

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

Criminal
Case No. 18/3371 SC/CRML

PUBLIC PROSECUTOR
v.
SAMSON TASSO

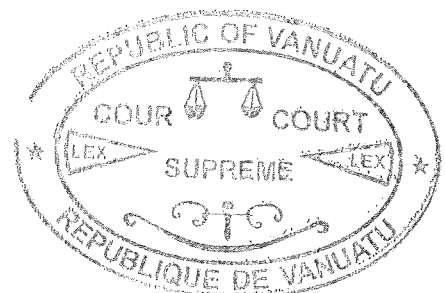
Coram: *Justice D. V. Fatiaki*

Counsel: *Mrs. B. Pakoasongi for the State*
Mrs K. Karu for the Defendant

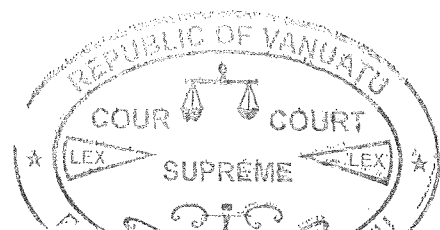
Date of Sentence: *1 March 2019*

SENTENCE

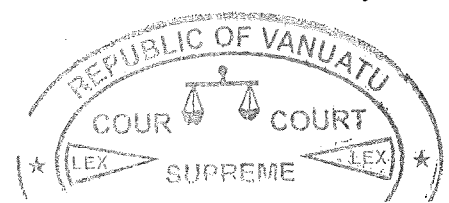
1. On 11 December 2018 the defendant was convicted on his guilty plea (“*hemi tru*”) to a charge of Act of Indecency With a Young Person committed on a girl child aged 5 years.
2. The brief facts of the offence which the defendant admitted are that on Sunday 9 September 2018 while the defendant and the victim were alone at home, the defendant approached the victim, removed her underwear and began touching her vagina. After a while the defendant unzipped his trousers, took out his penis and made the victim touch it.
3. Fortunately for the victim her 42 year old grandmother returned from church and caught the defendant red-handed, sitting naked on a chair with his penis exposed and the victim standing in front of him. On witnessing this, the grandmother fainted and when she regained consciousness, the 28 year old defendant who was her defacto partner apologised to her and went and surrendered himself to the police.



4. Under police caution on 10 September 2018, the defendant gave a voluntary statement in which he frankly admitted committing the offence on the victim who was the grand-daughter of his defacto partner. He claims that he committed the offence because he was not happy with his partner not allowing him to see his own children from an earlier defacto relationship whenever he had wanted to. In other words it was an act of revenge.
5. The offence of Act of Indecency With a Young Person contrary to Section 98A of the Penal Code is a serious offence that carries a maximum penalty of 10 years imprisonment. Furthermore, there can be no doubting that a grown man undressing and gratuitously touching an infant girl's vagina and then making her touch his naked penis are indecent acts by any measure of acceptable behaviour and decency of ordinary members of society. Even the defendant admits as much with his guilty plea and apology and in seeking forgiveness from his defacto partner and the victim's parents.
6. Samson Tasso what you did to that little girl was opportunistic and disgusting and, on your own admission, was intentional. There can be no possible justification for it. It is simply unacceptable conduct. Your claim that it was somehow an act of revenge or retaliation, can never excuse or reduce the seriousness of your offending. Your victim may be related to your defacto partner, but, she is a totally innocent child whatever might be the state of your relationship with her grandmother or her parents.
7. Your offending has the following additional aggravating features:
 - The victim who calls you: "**apu**" was left under your care and protection and instead you indecently assaulted her;
 - The offence occurred in the family home where the victim was entitled to feel safe and secure in the company of family members;
 - The victim was barely 5 years of age at the time and was particularly vulnerable and defenceless;
 - You were the adult and had complete control of the situation;
 - Not satisfied with indecently touching the victim's vagina, you also exposed your naked penis to her and made her touch it; and
 - Your so-called reason(s) for committing the offence are cowardly and wrong and, in my view, were an after-thought in a vain attempt to justify what you did.



8. Having said that I accept that the indecent acts did not extend beyond skin on skin touching nor was there any attempted penetration. No physical harm or injury was caused to the victim nor were the acts repeated. I also accept that you immediately apologised for your actions when you were surprised by your defacto partner and that you voluntarily surrendered yourself to the police.
9. I am mindful of the guidance provided by the Court of Appeal in Public Prosecutor v Scott and Tula [2002] VUCA 29; Public Prosecutor v Gideon [2002] VUCA 7 and Public Prosecutor v Boita [2002] VUCA 8. Prosecuting counsel also referred to the Supreme Court case of Public Prosecutor v Naropacen [2017] VUSC 8 where a starting point of 4 years was adopted in a case involving a 12 year old complainant whose vagina was digitally manipulated and later her breasts were squeezed on a separate occasion by the defendant. Additionally, defence counsel referred to Public Prosecutor v Andy [2011] VUCA 14; Public Prosecutor v Iaiaho [2018] VUSC 151 and Public Prosecutor v Reinigment [2014] VUSC 118.
10. I have also considered the recent judgment of the Court of Appeal in Public Prosecutor v Bong James [2018] VUCA 44 where the Court upheld a prosecution appeal and converted a suspended prison sentence of 2 years imprisonment into a full term immediate end sentence of 2 years and 8 months imprisonment. In that case the defendant after the complainants had testified, pleaded guilty to 4 counts of Indecency Without Consent involving his teenage daughter and a teenage niece. The acts of indecency included touching the victims' vagina, exposing his penis and forcing the victim to touch his penis. The Court of Appeal adopted a "... *minimum starting point of 5 years imprisonment on a totality basis*". That was a more serious case.
11. In light of the above decisions and mindful of the several aggravating factors earlier identified, I adopt a starting point of 4 years (48 months) imprisonment. From that starting point I deduct 12 months for personal mitigating factors including the defendant's hitherto unblemished past; his early admission and assistance to the police; the 2 weeks he spent on remand and the 2 custom reconciliation ceremonies he performed firstly, to the victim and his defacto partner and in the second ceremony, to the victim's parents and their community




Chief Colin Natonga. Substantial gift items including a variety of staple food crops, 25kg rice, 2 mats, 8 yards of calico material and VT53,000 cash was distributed by the defendant and accepted by the aggrieved parties. This leaves a sentence of $(48 - 12) = 36$ months imprisonment.

12. Finally, I discount the 36 months by one third (ie. 12 months) in recognition of the defendant's early guilty plea which has saved the victim from having to relive her ordeal in court. Accordingly, the end sentence that the defendant must serve is: $(36 - 12) = 24$ months imprisonment with effect from 11 December 2018.
13. The defendant is advised of his right to appeal this sentence within 14 days to the Court of Appeal if he does not agree with it.

DATED at Port Vila, this 1st day of March, 2019.

BY THE COURT


D. V. FATIAKI
Judge.

