

**PUBLIC PROSECUTOR**

- v -

**JACK LUAN**

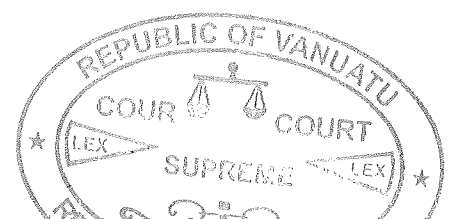
**Coram:** Chief Justice Lunabek

**Counsel:** Mr. Lenry Young for Public Prosecutor  
Mrs. Kylie B. Karu for the Defendant

*Date of Sentence: 4<sup>th</sup> October 2019*

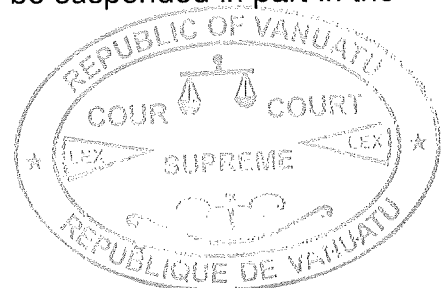
**SENTENCE**

1. Mr. Jack Luan, you come today to receive your sentence. On 3<sup>rd</sup> July 2018, you entered guilty pleas for one count of act of indecency with a young person and one count of act of indecency in public place, contrary to sections 98 A and 94 (1) of the Penal Code Act [CAP 135] respectively.
2. The brief facts in this case is this -
3. The complainant is a girl of 13 years of age. She said on 12 May 2017 she and her sister went to New Look store for shopping. You were following her inside the store and were avoiding her when she was looking at you. When she moved to a different location, you moved in that direction too.
4. She suddenly heard one Janita Meltorosi ( a member of the staff of the store) shouting and saying "*hey yufala traem luk man ia istap karem aot cock blong hem*" meaning "*hey look at this man, he is showing his penis.*" When she turned around, she saw you close up to her and you were trying to zip up your trousers.
5. Janita Meltorosi was about 2 to 3 meters away when she saw you unzip your pant and exposed your penis to touch the backside of the complainant. She

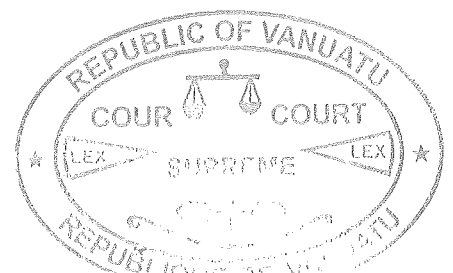


shouted and you covered your penis with your shirt. Her evidence corroborates the complainant's report.

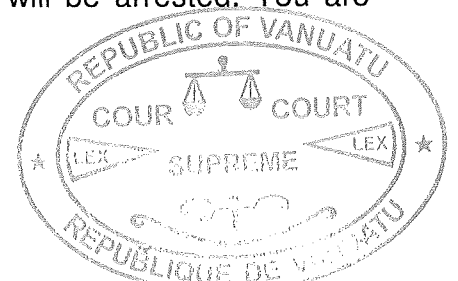
6. One Kensly Joe Karae (Vanuatu Mobile Force Officer) was at the scene. He arrested you. After arresting you, he handed you over to Police Sergeant Risa Fred.
7. One Mary Wilson (eldest sister of the complainant) confirmed that she was with her doing shopping at New Look store when the incident happened. She was waiting outside when she heard a woman shouting inside the store. Soon after that she saw the same person she came across in the store escaping. She then saw another person pursuing him and took him to the Police Station. As she was standing, the other women told her that the person took off his pant and wanting to do something to her sister (the complainant). She confirmed that the complainant soon after told her of what you did to her.
8. The complainant went to the police station with you and the arresting officer. She confirmed that the complainant is in Year 7 (education level).
9. You were cautioned by the police and you voluntarily admitted what had happened and said you were making jokes.
10. I read the pre-sentence report filed by the probation office. I also read the prosecution and defence submissions and their respective case authorities.
11. The law punishes the first offence with a maximum penalty for 10 years imprisonment and the second offence for 2 years imprisonment.
12. You are 35 years of age and the complainant is 13. The age difference is 22 years. That is a serious aggravating factor as you are mature in your age whilst the girl complainant is a child (student) with a need for protection.
13. The prosecution submitted that a starting point sentence should be between 2 to 3 years imprisonment. They said you would be entitled to 1/3 reduction because you entered guilty pleas at the first opportunity given to you by the Court. They also say that the end sentence should be suspended in part in the light of sections 57 and 58 of the Penal Code.



14. In mitigation, your lawyer provided a detailed chronology of your school record and employment history. You have reached Year 13 at Matevulu College in 2004. You attended also courses of Geography, English and Sociology at the University of the South Pacific between 2005 - 2007. You worked as a lending officer at the National Bank of Vanuatu in 2008-2010. You then joined the Public Service and worked at the Department of Foreign Affairs as Protocol and Consular Division of the Vanuatu Government. In 2012, you were retired for medical condition at the age of 28 (past-traumatic stress disorder, bipolar and depression including schizophrenia). In essence, you are mentally disordered. In 2012, you were diagnosed with psychosis. In 2012 – 2016, your mental is highly affected – you will walk around naked, or wearing broken clothes looking for bottle on the streets. In 2017, you were recovered but still with some perceptual disturbances (paranoid hallucinations) but you can control it. You remembered you committed the offence on 12 May 2017. You knew the consequences of your actions but described it as something you did not like but it happened to you.
15. In 2018, you can control your perceptual disturbances you want to change and do something useful. You work as a security officer at USP in the beginning of the year. You continued to attend counselling.
16. Your lawyer submitted that following cases submitted by the Prosecution in their case sentencing submissions cannot apply to the circumstances of your case: **PP –v- Pascal [2012] VUSC 2; PP –v- Tamla [2011] VUSC 104; PP –v- Tabi [2016] VUSC; PP –v- Moffet [2010] VUSC 169**, as they are quite more serious than this present case.
17. I agree with the submissions of your lawyer on the facts of your case. Yet, I note the offences are serious by their nature coupled with the differential age of 22 between you and the girl complainant. In 2017, when you committed those offences you have changed and shown some recovery. However, you were still having perceptual disturbances (paranoid hallucinations) but you can control it. However, at the time of the incident on 12 May 2017, you did not control it.



18. I adjourn the sentencing processes and direct for further information on your mental status. Dr. Obed Jimmy, the Mental Health Doctor of Mental Health Department, filed a report on 28<sup>th</sup> June 2018. The report stated that you were assessed to have psychosis in December 2011 and you were seen again in March 2012 with similar presentation of psychosis. Dr Obed Jimmy found that you still have some perceptual disturbances but it is manageable. Dr Obed Jimmy is of opinion that Mr. Luan, you were not of unsound mind at the time of the incident on 12<sup>th</sup> May 2017.
19. The Psychologist, Ms Laurina Liwuslili also filed a report on 15<sup>th</sup> February 2019. Her report stated that you were found to be very calm and clearly answered most of the questions you were asked. She said at paragraph 35 that: "*Hearing voice is an auditory hallucination that may or may not be associated with mental problem... healthy individuals have also reported hearing voices*".
20. At paragraphs 22 to paragraph 26 of the report of the Psychologist, you stated you remembered the incident (i.e. this offending) which you did not think that your actions will result in your arrest. At paragraphs 46 and 47 of the same report of the Psychologist, your statement of matters are found to be true. Further, you have no symptoms of psychosis as you had no hallucinations or delusion during your intensive assessment sessions. At paragraphs 45 and 50 of the same psychologist report, it is stated that: "counselling sessions remain compulsory for you (Jack Luan) to help you build back your self-esteem and confidence. Moreover, counselling will help you to stop hearing voices. It was not your intention to harm neither to rape Rose Wilson...the court is accordingly urged to refuse imprisonment..."
21. I have considered these reports. The plea for insanity of mind could not stand on the material information provided. I am grateful for the submissions and efforts done by Counsel and the Health professionals and the Psychologist for their assistance to the court in this case.
22. On 12 May 2017, you were not of unsound mind at the time of your offending. You knew what you did but you did not think you will be arrested. You are

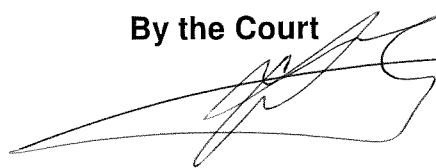


convicted of the two offences you are charges with in the information in this case.

23. A starting point sentence of 3 years imprisonment is appropriate and this is relevant for the first offence as the most serious one for all purposes in the over-all (totality) consideration.
24. I treat the second offence as the direct consequence of the first offence as it happened in a public place (shop where people have access to) where the offence is also committed too.
25. Although the second offence is an offence of its own, it is committed as the place is a public place and from the time you committed the first offence (the principle offence). I sentence you for 8 months starting point on the second count. They are concurrent to each other which mean a starting point sentence of 3 years imprisonment for both offences. You are entitled to 1/3 for your early guilty pleas. You are also entitled to 12 months for other mitigating factors including your mental disorder and others. Your sentence is reduced to 7 months. Should it be suspended?
26. I consider the nature and circumstances of your offending and your character as the offender, I think they justify a suspension of your sentence of 7 months imprisonment. I suspend it for a period of 12 months.
27. In addition, I direct that you serve 6 months supervision on the normal standard so that you can be assisted with treatments and counselling activities to redress your mental disorder.
28. You have 14 days to appeal this sentence if you are not satisfied with it.

**Dated at Port Vila, this 4<sup>th</sup> October 2019.**

**By the Court**



Vincent Lunabek  
Chief Justice

