

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

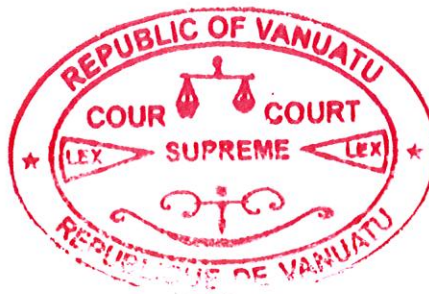
Criminal Case No. 98 of 2014

**PUBLIC PROSECUTOR
V.
SERGIO RUVU**

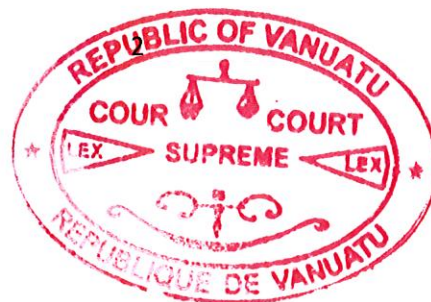
Coram: Justice D. V. Fatiaki
Counsel: Mr. S. Blessings for the State
Mr. J. Garae for the Defendant
Date of Sentence: 11 December 2015

SENTENCE

1. On 1 December 2015 the defendant was convicted on his guilty pleas to two (2) offences. Count 1 – Act of Indecency With a Young Person aged “only 14 years old” contrary to section 98A of the Penal Code and Count 2 – Act of Indecency Without Consent contrary to section 98 involving the same victim who was the defendant’s step-daughter and who turned 15 years of age between the commission of the offences.
2. The brief facts of the case outlined by the prosecutor and admitted by the defendant tells of two (2) incidents that occurred in June and August 2015. The 08 June incident occurred after the complainant had attended her brother’s first holy communion ceremony and returned home where she fell asleep face-down. She was awakened by the defendant groping her buttocks and fondling her breast over her clothes. She chastised the defendant: “hey be you olsem wanem ia, head blong yu stap lus?” and ran out of the room and reported the incident to her sister-in-law. Soon after the first incident, the complainant left the family home at Port Olry and went to live with her maternal uncles at Saint Michel Area, Luganville.

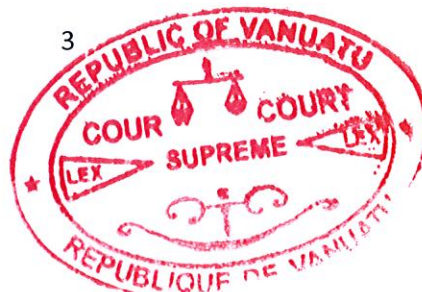


3. After a custom reconciliation was held in which the defendant paid a custom fine of VT20,000 to the chief and the complainant's uncles and promised not to re-offend, the complainant returned to live in Port Olry.
4. Barely a month had passed before the second incident occurred on 17th August 2015. This time the complainant was listening to music in her bedroom when the defendant entered her room and again indecently groped her buttocks outside her clothes. The complainant reported this incident to her mother and later to the police. During the investigations the defendant was interviewed under caution and admitted being fined VT20,000 for the first incident which he paid to the complainant's maternal uncle together with cigarettes and kava worth VT4,000. However he could not clearly recall the second incident which he considered was a playful joke.
5. The complainant's birth certificate records that she was born on 16 June 2000 and would have been just 15 years of age at the time of both incidents.
6. Section 98A of the Penal Code makes it an offence punishable with a maximum of 10 years imprisonment for a person to commit an act of indecency on a young person under the age of 15 years. Similarly Section 98 makes non-consensual acts of indecency an offence punishable with up to 7 years imprisonment. A clear aim and purpose of both provisions is the protection of young sexually immature children from the corrupting effects of exposing or subjecting them to sexually indecent, often predatory, behavior. Both are considered serious offences.
7. Prosecuting counsel in his sentencing submissions refers to three (3) sentencing judgments delivered in the Supreme Court in 2014 and more recently in April 2015. I have read and considered all 3 judgments which are readily distinguished from the present case in that they all involved the defendants either getting the victim to masturbate his exposed penis or rubbing his penis against the victim's naked vagina until he ejaculated. Furthermore in none of the judgments was reference made to the binding decision of the Court of Appeal in Tangiat v. Public Prosecutor [2014]



VUCA 5 which more closely resembles the present case involving an indecent assault outside the victim's clothes.


8. In Tangiat v. Public Prosecutor [2014] VUCA 5 the Court of Appeal in described the touching of the victim's breasts on the outside of her clothing as "... *falling at the lower end of the scale for this offence*", and in allowing the appeal against the 12 months sentence of imprisonment imposed in the Supreme Court, the Court of Appeal said: "*We consider that 9 to 12 months imprisonment was the appropriate starting point.*" (recently affirmed and applied in Wenu v. Public Prosecutor [2015] VUCA 51). The present case however is more serious than the Tangiat case in that the offence was repeated and, additionally, involved the indecent groping of the complainant's buttocks. In both cases however the defendant was the step-father of the victim and a custom reconciliation ceremony had been performed.
9. In light of Tangiat's case given the aggravating factors, I adopt a starting point of 18 months imprisonment in the present case. From that starting point I deduct 6 months in recognition of the defendant's early guilty pleas and earlier admission of the first incident in his police interview. The court is also required to take account of the significant cash payment of VT20,000 made by the defendant under custom as well as the defendant's hitherto unblemished record of 40 years. For these latter mitigating factors a further discount of 4 months is made giving an end sentence of $[18 - (6 + 4)] = 8$ months imprisonment.
10. Next having considered all the circumstances including the non-invasive momentary nature of the offending outside the victim's clothes and the character of the offender as outlined in his pre-sentence report including his education level as a year two leaver; the fact that he is a useful member of the village community; the sole provider of his centurion-aged father; and the fact that his wife and complainant had relocated to her maternal relatives at Saint Michel area in Luganville, and mindful of the mandatory provisions of Section 37, this Court in exercise of its discretion under Section 57 of the Penal Code, orders the end sentence be suspended for a term of 2 years.



11. The defendant is warned that although he will not be returned to prison today, this suspended sentence means that if he is convicted of any other offence in the next 2 years he will be returned to prison to serve this 8 months imprisonment in addition to any other sentence he may receive for his re-offending. However if the defendant stays out of trouble for 2 years as is the expectation of this court, then he will not have to serve this sentence of 8 months imprisonment. Whether that happens or not is entirely in the defendant's hands.
12. I understand that the defendant accepts his mistake and is sincerely remorseful and regrets his disgraceful behavior towards the complainant and I urge the defendant to take this opportunity given by this Court to reunite his family and become, again, the caring, protective and loving father they all deserve.
13. In addition, the defendant is sentenced to perform 150 hours community work and he is directed to report to a probation officer within 72 hours to finalize the details of this community work order. To facilitate in the implementation of the community work order the court recommends that the defendant's chief Tangis Las be given an over-seeing role consistent with his offer to assist in the rehabilitation of the defendant.
14. If the defendant does not agree with this sentence he may appeal to the Court of Appeal within 14 days.

DATED at Luganville, Santo, this 11th day of December, 2015.

BY THE COURT


D. V. FATIAKI
Judge.

