



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

Criminal Case No 18/2355

PUBLIC PROSECUTOR VS- SIMON ANTHONY

Coram: *Mr. Justice Oliver A. Saksak*

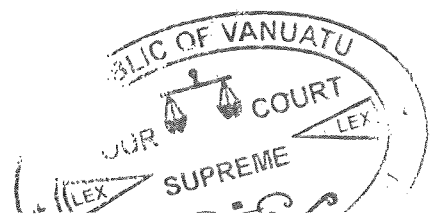
Counsel: *Damien Boe for Public Prosecutor
Steven Garae Junior for Defendant*

Date of Pleas: *3rd September 2018 and 4th March 2019*

Date of Sentence: *6th March 2019*

SENTENCE

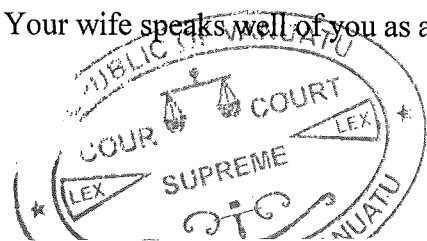
1. Simon Anthony you initially pleaded not guilty to one charge of sexual intercourse with child under care and protection on 3rd September 2018 at the Court in Luganville, Santo. The charge is laid under section 96 (1)(a) of the Penal Code Act [CAP.135]. It carries a maximum penalty of 10 years imprisonment.
2. The charge was put back to you on 4th March 2019. You then entered a plea of guilty. You are therefore here for sentence today.
3. The facts are simple. The victim complainant (G.A) is your adopted child. She was 18 years old at the time of offending. She lived with you and your wife at Bongwosor and was attending Arep Junior Secondary School at the time. On the night of 26 July 2017 you entered the girl's room and forced her to have sexual intercourse with her. You told her to remain quietly. You warned her that if your wife heard what you were doing she would put her out of the house. She then succumbed and sex took place. Sexual intercourse occurred on many other times subsequently for more than 20 times. The last time was on 2nd April 2018 when you forcibly imposed yourself on the girl against her will. You had blocked her mouth so she was not able to yell out. She felt bad about all your actions as an active advocate against violence on women. She became pregnant as a result of all your actions. She eventually left the house and made a formal complaint to the police. The police investigated and you had admitted to them about all these.



4. I have heard submissions from Mr Boe and Mr Garae as to what your punishment and the starting sentence should be. In my view the appropriate punishment for you should be a custodial sentence. It is inevitable based on the sentencing principles in PP.v. Gideon [2002] VUCA 7 and Talivo.v.PP [1996] VUCA 2. It is clear that you took advantage sexually of a young girl under your care and abused her causing her, to be pregnant.
5. I therefore convict you for the offence as charged and sentence you to a starting sentence of 5 years imprisonment.
6. I consider that there should be an uplift of 3 years imprisonment for the following aggravating features:
 - a) Serious breach of trust.
 - b) Serious consequences such as pregnancy and loss of education and prospect of a good future.
 - c) Loss of dignity.
 - d) Repetitions of actions over a period of 8 months from July 2017 to March 2018.
 - e) Offendings occurred within the confines of the home where she should feel safe.
 - f) Some degree of force and threats of expulsion used.
 - g) Abuse of personal position as male advocate of violence against women.
 - h) Previous conviction in Criminal Case No. 2356 of 2018.

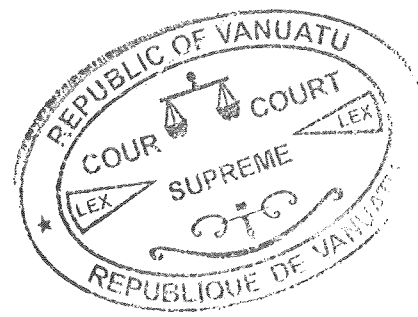
Your starting sentence of 5 years is now increased to 8 years imprisonment.

7. I now consider your mitigating factors. I have seen a Same Day report submitted by the Probation officer. And I have heard Mr Garae urging the Court to take into account the mitigating factors submitted to reduce sentence.
8. I note that you are 30 years old, married but with no children of your own. Your highest education level was Year 7. You have some mechanical, saw milling, carving and gardening skills which you use to earn income to feed your family and to support your sister who attends, Year 9 at Arep School. You have an ill and disabled mother. There is no medical report to confirm this. Your father passed away in January this year (2019). These are unfortunate circumstances indeed. Your wife speaks well of you as a



good and supportive husband. And your chief also speaks well of your participation in community developments and activities. Your relationship with family members and community was good until your offendings came to light and gave rise to some disputes. As for your health it is stated that sometimes you experience chest pains and have to take medication. I have no medical report confirming this. Your aim is to build a decent home for your family. I note your wife's letter of concern. And I note you performed custom ceremony to G.A by giving 1 mat, 1 pig, VT 17.000, 1 40 yard Roll Calico and 1 leave wesmat of high value in custom signifying peace.

9. I consider that your only relevant mitigating factors is your performance of a custom ceremony showing remorse. I allow a deduction of 1 year from your 8 years leaving the balance at 7 years.
10. As regards 1/3 reduction you admitted your offending to the police during interview but pleaded not guilty perhaps due to not being properly advised. For this reason you are entitled to 1/3 reduction on your guilty plea albeit late. Your sentence of 7 years is therefore reduced by 2 years 4 months leaving your sentence at 4 years and 8 months imprisonment.
11. I noted that you spent 6 months in custody on remand from 9th April 2018 to 6th September when you were released on bail. I have deducted these from your sentence in Criminal Case 2356/2018. You are not entitled to the same deduction twice.
12. I accept Prosecution submissions that there is no exceptional circumstances that warrant the imposition of a suspended sentence.
13. Your sentence of 4 years 8 months imprisonment begin forthwith today. This sentence shall be served consecutively with the 3 years and 8 months sentence imposed on you in Criminal Case No. 2356/2018.
14. You have a right of appeal against this sentence within 14 days if you do not agree with it.



DATED at Sola this 6th day of March 2019

BY THE COURT


Oliver.A.Saksak

Judge

