

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

Criminal
Case No. 22/1890 SC/CRML

PUBLIC PROSECUTOR

v

MICHEL DO

Date: 8 March 2024
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr T. Karae
Defendant – Mrs M. Markward

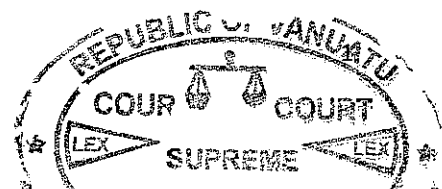
SENTENCE

A. Introduction

1. The Defendant Michel Do pleaded guilty to act of indecency without consent (Charge 2) and intentional assault where no physical damage is caused (Charge 3) contrary to paras 98(a) and 107(a) of the *Penal Code* [CAP. 135] respectively. He is convicted on his own pleas and the admitted facts.
2. He was convicted after trial of unlawful sexual intercourse with a child under the age of 15 years but of or over the age of 13 years, contrary to subs. 97(2) (Charge 1) and threat to kill a person contrary to s. 115 of the *Penal Code* (Charge 4).

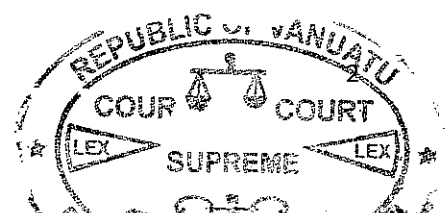
B. Facts

3. The complainant Lilly Tasarofa turned 14 years of age in 2016. At all times during that year, she was under 15 years old but of or over the age of 13 years.
4. In 2016, she was 14 years old and in Class 6 at the French school at Anambrou area. She met Mr Do when he drove his truck to her house and her mum introduced him as a



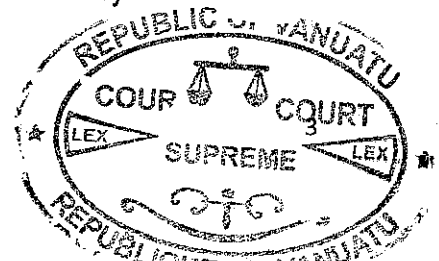
friend. She and her mum were living at Anambrou area and Mr Do at Bellevue area. At the time she took Mr Do to be her biological father as he had similar eyes to her and he was kind to her. Sometimes he bought things for her and brought them to her house. He focused on her rather than her sister.

5. She texted Mr Do that year to ask who her father was. He texted back that he did not want to make her confused and to wait and he would pick her up. She did not tell her mum where she was going. He picked her up from her house at Eratap and drove them to the Vietnamese church near Vansec House, named 'Bort du ciel.' No one else was there.
6. Inside the Vietnamese church is a red bar with a counter top curving round, and tables and chairs, and a stage. Mr Do opened the door to go inside and talked about what he would do to upgrade the church and the recent loss of his father. Mr Do turned on the light but it shone above the stage only. They were standing face to face just inside the door. There was no light there. He talked about what boys and girls did in a relationship and started his 'actions'. He rubbed her breast through her shirt (demonstrating with her right hand on her left breast) then pushed his hand inside to touch her breast and sucked her breast. She was shocked and confused as she was young at the time and did not know what he was doing.
7. When Mr Do touched her breast, she did not push him away because she was frightened, she thought he was her biological father, her mother had introduced him as a friend and she was small so she did not understand what he was doing. She was asked why she did not walk away from him. She replied that he had control in the situation, she did not call out for help.
8. She was wearing pants and a top, and Mr Do was wearing jeans and a buttoned shirt. Mr Do took off his jeans and told her to suck his penis. She knelt down and sucked his penis. She performed oral sex on him for 5 minutes. That oral sex was sexual intercourse as defined in para. 89A(c) of the *Penal Code*.
9. Mr Do pushed his fingers into Ms Tasarofa's vagina when they were standing by the church door. Then he told her to remove her pants and lie down on the floor behind the bar. Mr Do knelt down by her legs and again pushed his fingers into her vagina. This digital penetration was sexual intercourse as defined in para. 89A(a) of the *Penal Code*.
10. Then Mr Do unzipped his fly and lay on top of her. She only felt his stomach as he is heavy then he said, "OK, it has gone inside" ('OK, I go insaed') and he moved up and down on top of her for 5-7 minutes. She felt pain in her vagina while he was lying on top of her and moving up and down.
11. Given the difference in their sizes, and that Ms Tasarofa was even smaller in 2016 than she is today, the inherent likelihood of the situation was as she described, that when Mr Do lay on top of her, she could only feel his stomach as he is heavy and she could not feel his penis. She heard him tell her that 'it' had gone inside which I inferred were



words to the effect that his penis had gone inside her vagina. The words that Mr Do spoke, his lying on top of Ms Tasarofa and moving up and down on top of her, and the pain caused to Ms Tasarofa in her vagina all corresponded with the act of Mr Do inserting his penis into her vagina. The penile penetration of her vagina was sexual intercourse as defined in paras 89A(a) and (e) of the *Penal Code*.

12. Then someone came to the front door of the church. They were Chinese. Mr Do fixed up his jeans, stood up and walked towards the door, telling her to put on her clothes. She put on her clothes and still felt pain in her vagina. She walked to the car and Mr Do drove her back to her house at Anambrou. She thought about what had happened and was still in shock. That same day and the next, she saw blood in her undies. She was sure that this was not menstrual blood.
13. These were the facts of Charge 1 (unlawful sexual intercourse with a child under the age of 15 years but of or over the age of 13 years).
14. Later on, from 2019 to 2021, Ms Tasarofa had to live with Mr Do at his house at Belleview area in Port Vila so that she could have access to transportation to attend school. Mr Do paid for her school fees. Between 1 January 2019 and 31 December 2021 at Mr Do's house, on several occasions, he acted indecently upon Ms Tasarofa by kissing her and touching her breast without her consent. She would often make excuses to avoid his actions by making excuses to either go to the toilet or drink tea.
15. These were the facts of Charge 2 (act of indecency without consent).
16. On 17 February 2022 morning, Ms Tasarofa dropped her sister at school then went to Mr Do's house at Bellevue as he had called her to go type and print a letter for the church. She joined Mr Do, her big sister Sylvia and a man from the church in the living room. Mr Do was standing by a chair, waiting for her. He asked her about her weekend and gave her the papers for her to type. Then he asked if she would spend the weekend with her mum at Eratap? She said no, she would go back to her mummy Emily Niras. He asked why and she said because her stepfather Gideon was at Eratap. She did not want to go to Eratap because Gideon was doing the same thing to her as Mr Do. He became angry with her and started yelling and swearing at her.
17. Mr Do grabbed Ms Tasarofa by the neck, squeezed her neck and pushed her against the wall. Sylvia tried to remove Mr Do's hands from Ms Tasarofa's neck as he had her up against the wall and told her to say sorry to Mr Do so he would not be angry anymore. He also told Ms Tasarofa to go fuck her friends, her dad and her family. She cried, she was frightened and angry.
18. These were the facts of Charge 3 (intentional assault).
19. Mr Do told Ms Tasarofa that he would call his friends ('*ol poisen man*') who would kill her by witchcraft. This was an oral threat to kill her that Mr Do made directly to Ms Tasarofa

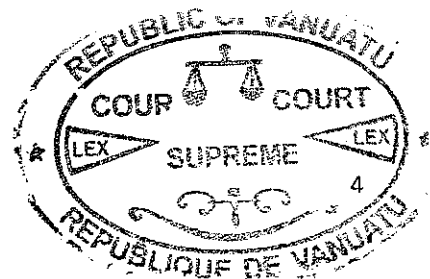


and which she received. Ms Tasarofa said that she was tired of receiving such threats from Mr Do so she told him to tell those people to come and kill her by witchcraft.

20. While squeezing her neck with his hands, Mr Do told Ms Tasarofa and her sister that he had said that he would cut them with a knife and had not, but now he would cut them with a knife. Mr Do removed his hands then pulled a knife from his bucket of tools and pointed the knife at her and Sylvia's faces, telling them he would cut them with the knife. They moved backwards, Sylvia blocking Ms Tasarofa with her body so that if Mr Do struck them with the knife, Sylvia would be struck first. These too were oral threats to kill her made directly to Ms Tasarofa in the course of an assault and whilst Mr Do was wielding a knife. Ms Tasarofa feared for her life, fearing that Mr Do would kill her inside that house.
21. The same day, Ms Tasarofa went to the Police and spoke with Officer Johnson. She made two statements with the Police.
22. There can be no doubt that Mr Do knew the contents of his oral threats to Ms Tasarofa. Mr Do intended Ms Tasarofa to receive the threats, and she understood the threats and took them seriously. She was tired of him threatening her like that so she told him to go tell the witchcraft people to come and kill her.
23. These were the facts of Charge 4 (threat to kill a person).
24. Ms Tasarofa explained why it had taken 6 years to report the offending, saying that she was young, she did not have anyone to report to, she was not supported by her mum to report, and both her mum and Mr Do told her not to tell anyone.

C. Sentence Start Point

25. The sentence start point is assessed having regard to the maximum sentences available, and the mitigating and aggravating factors of the offending.
26. The maximum sentences prescribed in the *Penal Code* [CAP. 135] are:
 - a. Unlawful sexual intercourse with a child under the age of 15 years but of or over the age of 13 years – 15 years imprisonment (subs. 97(2));
 - b. Threat to kill a person – 15 years imprisonment (s. 115);
 - c. Act of indecency without consent – 7 years imprisonment (para. 98(a)); and
 - d. Intentional assault where no physical damage is caused – 1 year imprisonment (para. 107(a)).
27. There are no mitigating aspects to the offending however, it is aggravated by the following:



Unlawful sexual intercourse offending:

- a. Breach of trust;
- b. 42-year age differential;
- c. The defendant told the complainant not to tell anyone what had happened;
- d. Exposing the complainant to the risk of sexually transmitted infection and pregnancy; and
- e. The physical and mental effects on the complainant.

Indecency without consent offending:

- a. Breach of trust;
- b. 42-year age differential;
- c. The complainant was living in the defendant's house in order to access school and he paid for her school fees and other needs, therefore associated grooming of the complainant over time;
- d. The offending occurred at home where the complainant should have been able to feel safe and secure; and
- e. The physical and mental effects on the complainant.

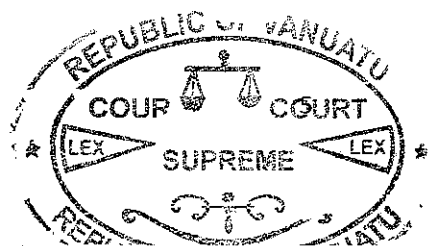
Threats to kill and intentional assault:

- a. Breach of trust;
- b. Repetitive threats with violence;
- c. The use of a weapon (knife) when making the threats; and
- d. The physical and mental effects on the complainant.

28. Taking these matters into account, I adopt the following sentence start points: 10 years imprisonment for the unlawful sexual intercourse (Charge 1), 7 years imprisonment for the threats to kill (Charge 4), 3 years imprisonment for the indecency without consent (Charge 2) and 10 months imprisonment for the intentional assault (Charge 3).

D. Mitigation

29. The guilty pleas to Charges 2 and 3 were entered at the earliest possible opportunity to those charges as amended, at the commencement of the trial. This saved time and the

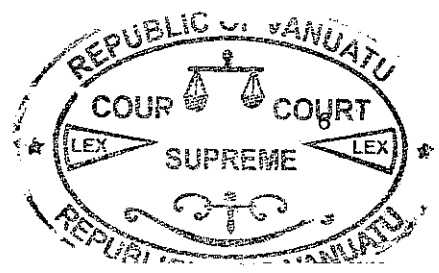


need for the complainant to give evidence as to those charges however this was done on the day of trial therefore I deduct 10% from the sentence start points for each of those charges.

30. There is no deduction for a guilty plea in respect of the sentence start points for the unlawful sexual intercourse and threats to kill offending.
31. Mr Do is 60 years old. He is of Vietnamese ethnicity and a naturalised citizen of Vanuatu as he has lived here since 1941 with his parents. His father has passed away. He is single and lives with his mother at Belleview area. She is dependent on him for her care as her other children live overseas. Mr Do is now retired; his main source of income are his rental apartments in Port Vila. He is the President of the Vietnam Church in Vanuatu. He has the support of his community chief. Mr Do has health issues and has had to attend Medipole Hospital in New Caledonia for medical treatment, and is due to go there for another operation.
32. He has no prior convictions although that is of little mitigatory value in cases of a sexual nature.
33. Mr Do is stated to be remorseful, including as reported by the pre-sentence report writer. He has made three attempts at a custom reconciliation ceremony but this has been refused by the complainant and her family.
34. I deduct 15% from the sentence start points for Mr Do's personal factors.
35. A further month is deducted from the sentence start points to take into account the time that Mr Do has served in custody (18 July 2022-1 August 2022).

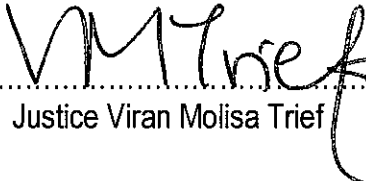
E. End Sentence

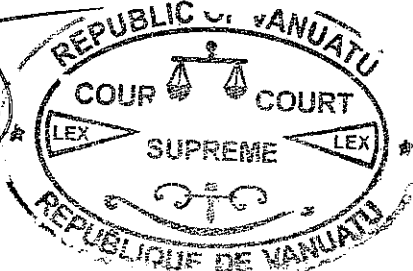
36. Taking all matters into account, the following end sentences are imposed concurrently:
 - a. Unlawful sexual intercourse with a child under the age of 15 years but of or over the age of 13 years (Charge 1) 8 years 5 months imprisonment;
 - b. Threat to kill a person (Charge 4) 5 years 10 months imprisonment;
 - c. Act of indecency without consent (Charge 2) 2 years 2 months imprisonment; and
 - d. Intentional assault where no physical damage is caused (Charge 3) 6 and a half months imprisonment.
37. The sentences are imposed to denounce such criminal conduct against young girls and against the values of society, to mark the gravity of the offences, to protect the community, to deter Mr Do and others from such offending, and to hold Mr Do accountable for his criminal conduct.



38. The end sentences will not be suspended as there are no exceptional circumstances warranting suspension. An immediate custodial sentence must be imposed for this serious sexual offending against a child: *Public Prosecutor v Gideon* [2002] VUCA 7.
39. The sentences of imprisonment may not be enforced until the time of appeal against sentence has expired or Mr Do earlier elects to begin serving his sentences: s. 50 of the *Penal Code*. The Manager of the Correctional Centre in Port Vila is to inform the Court if Mr Do has failed to present himself by 4pm on 22 March 2024 to begin serving his sentences.
40. Mr Do has 14 days to appeal against the sentence.

**DATED at Port Vila this 8th day of March 2024
BY THE COURT**


Justice Viran Molisa Trief



The seal of the Supreme Court of Vanuatu is circular. It features a central scale of justice. The text 'REPUBLIC OF VANUATU' is written along the top inner edge, and 'REPUBLIQUE DE VANUATU' along the bottom inner edge. The words 'COUR' and 'COURT' are positioned on either side of the scale, with 'SUPREME' centered below it. Two small triangles containing the word 'LEX' are located on the left and right sides of the seal.