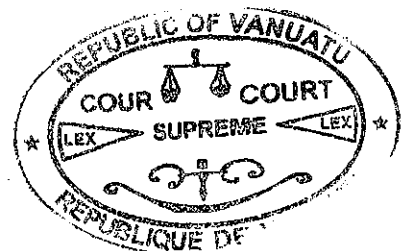
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<sup>3</sup> [2002] VUCA 29

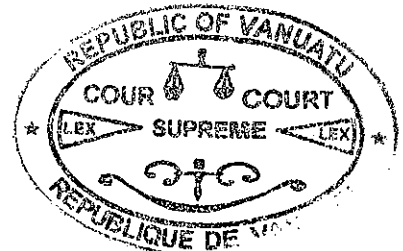


mitigating feature a figure of five years should be taken as the starting point in a contested case.

27. 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.
28. The Court of Appeal also referred to a number of aggravating factors and observed that where anyone or more of those aggravating features are present the sentence should be substantially higher than the figure suggested as the starting point.
29. The offending in this case, which has involved you forcing the victim to engage in sexual activity with you and your wife, which has involved threats of violence and actual violence against the victim and which has involved the isolation of the victim in the way that I had described, in my assessment justify a starting point of 10 years in respect of one charge alone. The difference in this case is that there are five separate counts of rape and any sentencing exercise make that into account.
30. In that regard I would respectfully suggest that the submissions filed do not take that into account sufficiently. If one were to approach this on a cumulative or consecutive basis taking into account that three of the rapes involved sexual assaults by both you and your wife and that the other two offences were committed by you alone, a cumulative starting point of 46 years could be contemplated which would be comprised of three counts at 10 years each and two at eight years each.
31. Clearly such an approach would be entirely inappropriate and would offend against the principle of totality which requires the Court to stand back and reduce the total to a figure which is "just and appropriate".



32. In looking at your case I am of the view that a 20 year starting point would be a just and appropriate starting point taking into account the matters I have referred to. This of course is in respect of the leading offences of unlawful sexual intercourse without consent.
33. Taking into account the other offences and the fact that they were committed during the course of this horrific four days of offending I consider that the starting point of 20 years also adequately accounts for the other offences.
34. There are no personal aggravating features which would justify any further uplift in that starting point.
35. I turn then to consider the mitigating factors which should be taken into account. Mr Napuati refers to the following factors, your guilty plea, the customary reconciliation ceremony, your remorse and co-operation with the police and your previously clear criminal history.
36. As to your guilty plea Mr Napuati suggests that you should receive a deduction of one third. With respect to that submission I disagree with it. You did not enter your guilty plea at the first available opportunity but on the morning of your trial. And while you should be given some credit for that you cannot expect to receive the same allowance as you would have received had you entered a guilty plea at the outset. I consider a 15% allowance to be appropriate which represents a deduction of three years from the starting point.
37. As to customary reconciliation, remorse, co-operation with the police and your clear criminal history I accept Mr Napuati's submission that such matters would warrant a 12 month deduction, taking into account the matters I have already mentioned regarding my doubt around your remorse. No other deductions are warranted.
38. Your period in custody will be taken into account in the calculation of your parole and release dates by Corrections.



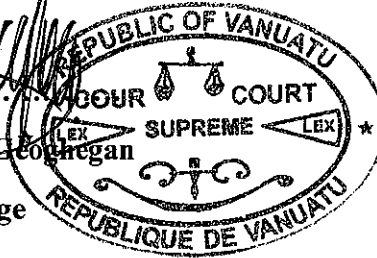


39. Accordingly, you are sentenced as follows. In respect of each count of sexual intercourse without consent, 16 years imprisonment. On the count of an act of indecency without consent, 2 years imprisonment. On the count of threatening to kill, 3 years imprisonment. On the count of intentional assault, 9 months' imprisonment. These terms are to be served concurrently.
40. You have 14 days to appeal this sentence.

DATED at Port Vila this 4th day of October, 2017

BY THE COURT

.....  
James Paul Geoghegan  
Judge

The seal of the Supreme Court of Vanuatu is circular. It features a central emblem with a scale of justice and a sword. The text "REPUBLIC OF VANUATU" is written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. In the center, the words "COUR SUPREME COURT" are arranged around the emblem, with "LEX" on either side of "SUPREME". A small star is located on the right side of the seal.