IN THE SUPREME COURT **Criminal Case No. 46 / 2012**
OF THE REPUBLIC OF VANUATU
(Criminal Jurisdiction)

PUBLIC PROSECUTOR

V
STEVE TARI TUGU

Hearing:	***20 July 2012 at Luganville, Santo.***
Before:	***Justice Robert Spear***
Appearances:	***Parkinson Wirrick for the Public Prosecutor***
	Jane Tari for the accused

SENTENCE
Justice Robert Spear
20 July 2012

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1. Steve Tari Tugu, you are for sentence on 1 count of committing the offence of having sexual intercourse without consent. You were found guilty of that charge at the trial conducted at Saratamata on Ambae on 19 June 2012. The reasons for that verdict of guilty are contained in a decision given by me that day.

2. The charge initially related to three young complainants as explained in both the reasons for the verdicts and in trial ruling no. 1. This charge (count 1) was treated as three separate representative charges; relating to each of the three complainants. As it happened, the youngest of the three complainants did not wish to give evidence and Mr Wirrick elected not to insist upon it. You were discharged in respect of count 1 only as it related to the third-named complainant. You were, however, found guilty of count 1 on the remaining basis that it was effectively a representative charge in respect of two separate complainants.

3. Separate consideration was given to the case in respect of each of the two complainants - all as mentioned in the rulings and in the decision given in that case.

4. You reside in a village on the island of Ambae. The two young complainants are related to you and they lived close by your home. Over a period of some months in 2011 you forced these two young girls to perform (what is often called) oral sex on you. You did so by persuading each of the young girls, in some cases quite forcefully, to accompany you into the bushes where you told that young girl that she had to "lick your penis"; at least, that was the term used by each of the complainants when they were asked to describe exactly what they were told to do by you. When they described what they actually did, it became clear that this meant that the girl took took your penis in to her mouth. Certainly, on at least one occasion, this lasted right through to ejaculation.

5. The two young girls are sisters although it does not appear that one was particularly aware of what was happening to the other and it certainly did not appear that they had discussed between themselves what you were doing to each of them. That is perfectly understandable given their young age and their confusion as to the nature and significant of the acts that took place.

6. Each of the two girls explained that you threatened them with harm if she told anyone about what you had done. I note from the pre-sentence report that you take issue with this. However, I have the benefit of hearing from both the two young girls and I am satisfied that threats of some nature were indeed uttered by you as you attempted to avoid having your offending detected.

7. The indictment expresses a date range for this offending of 1 January 2010 (when you were 15) through to 12 November 2011 (when you were 17). I am satisfied that the offending occurred in 2011 when you were 16 and 17 years of age. I understand why the prosecutor Prosecutor detailed a broader date range but it is my judgment that the manner in which this offending occurred, and how it emerged or become detected, indicated that it was of more recent moment to the disclosure date of 12 November 2011 then simple regard to the beginning of the date range would suggest.

8. I am accordingly satisfied that you were at least 16 years of age when this offending occurred. I mention this in recognition of the restrictions imposed by s. 54 of the Penal Code in relation to the imprisonment of those offenders under 16 years. There does not appear to be any authority in Vanuatu yet as to whether the age limit arising in s. 54 is to be measured at that time of the offending or at the time of sentence. In New Zealand, a similar issue is clarified by s.2 (2) of the Children, Young Persons, and Their Families Act 1989 that the age relates to the time of the offending.

9. If I had to rule on this particular issue here, and of course I do no have to do so given my conclusion as to when this offending occurred, I would have ruled that the age for the purpose of s.54 of the Penal Code, would be at the date of the offence.

10. This is serious offending of its type given that you were 16 or 17 years of age at that time and the young girls were only 9 and 7 years of age. It was predatory behaviour on your part as clearly you identified these two young girls as a source of personal sexual gratification for you. You way-laid each of them at a time when the young girl in question was walking alone on her way home from school. This was with one exception, with the younger complainant, when you were walking back from a nearby village.

11. There was an element of trust that was breached by you given that you are their cousin, you were much older than them, and you were someone whom the family could have expected would look after those young girls and keep them safe rather than subjecting them to harm. However, given that you were only 16 or 17 years of age at that time, that breach of trust is not as significant as it would have been if you had been older.

12. The Courts in Vanuatu are required to respond firmly to those who commit sexual offences against the young and vulnerable members of this community. The sexual abuse of children is a shocking crime and it almost invariably calls for a condign sentence. However, every case is different and it is important to have regard to the individual circumstances of each case so that the appropriate sentence can be achieved.

13. In this case, there was not actual sexual intercourse (in the commonly understood sense being penile penetration of the genetalia) and the case is accordingly to be treated at a slightly lower level. The rationale for that approach is understood to be that there has not been the same degree of personal intrusion although, of course, the intrusion here was still significant and serious in its own form.

14. I do not have any information about the effect that this offending has had upon the two young girls. The probation officer was unable to make contact with them. However, the courts's experience provides it with a clear understanding of the typical effect that sexual abuse has on young girls. They often experience real difficulties as they grow up, they experience difficulties with their ability to develop relationships, to socialise with their age peers, and settle and focus on their school work. It is often said that the sexual abuse of young girls (or indeed young boys) robs them of their childhood and that is exactly what has occurred here. Both two girls can confidently be expected to still be confused about what happened.

15. They each gave very clear accounts of the events which indicated a significant level of intelligence. Accordingly, it can only be hoped that they are able to work through matters themselves and move on as best as they can from the sorry state in which you left them.

16. I note that you are now 18 years of age, that you are young man without much schooling, but you are also someone who had not being seen as a problem before this

offending was detected. You have expressed your remorse for the harm that you have done to these two young girls and indeed you have endeavoured to explain your offending on the basis that you are not "thinking straight".

17. There has been a custom reconciliation ceremony and the probation officer has provided information about that occasion. There has been a settlement of issues between the families (or more exactly within the family) and which saw, in particular, payment of Vt 10,000 and the provision of 3 custom mats and a pig all together estimated to be worth Vt 18,000.

18. Custom reconciliation is important, particularly in village communities, but also even in the cities and towns, as it assists the families involved to come to terms with what has happened and to identify a way to move forward from it. It also provides the opportunity for one side to represent their feelings in a visible and tangible manner. Be that as it may, it is not a complete answer to the offending and it does not provide a salve for all the harm caused by criminal offending. In this case, there are still two young girls who have been harmed by you and it can only be hoped that they are able to come to terms with your offending.

19. Offending of this nature requires a sentence that sends out a very clear message to the community that those who commit sexual offending against young children will be punished severely. That is necessary to deter others who might contemplate offending in this way and so that it is well understood that offending is not worth the risk.

20. The sentence must also mark society's outrage that young vulnerable members of the community have been sexually abused.

21. The sentence must be the least restrictive outcome but a sentence of imprisonment has to be the minimum sentence for offending of this nature.

22. Mr Wirrick, in his submissions, argues that the appropriate starting point for this offending is in the region of 5 to 8 years imprisonment for each count respectively. Furthermore, that a uplift from that of an additional 5 to 8 years is appropriate. With respect, having regard to the sentencing levels applied in Vanuatu, I cannot accept that to be so. If this was a single and unexceptional case of rape, the starting point would

be 5 years before any consideration of aggravating features and before any allowance for mitigating circumstances.

23. While it might be difficult to understand, the courts in other countries have always placed sexual abuse less than penile penetration of the genitalia at a lower level than full sexual intercourse (or penal penetration of the genitalia). In my view, that should happen here.

24. If I was to sentence you on only one count or instance of sexual abuse of this nature involving a girl between 7 and 9 years of age, I would have adopted a starting point of 3 years imprisonment. However, I have are two instances of sexual abuse in this form (technically described as sexual intercourse) and against two young girls. In my view that requires uplift by a further two years to an end-offending point of 5 years imprisonment.

25. I need to pay regard to your remorse, to your otherwise blameless character and the reconciliation ceremony that has taken place. In my view that warrants a reduction by 18 months against the sentence that would otherwise have been imposed on you.

26. You are now 18 years of age but this offending occurred with you were 16 and 17 years of age and so it is important also to pay particular regard to your young age at the time beside the recognition that young men can act quite nonsensically. Also, that imprisonment is likely to be more difficult for you than a more mature individual. I will reduce the sentence by a further 18 months to recognise your age related circumstances.

27. That brings me to a sentence of two years' imprisonment. In my judgment, that is an appropriate sentence in this case.

28. It is quiet inappropriate for such a sentence to be suspended given the seriousness of the offending and the need for anyone who hears about this case to know that those who commit sexual offending against young children will be sentenced to imprisonment.

29. I suggest, with respect. that the Parole Board, when it considers what conditions should attach to your parole, give consideration to a requirement that you reside at an

area significantly apart from where these two young girls reside and that you do not visit their village throughout the time on parole. However, that is the matter for the Parole Board.

30. I would also hope that there is some capacity within correctional services for you to received some counselling in relation to your offending so you can understand what motivated you to act in this way in the hope that you will no do so again.

31. So the sentence of the Court is that your will go to prison for 2 years calculated from 19 June 2012 when you were first taken in to custody. The pre-sentence report mentioned 22 June 2012 but you have been in custody since you were found guilty albeit with the Police until you could be handed over to Correctional Services.

32. You have 14 days to appeal this sentence if you do not accept it.

BY THE COURT