

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

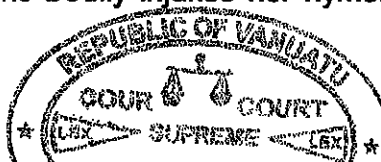
Criminal Case No.33 of 2013

PUBLIC PROSECUTOR
-V-
TAMARA ALBERT

Coram: Justice D. V. Fatiaki
Counsel: Mr. T. Karae for the State
Ms. P. Kalutman for the Defendant
Date of Sentence: 14 August 2013

SENTENCE

1. On 13 June 2013 the defendant was convicted on his guilty pleas to two (2) offences of Act in Indecency With a Young Person contrary to section 98A of the Penal Code Act [CAP. 135]. This is an offence which carries a maximum penalty of 10 years imprisonment.
2. The circumstances of the offending which are admitted by the defendant were as follows: both incidents took place at Pele Island.
3. In the first incident which occurred in September or October 2012 the defendant called the complainant (his step-daughter) to her bedroom. When she entered she found the defendant lying on a mattress with his trousers pulled down to his knees. The defendant then forced the complainant to lie on top of him. After a while he made her lie down naked on the mattress and he rubbed his penis on her vagina until he ejaculated. When it was over the defendant gave the complainant VT100 to buy herself some chewing gum.
4. The second incident occurred on 5 March 2013 at the defendant's garden. On this occasion the defendant called the complainant to accompany him to cut a bunch of bananas. At the banana tree the defendant pulled down his trousers and forced the complainant to masturbate him until he ejaculated. After that they returned home.
5. A few days later the complainant packed her clothes and went to live with an aunt and relayed her experiences of what the defendant had been doing to her. When the defendant came and asked her to return, the complainant refused as she was afraid and tired of what the defendant had been doing to her. The complainant now lives with her biological parents in Ohlen area, Port Vila.
6. The matter was reported to the police and the complainant was medically examined. Although she had no bodily injuries her hymen was not intact. The

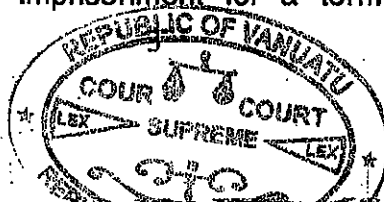


defendant was also interviewed under caution and although he denied intercourse, he freely admitted rubbing his penis on the complainant's vagina and giving her money for masturbating him.

7. After his conviction a pre-sentence was ordered and a timetable was set for sentencing submissions. The defendant was also directed to perform a custom reconciliation ceremony to the complainant and her family. I have been greatly assisted by the pre-sentence and custom ceremony reports prepared by the probation officer and counsels sentencing submissions.
8. In an emotional custom reconciliation ceremony witnessed by the Probations Manager and the defendant's chief, the defendant presented 3 plain mats, a feather mat, 20 yards of calico/garment, a kava root and VT3,000 cash to the complainant's father and brother and sought their forgiveness. The items were accepted by the complainant's father on her behalf and the defendant was forgiven and encouraged "*to change and be a better person*".
9. The defendant's pre-sentence report also records that "... (the defendant) *has expressed insight to his offending and he showed remorse by being emotional, shedding tears and using a sympathetic low tone of voice stating that he is sorry for what he did and that he will leave (sic) with this guilt for the rest of his life and also stated that he will not re-offend again in the future.*" To his credit the defendant did not seek to excuse his behavior or blame the complainant or his estranged wife who left him 3 years ago to raise their daughters including the complainant on his own.
10. Having said that, Albert Tamara, what you did to the complainant who is your adopted daughter from your elder brother, was disgraceful and cowardly behaviour that should never have occurred. It is aggravated by the age difference between your 37 years and the complainant who was 14 years of age. Whatsmore you are a sexually experienced man and the complainant has barely reached sexual maturity. As the complainant's real blood uncle and adopted father you are someone that she should have been able to trust and look to for shelter, protection and comfort. You have grievously abused that trust and it does not surprise me in the least that she no longer wishes to live with you.
11. In addition, the complainant was an unwilling participant and only acted after you had threatened to beat her. Your offending was not isolated and only ceased when the complainant left your home and refused to return.
12. On your behalf your counsel refers to the contents of your positive pre-sentence report which indicates that you are well-liked in your village community and freely contribute your time and resources to community and church events and activities. Although you only attended primary school, you are a skilled fisherman and have a personal ambition of starting your own fishing business.
13. You have been single-handedly raising your daughters for the past 3 years since your wife left the family home and you have traditionally reconciled with the complainant and her parents with whom she now dwells at Ohlen area in Port Vila.



14. You are a first offender who cooperated with the police and pleaded guilty at the earliest opportunity thereby saving the complainant from the further trauma of having to testify in court. I accept that you are remorseful and are motivated to change your ways and become again a respected and law-abiding member of the community. You will have to live with the shame you have brought upon yourself and your brother's family. I also accept that with the removal of the complainant from your home there is no danger of a recurrence of your offending.
15. Albert Tamara for your offending I adopt a starting point of 18 months imprisonment which is increased to 30 months for aggravating factors. From that total sentence I deduct 9 months in recognition of mitigating factors including the accepted custom reconciliation ceremony leaving a sentence of 21 months imprisonment which is further reduced by 7 months for your guilty plea giving a final sentence of 14 months imprisonment.
16. I turn next to consider whether or not to suspend your sentence as urged by your counsel and I remind myself that I am required to consider, all the circumstances of the case "... and in particular the nature of the crime; and the character of the offender".
17. The crime of Act of Indecency with a Young Person is to be distinguished from an Act of Indecency Without Consent which carries a lesser maximum penalty of 7 years imprisonment and is age-neutral. Furthermore and quite incongruously, the more serious offence of Unlawful Sexual Intercourse with a child under 15 years of age only carries a maximum penalty of 5 years imprisonment. Be that as it may denunciation, punishment and deterrence are primary factors in the sentencing of offenders who commit these kind of offences, as well as, the protection of young and vulnerable girls. A sentence of imprisonment is therefore inevitable as a starting point.
18. The particular nature of the defendant's crime lies in the predatory behavior and abuse of trust involved in the commission of the offences. Although non-penetrative and causing no physical injuries to the complainant the fear, anxiety, guilt and long term emotional harm cannot be so easily discounted or ignored.
19. On the other hand the defendant is a person of hitherto unblemished character who, by all accounts, is a useful and respected member of his community. He has accepted responsibility for his wrong doing and is I accept genuinely remorseful. He has not attempted to diminish the seriousness of his offending or lay blame on the complainant or the unfortunate breakup of his marriage.
20. I am satisfied that there is no likelihood of the defendant re-offending in a similar manner in future nor does his continued presence represent a danger to his community. In all the circumstances therefore I consider that this is not an appropriate case to make the defendant suffer an immediate term of imprisonment.
21. Accordingly, I order the suspension of the execution of the defendant's sentence of 14 months imprisonment for a term of 3 years. What this



suspended sentence means is that you, Tamara Albert, will not go to prison today but, if you commit another offence in the next 3 years you will be required to serve this sentence of 14 months imprisonment in addition to any other penalty you may receive for your re-offending. Whether that happens or not is entirely in your hands.

22. In addition, I impose a sentence of 250 hours of Community Work to be served under the sponsorship of Chief Satungia over a period of 2 years. The defendant is also ordered to undergo a sentence of supervision for 12 months with a special condition that he undertake and complete the Niufala Rod Program facilitated by the Probation Service.
23. If you do not agree with this sentence you have 14 days to appeal against it.

DATED at Port Vila, this 14th day of August, 2013.

BY THE COURT



D. V. FATIAKI
Judge.

