

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

Criminal Case
No. 22/1568 SC/CRML

PUBLIC PROSECUTOR v JOHN STEEL

Coram: *Hon. Chief Justice V. Lunabek*

Counsel: *Mr D. D. Boe for the State*
Mr J. S. Garae for the Defendant

Date of Plea: *11 July 2022*

Date of Sentence: *05 August 2022*

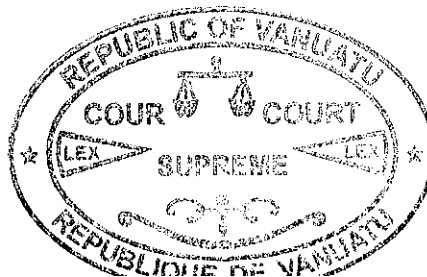
SENTENCE

A. Introduction

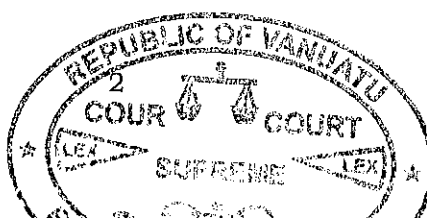
1. John Steel, you appear for sentence today having entered guilty pleas on three (3) Counts of act of indecency, contrary to Section 98A and 98(a) of the Penal Code.
2. You were discharged on the fourth count of indecency based on section 29 of the Criminal Procedure Code Act [CAP. 136] after an application for nolle prosequi was made by the prosecution.

B. Facts

3. The complainants are Dalia Jim, Tina Toknepu, Christina Toknepu.



4. John Steel you are from North Pentecost. The complainants and you are all resident at Banban area in Luganville during the alleged commission of the offence.
5. On 28 February 2022 the complainants made a report to the police that you had committed the offence of Act of indecency on two separate occasions, firstly in 2019 and secondly on 28th February 2022 to each of those victims.
6. On the 26th of February 2022 at Banban White Wood Area, you were cutting the grass using your grass cutter on the side of the victim's yard close to the fence.
7. The victim and two of her sisters were doing their washing at the side of their house. She heard the engine stopped and shortly she heard someone calling "seh seh" and when she looked to the direction, she saw you standing half naked holding your penis you then moved towards the banana plant and you continued to shake your penis to the victim and her friends.
8. The victims could clearly see your penis. They run back to their house and revealed the incident to their mother.
9. The first complainant's date of birth is 24 August 2012 and she was a 11-year-old girl at the time of the alleged offending.
10. The second complainant's date of birth is 24 December 2003.
11. The third complainant's date of birth is also 24 December 2003. She was also 18 years old at the time of the offending.
12. The complainant in Count 2 is the same as 18 years during the time of the alleged offending (DOB 24th of December 2003).
13. On 28th of February 2022, she was with the victim 1 doing the washing out of their house while you were cutting the grass outside the yard near their fence. They heard the engine stopped. Shortly she

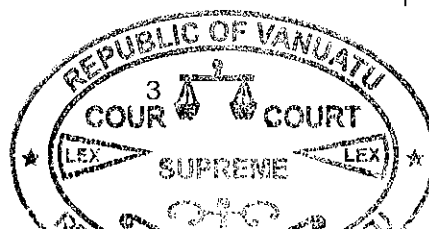


heard someone was calling "seh seh" and she looked towards the direction she was you were standing half naked and showing your penis to them. She and her other friend ran out into the house (Count 2).

14. On the 28th of February 2022 at Banban White Wood the third complainant was also with her two sisters doing their washing near their house outside where they could see you. You were cutting the grass with your grass cutter outside their yard near the fence. She heard the noise of the engine stopped and shortly she heard someone was calling to them "seh seh" and when she looked to the direction, she noticed you were standing naked and holding your penis and showing it to her and her sister.
15. She and her sister ran into the house and reported the incident to their mother (Count 3).
16. You were arrested and have been remanded in custody since this time.

C. Sentencing start point

17. The maximum sentence for the offence under Section 98A is 10 years imprisonment. The maximum sentence for the offence under Section 98(a) is 5 years imprisonment. They are both serious offences.
18. The prosecution and defence counsel referred to the court various case authorities including, PP v James [2018] VUCA 44; Gifima -v- PP [2017] VUCA 15; PP -v- Maleb [2015] VUSC g1, PP -v- Langa [2018] VUSC 20.
19. The above cases referred to by Counsel relate to some contact or touching by the defendants and some degree of force applied in some of them.
20. The circumstances of the present case are different. They are akin to the situation of a defendant exposing publicly his penis to the victims on different occasions respectively.



21. I assess the start point sentence of 2 years for the offence under section 98A of the Penal Code and 1 year imprisonment for the offence under section 98 (a) of Penal Code Act.
22. I increase the sentence to 3 years and 2 years respectively for the repetition of the offending as respectively appropriate in the circumstances of each case.
23. In mitigation, I reduce respective sentences by 25% to reflect the early guilty pleas of the defendant. The sentence under section 98A is reduced to 2 years imprisonment and the sentence under section 98 (a) is reduced to 1 year.
24. Both sentences shall be concurrent which means to be served at the same time. And so, the end sentence is of 2 years imprisonment and it is suspended for a period of 2 years. You shall be of good behaviour and live in peace. You must not re-offend during the 2 years suspension. If you re-offend during the suspension period, you shall be dealt with according to law and your sentence of 2 years imprisonment may be re-activated.
25. In addition, the defendant is ordered to serve 60 hours community work.
26. You have 14 days to appeal this sentence if you are unsatisfied with it.

DATED at Port Vila, this 5th day of August 2022

BY THE COURT

Vincent LUNABEK
Chief Justice

