

(Criminal Jurisdiction)

**PUBLIC PROSECUTOR V. CHARLIES MARK and
LINNETTE ROSE**

**Coram: Mr Justice Oliver A. Saksak
Mrs Anita Vinabit**

**Counsel: Mr Eric Csiba for the Public Prosecutor
Mr Jacob Kausiama for the Defendants**

Date: 15th July, 2004.

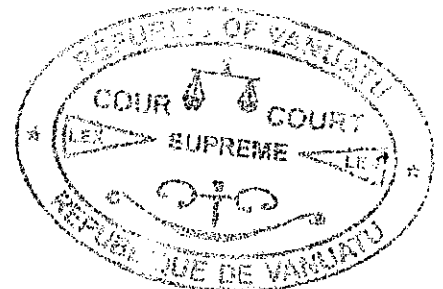
SENTENCE

On 10th March 2004 Charles Mark pleaded guilty to the following charges –

- Count 1 - Indecent Assault – Section 98(2) Penal Code Act [CAP.135] (PCA)
- Count 2 - Unlawful Sexual Intercourse – Section 97(2) PCA
- Count 3 - Unlawful Sexual Intercourse with Girl Under Case & Protection – Section 96(1)(a) PCA
- Count 5 - Unlawful Sexual Intercourse with Girl Under Case & Protection – Section 96(1)(a) PCA
- Count 7 - Unlawful Sexual Intercourse with Girl Under Case & Protection – Section 96(1)(a) PCA

Linette Rose, the wife of Charles Mark was jointly charged as follows –

- Count 4 – Aiding & Abetting Sexual Intercourse with Girl Under Case & Protection – Section 96(1)(a) PCA.
 - Count 6 - Aiding & Abetting Sexual Intercourse with Girl Under Case & Protection – Section 96(1)(a) PCA
- She pleaded not-guilty to the two counts.



Convictions were entered in respect to all five counts against Charles Mark and sentence was deferred pending trial of Linnette Rose. The trial commenced on 29th April 2004. The prosecutions called evidence from two witnesses and closed their case. Mr Hillary Toa made a 'No-Case' submission. However the court found there was prima facie case made out against Linnette Rose requiring her to make a defence. Trial was adjourned to 17th June 2004. Linnette Rose was allowed conditional bail on the same conditions granted by the Magistrate's Court. One of the conditions was that she put up cash surety in the sum of VT20.000 which she did.

The trial did not take place on 17th June 2004 as the judge was attending a judicial training programme in Canada. Trial was re scheduled for 15th July 2004. On this date Linnette Rose through counsel informed the Court that she would change her pleas. The charges were put back to her and she pleaded guilty to the charges of aiding and abetting unlawful sexual intercourse. The Court entered guilty pleas against her and convicted her on the two counts.

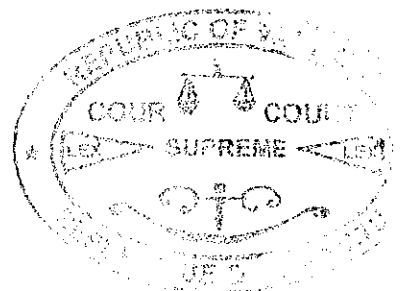
In sentencing Charles Mark and his wife Linnette Rose I took into consideration the sentencing principles applied in Criminal Case No.4 of 2004: Public Prosecutor v. Jacob Nof; Criminal Appeal Case No.2 of 1996 Peter Talivo v. Public Prosecutor and Criminal Appeal Case No.3 of 2001 Public Prosecutor v. Keven Gideon.

As against Charles Mark I took into account the following aggravating factors:-

- (a) That he is an elderly man of 57 years.
- (b) He stood in a position of trust and he abused that trust.
- (c) He repeated the sexual acts once in December 2001, then again in 2002 and yet again in 2003.
- (d) He caused irreparable damage to the complainant physically and emotionally causing her not to attend and complete her secondary education.
- (e) He was related as uncle to the complainant who was only 14 years and 4 months old in 2001 when the sexual acts commenced.

I allowed some credit due to the following mitigating factors:-

- (a) His guilty pleas at the earliest opportunity.



- (b) His remorse and reconciliation in a customary settlement which saw exchange of a fowl, a mat and cash of VT1.000.
- (c) That he is a first offender.

The aggravating factors out-weighs the mitigating factors in respect of Charles Mark and the only appropriate penalty to impose is a term of imprisonment as follows –

Count 1 - 2 years imprisonment consecutive to Counts 2 and 3
 Count 2 - 3 years imprisonment concurrent to Count 3
 Count 3 - 3 years imprisonment concurrent with Count 2
 The total term of imprisonment is 5 years.

For Count 5 - 3 years imprisonment concurrent with Count 7
 Count 7 - 3 years imprisonment concurrent with Count 5
 Total = 3 years to be served consecutively with the 5 years
 for counts 1, 2 and 3 above.

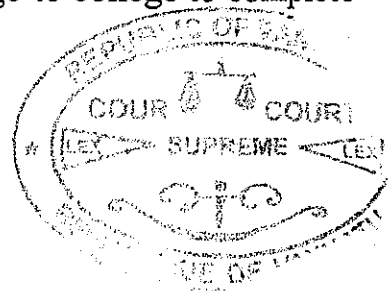
The total term of imprisonment for Charles Mark is 8 years.

He has spent more than 6 months in jail awaiting sentence. That period is deducted accordingly from the 8 years imposed.

Mr Kausiama informed the Court about the medical condition of Charles Mark. A medical report was produced. The Court made allowance simply by granted liberty to Charles Mark to be allowed to take his daily prescriptions in accordance with the doctor's advice. Further the Court directs that Charles Mark be allowed to attend a doctor as and when his medical condition requires.

In regard to Linnette Rose the Court took considerations of the following aggravating factors –

- (a) She is a mature woman of 30 years.
- (b) As the complainant's aunt, she stood in a position of trust to protect her niece but she abused that trust.
- (c) She assisted in the acts of sexual intercourse
- (d) She repeated her action once.
- (e) She caused irreparable damage physically and emotionally by not taking her responsibility to see her niece go to college to complete her education to secure a good future.



Her mitigating factors were –

- (a) Her change of pleas
- (b) Her remorse and reconciliation during a customary ceremony which saw an exchange of a fowl, a mat and cash of VT1,000.
- (c) She is a first offender.

Again the Court applies the sentencing principles in the same three cases of Jacob Nof, Talivo and Keven Gideon.

While the Court allowed some credit for her mitigating factors, again the aggravating factors for outweigh these mitigating factors to make this case a serious one. The Court was urged to treat Linnette Rose as a principal offender. To act both as a punishment for this woman and as a deterrence to others, the Court considers that the appropriate sentence I can impose is a term of imprisonment. However there being no separate institution for female prisoners, I will suspend Linnette's prison terms in accordance with the Suspension of Sentences Act [CAP.67].

The following sentences are imposed –

Count 4 – 3 years imprisonment concurrent with Count 6.

Count 6 – 3 years imprisonment concurrent with Count 4.

Total = 3 years imprisonment.

This term of imprisonment is suspended for a period of 3 years from the date of sentence.

I order Linnette Rose to pay VT10.000 towards prosecution costs. She could have pleaded guilty in the first instance to avoid a trial. This sum will be deducted simply from the cash surety of VT20.000 paid by her. She will only receive the balance of VT10.000.

PUBLISHED this 19th day of July, 2004.

BY THE COURT


OLIVER A. SAKSAK

Judge

