

PUBLIC PROSECUTOR

VS-

**CLEMENT SURMAT,
ANTHONY SURMAT,
JAMES SURMAT,
ISHMAEL SURMAT,
JOHNNY SURMAT**

Coram: *Mr. Justice Oliver A. Saksak*

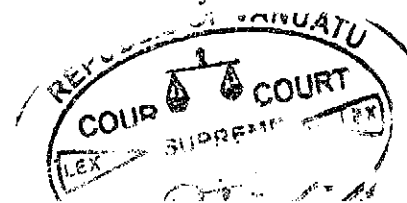
Counsel: *Damien Boe for the Public Prosecutor
Junior Garae for the Defendants*

Date of Plea: *7th May 2018*

Date of Sentence: *18th May 2018*

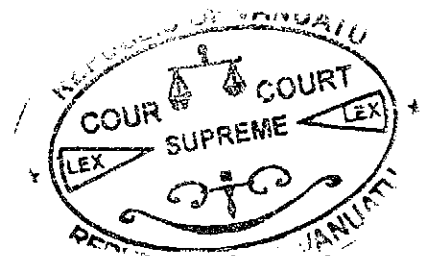
SENTENCE

1. Clement Surmat, James Surmat, Johnny Surmat, Anthony Surmat and Ismael Surmat, you are all here for sentence after each of you pleaded guilty to a joint representative charge of unlawful sexual intercourse contrary to section 97 (2) of the Penal Code Act [CAP.135]. This offence carries a maximum penalty of 15 years imprisonment. Parliament in 2016 amended the Act to increase the penalty by 5 years to reflect the seriousness of this offence in light of the current increase and regular reoccurrences of the offence.
2. Clement Surmat you were charged also with sexual intercourse without consent to which you pleaded not guilty. However the Court entered nolle prosequi under section 29 of the Criminal Procedure Code Act [CAP. 136]. You have been acquitted of the charge.
3. Although you are all charged together ,each of you committed the offence on different dates as follows-
 - a) Clement Surmat- First time around on a Saturday afternoon in June 2017 the victim Annie Baha was walking to Presley's house to collect some money for

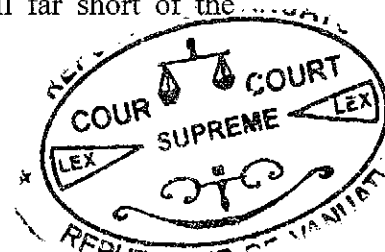


her mother's savings. You followed her with a bush knife in your hand. You got up with her and told her to go into the bush. She hesitated but you pointed the knife at her and told her you would cut her with the knife if she did not. She was frightened and went into the bush. You went after her and demanded her to remove her clothes fast. She did and laid down on the grass and you had sexual intercourse with her. You ejaculated into the ground, then left her.

- b) The second time was in September 2017, when you told her to go into the bush again and had sex with her. The last time you had sex with her was on 6th October 2017. There were other times that you had sex with her. You admitted having sex with her about six or seven times. The victim is now pregnant and you have accepted that you are the father of the baby. You knew she was 14 years old.
- c) James Surmat, you had unlawful sexual intercourse with Annie Baha two weeks after Clement had sex with her. You met her at the water pump and told her to go into the bush and wait for you. You followed her there, told her to remove her clothes and then you had sex with her. You ejaculated into the ground. You did so because Clement had told you he had previously had sex with her. You had sex with her about four times and you knew she was 14 years old.
- d) Johnny Surmat, in July 2017 after Clement and James had told you they had had sex with her, you followed her into the bush, kissed her and after she removed her clothes and laid down, you had sex with her and ejaculated on the grass. Then you told her to return to her house. You think you had sex with her 4 times. You knew she was only 14 years old.
- e) Anthony Surmat, you had sex with Annie Baha two times. First in August 2017 after church and again in September 2017. You knew she was 14 years old.



- f) Ishmael Surmat, you had sex with Annie Baha once in August 2017 when you asked her to go down to the water pump for a bath. You did not know she was 14 years old at that time.
4. Your victim was one and the same girl. She was 14 years old. Although she may have been acting foolishly and willingly at the time of the offendings, that did not give you any excuse at all to be ignorant of her age and to take advantage of her and to abuse her sexually.
5. The classic case on unlawful sexual intercourse is the case of **PP.v. Gideon** [2002] VUCA 7 where the Court of Appeal say this
- “There is an overwhelming need for the Court on behalf of the community to contempt in the strongest terms any who abuse young people in the community. Children must be protected. Any suggestion that a 12 year old has encouraged or initiated sexual intimacy is rejected. If a 12 year old is acting foolishly then they need protection from adults. It is totally wrong for adults to take advantage of their immaturity.....*
- Men must learn that they cannot obtain sexual gratification at the expense of the weak and the vulnerable. What occur is a strategy for all involved. Men would take advantage sexually of young people forfeit their rights to remain in the community.”*
6. The sentences imposed on offenders in the cases of
- a) PP vs Shing [2015] VUSC 58,
 - b) PP.v. RY [1993] VUSC 19,
 - c) PP.v. Selu [2011] VUSC 286, and
 - d) PP.v. Patrick [2014] VUSC 186
- are consistent with the Court of Appeal decision in Gideon’s case.
7. The cases of **PP.v. Markmoi** [2015] VUSC 94, **PP.v. John** [2016] VUSC 157, **PP.v. Aru** [2014] VUSC 141 and **PP.v. Tomol** [2009] VUSC 28 fall far short of the requirement of being consistent with the Gideon case principle.



8. The Court will apply the Gideon principle to maintain consistency. That means that for each of you the only appropriate punishment will be a custodial sentence.

9. The purpose of this are well established and these are-

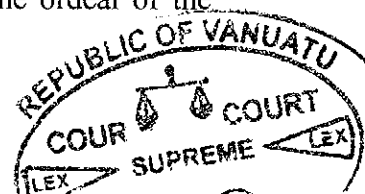
- a) To mark the seriousness of your offendings,
- b) To mark the Court's condemnation of your actions,
- c) To be a deterrence for you and other like-minded men,
- d) To protect young girls, women and the vulnerable members of the community,
and
- e) To punish you adequately.

10. You are therefore each convicted and sentenced as follows:-

- a) Clement Surmat- You are the most culpable of the lot. It was you who started this chain of offendings by telling James Surmat who followed suit. Had you not done so, the others would not have followed and fallen into the same pit.

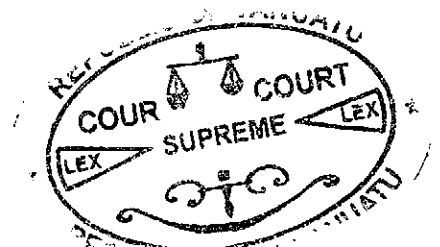
For the 6 to 7 times of unlawful sexual intercourse a starting sentence of 7 years imprisonment is imposed with no uplift. Your sentence is reduced for being a first time offender, custom reconciliation and good cooperation with the police during investigation by 12 months, leaving the balance at 6 years. And in addition you are entitled to a 1/3 reduction for your guilty plea. Two years are deducted so your end sentence is 4 years imprisonment. There will be no suspension of sentence. Your sentence is backdated to 23rd February 2018 when you were first remanded in custody.

- b) James Surmat- for the 4 times of unlawful sexual intercourse, your starting sentence is 4 years imprisonment with no uplift. I reduce your sentence by 12 months for being of clean past record, custom reconciliation and good cooperation with the police. The balance is 3 years. You are entitled to a further 1/3 reduction for your guilty plea saving time and the ordeal of the



victim having and retell the whole story in open Court in a trial. 1 year is taken away from 3 years leaving the end sentence to be 2 years imprisonment. There will be no suspension of sentence. Your sentence is backdated to 23rd February 2018 when you were first taken into custody.

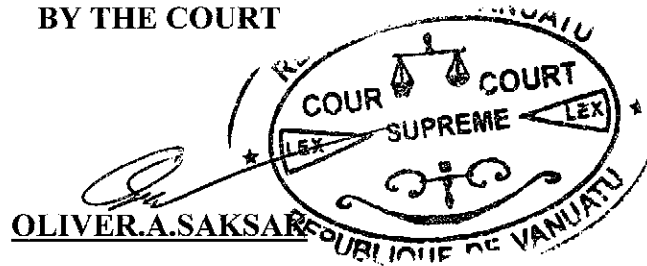
- c) Johnny Surmat- Your starting sentence is 4 years imprisonment. I deal with you in exactly the same way as James Surmat for the four occasions you had sex with the complainant. Your sentence is reduced by 1 year for the same mitigating factors leaving the balance at 3 years. And for a 1/3 reduction, a further 1 year is allowed leaving your end sentence at 2 years imprisonment. Your sentence will not be suspended. And your sentence is backdated also to 23rd February 2018.
- d) Anthony Surmat- For the two occasions you had unlawful sexual intercourse with the complainant, your starting sentence is 3 years imprisonment with no uplift. For your clean past record, custom reconciliation and good cooperation with Police, I reduce your 3 years by 1 year leaving the balance at 2 years. I deduct 1/3 for your guilty plea leaving the end sentence at 1 year and 4 months or 16 months imprisonment. Your sentence will not be suspended but it is backdated to 23rd February 2018 when you were first remanded into custody.
- e) Ismael Surmat- For you Ishmael, for having committed unlawful sexual intercourse only one time, you are sentenced to a starting sentence of 2 years imprisonment. I deduct 12 months for your clean past record, custom reconciliation and good cooperation with the police leaving the balance of 1 year. I reduce this 1 year by 1/3 for your guilty plea leaving the balance of 8 months imprisonment. This sentence will not be suspended but is backdated to 23rd February 2018 when you were first remanded in custody. By 23rd May 2018 you will have served ½ of your 8 months sentence. You will be entitled to an automatic release on parole after 23rd May 2018.



11. That is the sentence of the Court for each of you. You each have a right of appeal against your sentence within 14 days if you are not happy with them.

DATED at Luganville this 18th day of May 2018

BY THE COURT



OLIVER.A.SAKSAR

Judge