

PUBLIC PROSECUTOR

- v -

DANIEL HARRY

*Ms Tabisa Harrison for the Public Prosecutor
Mr Bryan Livo for the Defendant*

SENTENCE

Accused Daniel Harry, you appear today for sentence. You are initially charged with three counts of sexual intercourse without consent and three alternative counts of unlawful sexual intercourse contrary to sections 91 and 97 (1) of Penal Code respectively.

On 26 September 2014, you have entered not guilty pleas in respect to the three substantive charges and the corresponding alternative charges.

A week trial was scheduled on two separate occasions but the trial could not be held due to prosecution unreadiness and others.

On 3 February 2015, the prosecution amended the charges laid against you. After the amendment, you are re-arraigned and you entered guilty pleas on two counts of unlawful sexual intercourse, contrary to s.97 (1) of Penal Code and one count of Act of Indecency, contrary to s. 98(A) of Penal Code.

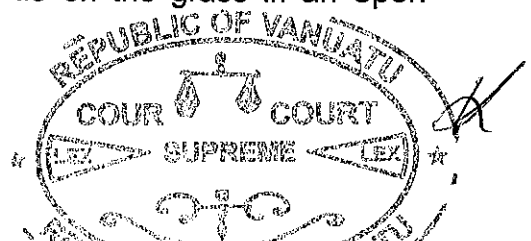
You are sentenced today on those amended charges.

The brief facts of this case as provided by the prosecution are this:

The complainant of this case against you is a girl of 12 years of age and she was 10 years old at the time of the beginning of the offending. I call her V1. V1 was the first victim of your sexual abuses from 2009 to 2014. The other victim is V1's younger sister of 8 years old and she was 6 years old at the beginning of your sexual abuses in 2009.

On 12th April 2014, V1 lodged a report against you, Daniel Harry for having sex with her without her consent. V1 is 12 years old. Ages ago she cannot remember the exact date she was small like her younger sister V2 back in 2009. You Daniel Harry laid on top of her moving your arse on top of her. According to her you did this to her on many occasions.

Once at your house in Teouma nobody was at the house just herself, her sister V2 and you were at home at the time. You took them to the bush and instructed them to lie down and you lay on top of one after the other. At the time V1 was wearing a skirt and V2 had a trousers. You removed V2's trousers lifted her skirt and removed her panty and you also made them lie on the grass in an open space.



You knelt down in front of the two girls and then hold on to her legs and hands at same time pushed your penis inside their vagina. They felt pain which led them to cry. First you lie on top of V1 pushed your penis inside her vagina and moved your bottom up and down. You did that for a while until your sperm came out. Then you removed your penis wiped it on a green leaf. When you finished on her you then did the same to V2. V2 felt pain and cried "awe".

Another time you did the same to V2 at the house at Teouma when nobody saw you and her but she was frightened to tell anyone about it. Also you did this to her (V2) at her house inside the room where they slept, nobody saw you and her. She was too scared to tell anyone about it until April at Nicky's house at Namba Tu when you did it to V2 then she told Nicky about it.

An additional statement by V1 was submitted on 30th May 2014. She cannot remember the date it was at the house in Teouma at your house. Your wife Martha and V2 were in the kitchen. V1 was in the main house you told her to sleep on the floor. She laid down with the blanket then you lifted up her skirt and removed her panty then you pulled you rubbed your penis outside her vagina you made her suck your penis. She felt sick and nearly vomit. You then put back your pant and went outside.

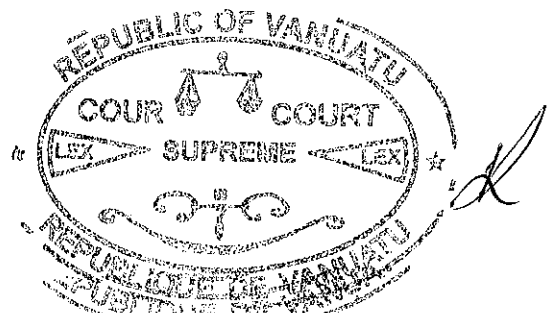
Another time at your house, you had a blue and black mobile phone and you showed a video of a man on the phone. It was a black man with round ball and he was naked and his ball was hanging, this man had a can of coca cola and a hammer. She also saw a white man and white woman, both naked this man was leaking the woman then pushed his penis inside her vagina, she ran away when she saw the pictures.

When I sentence you I consider the nature and seriousness of your offending. I peruse, read and consider the submissions made on behalf of the Public Prosecutor. I also read and consider the submissions of your lawyer made on your behalf and the content of a pre-sentence report when relevant.

Sexual intercourse with a girl under 13 years of age is a very serious and nasty crime. It is against the law.

In the present case, V1 and V2 were respectively 10 years and 6 years at the time of the beginning of your offending. V1 and her sister V2 are children. The law protects them as they are vulnerable. The seriousness of such an offence is reflected by the maximum penalties imposed by law of 14 years imprisonment for section 97 (1) offence in counts 1 and 2 and of 10 years imprisonment for section 98 A offence of act of indecency with any other person under the age of 13 years.

I take unlawful sexual intercourse as the more serious offence in the information charge you pleaded guilty to and I will set a starting point to reach a reasonable sentence I am going to pass on your offending in line with *Public Prosecutor –v- Andy [2011] VUCA, Criminal Case No.09 of 2010 and others case authorities*. I do this as an attempt to assess your culpability and its seriousness on the two victims girls to arrive at an appropriate sentence for you in this case.



In the present case, your offending is aggravated by the following factors:

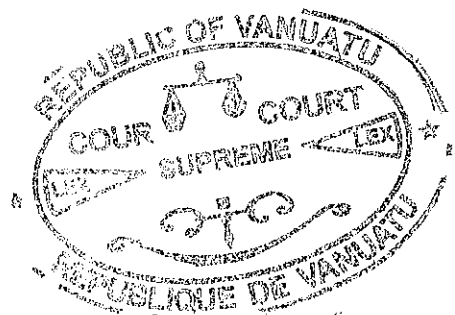
1. Age difference – Younger age of both victims' girls and the significant age difference between the two young victims and you Daniel Harry in your early 30's. The age difference is 18 years for victim V1 and 22 years for victim V2. The age difference is significant between the two girls and you as a mature man.
2. Breach of trust. Daniel Harry you are a family member of the victims where the two girls look up to you to protect them yet you preyed on them.
3. You would threaten the victims not report you to anyone.
4. V1 contracted STD from several years of sexual abuse by you as shown in V1's medical record.
5. Both victims' girls encountered physical pain and damage (full penetration of penis on both victims).
6. The offences were premeditated.
7. The offences were repeated as occurred for number of years from 2009 – 2014 (7 years).
8. The two victims' girls are subject to further sexual indignities or perversions when you took them to the bush and instructed them to lie down on the grass in an open space side by side. You remove their cloths. You sexually abuse each one of them in the presence of the other.
9. The sexual abuses have psychological or mental effects on each one of them as revealed by the report. They have lost their virginity. They suffer nightmares. They are scared and not trusting any man. They are afraid to go out in the public by themselves.

A sentence of 8-9 years imprisonment is an appropriate sentence based on the seriousness and aggravation of your culpability in the offending. I consider and take 8 years imprisonment as the starting point of your sentencing in counts 1 and 2.

The report shows that you are 32 years old. You are married and have a child boy. You originate from the village of Lonialu on the island of Tanna.

In mitigation, you are a first time offender. You plead guilty after the prosecution dropped the rape charge laid against you.

I treat this as if you pleaded guilty at the first time opportunity given to you by the authorities and so you are entitled to 1/3 discount to your starting point sentence.



You have performed a custom reconciliation ceremony which was accepted by the families of the two (2) girls. I allow you another discount of 3 months. I take into account the pre-custodial period from 26/06/2014 to 20/11/2014 which is of 6 months imprisonment you have already served.

Your end sentence is 4 years and 3 months on each of the offences in counts 1 and 2. You are sentenced to 8 months imprisonment for the offence in count 3. You shall serve these sentences concurrently to each other. This means that you shall serve all your sentences at once which is a total of 4 years and 3 months imprisonment.

You are ordered to serve a sentence of 4 years and 3 months imprisonment with immediate effect.

You have 14 days to appeal against this sentence if you are unsatisfied with it.

DATED at Port-Vila this 7th day of April 2015

BY THE COURT

Vincent LUNABEK
Chief Justice

