

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

Criminal Case No: 21 of 2015

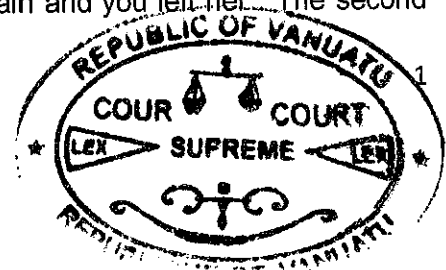
PUBLIC PROSECUTOR VS BATKAI LARIO

Coram: Justice Dudley Aru

Counsel: Mr Ken Massing for Public Prosecutor
Ms Jane Tari for the Defendant

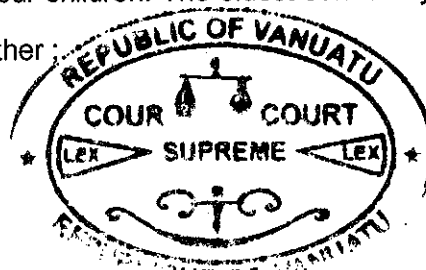
SENTENCE

1. Batkai Lario you were charged with two counts under the Penal Code [CAP 135] . Count 1 was for unlawful sexual intercourse contrary to section 97 (1) and count 2 was for an act of indecency with a young person contrary to section 98A . On 14 April 2015 you entered a guilty plea to count 1 and a not guilty plea to count 2. The Prosecutor then entered a nolle prosequi in relation to count 2. You were convicted on count 1 and you are here today to receive your sentence .
2. The following brief of facts are accepted by defence counsel on your behalf . You are 40 years old and the complainant is your adopted daughter . You are both from Pentecost were the offending took place on five different occasions dating back from 2013 to 2015. The complainant was under the age of 10 in 2013 when you started sexually abusing her .The abuse continued when she was under the age of 11 in 2014 and again when she was under the age of 12 when the incident was discovered by your wife.
3. The first incident occurred in March 2013 when you entered the bedroom of the complainant removed her clothes and laid on top of her and attempted penile penetration but you failed . The complainant was in pain and you left her... The second



incident occurred in January 2014 when the complainant's mother went to the garden and you were with the complainant at home. You then called the complainant into your bedroom and removed your clothes then undressed her . You laid on top of her and attempted penile penetration but failed then you left the house.

4. The third time in 2014 you entered the complainant's room and took off your clothes then undressed the complainant and laid on top of and attempted penile penetration but you failed . You then sucked her vagina and masturbated yourself until you ejaculated . You then left her room . On the fourth occasion still in 2014, the complainant's mother went to the garden and you called the complainant into your room and undressed her and had penile penetration of her vagina . The complainant struggled with pain but you held her firmly then left her.
5. Again in December 2014 when the complainant's mother was not at home , you called the complainant into the house and undressed her then you used a wet soap to rub both your penis and her vagina and had penile penetration . The complainant was in pain so you masturbated yourself until ejaculation then left the house.
6. Sometime in January 2015 , whilst the complainant's mother was having a bath you entered the house and put your hands into the complainant's skirt and panty to hold her vagina . When the complainant's mother entered the house she saw you in the act and you left the house .
7. The matter was then reported to the Police . When you were arrested and cautioned , you admitted the allegations .
8. The following personal details are extracted from your presentence report :
 - You are from Namaram village on central Pentecost and a first time offender;
 - You are 40 years old and married with four children. The eldest son is in year 11 at Melsisi school and you are a grandfather ;



- You started primary school but did not complete class 1 and you earn your living from gardening ;
- You are a member of the catholic church and involve yourself in community activities.

9. You told your probation officer that you were sleeping in an open room and the complainant moved up to you which then tempted you to have sex with her. The pre sentence report goes further to state that you were fined by the chiefs in the sum of VT 200,000 worth of goods and you performed custom fine to the complainant with 10 red mats valued at VT 5000 each and 5 pigs valued at VT 2000 each . You were also required to pay VT 20,000 to your wife and she was taken away from you by her families for a period of 6 months which will lapse in July 2015 .

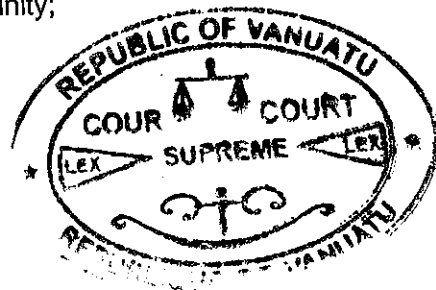
10. Whatever the reasons for your perverted actions, what you did to your adopted daughter is totally wrong . She is your daughter and it is your responsibility as a father to protect her from such abuse. I am guided by what the Court of Appeal said in *Public Prosecutor v Gideon [2002] VUCA 7* , that *"...men who take advantage sexually of young people forfeit their right to remain in the community."* The sentence I impose on you today must therefore be a custodial one.

11. Factors which I take into account as aggravation of your offending are:

- Breach of trust ;
- Age disparity ;
- Some degree of planning involved ;

12. Defence Counsel on your behalf submits the following factors in mitigation :

- You are a first time offender;
- You entered a guilty plea at the first opportunity;
- You cooperated with the Police ;



- You were remanded in custody for 2 months and 2 days;
- You performed a custom reconciliation to the complainant

13. As a starting point you are sentenced to 6 years imprisonment which is uplifted to 9 years imprisonment after taking into account aggravating factors. Given your early guilty you are entitled to a one third (1/3) discount of your sentence which is reduced to 6 years imprisonment. Your presentence custody of one month two days is rounded off to two months is deducted reducing your sentence to 5 years and 10 months imprisonment.

14. As a first time offender and for your cooperation with the Police I deduct ten months and make a further deduction of six months taking into account your performance of custom reconciliation and also recognizing the penalty imposed on you by your chiefs. This then leaves you with an end sentence of 4 years and 6 months imprisonment which is effective from today.

15. You have 14 days to appeal this decision if you are not happy with it.

DATED at Luganville this 23rd day of April 2015

BY THE COURT


DUDLEY ARU

Judge.

