

PUBLIC PROSECUTOR

VS.

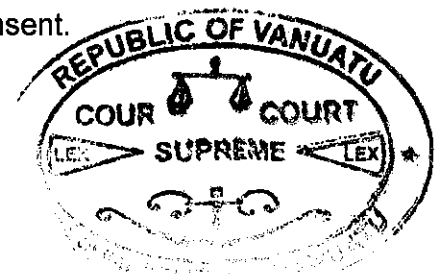
SIMION KALO

Coram: Vincent Lunabek CJ

*Mr Denison Boe for Public Prosecutor
Mr Stephen Garae Junior for Defendant*

SENTENCE

1. Simion Kalo, you appear for sentence today at the age of 21 years on two counts of sexual intercourse without consent, contrary to ss.90 and 91 of the Penal Code, against your niece (complainant), respectively, sometimes in October 2015 and March 2017.
2. On 26 June 2017, you entered guilty pleas on both counts as charged in the information against you dated and filed 20th June 2017.
3. The facts of this case are these. The complainant is from Wahala village, Ambae. She was 14 years of age at the time of the first incident on 23 October 2015. She is 16 years of age on 23 March 2017 when the second incident occurred.
4. The complainant is your niece. You and the complainant live together at Wahala village on Ambae Island. The complainant is a student attending year 9 at Apostolic College on West Ambae.
5. The first incident occurred on the 23rd October 2015 at Wahala village. On that date, you and the complainant were alone at home. The mother of the complainant took the complainant's grand mother to Port Vila central hospital. You entered her bed room and forced her to have sexual intercourse with you and you penetrated her vagina with your penis without her consent.



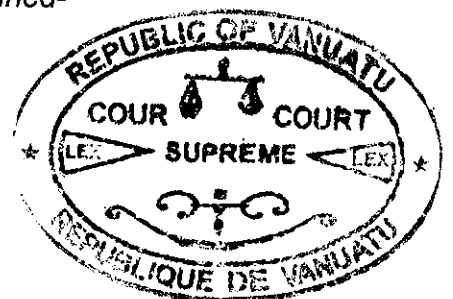
6. The second incident occurred on 23rd March 2017 inside her bedroom.
 7. On that date, you had sex with her during the day time. You went into her room while she was resting. On her bed, she was sleeping (laying) on her back. You then indecently touched her breast. She struggled but could not resist you. After you indecently touched her, you demanded oral sex but she refused.
 8. You, however, removed her trousers where she had her panty on. You removed your clothes and then slept on top of her. While you were on top of her, you sucked her breast and slide her panty to one side and inserted your penis into her vagina. You then penetrated her vagina with your penis for about (one) 1 minute; you then removed yourself from her and got dressed. You fled the scene where the complainant also came outside to do her washing.
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9. When she came outside, she was scared for what you had done to her, so she told her uncle Tindy Sara of what you had done to her.
 10. Also on 23 March 2017, one Stephanie Tarigole come to visit the complainant, she witnessed you had sexual intercourse with the complainant. She told everyone in the family of what she saw you did to the complainant.
 11. The matter was reported to the police. The complainant made a statement against you on 6 April 2017. You were then cautioned by the police where you admitted the allegations that where made against you.
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12. The law defines sexual intercourse without consent in s.90 of the Penal Code in this way:-

"Any person who has sexual intercourse with another person-

(a) without that person's consent; or

(b) with that person's consent if the consent is obtained-

(i) by force; or



- (ii) by means of threats of intimidation of any kind; or
- (iii) by fear of bodily harm; or
- (iv) by means of false representation as to the nature of the acts; or
- (v) in the case of a married person by impersonating that person's husband or wife; or
- (vi) by the effects of alcohol or drugs or
- (vii) because of the physical or mental capacity of that person, commits the offence of sexual intercourse without consent"

13. The law punishes for sexual intercourse without consent under s.91 of the Penal Code. It provides:

"No person shall commit sexual intercourse without consent.

Penalty: Imprisonment for life."

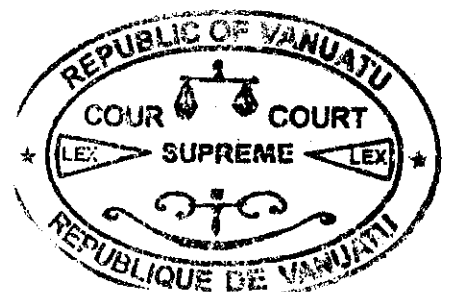
14. This is a very serious offence as reflected in the maximum penalty of life imprisonment imposed by law.

15. In this case, the circumstance of your offending are aggravated by the following factors:

- i- There is some degree of planning as sex occurred when no one else was at home.
- ii- There was a serious breach of trust (uncle and niece relationship).
- iii- Age difference (you are 21 years and complainant 16) of 5 years.

16. When I consider your sentencing, I read and consider the pre-sentence report provided by the probation officer and I thank her for her assistance. I also read and consider the submissions of the prosecution and those of your lawyer on your behalf. I also thank them for their assistance.

17. The prosecution reminds me of the guideline judgments of PP -v- Ali August [2000] which was confirmed by the Court of Appeal in Scott and Tula [2002]



VUCA 22 and PP –v- Gideon [2002] VUCA and others (I explain orally the details of these judgments to you today in court).

18. I sentence you to 8 years imprisonment as a starting point (inclusive of the aggravating factors).

19. In mitigation, the following factors are present:-

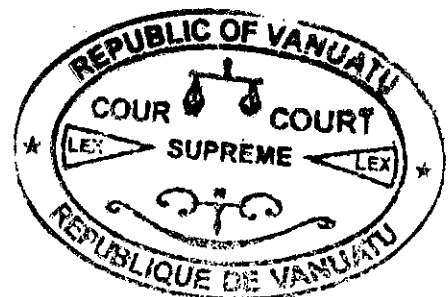
- (a) You immediately admitted your offending and cooperated well with the police.
- (b) You pleaded guilty at the first opportunity given to you by the Court;
- (c) You have no previous convictions;
- (d) You have a good work and community history
- (e) You are remorseful and regrets your actions.
- (f) You apologise to the Court for your offending
- ~~(g) The victim has confirmed that she is physically fine, has forgotten what had happened and she is coping well with her education and life.~~

20. I reduce your sentence of 8 years imprisonment by one third to take into account of your guilty pleas. Your sentence is reduced to 5 years. I give your another allowance of 3 months for your remorsefulness.

21. You have already served 64 days in pre-custody period. This has to be deducted also.

22. I refuse to give you some allowance to reflect the custom reconciliation you have performed in 2015 for the reason that despite the custom compensation (reconciliation) you ignored it or by- passed it by doing the same offending on the same person again in March 2017. I take it that the custom compensation is meaningless.

23. Your end sentence is 4 years and 7 months imprisonment on both counts and to be served concurrently.

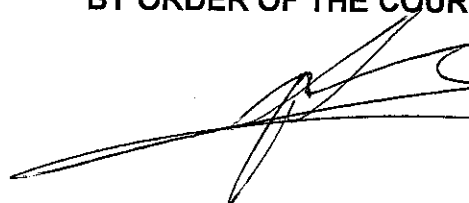


24. You are ordered to serve the terms of 4 years and 7 months imprisonment effective from 28th April 2017 to take into account of the time you have already served in custody.

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

DATED at Luganville this 30th day of June 2017.

BY ORDER OF THE COURT



Vincent Lunabek
Chief Justice

