

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

**Criminal
Case No. 24/1968 SC/CRML**

BETWEEN: Public Prosecutor

**AND: Olivier Anatu
Defendant**

Coram: Justice Dudley Aru

**Counsel: Mrs. B. Tamau for the Public Prosecutor
Mrs. P. Malites for the Defendant**

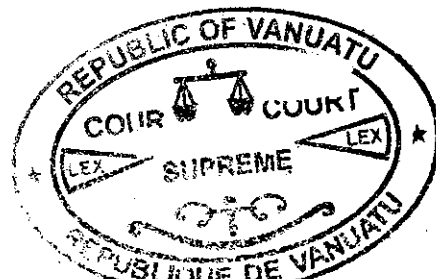
SENTENCE

Introduction

1. Olivier Anatu pleaded guilty to one count of acts of indecency contrary to s98 (a) of the Penal Code [CAP 135] and one count unlawful entry into a dwelling house contrary to s143 (1) of the Penal Code. He now appears for sentencing on his guilty pleas.

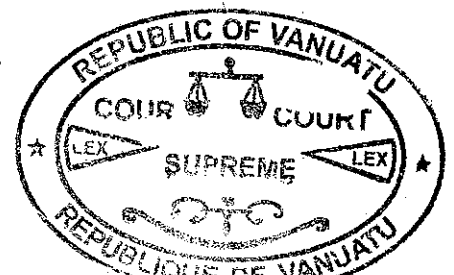
The facts

2. The offending occurred around midnight on 11 June 2024.
3. The complainant was living with her de facto husband at Mele village and they have three children. On the night of the incident, they were asleep when the defendant allegedly entered their house.
4. The complainant was asleep by herself on one mattress and her partner was sleeping on another mattress with two of their children. Both mattresses were placed side by side close to each other. Around midnight the complainant felt someone pulled her blanket and then started touching her legs. Initially she thought it was her husband and remained asleep. The defendant then moved his hand upwards and pushed his hand into the complainant's pants and touched her buttocks and vagina.
5. The complainant immediately opened her eyes and turned around and was shocked to see the defendant sitting on her side of the bed looking at her. She screamed and punched her husband's chest to wake him up. At that point the defendant ran out of the house.
6. The matter was then reported to the Police.



Sentence start point

7. The maximum sentence available for acts of indecency without consent is 7 years imprisonment and for unlawful entry of a dwelling house used for human habitation is 20 years imprisonment. The offending is aggravated by the fact that the complainant feared for her safety and that of her family. Secondly, the offending occurred in the victim's own home at night and in the presence of her children who were asleep in the same room.
8. For comparison purposes the prosecution referred to two cases. **PP v Moli** [2018] VUSC 76 and **PP v Serge Atuary** [2014] VUSC 140. In *Moli* the defendant entered a room at Nasama Resort at night. Two female complainants were asleep in the room. He stood by their bedside and masturbated. They ran outside and called security and the defendant fled into the night. The defendant did not touch the complainant. A starting point of 4 years was adopted for unlawful entry and 3 years for acts of indecency. The end sentence arrived at was 2 years imprisonment which was then suspended for 2 years.
9. In *Atuary* the defendant entered a bathroom at night where the complainant was having her shower. It was a common or shared bathroom and could not be locked from the inside. The defendant stripped naked then entered and whilst trying to close the door the complainant saw him and screamed out loud. The defendant then fled. The starting point adopted in that case for one count of indecency was 12 months imprisonment. After taking into account the defendant's personal factors, the sentence was reduced to 8 months imprisonment and suspended for a period of 2 years with 100 hours of community work.
10. The prosecution submits that I adopt a starting point between 2 to 3 years imprisonment for acts of indecency and a starting point of 3 to 4 years imprisonment for unlawful entry. It was also submitted that this case falls at the lower end of the scale for this type of offending and that a suspension of the sentence is warranted with orders for supervision, medical assessment and treatment.
11. Counsel for the defendant filed her written submissions very late on 7 March 2025 despite clear directions to do so by 28 February 2025. This was filed with two sworn statements, one from the defendant and one from the defendant's father. Both stating that following the offending, that same night the defendant was assaulted by the complainant's husband and some relatives. The statements amount to complaints of a criminal nature against the complainant's relatives and are therefore put to one side.
12. Mrs Malites referred to **PP v Wol** [2024] VUSC 227 and **PP v Tarosa** [2021] VUSC 20 for comparison. In *Wol* the starting point for unlawful entry was 3 years imprisonment and for acts of indecency which consisted of a kiss on the complainant's mouth witnessed by one of her children the starting point was 2 years imprisonment. In *Tarosa* the starting point for unlawful entry was 4 years imprisonment and for indecency which consisted of the defendant masturbating near the complainant's head whilst she was asleep the starting point was 2 years imprisonment.
13. Noting the above cases, I set the starting point of sentence as follows, for the offence of acts of indecency without consent the starting point of sentence is 3 years imprisonment and for the offence of unlawful entry into a dwelling house I adopt a starting point of 4 years imprisonment.
14. The overall concurrent starting point of sentence is 4 years imprisonment.



Personal factors

15. The defendant entered his guilty plea at the earliest available opportunity as a sign of remorse therefore the sentence is discounted by one third.
16. A pre-sentence report was filed which gives the defendant's personal details as follows. The defendant is 21 years old and originates from Mele village. He is single and resides with his parents. He still relies on his parents for his financial needs. He completed his education at year 10 in 2021 at Tebakor College. He suffers from asthma and some mental issues probably as a result of his consumption of alcohol, cigarettes and marijuana. Both parents speak highly of him. No custom reconciliation has been performed to date.
17. Considering the above factors, the sentence start point is further reduced by 6 months and further 2 months for time spent in pre custody.

End sentence

18. The defendant is sentenced to an end sentence of 2 years imprisonment which is concurrent. In view of the defendant's youth and mental issues affecting his health, the sentence is suspended for a period of 2 years. Should he reoffend during this period, he will be arrested and remanded to serve the sentence in custody with any additional sentence the Court may impose. In addition to the suspended sentence a supervision order is imposed for the period of the suspended sentence. In addition to any rehabilitation directed by his Probation Officer, the defendant must continue and complete any treatment identified by the Mental Health Clinic to deal with his mental issues.
19. The defendant has 14 days to appeal if he is dissatisfied with the decision.

DATED at Port Vila this 11th day of March, 2025.

BY THE COURT

Dudley Aru
Judge

