



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

Criminal Case No.2735 of 2017

PUBLIC PROSECUTOR VS- BONG JAMES

Coram: Mr. Justice Oliver A. Saksak

Counsel: Damien Boe for Public Prosecutor
Junior Garae for the Defendant

Date of Re-arraignment and Plea: 21st November 2017
Date of Sentence: 23rd November 2017

SENTENCE

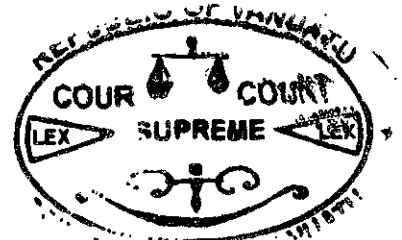
1. Bong James you are here for Sentence for having pleaded guilty to 4 counts of Acts of Indecency without Consent contrary to section 98 (a) and (b) of the Penal Code Act on 21 November 2017.
2. You had initially pleaded not-guilty to all 5 Counts and trial had began. After the prosecution had called evidence from 2 of their 7 witnesses you sought leave to be re-arraigned. Leave was granted. On re-arraignment you pleaded guilty to 4 counts and pleaded not guilty to the charge in Count 5. The prosecution entered nolle prosequi and you were acquitted of the charge in Count 5.
3. The facts are simple. The charges in Counts 1, 2, 3 and 4 are laid under section 98 (a) and (b) which states:

“ A person must not commit an act of indecency on, or in the presence of another person:

 - (a) *Without that person’s consent, or...*
 - (b) *With that person’s consent of the consent is obtained:*

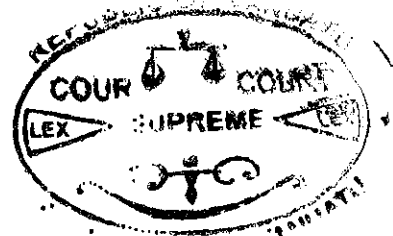
By force, or...

Penalty : 7 years imprisonment.”
4. In March and April 2017 on the first occasion you touched Sheila Kalran’s breast. On the second occasion you touched her vagina. And on the third occasion you held her hand and forced her to touch your penis.



Later on 18 July you deliberately exposed your penis to Dores Arur. All these incidents happened in the house you lived in at Santo East School. Sheila gave her age at 17 years and Dores gave her age at 15 years at the time of making their complainants. Sheila is your biological daughter born to Leisau your first wife but have since then separated. Dores is your niece. You took Sheila over from Malekula for Christmas in 2016 to live with you together with you other siblings. Dores your niece was living with you also at the time when the incident happened to her in July 2017. Your actions were repetitive and deliberate.

5. From your Same Day Report it appears you are trying to shift blame and responsibility for your actions on Sheila for her misbehaviour. You explain that you were ‘teaching’ her by touching the different parts of her body. But clearly your explanation affords you no excuse. You as a father to Sheila and uncle to Dores acted very inappropriately and you went too far. Unfortunately the actions did not go beyond touching of private parts and exposure. Nevertheless your actions are clearly prohibited by law in that they were done to the girls without their consents.
6. In my view your offendings by comparison to the sentences imposed in the cases referred to by Mr Garae fall within the lower end of the scale for this category of offending. The offendings attract a custodial sentence in order to:-
 - (a) Mark the seriousness of the offences
 - (b) Mark the Court’s condemnation of your actions
 - (c) Deter you and like-minded persons.
 - (d) Protect young girls and women in general.
 - (e) Punish you adequately
7. Taking the aggravating features and the facts in totality your sentence will be one of imprisonment and the starting point shall be 3 years imprisonment.
8. I have considered the submissions made in your behalf by Mr Garae and the case laws cited. The majority of those cases support a suspended sentence and a sentence of community work. I accept that you are entitled to reductions for:-



(a) Guilty plea but it will not be at the full 1/3 but only 50% of it. Therefore whereas the full 1/3 remission of 3 years would be 1 year (12 months) you are entitled to only 6 months. This is because you decided to change pleas late after trial had started.

The balance of your sentence is 2 years and 6 months imprisonment.

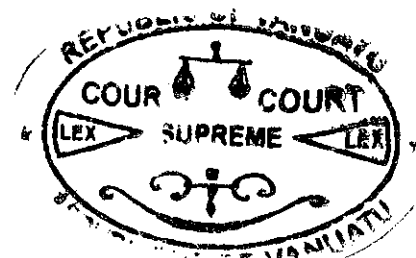
(b) You performed custom reconciliation to Sheila and her mother by paying fine at VT 20.000, a pig and local food (Taro, Kumala and banana). This shows remorse on your part.

(c) You are a first time offender with clean past record for (b) and (d) together a deduction of 6 months is made leaving the balance of your sentence at 2 years imprisonment. I therefore convict you and sentence you to 2 years imprisonment on each of the 4 counts to be served concurrently.

9. I consider that this is a case where your term of imprisonment should be suspended. Accordingly I Order that your end sentence of 2 years imprisonment be suspended for 2 years under section 57 of the Penal Code Act. This means that within 2 years from the date of this sentence you must not commit these offences again or any other criminal offences (s) for which you are charged and convicted. If you do, you will go to prison to serve out your 2 years imprisonment terms.


10. Finally for completeness I consider that I is appropriate for the Court to impose an additional Order for community service. Accordingly I order that you perform community work for 100 hours within a period of 12 months from the date of this order.

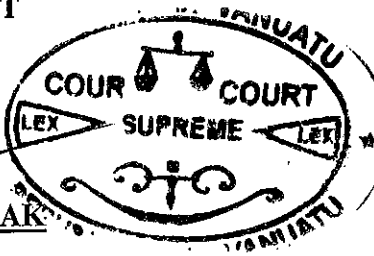
11. That is the sentence of the Court. You have a right of appeal against sentence within 14 days if you so choose.



DATED at Luganville this 23rd day of November 2017

BY THE COURT


OLIVER A. SAKSAK



Judge