

PUBLIC PROSECUTOR

-v-

ATANAS AMOS

Coram: *Justice Mary Sey*

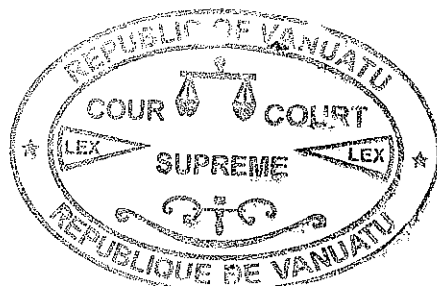
Counsel: *Ms. Marie Taiki for the Public Prosecutor*

Mr. Roger Tevi for the Accused

Date of Decision: *6 December 2016*

SENTENCE

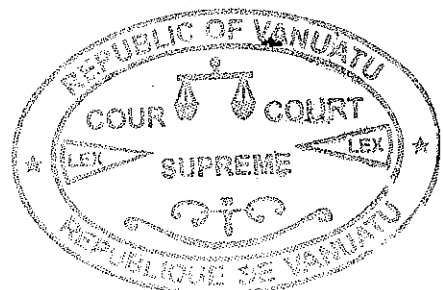
1. **Atanas Amos**, on 9 August 2016, you pleaded not guilty to two counts of sexual intercourse with a child under care or protection contrary to section 96(1) (a) of the Penal Code [CAP 135] and guilty to one count of act of indecency with a young person contrary to section 98A of the Penal Code [CAP 135]. A trial was required in respect of the two counts of sexual intercourse with a child under care or protection and the case was adjourned to 24th and 25th November 2016 for trial. On 24 November 2016, you asked to be re-arraigned and you changed your not guilty pleas in respect of the two counts to guilty pleas.
2. You were convicted accordingly and you appear today for sentence. No dispute is taken with the summary of the facts presented by the prosecutor.
3. On 13 June 2016, the complainant (who I shall refer to as MCS) lodged an official complainant against you alleging sexual intercourse with a child under care or protection and acts of indecency with young person. The complainant's mother is your de-facto wife. The alleged offences occurred sometime between 27 and 28



May 2016 at Nambatu Lagoon. The complainant was 14 years old at the time of your offending (date of birth 20.December 2002).

4. The first incident occurred during the evening of 27 May 2016. You entered MCS's room while she was asleep on her bed and you tried to remove her blanket. However she held on to it tightly and you then touched her breasts. The second incident took place the next day on 28 May 2016. MCS was at home with her 9 month old brother when you entered the house and approached her as she laid down on the bed. You started removing her trousers. She tried to pull back her trousers and push you away but you were too strong and you forcefully held her down onto the mattress and removed her trousers and panty. Then you removed your trousers and climbed on top of her and you pushed your penis inside her vagina and had sexual intercourse with her. Whilst this was going on, you opened her legs, held her arms and penetrated her vagina three times. Afterwards she felt and saw some wet milky substance running down her legs onto the mattress. The complainant felt sore in her vagina as it was the first time she had sexual intercourse. In addition, you rubbed your penis against her vagina and at one point you attempted to push your finger inside her vagina. However, you stopped when you saw that she had a frightened expression on her face.
5. The facts further reveal that MCS felt afraid and ashamed of reporting the incidents immediately as she was afraid that you would assault her and her mother. On 13 June 2016, she reported the incidents to her grandfather and on 19 June 2016 she told her aunty Salome Manbonsue also of what you had done to her. I note that prior to coming to live with you and her mother in Port Vila in 2015, MCS had lived with her grandparents in Pentecost.
6. The offence of **sexual intercourse with a child under care or protection** is dealt with under section 96(1) (a) of the Penal Code [Cap 135] which provides as follows:

"96. (1) A person must not have or attempt to have sexual intercourse with any child, not being the person's spouse, who is under the age of 18 years and who:



(a) being the person's stepchild or foster child, is at the time of the intercourse or attempted intercourse living with the person as a member of the person's family."

Penalty: Imprisonment for 10 years.

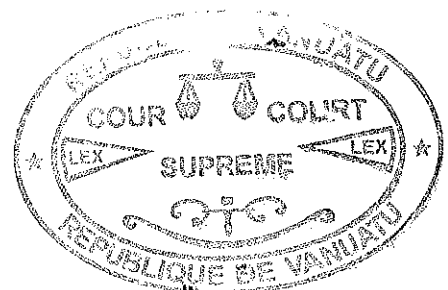
7. It is undoubtedly a very serious offence which underscores the notion that all children must be safe in their own homes. In **Peter Talivo v Public Prosecutor** [1996] VUCA 2 Criminal Case No. 02 of 1996 the Court of Appeal remarked that:

"All children are entitled to be protected by adults. Children must be safe in their own homes. When men who have the care of children abuse that trust we agree with the Chief Justice that they forfeit the right to remain within the community. In this case the custom dealing with the matter could not in and of itself be sufficient to deal with it... The Court had an obligation to mark the community disapproval of it in a serious way."

8. I am equally mindful of the following statement made by the Court of Appeal in **Public Prosecutor v Gideon** [2002] VUCA 7 which remains the principle authority in sexual offences:

"Men must learn that they cannot obtain sexual gratification at the expense of the weak and the vulnerable. What occurred is a tragedy for all involved. Men who take advantage sexually of young people forfeit the right to remain in the community."

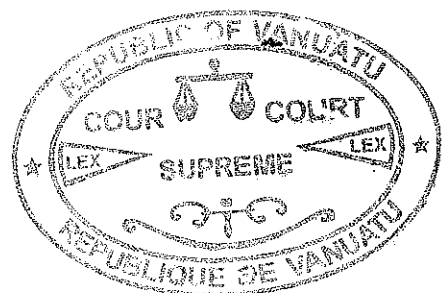
9. In **Public Prosecutor v Daniel Epsi** [2011] VUSC 287, the defendant was charged with unlawful sexual intercourse under section 97(1) and unlawful sexual intercourse under section 97(2) of the Penal Code Act [Cap135]. The defendant was 46 years of age and in a position of authority and seniority in a small village community. He took advantage of a 12 year old girl by having sexual intercourse with her when she was 12 years old and again when she was 13 and 14 years old. In sentencing the defendant the Court said:



“Taking a starting point of 7 years might be considered by some to be unduly harsh but such an approach is warranted to reflect society’s condemnation of those who sexually abuse the young and vulnerable members of our community. The sentence imposed must also reflect the seriousness of the offending, hold you fully accountable for what you have done and send out the strong message, the consistent message, that the courts will act decisively with adults who sexually abuse the young and the vulnerable. There must be a clear deterrent message embedded in the sentence and that is why the starting point here must be as high as 7 years imprisonment.”

10. **Atanas Amos**, there is a need in my view here for a prison sentence. That is necessary to mark the seriousness of the offending and to send the appropriate deterrent message out to those people who might contemplate likewise. Therefore, I adopt a starting point here of 6 years’ imprisonment. You did not plead guilty at the first available opportunity and you are therefore not entitled to full credit of one third which would have meant a reduction of 2 years from your sentence. Nonetheless, I will give you credit of one sixth thus bringing your sentence to 5 years’ imprisonment.

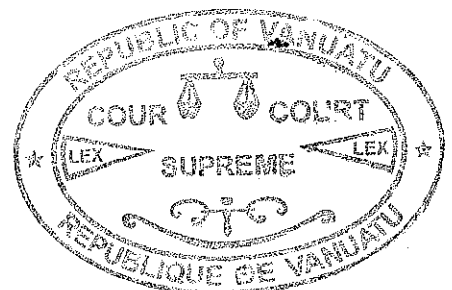
11. Regarding your educational background, you stated that you had attended primary school at your home village Unmet and you later moved on to Rensary secondary school to continue your education. You went on to say that you were later accepted at the Montmartre secondary school and then you moved to Lycee LAB where you completed year fourteen (14). You were then fortunate to be accepted to study at the Lycee Agricole de Pouembut in New Caledonia in the area of Agriculture. After returning from New Caledonia, you started your career as an Agriculture teacher at Montmartre secondary school where you were gainfully employed until you were arrested and remanded for your offending.



12. When questioned by the probation officer about your offending, you stated that you had a strong belief that you were compelled to commit the offence through some form of customary practice or black magic. You stressed that when the incidents occurred you were out of your mind and did not know what you were doing. In addition, you told the probation officer that you had asked your de-facto wife to send MCS back to Pentecost on a number of occasions because you find it very hard to maintain extra family members at your home but she was reluctant to do so for some unknown reasons.
13. Defence counsel submits that you are 30 years old and that you are a School teacher at Number 2 Lagoon. Moreover, that you are a first time offender and that you have shown remorse for your actions and cooperated well with the police.
14. I accept the fact that a custom reconciliation has been made by your Chief on your behalf and that the following items were given during the reconciliation:
 1. A pig with a value of 25,000VT
 2. A mat of 1000VT
 3. A Yam of 1000VT
 4. Cash Money of 15,000VT
 5. One kava stamp 6,000 VT

This is in accordance with section 119 of the Criminal Procedure Code which provides as follows:

"Upon the conviction of any person for a criminal offence, the court shall, in assessing the quantum of the penalty to be imposed, take account of any compensation or reparation made or due by the offender under custom and if such has not yet been determined, may, if he is satisfied that undue delay is unlikely to be thereby occasioned, postpone sentence for such purpose."

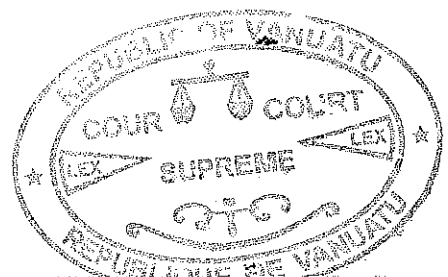


15. Although I have regard to your previous good character and the fact that you are a very hard working man, I must say that I cannot ignore the fact that you have abused MCS on at least two occasions. I am very much concerned about this especially since your de-facto wife is her mother and MCS is a child under your care and protection. I note with interest that, when assessing your offending, the probation officer concluded that you are still in denial and minimizing your offending as well as shifting the blame.
16. You need to come to terms with your offending and realise the serious impact it has had on your step-daughter. I note from the pre-sentence report that she told the probation officer that she was traumatized by what had happened to her and that at times she would cry during class break. She went on to say that she is now afraid of going out in public as she does not feel safe by herself.
17. **Atanas Amos**, the offence of rape is a most serious crime and the Court of Appeal has reiterated that there is an overwhelming need for the Court, on behalf of the community, to condemn in the strongest terms any who abuse young people in our community. Children must be protected.
18. It is noteworthy that there are matters that I have seen from the pre-sentence report and from your counsel's submissions that encourage me to reduce your sentence further by 1 year. So that the appropriate end sentence here for the two counts of **sexual intercourse with a child under care or protection** is one of 4 years' imprisonment on each count.
19. As regards the offence of **act of indecency**, section 98A of the Penal Code [CAP 135] states that:

"98A. A person must not commit an act of indecency upon, or in the presence of another person under the age of 15".

Penalty: Imprisonment for 10 years.

For your offending in respect of this count, I hereby sentence you to 1 year imprisonment. You pleaded guilty to this count at the first available



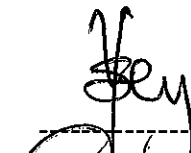
opportunity on 9 August 2016. You are therefore entitled to one third credit leaving an end sentence of 8 months' imprisonment on this count.

20. All your sentences are to run concurrently which means you should serve a total of 4 years' imprisonment for your offending. The sentences are deemed to have come into effect from 15 June 2016 which was the day you were first arrested and taken into custody. You have 14 days to appeal this sentence if you do not accept it.

21. I must say I have been greatly assisted by the prosecution and defence submissions and also by the pre-sentence report.

DATED at Port Vila, this 6th day of December, 2016.

BY THE COURT


M.M. SEY
Judge

