

**PUBLIC PROSECUTOR v FELIX VARI**

**Before:** Chief Justice V. Lunabek

**Appearances:** Mr D Boe for the State  
Mr L. Tevi for the Defendant

**Date of Plea:** 25 April 2023

**Date of Sentence:** 5 May 2023

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**SENTENCE**

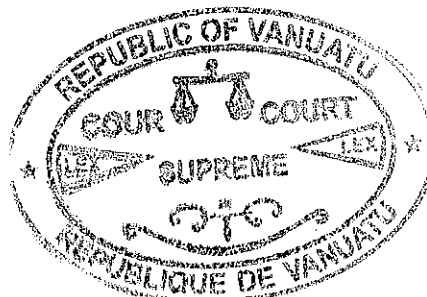
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**A. Introduction**

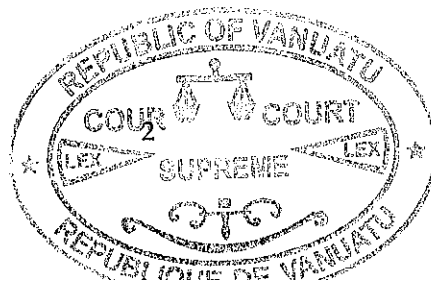
1. Felix Vari, you appear today for sentence. On 25<sup>th</sup> April 2023, you entered a guilty plea on one count of attempted unlawful sexual intercourse with a girl under Section 97(1) and 28(1)(2) of the Penal Code.

**B. Facts**

2. You are from Tutuba island, Santo. You live and reside in the area of the Fire Station in Luganville, Santo at the time of the incident.
3. The complainant is a girl of 12 years of age and she was born on 15 January 2010. She attended class 5 at NTM School and she resides at Solomon Hill area at Luganville, Santo at the time of the incident.
4. The complainant recalled that on 8 August 2022 around 4pm in the afternoon at Solomon Hill she had finished school and walked along her normal route to go back home, she walked following the main road at Solomon's hill.



5. Along the road right at where the mortuary is located, she met you, Felix Vari. She did not know who you were at the time but she described you as black and short, you had an undercut hairstyle with a braided rasta, you were wearing black and white shirt and black trousers.
6. You were calling out to her but she did not want to take notice she continued to walk on. She passed a family she did not know along the road and continued to walk but she noticed that you were following her.
7. She walked until she reached the area where a water tank was located. You reached her. You took the complainant's hand and you pointed in the direction of a bush behind the water tank, you told the complainant that you and her will go in that direction. The complainant was afraid there was no one around she told you that when she finishes school she has to follow the main road to go back home but you forced her repeatedly telling the complainant that she has to follow you. The complainant was afraid and followed you. While walking into the bush, the complainant tried to walk in the direction of a garden she recognized belonging to some family members but you stopped her.
8. As the complainant had just finished her classes for that day, she was still wearing her uniform shirt and skirt. You lied to the complainant that your name was Jack. You told the complainant to remove her clothes, she refused.
9. You then removed the complainant's skirt, trousers and panty, you kissed her on the mouth and made her sleep on the ground. You then laid on top of the complainant, she was afraid and began crying. You then put your penis to the complainant's vagina and tried to penetrate the complainant's vagina with your penis but without success. The complainant could feel your penis hitting against the outside of her vagina.
10. Afterwards you wore back your clothes, the complainant wore back her clothes and walked back home. When she reached home, she was upset and began crying. Her parents were at home and she told her father of what had happened to her.
11. The complainant's parents were at home when the complainant returned home. They were both checking the time as it was getting late and the complainant had not returned home. Her mother, Lendy Siba the decided to walk along the road to check for the complainant. But then the complainant returned home. They both saw that the complainant's uniform skirt and shirt were dirty and that she was crying.
12. The complainant's parents saw that something was wrong and her father questioned her. The complainant told him everything that happened to her and that she recalled that you worked at Franklyn Construction at Solomon's Hill as she recognized seeing you in that yard.



13. The next day on 9 August 2022 the complainant and her parents went to Franklyn Construction yard, the complainant pointed out you to them. When you saw them you went and hid. The complainant's father asked the boys in the yard for your name and they told him that your name is Felix and that you are from Tutuba.
14. The complainant was medically examined on 10 August 2022 by Dr Thomas Sala. His examination showed normal examination, no physical evidence of penetrative sexual intercourse.
15. On 9 August 2022 Sergeant Peter Solwie the Crime Scene Officer visited the crime scene at Solomon Hill.
16. Photographs show the complainant pointing out the location of the incident close up and over all view of the bush where the incident took place.
17. The records of interview conducted by Corporal Noelline Stephen in the presence of PC Florida Masingnau showed that you understood your rights and the allegations made against you. You stated that you knew the complainant. You thought the complainant was 14 or 15 years old. You said that you had sexual intercourse with the complainant on a previous occasion but that you did not force her. That you were sorry for what you did and that you will not do it again.

**C. Sentence start point**

18. Sexual intercourse with any child under the age of 13 years is unlawful and is prohibited by Section 97(1) of the Penal Code.
19. In this case, you are charged with an attempt to commit an unlawful sexual intercourse with a child girl of 12 years of age at the time of the incident.
20. Section 97(1)(3)(4):

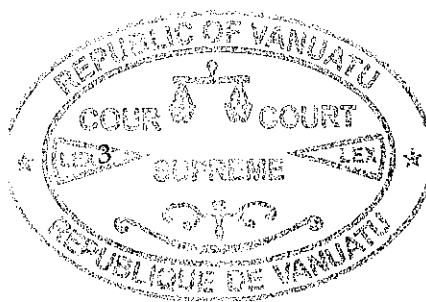
(1) *No person shall have sexual intercourse with any child under the age of 13 years.  
Penalty: Imprisonment for life.*

(2) ...

(3) *It is no defence to a charge under this section that the child consented or that the person charged believed that the child was of or over the age in question;*

(4) *The child shall not be charged as party to an offence under this section;*

(5) ..."



21. Section 28 prohibits an attempt to commit a criminal offence. In this case, you attempted to commit the offence of unlawful sexual intercourse with a child under 13 years. Section 28(1)(4) provides:

"(1) *An attempt to commit a criminal offence is committed if any act is done or omitted with intent to commit that crime and such act or omission is a step towards the commission of that crime which is immediately connected with it, or would have been had the facts been as the offender supposed them to be.*

(2) ....

(3) ...

(4) ***The commission of an attempted offence shall constitute an offence punishable in the same manner as the offence concerned.*** (Emphasized)

(5) ...

22. As the law stands, an attempted offence is an offence and is punishable in the same manner as the offence concerned. Here, the offence concerned is unlawful sexual intercourse with a child under 13 years of age. The maximum sentence for this offence is life imprisonment. An attempted unlawful sexual intercourse is punishable with a maximum sentence of life imprisonment. It is a very serious offence as reflected by the maximum sentence imposed by law.

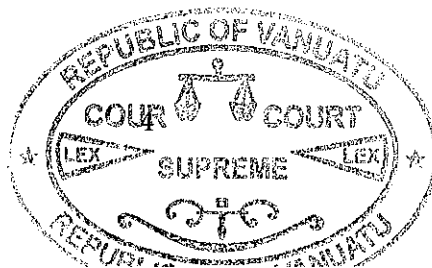
23. In the present case, there is no personal features to the offending but the following are the aggravating factors to the offending:

- The effect of this offence on the victim, whether physical or mental;
- The age difference between you and the complainant

24. I set 6 years imprisonment as your start point sentence for this offending.

#### D. Mitigating factors

25. You are from Tabunamalao village, Tutuba island, Santo. You are the second of the children of your family. The Court is not informed about your age. You live with a woman in a defacto relationship and you have a child of 7 months together. Your highest level of education is Year 11 at Matevulu College in 2019. You also attended the technical school of Saint Michel for 8 months and you obtained a certificate in joinery. In 2022 you worked for Fanklyn Joinery and Construction company at Solomon Hill where you met the complainant. You are a first time offender and you do not have a previous conviction. You help your family and your community. You are a member of Seventh Day Adventist Church. I am prepared to allow 6 months deduction from your sentence start point.



26. You pleaded guilty at the earliest opportunity after the prosecution amended the charge to an attempted offence. I give you a full one third allowance to reflect this. Your sentence is further reduced to 44 months that is 3 years and 4 months.
27. There is no custom reconciliation although you intend to perform one. There is no indication for such a customary reconciliation from the complainant's family.

**E. End Sentence**

28. Your sentence is 3 years 4 months imprisonment.
29. The pre-sentence report indicates that you were remanded on the 2<sup>nd</sup> September 2022 and released on bail conditions on the 12<sup>th</sup> September 2022. You have a total pre-custodial period of 13 days. The pre-custodial period of 13 days will be further deducted from your end sentence. You are now sentenced to 3 years 2 months 17 days imprisonment. That is your final end sentence.
30. The nature and seriousness of the offence do not justify a suspension of your imprisonment sentence of 3 years 2 months and 17 days.

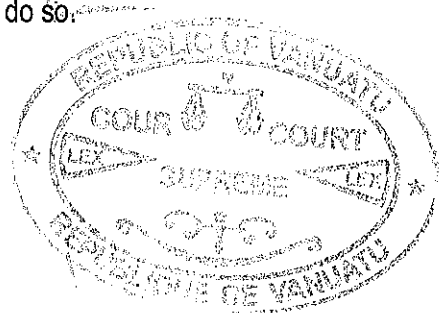
**F. Appeal right nd Section 50 of Penal Code situation**

31. You have 14 days to appeal this sentence if you are unsatisfied with it. The 14 days starts at the date of this sentence ie. 4 May 2023.
32. Your situation reminds me of the provisions of Section 50 of Penal Code which states:

*"Commencement of sentence*

*50. If the offender has not been held in custody pending trial and no warrant of arrest or remand is issued against him or her at the time of conviction in the circumstances authorized by the rules of criminal procedure, no sentence of imprisonment may be enforced until the time of appeal against such sentence has expired or the offender earlier elects to begin serving his or her sentence."*

33. You shall start serving your sentence of 3 years 2 months and 17 days on Thursday 18 May 2023 or if you elect (choose) to start your sentence earlier, you may do so.



34. I direct that the Correctional Services Centre manages this special situation of this detainee by recording the date Mr Felix Vari starts his sentence. If, after 14 days (Thursday 18 May 2023), Mr Felix Vari fails to attend the Correctional Centre to start his imprisonment sentence, application should be made to the Supreme Court for his arrest and to be brought into the Correctional Centre to start serving his sentence.

**DATED at Luganville, Santo, this 5<sup>th</sup> day of May, 2023**

**BY THE COURT**



**Chief Justice V. Lunabek**

