IN THE COURT OF APPEAL OF
THE REPUBLIC OF VANUATU

APPEAL CRIMINAL CASE No 2 of 1996

BETWEEN: Peter TALIVO

Appellant

AND: Public Prosecutor

Respondent

JUDGEMENT

This is an appeal filed by Peter Talivo against sentences imposed upon him by the learned Chief Justice in the Supreme Court on the 30th April 1996 sitting in Santo. The Appellant pleaded guilty to two charges. One under section 96 (1) (a) of Unlawful Sexual Intercourse with a Girl under protection or under care and a subsequent offence under section 97 (1) of further sexual intercourse with the same girl.

The child had been a member of his family for a period of some years. At the time of the first offence she was twelve. She was living with and had been brought up as part of this man's family.

The Court indicated in sentencing that although it had regard to his previous good character, that he was a very hard working man and having given substantial credit for him having pleaded guilty, the Court could not ignore the fact that he had abused the child on at least two occasions. The Court was concerned about the amount of abuse of young children by men considerably older than themselves. On the first charge he was sentenced to two years and on the second three years, which made a cumulative sentence of five years imprisonment.

It is submitted on Appeal that the learned Judge failed to give sufficient weight to matters of mitigation and that the sentence was disparite. Section 119 of the Penal Code provides that the Court shall have regard to matters of custom. We accept Mr Stephen's submission that this aspect is not specifically adverted to within the trial Judge's decision. It is accepted that a custom payment of 25.000 vt was paid by Peter to Priscilla, his former wife who had been responsible for the care of the child at the time and a further 10.000 vt to the child's natural mother.

The learned trial Judge accepted that this man had no previous convictions but we are of the view that he correctly treated this as a

serious abuse of trust. On the first charge he was liable to ten years imprisonment and on the second to fourteen.

Someone of twelve is but a child. We are told that this little girl had been abused by other men before she was abused by Peter. That provides him with no assistance. If he knew of that, it increased his obligation to care for and protect this child who was living in his family. If others had taken advantage of her and then he too took advantage of her, that is in our view an aggravating not a mitigating factor.

All children are entitled to be protected by adults. Children must be safe in their own homes. When men who have the care of children abuse that trust we agree with the Chief Justice that they forfeit the right to remain within the community. In this case the custom dealing with the matter could not in and of itself be sufficient to deal with it. We cannot see how on any basis it could be said that the sentence imposed was manifestly excessive. What this man did was deplorable conduct. The Court had an obligation to mark the community's disapproval of it in a serious way.

We have been referred in the second ground of appeal to another decision of the learned Chief Justice given on that same day at the same sitting of the Supreme Court. In that case a man was sentenced to nine months imprisonment for the sexual abuse of his daughter. We do not know all the details but there are some matters which appear to us to be significantly different. First the girl in the second case appears to be fifteen or sixteen and not twelve. Those three or four years are of substantial importance at that time. Secondly there was only one charge and not two. Thirdly in the other case the man immediately confessed his offence when confronted by the Police whereas in the present case the man denied his guilt. He left this little girl in the position that she might have had to come to Court and give evidence with all the trauma which is involve in that. It appears to us that a nine months sentence in the other case was a very merciful sentence. It does not provide any basis upon which we could interfere with what was a proper exercise of discretion in the instant case.

We have listened with care to all Mr Stephens has said. It appears that he has said all that could possibly be said on behalf of this man but there is no basis upon which we could conclude that the total sentence of five years was either wrong in principle or manifestly excessive. The appeal is accordingly dismissed.

DATED AT PORT VILA this 25th day of October 1996

Justice ROBERTSON
Judge of Appeal

Justice D. DILLON
Judge of Appeal

Justice MUHAMMAD
Judge of Appeal

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