

PUBLIC PROSECUTOR

-V-

SIMON BENNY

*Mr. Molbaleh for the Prosecution
Mr. Bal for the Defendant*

SENTENCING

- 1- As a result of a malfunction of the Dictaphone only two paragraphs were recorded. The following (accepted by both counsel) is a sufficient record of my Sentencing. It has been provided by the translator Jennifer Nicole.
- 2- The prisoner is being sentenced for two charge of Indecency C/S 98 A of the Penal Code.

[I have not quoted the Penal Code Sections nor the various cases referred to because I did not write them down]

Mr. Simon Benny has been found guilty on the 2 counts against him, being acts of indecency upon young persons.

The maximum penalty for each count is 10 years imprisonment.

I have read the pre-sentencing report and heard submissions from the Defence and the Prosecution, whereby the Defence calls for 6 years imprisonment and the Prosecution seeks 9 years.

The Prosecution referred to his opening statement regarding the allegations against the Defendant and drew attention to the absence of the parents at the time, the father had gone fishing. Additional features known to the accused as related in the statement made by Leiman or Leimau, [there seem to be two different names used alternatively in this case], were the absence of the mother and the grandmother, who had gone to Vila Central Hospital with the baby. It is clear that the grandfather had responsibility for the 2 children and that they were under his care.

Mr. Simon Benny is 56 years old.

The father had gone fishing.

It is noted that Mr. Simon Benny, the grandfather, had prior convictions for similar offences, i.e. 7 years imprisonment for indecent assault and again for unlawful sexual intercourse without consent, 9 years, so he has been twice convicted.

He is a chief, and as such he may have rights but he also has obligations, as a grandfather having the care of 2 very young children, when they are most vulnerable.

It was clear they were overwhelmed at having to attend Court and give evidence, they were very shy. I did my best to limit and ameliorate the impact of the Court on them, but it will probably stay with them all their life.

They should be able to trust their grandfather.

Simon Benny waited for his chance and seized it, this is an appalling breach of trust.

The charges are to be brought and proven by the Prosecution. There is an agreed part of the evidence by Leiman who was forced to give such evidence by the plea of not guilty on the part of the defendant, but there is also the earlier evidence from Leiman regarding the extent of the conduct forced upon them.....

The particulars amount to acts of indecency.

The Prosecution has referred to various cases and to aggravating features.

The Defence argued that in the range of decisions in Vanuatu there is no additional penalty, but neither is there any discount for guilty plea. They say there should be a reduction for the time already spent in custody.

This is a very serious offence, children are extremely vulnerable and we have all seen the effect that coming to Court had on them, both Counsels will agree.

The grandfather was ready to pounce at the first opportunity that occurred.

There is the matter of the previous convictions.

There are no mitigating factors.

The aggravating factors include:

- the age of the parties, the grandfather 56 years old, the two girls 7 and 8 years old;
- the issue of trust where a sick child had to be taken to hospital;
- the extent and nature of the conduct forced upon the children and the impact this is likely to have on them for life.

This defendant is to be considered under the category of persistent offenders, i.e repeated offences.

He should not be released before undergoing treatment for his misbehaviour.

I have given consideration to cumulating the sentences to reflect the seriousness of the case. There were indeed two (2) charges, but both occurred during the one incident.

I have spoken in the presence of Simon Benny and expressed concern for him. There is need to separate the goodness of a person and his poor conduct.

Mr. Benny complained about the manner in which he was treated during the proceedings when the children gave evidence and I explained at the time that it was not to be understood as showing disrespect towards him, but the measures taken were for the protection of the children for the purpose of the trial.

Mr. Benny should realise that if he is a chief, then there are obligations that go with it, and these are to ensure that those around him are treated with care and consideration and in accordance with their rights.

Mr. Benny, you were represented adequately, there was nothing adverse done to you, you were treated with courtesy, and this includes the support shown by the prison guards.

You need to look into your own conduct, you should be showing an example to others and respect towards your family.

You should never be allowed to be alone with young children.

The maximum penalty is 10 years' imprisonment, with a starting point of 5 to 8 years, plus there are the aggravating features.

It must be made clear to the public and to Vanuatu at large that if you choose to use children for your own personal pleasure, then you must expect to spend time in prison.

You are therefore convicted of 9 years' imprisonment, less 2 months and 25 days already spent in custody.

So into total you are sentenced to 8 years, 9 months and 5 days imprisonment.

I hope that you will accept that you have acted wrongly and that there is need for reconciliation with your family.

You have 14 days to appeal this decision.

DATED at Port Vila, this 15th day of October, 2009

BY THE COURT

J. CLAPAHM
Judge

