



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

Criminal Case No 18/2356

**PUBLIC PROSECUTOR VS- SIMON ANTHONY**

**Coram:** *Mr. Justice Oliver A. Saksak*

**Counsel:** *Damien Boe for Public Prosecutor  
Steven Garae Junior for Defendant*

**Date of Pleas:** *4<sup>th</sup> March 2019*

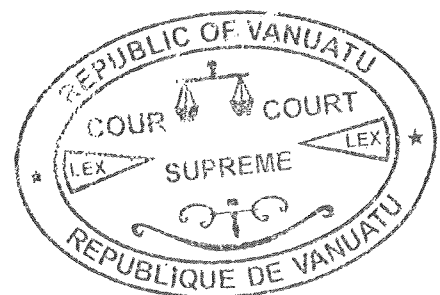
**Date of Sentence:** *6<sup>th</sup> March 2019*

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**SENTENCE**

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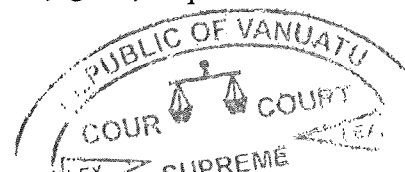
1. Simon Anthony you initially pleaded not guilty to one charge of unlawful sexual intercourse on 3<sup>rd</sup> September 2018 at the Court in Luganville Santo. The charge is laid under section 97 (2) of the Penal code Act [ CAP.135]. It carries a maximum of 15 years imprisonment.
2. The charge was put back to you on 4<sup>th</sup> March 2019. You then entered a guilty plea. You are therefore here for sentence today.
3. The facts are simple. The victim and complainant ( MD) was a 14 year old girl attending Arep Junior Secondary School. You are her maternal uncle. Her mother is your wife's sister. She was residing with you at the time of the offending. In the early hours of 16<sup>th</sup> February 2018 at your house at Bongwosor you entered the girls room. You approached her on her bed, pushed your finger through her clothes and penetrated her vagina with one finger. The girl woke up and cried out. You then left the room and said sorry to her. She recognised your voice. She then made a formal complaint to the police who investigated. You admitted doing this to the girl. You have accepted these facts. The reasons you have given in submissions were that you were drunk and that you had mistakenly thought the complainant was your wife.



4. This is now your second offending. It occurred in about the same period when you were having sex with G.A our adoptive daughter in criminal case No. 2355 of 2018. It indicates that perhaps you are a habitable sex offender.
5. I have heard Mr Boe and Mr Garae's submissions as to what your appropriate punishment should be. For the Court, the principles in PP.v.Gideon[2002] VUCA 7 and Talivo vs PP [1996] VUCA 2 are very clear. This is now the second victim that you have taken advantage of sexually. The Court has a clear duty to impose a sentence that should not only act as a deterrence to you and others of like minds, but sentences that would protect young children and vulnerable members of the community. In your case the community would be safe without you.
6. I adopt and apply the principles in PP.v. Kalosil [2015] VUSC 149, R V . Radich [1954] NZLR 86 and Veen.v. The Queen ( No.2) [1988] HCA 14 to your case.I therefore convict and sentence you for the offence charged to a starting sentence of 4 years imprisonment.
7. I consider that there should be an uplift for the following aggravating features-
  - a) Serious breach of trust
  - b) Offending occurring in the family home where victim should feel safe.
  - c) Disparity between the ages of the victim and the defendant.
  - d) Loss of dignity and feeling of shame and guilt by victim.
  - e) Repetition of sexual offending by defendant.

For these your starting sentence is increased by 2 years to a total of 6 years imprisonment.

8. I have seen the Same Day Report prepared by the Probation officer. I note you are married but with no children of your own. Your highest education level was year 7. You have mechanical, carving and gardening skills. You use these to earn a living for yourself and the family. Your father died recently in January 2019 and your mother is ill and disabled. You are the only son supporting her. You also support your younger sister who attends Year 9 at Arep School. Your wife says you are a very good, helpful

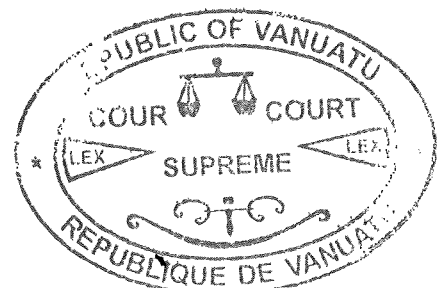


and responsible husband and she acknowledges the mistake you have made. She has written a letter of concern. Your chief also speaks well of you and your participation in the community. I note that sometimes you have chest pains and that you must take medication once in a while. However there is no proper medical report to confirm this or your mother's illness. You are 30 years old with no previous offending history. You paid VT 500 to the victim and VT 3.000 to her parents and VT 1.000 to the community chief. The parents of the girl did not know what the money was for until later when they found out.

9. The only relevant mitigating factor I accept are that you made an early admission to the police during investigation. That was sufficient for you to have entered an early plea in September 2018 but may be you were not properly advised at that time.
10. The other relevant factors are your attempts to perform custom ceremony by your paying the sum of VT 4500 to the victim, the parents and the chief. I take into account your pre-custodial period of 9 April 2018 to 6<sup>th</sup> September 2018 when you were released on bail. That is a period of 6 months.
11. I therefore make the following deductions:
  - a) 6 months for attempts at reconciliation showing remorse bringing your sentence of 6 years imprisonment down to 5 years and 6 months
  - b) 6 months are deducted for your pre-custodial period.

Your balance of sentence therefore is 5 years imprisonment.

12. Next, I accept you are entitled to 1/3 reduction due to the early admission you made to the police. It was from this that with your counsel's advice you have been rearraigned and pleaded guilty, albeit late. That means 1 year and 4 months are is deducted from your 5 years leaving the balance sentence to be 3 years 8 months.
13. You are therefore sentenced to an end sentence of 3 years 8 months imprisonment for this offending.



14. I order that this sentence be served consecutively with the sentence for the offending in Criminal Case No. 2355 of 2018.

15. That is the sentence of the Court. You have a right of appeal against this sentence within 14 days if you do not agree with it.

**DATED at Sola this 6<sup>th</sup> day of March 2019**

**BY THE COURT**

  
**OLIVER.A.SAKSAK**

**Judge**

