

**PUBLIC PROSECUTOR**

- v -

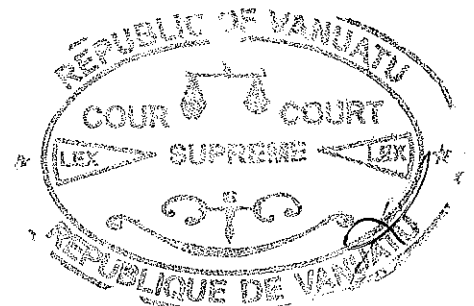
**ENOCK SHING**

*Coram: Lunabek Vincent CJ*

*Counsel: Mr Damien Boe for the Public Prosecutor  
Mr Brian Livo for the Defendant*

**SENTENCE**

1. Enock Shing you appear today for sentence.
2. On 12 May 2015, you entered a guilty plea to one charge of unlawful sexual intercourse, contrary to section 97(2) of the Penal Code Act [Cap 135].
3. This is a serious offence because it carries a maximum penalty of 5 years imprisonment.
4. The brief facts of your offending show these :
5. The victim complainant is a girl under the age of 15 at the time of offending. She is from Analchauhauhat village on the island of Aneityum and she is a student. Her birth certificate shows that she was born on 8<sup>th</sup> day of April 2001, meaning that she is 13 years and 9 months when you had sexual intercourse with her.
6. You are 28 years of age and you originate from the same village of Analchauhauhat on Aneityum. You are self employed.
7. The complainant lodged a complaint to the police on the 21<sup>st</sup> of January 2015 that you have sexual intercourse with her.
8. She and her sister in-law went for a swim in a nearby river. While they were at the river, they followed the river and they encountered Madleen Ferry, a lady from Tanna.



9. Madleen and the complainant walked down under a mango tree to swim. Madleen decided to walk away from the complainant towards others who were also swimming a distance from the complainant. The complainant stayed by herself under the mango tree.
10. Enock Shing, you passed by. You saw the complainant and asked her to follow you in your garden. She followed you in the garden. You shared some coconuts with her.
11. You asked her for sex. She did not respond. You asked her to remove her clothes. You approached her and removed her T-Shirt. You asked her twice to remove her trousers and she removed her trousers and underwear.
12. You took off your clothes. You asked the complainant to position herself on the top of a stone and you had sexual intercourse with her until you ejaculated. After the sexual intercourse, the complainant went to the river and had her bath.
13. The complainant was medically examined by a medical practitioner. The medical report shows there was no genital trauma surgery or bleeding. The history of the offence shows, there was no threats and no physical injuries. The victim was normal and already enjoyed sexual activity.
14. Sexual intercourse with a child under the age of 15 years is a serious offence. In this case, the seriousness of your offending is aggravated by the following three (3) factors:

(i) Age difference

You are 28 years of age and your victim is 13 years and 9 months (14 years). The age difference between you and her is 14 years. She is half of your age. You are an adult. She is a child. As an adult person, your responsibility is to protect her because as a child, she is vulnerable. The purpose of the law is to protect children of their vulnerability from adult misbehaviours against them in the society.

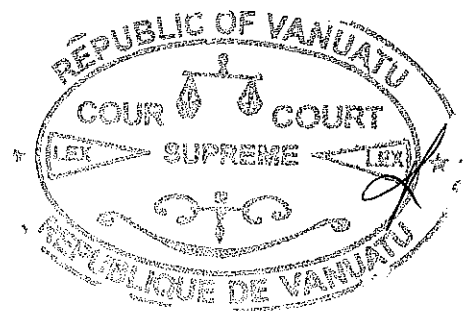
(ii) Mental effect on the victim

The father of the complainant (Mr John Tesei) told the writer that her daughter continuously missed classes (year 8 student). She was ashamed. She received threats after the case was reported from the police. She was moved from Aneityum to Port Vila for her safety. She now attends a new school in Port-Vila to continue with her education. I assess that there is some



effect or impact of the offending on the mental of the complainant girl.


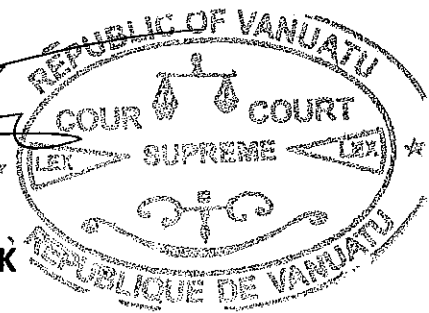
- (iii) Lack of use of condom. The medical report does not reveal any pregnancy although I am informed by your legal counsel that you did not ejaculate inside the body of the victim but outside. The medical report did not reveal either of the existence of any medically transmitted diseases. However, there is a real risk for the health of the child victim as the sexual intercourse is a non-protected sexual activity.
15. Considering these aggravating factors, I consider a starting point sentence of 3 years imprisonment.
  16. In mitigation, you pleaded guilty at the first time opportunity given to you by the court. You will be entitled to one third (1/3) of your total sentence of 3 years imprisonment.
  17. You are a first time offender. You do not have previous criminal records. You have achieved a secondary level of education at Onesua College. You have a certificate in Mechanics and also skills in using the movable saw mill machine as you and your family have Timber company in Aneityum.
  18. The report reveals you do not have ambition in life apart from the Christians knowledge you acquire in the correctional centre religious programs with an aim to helping people in your island.
  19. The report shows you are remorseful and you regret you have committed an offence by having sexual intercourse with a girl under the age of 16 which is contrary to law.
  20. Although, in the report [at paragraph 9], you admitted that it was not your first time to have sex with the victim girl, as you both have been having sexual intercourse for a while, it is not a mitigating factor and cannot be considered as such.
  21. Your admission in the pre-sentence report [paragraph 9] of having sexual intercourse with the victim girl on more than once, may be considered as an aggravating factor if you had been charged for it in the indictment. This is not such a circumstance. [see in *R v De Simoni* [1981] HCA 31 and *The Queen v Mokaraka* [2001] NZCA 378].
  22. I give you an allowance of 6 months to reflect other mitigating factors.



23. Your end sentence is of 18 months (1 year and six months).
24. In the present case, I do not see evidence of circumstance justifying a suspension of your term of imprisonment. Any suspension is declined.
25. The report shows that you have already spent a pre-custodial period of 1 month and 22 days in the Correctional Centre since 10<sup>th</sup> February 2015 to the date of your sentence today 5<sup>th</sup> June 2015. I consider and take your pre-custodial period in your favour.
26. You are ordered to serve a term of 1 year and 6 months imprisonment (18 months). In your favour, I order that your sentence is deemed to start on 10 February 2015 to take account of the time you have already spent in custody waiting for trial and/or sentence.
27. You have 14 days right to appeal this sentence if you are unsatisfied with it.
28. I thank both counsel for their useful assistance to me in this case.

**DATED at Port-Vila this 5<sup>th</sup> day of June 2015**

**BY THE COURT**

**Vincent LUNABEK**  
**Chief Justice**