

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

Criminal
Case No. 22/1308 SC/CRML

PUBLIC PROSECUTOR

v

PARMOD ACHARY

Date: 2 August 2023
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr K. Massing
Defendant – Mr M. Hurley

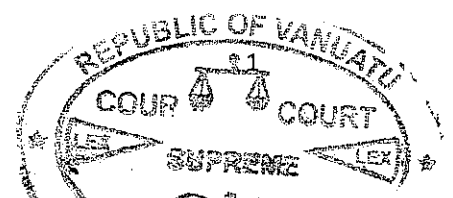
SENTENCE

A. Introduction

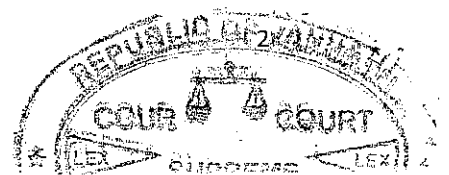
1. Mr Achary was convicted after trial of indecency without consent contrary to para. 98(a) of the *Penal Code* [CAP. 135] (Charges 1, 3-5); indecency without consent contrary to para. 98(b)(i) of the *Penal Code* (Charge 2); and failure to comply with and observe the law, in breach of s. 19 and para. 13(1)(a) of the *Leadership Code Act* [CAP. 240] (Charges 6-10).

B. Facts

2. The facts are set out in full in the Verdict dated 16 June 2023, and summarised in the following paragraphs.
3. At the time that the offending occurred, Mr Achary was the General Manager and chief executive officer of the Vanuatu National Provident Fund ('VNPF'), a statutory body, and the 5 complainants were employees of the VNPF.
4. In 2021, Mr Achary came out of his office, passed behind Josian Viraliliu as she was bending down to the printer, and placed his front part where his penis is (through clothing) on her buttock. She did not expect that at all. She said to him, 'What are you doing?' He responded with words to the effect, 'I have inserted it already', referring to his penis. It was clearly indecent for Mr Achary to place his forefront/penis on Ms Viraliliu's buttock. He did so without her consent. He could not have been under any illusion from her reaction that she consented to his act (Charge 1).



5. In 2021, Mr Achary walked towards Nathalie Merick, held her hand and pushed it to touch his penis. She tried to pull her hand back but he kept coming nearer and pushed her hand until she actually felt his penis. She demonstrated in Court how she curled her hand into a fist and was trying to pull her hand back but he forced her hand to touch his penis (through clothing). She did not like him making her feel his penis. She turned around, came back inside the Compliance office and told Serah Stephens that Mr Achary had made her touch his penis. Mr Achary also came inside the Compliance office and said good morning to the staff.
6. Holding Ms Merick's hand and forcing her to touch his penis was clearly indecent. She did not consent to Mr Achary doing so. He could not have believed from her effort to resist him, and from her immediately turning around and leaving, that she consented to his act (Charge 2).
7. In 2020, Lorina Tugu was walking along a corridor on the ground floor of the VNPF building when she felt someone touch her bottom from behind. She turned around and was shocked to see that it was Mr Achary. She walked to her workstation where Leah Takaro saw her facial expression and asked her what was wrong. She told Mrs Takaro that Mr Achary touched her bottom. Touching Ms Tugu's bottom was indecent. Ms Tugu did not consent to Mr Achary doing so. He could not have believed from her reaction that she consented to his act (Charge 3).
8. In 2020, Melissa Iopa was sitting facing her desk in her office. There were others present in the room. Mr Achary approached her from behind and massaged her shoulders then his hands went lower down to her breasts (through clothing). She felt that it was an invasion of her personal space and she felt ashamed and uncomfortable. She did not consent to him doing so. He could not be under any illusion that she consented to his act which was indecent and done in the presence of others (Charge 4).
9. In 2019, Mr Achary walked behind Cynthia Ala, pushed his hand and touched her buttock. Meresimani Bakeo Markward's evidence was that she arrived right on time to see Mr Achary touch Mrs Ala's bottom in a sexual manner. Mrs Markward was standing in the doorway that is the entrance into the executive suite area and she was speaking to Anna Stephens, the executive secretary so she was close by. Mrs Ala was shocked and said, "Kass!" Mrs Ala looked at Mr Achary and said, "Stop it!"
10. Mr Achary touching Mrs Ala's buttock was indecent. She did not consent to him doing that. He could not have believed from her reaction and words spoken out loud that she consented to his act (Charge 5).
11. The VNPF Board is a 'statutory body' because it was established by or under a law of Vanuatu, namely subs. 2(1) of the *Vanuatu National Provident Fund Act* [CAP. 189].
12. Mr Achary, as the chief executive officer of the VNPF, is a leader pursuant to para. 5(f) of the *Leadership Code Act*.
13. Having found Charges 1-5 proved beyond reasonable doubt, it followed that I also found it proved beyond reasonable doubt that Mr Achary, as a leader pursuant to para. 5(f) of the



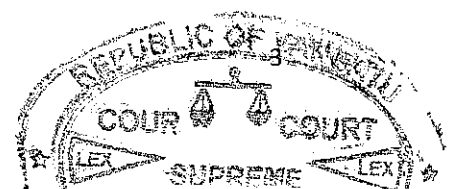
Leadership Code Act, in committing the offence of indecency without consent contrary to paras 98(a) and 98(b)(i) of the *Penal Code* [CAP. 135] failed to comply with and observe the law in breach of the *Leadership Code Act* (Charges 6-10).

C. Sentence Start Point

14. The sentence start point is assessed having regard to the offending, its aggravating and mitigating features and the maximum sentences set by Parliament.
15. The maximum sentences provided are:
 - a. Breach of the *Leadership Code Act* – VT5 million fine or 10 years imprisonment; and
 - b. Indecency without consent – 7 years imprisonment.
16. There are no mitigating aspects to the offending however, it is aggravated by the following:
 - a. Serious breach of trust (employee and manager);
 - b. There was a real disparity between the defendant and the complainants, most of whom subsequently feared for her job;
 - c. The offending took place at the complainants' workplace; and
 - d. The effect on the complainants.
17. I am guided by the Court of Appeal's judgments in *Tangiat v Public Prosecutor* [2014] VUCA 15 and in *Wenu v Public Prosecutor* [2015] VUCA 51. However, taking into account the circumstances of the offending including indecent touching (through clothing) of breasts and buttocks, and the forced touching (through clothing) of his penis, as well as the aggravating features of the offending particularly the breach of trust and disparity between the defendant and the complainants, the global sentence start point adopted is 2 years 6 months imprisonment.

D. Mitigation

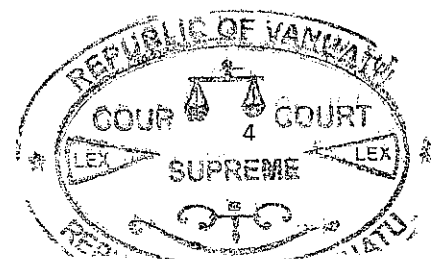
18. Mr Achary is 71 years old. He is married and has 2 adult children. He has the strong support of his wife and family and of his chief in Vanuatu. His family relies on him as their main source of income and support. His chief reported Mr Achary's strong support to the Seaside Tongoa community. Mr Achary has also been adopted by and bestowed with a chiefly title by a chief of Tanna. The Court and counsel were provided with written references in support of Mr Achary from prominent members of the community, both male and female.
19. Mr Achary is highly educated and has occupied many senior and important employment positions in Vanuatu and Fiji. The Director General of Finance and Economic Management and Chair of the VNPF Board spoke in the pre-sentence report of Mr Achary's passion and very big heart in serving the VNPF. The VNPF's development since 2017 occurred under Mr Achary's leadership. The VNPF Financial Year 2022 report includes that members' funds have experienced growth for the past 7 years; this 7-year period coincides with Mr Achary's tenure as General Manager of the VNPF since September 2017.



20. Mr Achary resigned from the VNPF with immediate effect soon after the Verdict, citing the intense pressure and now unbearable criticism from the media including social media (particularly, Facebook), from the Minister of Finance and Economic Management and from the Governor of the Reserve Bank of Vanuatu.
21. He has no previous convictions although in cases of a sexual nature, that is of little mitigatory value.
22. Mr Achary has serious health problems including diabetes, hypertension, coronary heart disease, stroke, psoriasis, prostatic hypertrophy and mild to moderate depression. His kidneys and prostate are being monitored. He is on a series of daily medications. Mr Achary has issues with his vision and must be careful around stairs and slopes. His healthcare requirements are such that constant monitoring with a practitioner who knows his history and background is required.
23. He has not performed a custom reconciliation ceremony however is willing to do so. Two of the complainants informed the pre-sentence report writer that they were not willing to accept any such ceremony given the effect of the offending on them. It is unknown what the attitude of the 3 other complainants is.
24. Twelve months is deducted from the sentence start point for Mr Achary's personal factors.

E. End Sentence

25. The sentencing principles applicable in this case are holding Mr Achary accountable for his conduct, to denounce the criminal conduct and emphasize public disapproval of such offending, to protect the community, and to deter him and others from acting in this manner in the future.
26. Taking all of those matters into account, the following end sentences are imposed concurrently:
 - i. Indecency without consent (Charges 1-5) 1 year 6 months imprisonment.
27. I accept Mr Hurley's submission that given Mr Achary's personal factors including his strong connections to the community, an appropriate sentence for his breaches of the *Leadership Code Act* would be a fine.
28. I am informed by counsel that pursuant to s. 58C of the *Penal Code*, Mr Achary has the means to pay a fine. Pursuant to para. 58C(1)(b) of that Act, the Court also has the option of ordering the whole or part of the fine to be paid as compensation to the victims.
29. Accordingly, the end sentence for failure to comply with and observe the law in breach of the *Leadership Code Act* (Charges 6-10) is a fine of VT1 million in total to be paid within 3 months' time, the whole of which is to be paid as compensation to the 5 complainants in the sum of VT200,000 each.



30. In the event of default in relation to the payment of the fine, Mr Achary is to be arrested and brought to Court to be dealt with, and remanded in custody as required, whichever is first occurring.

F. Suspension of Sentence (Charges 1-5)

31. I now consider whether or not to suspend the sentences imposed in relation to Charges 1-5.

32. Mr Achary committed the offending whilst serving as the chief executive officer of one of Vanuatu's most important statutory bodies. His offending was directed at employees of the statutory body that he headed. The offending is serious. These factors count against suspension of sentence.

33. On the other hand, there was no skin-to-skin genitalia contact in the circumstances of the offending, and together with Mr Achary's 71 years of prior good character, the strong support of his wife, family and chief, his contributions to the community and his very strong family and community ties favour suspension of sentence. I consider that Mr Achary has good prospects of rehabilitation. In addition, Mr Achary has suffered a long fall from grace for a man who was held in high esteem including as a recipient of the President's 40th Anniversary Medal, he has suffered in the public gaze and has lost his job. It is to Mr Achary's great credit that he put the interests of the VNPF and its members first in his difficult decision to resign from the VNPF.

34. On balance, weighing those factors, I consider that the sentences of imprisonment imposed (Charges 1-5) should be suspended. The period of such suspension will be 2 years. Mr Achary is warned that he must remain offence-free for the next 2 years or he will need to serve his sentences of imprisonment in addition to any other penalty that may be imposed on him for the further offending.

35. Mr Achary has 14 days to appeal.

36. The Prosecution is to provide a copy of this sentence to each of the 5 complainants.

DATED at Port Vila this 2nd day of August 2023

BY THE COURT

VM Trief
Justice Viran Molisa Trief

