



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

Criminal Case No 18/2603

PUBLIC PROSECUTOR VS- ROMAN SION

Coram: *Mr. Justice Oliver A. Saksak*

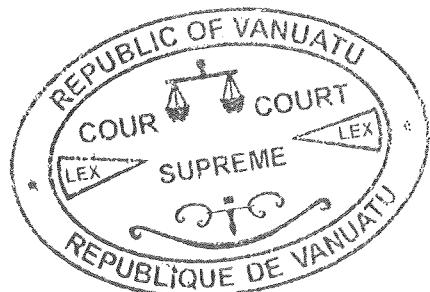
Counsel: *Damien Boe for Public Prosecutor
Steven Garae Junior for Defendant*

Date of Pleas: *24th September 2018 and 4th March 2019*

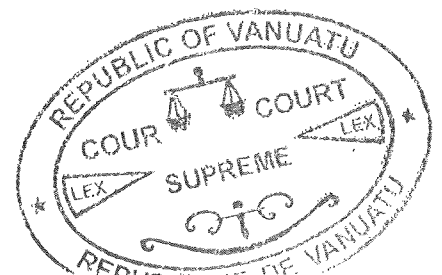
Date of Sentence: *6th March 2019*

SENTENCE

1. Roman Sion you are here for sentence for having pleaded guilty to one charge of unlawful sexual intercourse (Count 2) on 24th March 2018, and to the same charge in Count 1 after the charge was replead to you on 4th March 2019, you admitted the charge.
2. Unlawful intercourse with a child under the age of 13 years is serious offence as it carries a maximum penalty of life imprisonment, under the amendment of 2016.
3. The facts are simple. On 12 April 2018 you asked the complainant and two other girls to follow you to the garden. At a place called Twitwat you told the two girls to wait but the complainant insisted one of them called Betina to accompany her to the garden with you. After working in the garden you then instructed Betina to return home leaving you and the complainant behind. You then asked the complainant to follow you to have a look at a bunch of bananas. In doing so you asked her to move closer to you. She did not want to but you forced her to do so. You then removed her trousers and she refused. You then removed her clothes yourself leaving her standing naked. You then knelt down and sucked on her vagina for a while. Then you stopped and inserted a finger into the girl's vagina. You then asked her to lie down three times but she refused. You had promised to give her VT 200 for those acts. The girl returned to her parents and reported all these things to them.



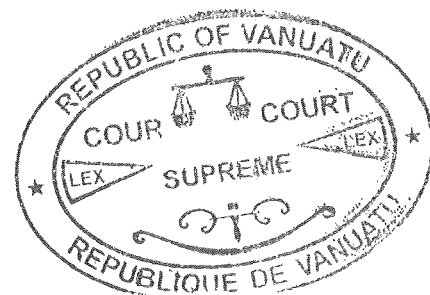
4. You have agreed and accepted those facts.
5. The complainant was only 11 years old. She is your niece. She lived with you at the time and was attending school. She did not attend school after the incident. She returned to her parents and reported you to them. The offendings occurred in the bush with only you and her. She had refused but you forced her to come closer to you, then you removed her clothes and performed those acts on her. The acts were repeated more than once by in the use of the tongue first and the finger later. You would have harmed her if she did not give in to your demands. These are the aggravating features of your offendings.
6. The acts were committed on the same date and at the same time. The first time you used your tongue and thereafter you used your finger. The use of the finger by inserting it into the vagina and the tongue licking or sucking the vagina falls within the definition of sexual intercourse under section 89A of the Penal Code Act CAP 135.
7. I have heard Mr Boe and Mr Garae in relation to what punishment the Court should impose on you. It is clear you took advantage of this young girl and sexually abused her. According to PP.v. Gideon [2002] VUCA 7 and Talivo vs PP [1996] VUCA 2 the only appropriate punishment the Court will impose is a custodial sentence. The principles of sentencing in PP.v. Kalosil [2015] VUSC 149 R.V.Radich [1954] NZLR 86 and Veen.v. The Queen are applied to your case.
8. I therefore convict and sentence you as follows-
 - a) For unlawful sexual intercourse in Count 1- starting sentence of 6 years imprisonment.
 - b) For unlawful sexual intercourse in Count 2- starting sentence of 6 years imprisonment concurrent with the sentence for the offence in count 1.Altogether you are sentenced to serve 6 years imprisonment as a concurrent sentence.
9. I will increase your concurrent sentence of 6 years by 3 years for the following aggravating features:-



- a) Serious breach of trust,
- b) Loss of dignity,
- c) Some degree of force and pressure,
- d) Isolated location with risk of victim's safety,
- e) Great age disparity between victim and defendant,
- f) Repeat offendings,
- g) Previous criminal history of sexual offending, and
- h) Some degree of planning.

Your sentence of 6 years imprisonment is now increased to 9 years imprisonment.

10. I now consider your mitigating circumstances. I note your Same Day Report showing you are 44 years old and married with 4 children 2 of these are already married and 2 are still under your responsibility and support. You have no educational background. You are a simple villager with farming, gardening and fishing skills. You are the sole breadwinner for your family. Your ambition is to plant kava and other root crops to sell and earn an income. Your wife has had 4 operations in birthgiving and cannot do heavy work. There is no medical report confirming this. Your wife and your chief both speak well of you. You have shown remorse by performing custom ceremony in which you paid VT 20.000 in cash, 1 pig, 1 head kava and 1 wesmat of customary value.
11. I consider the only relevant mitigating factor to be the reconciliation ceremony. I allow 1 year reduction for this. Your sentence is reduced to 8 years imprisonment.
12. Next I consider whether you are entitled to a 1/3 reduction for guilty plea. You pleaded guilty to the charge in Count 2 on 24th September 2018. That is sufficient to entitle you to a 1/3 reduction from 8 years which is 2 years and 8 months. The balance of your sentence is 5 years and 4 months.



13. I take into account your pre-custodial period of 6 months and 11 days from 23rd August 2018 to 6 March 2019. So that you do not lose your parole privilege, I order that your end sentence of 5 years 4 months be backdated to 23rd August 2018.

14. That is our sentence. You may wish to appeal if you do not agree with it, in which case you have 14 days to do so.

DATED at SOLA this 6th day of March 2019

BY THE COURT


OLIVER.A.SAKSAK

Judge

