

PUBLIC PROSECUTOR

-v-

AMOS TELUKLUK

Coram: V. Lunabek CJ

Counsel: Mr Lenry Young for Public Prosecutor
Ms Linda Bakokoto for the Defendant

Date of Delivery: 16 October 2017

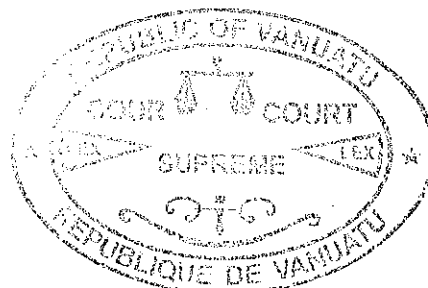
SENTENCE

1. Amos Telukluk, you were charged with two (2) counts of digital sexual intercourse and one count of indecent assault, contrary to ss.89A, 90, 91 and 98(a) of Penal Code Act [Cap 135].
2. You were tried at Lakatoro, Malekula on 28 and 29 August 2017 and were found guilty and convicted by the Court on 13 September 2017.
3. Sections 89A, 90, 91 and 98 (a) are the relevant provisions of the law. They provide as follow:

“Sexual Intercourse defined.

89A (a) for the purpose of this part sexual intercourse means any of this part activities, between any means of the following activities, between any male upon a female, any male upon a male or any female upon any female or any female upon a male: the penetration, to any extent, of the vagina or anus of a person by any part of the body of another person...”

“Sexual Intercourse without consent



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90 (a): any person who has sexual intercourse with another person – without that person's consent commits the offence of sexual intercourse without consent."

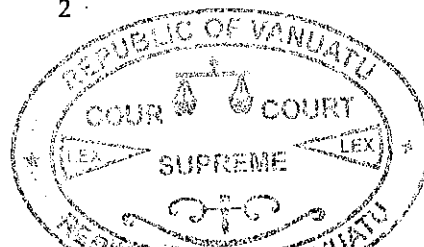
"Punishment

91: Punishment of sexual intercourse without consent – imprisonment for life."

"Act of Indecency without consent

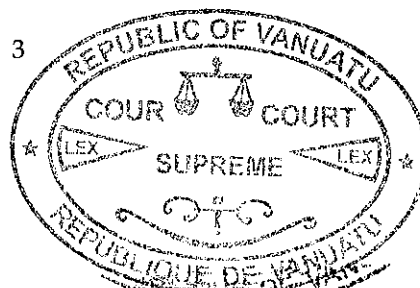
98 (a): A person must not commit an act of indecency on, or in the presence of another person without that person's consent – Penalty: imprisonment for 7 years."

4. The nature of your offending in this case is very serious one as reflected by the high level of penalty imposed by law.
5. The facts of your offending are recorded in the reasons for Verdict dated 13 September 2017. Briefly they are these.
6. The complainant lodged her complaint to the police on 10 March 2016 at Lakatoro Police Station. She complained against you as she regarded you as her step dad. She said in 2016 she was living at Norsup with her mother Marie Malapa and yourself you were living at a house that you were renting. She attends school at Norsup and she is a French student and currently at year 10.
7. She said the first incident happened to her on 11 February 2016 sometime at night. At the time, she was laying down on her belly on her bed in the sitting room and her mother was in the bathroom. You consumed kava and came back home and sat down on the bed that she was on. You moved closer to her. She laid down on her belly. At all material times only the three of you were living there.
8. At that time the complainant felt like something in her vagina. She said you pushed your finger into her nylon trousers pushed your finger into her vagina. She felt pain; she turned on her right side. She saw you. She said only one finger was pushed into her vagina and one time only on that night. You did not say anything. She did not say anything too. She confirmed no other person was there on that

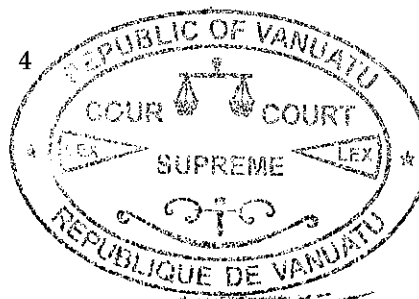


occasion apart from her mother who was in the bathroom and you. She said she did not agree with what you did to her as she regarded you as her dad.

9. On the next day 12/02/2016 at around 9.30 at night you pushed you finger into her vagina again and she felt pain. She turned to her left side when she felt pain. At that time her mother was inside their bed in the room in the same house. She said only one finger was pushed into her. At all material times only three of you were living in the house.
10. She said before the incident happened you went drinking kava. You did not say anything before you left. Similarly she did not say anything to you. She confirmed that the act was not straight since you looked after her when her biological dad left her mother. She said she did not think that you would do that to her.
11. Again on 13/02/2016 on the late afternoon when the complainant's mother was still at work she was inside the bedroom you and her mother used. She was there alone folding cloths. This was at the same house at Norsup.
12. You came back from work and went into the room where she was. You asked her what she was doing. She responded that she was folding the cloths. You then touched her vagina via her trousers only. Also you moved close to her and wanted to kiss her. You placed your hand on her and you moved closer to her. Then she cried. You then pushed your hand into your pocket trousers you took out your purse. You took out VT200 and gave it to her but she refused. You told her to stop crying otherwise you will run away. She cried because she did not like what you did to her (touching her vagina and wanted to kiss her). Her mother was still at work at that time. She works at Tautu store. The incident happened around 6pm.
13. On 26/02/2016 she told her mother about all the incidents that you did to her. She told her at Norsup when they went back to take out their cloths. She cried to her mother before she talked to her. She also reported the matter to the police. She is now living with her mother at small tautu. She made a complaint to the police because she is not happy with what you did to her. She confirmed that she not make up this story. She is not telling lies.

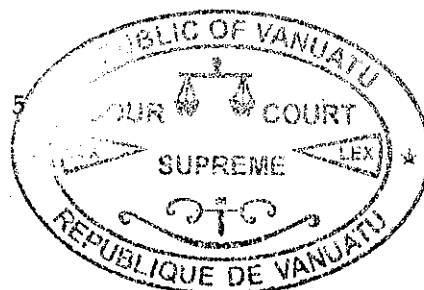


14. The complainant's mother said that they were living at Norsup before moving to Tautu. At all material times only her, you and the complainant were living together. She said everything was good until in 2016 when you started having affairs with another woman that caused quarrels.
15. On 26/02/2016, the complainant told her about the three incidents and that she cried and you wanted to give her VT200 otherwise you will run away. She confirmed that the complainant cried while telling her about those incidents. The complainant told her this when they went to take back their belongings at Norsup at the house where you were renting. You were there when they reached the house. She then admitted to you the troubles that the complainant had told her but you said she was telling lies. They reported the matter to the police.
16. The prosecution provided the following case authorities to support their submissions on the sentencing in this case:
 - ***Public Prosecutor-v- Ali [2002]VUSC; Public Prosecutor -v- Scott [2002] VUCA 29; Boesalana -v- Public Prosecutor [2011] VUCA 33; Kalfau -v- Public Prosecutor [1990] VUCA 9.***
17. The prosecution submitted that based on the above authorities, the starting point sentences of 7 years imprisonment in relation to counts 1 and 2 and 2 years imprisonment should be appropriate to reflect the seriousness and culpability of the offending.
18. Your lawyer makes submissions on your own behalf by providing following case authorities: **PP v-v Ali [2000] VUSC 73** recognizing that sexual intercourse without consent is a serious offence; **PP -v- Moise [2016] VUSC 5** where offender pleaded guilty to one count of digital sexual intercourse without consent. There were two penetrations of the vagina; one with one finger and a second with two fingers but were closed in time and part of the same incident. The Court stated there: "*digital penetration is undoubtedly less serious a sexual violation than penal*



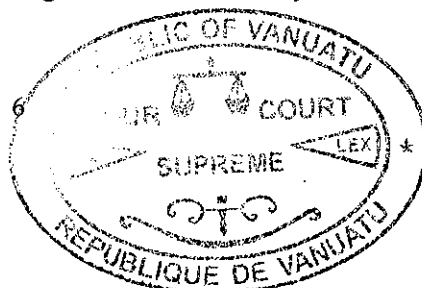
~~rape so on the spectrum of possible examples of sexual intercourse without consent, it is by comparison towards the lesser and end of the scale."~~

19. She submitted and I agree with her that in the present case, the nature of the offences being digital penetration as opposed to penile penetration, there was no exposure of the penis; the offences were committed on 3 consecutive days rather than a longer period of years as in **PP -v- Pale [2016] VUSC 162** and **PP -V- Viralone [2017] VUSC 18**.
20. She submitted that in the light of the previous cases with similar facts and circumstances and to maintain consistency, the starting point sentence should be 5 years for digital sexual intercourse without consent (Counts 1 and 2) and 2 years as appropriate starting point for acts of indecency without consent (Count 3).
21. Applying the sentencing approach in **PP -v- Andy [2011] VUCA 14** and **Kalfau - v- PP [1990] VUCA 9**, she submitted that an end sentence of 4 years imprisonment should be served.
22. The pre - sentence report shows that the factor that contributed to your offending was that you saw your step daughter (the complainant) as beautiful and young and you shifted the blame of your offending of the way she was dressed up. This was wrong.
23. The Court condemns in the strongest terms this type of behavior leading up to your offending. You must be accountable for your own actions.
24. In the present case, your offending is aggravated by the following factors:
 - There is a breach of trust between you and the complainant. The complainant expected that you protected her at home. You breach that trust.
 - There is repetition in your offending.
 - The offences occurred at night times.



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- There is an age differential between you (46 years of age) and the complainant (15 years of age) of 31 years. You are an adult and mature person. The complainant girl is a child. She needed your protection.
 - There was an impact of your offending on the girl complainant.
25. In this case, you are sentenced to 7 years imprisonment for digital sexual intercourse on counts 1 and 2 and 2 years imprisonment on indecent assault in count 3 as appropriate starting point sentences. They are concurrent to each other. The total starting point sentence is 7 years imprisonment. That is the head sentence.
26. In mitigation, you are a first time offender. You admitted that what you did to your step daughter was wrong. You say sorry for the offence you have committed. You realized your mistakes and you promised that you never want to end in such problem again. I give you an allowance of 6 months to reflect the above mitigating factors.
27. The report shows that you have performed custom compensation to the victim and her mother by giving Vatu 5, 000 to the victim. You provided to the mother and the victim girl a full furnished concrete house with three bed rooms, toilet and bathroom, kitchen, water tank, furniture and a refrigerator. I give you an allowance of 6 months to reflect this custom compensation.
28. Your end sentence is 6 years imprisonment.
29. The next question is whether your end sentence of 6 years imprisonment be suspended.
30. I assess the nature and circumstances of your offending; they do not justify a suspension.
31. You are to serve the term of 6 years imprisonment. It is deemed to start on 13 September 2017, the day you were brought into the custody.



32. You have 14 days to appeal this sentence if you are unsatisfied with it. The 14 days starts at the date of your sentence.

DATED AT PORT VILA, this 16th day of October 2017



Vincent Lunabek

Chief Justice

