

PUBLIC PROSECUTOR – VS – ANDERSON WARI

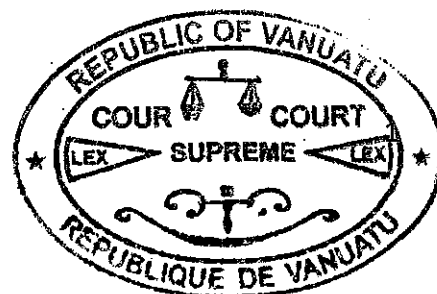
Coram: Mr. Justice Oliver A. Saksak

Counsel: Mr. Ken Massing for the State
Ms Jane Tari for the Defendant

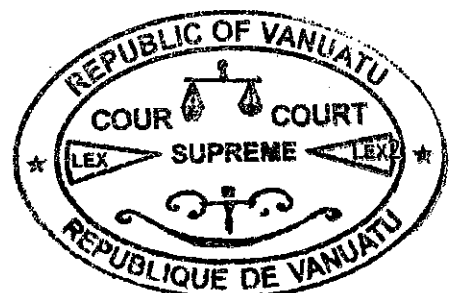
Date: 8th November 2013

SENTENCE

1. Anderson Wari you are here for sentence today for having pleaded guilty to one charge of sexual intercourse with a child under care and protection contrary to Section 96 (1) (a) and to one charge of unlawful sexual intercourse contrary to Section 97 (1) of the Penal Code Act Cap. 135 (the Act).
2. These are serious offences as the first carries a maximum penalty of 10 years imprisonment and the second carries a maximum penalty of 14 years imprisonment.
3. The offendings happened on 24th September 2013 at Solomon Hill when you walked with your step-daughter and her brother to school at Santo East School. The victim is only 12 years old. Leaving your son on the road you strayed into the bushes with the victim and had sexual intercourse with her. Someone who followed you became suspicious and followed you into the bush and watched you in the sexual act for a while before calling out. You then stopped and acting quite innocently, remarked to the person watching that the girl was a relative's daughter.



4. You have accepted all those facts as correct. You however do not appear to have any regrets or sympathy for your step-daughter. In your pre-sentence report you shift the blame to her that she was a willing partner in the act but that is no excuse for you. You stand in a position of trust as her step-father. She expected protection, care and fatherly love from you. Instead, you breached that trust and took advantage sexually of her being young and vulnerable. No doubt what you did to her whether on that occasion or on any other occasion, will have a long lasting impact on this young girl's life, physically and mentally. That appears clearly from her statement to the Probation Officer in the pre-sentence report. This offending happened when your son was standing on the road waiting for the two of you. The shame and humiliation on his step-sister could be imaginable but true. Mentally this boy also could have some impact on his way of thinking. Both of these children are students.
5. I do not see any other sentencing option but that only custodial sentences will be the appropriate sentence for you in respect of your offendings. The lead offence will be unlawful sexual intercourse under Section 97(1) of the Act.
6. The Court of Appeal has laid down clear sentencing guideline for this types of sexual offendings in Gideon v. Public Prosecutor [2002] VUCA 7 that men who take advantage sexually of young girls forfeit the right to remain in the community. This case also acknowledges that where a plea of guilty is entered at first opportunity the offender is entitled to a 1/3 reduction. Also in the case of Tausi v. Public Prosecutor [1990] VUCA 4 the Court of Appeal laid down the primary purpose of Section 97 is to protect young girls. Those principles are upheld and applied to your case in sentencing you.
7. I therefore sentence you as follows:-
 - (a) For Count 2 – Unlawful sexual intercourse – 8 years imprisonment as the starting point.



(b) For Count 1 – Sexual intercourse with a child under care and protection – 5 years as the starting point but this sentence is made concurrent to the 8 years sentence for the offence in Count 2.

Together, the total starting point sentence is 8 years imprisonment.

8. For the aggravating features stated in paragraph 4 of this sentence there will be an uplift of 4 years imprisonment bring the total to 12 years imprisonment.

9. I now consider mitigation of sentence as follows:-

(a) For guilty plea at first opportunity – 4 years are deducted representing a 1/3 reduction according to Gideon and Scott cases. That brings your total sentence back down to 8 years imprisonment.

(b) For your past clean record and being a first time offender and good cooperation with the Police during investigations and interviews and for willingness to perform a reconciliation ceremony – There will be a further reduction of 2 years. That leaves the balance of your concurrent sentence in respect of the two offences at 6 years imprisonment.

I trust that these 6 years sentence will –

(a) Deter you and others from committing these offences.

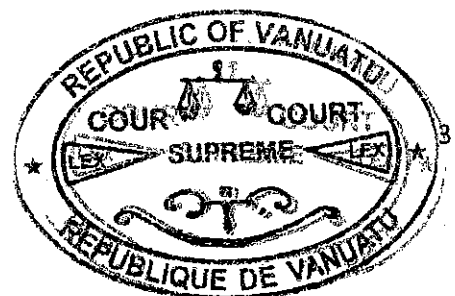
(b) Mark the seriousness of your offendings.

(c) Mark public disapproval and condemnation of your actions.

(d) Act as a safeguard and protection for the weak and vulnerable members of the community in particular young girls and women.

(e) Act as adequate and appropriate punishment for you.


10. You have been in custody under remand from 25th September 2013. Your 6 years term begins from that date.



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

DATED at Luganville this 8th day of November 2013.

BY THE COURT


OLIVER A. SAKSAK
Judge

