

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

Criminal Case No. 22 of 2010

PUBLIC PROSECUTOR

-V-

JIMMY TARIKAIU

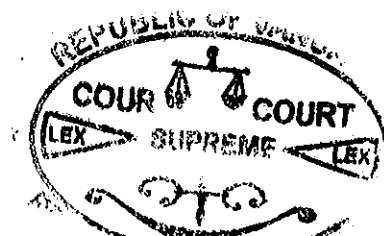
Coram: Justice N. R. DAWSON

Date of Sentencing: 17th August, 2010

*Counsel: Mr. T. Karae for Public Prosecutor
Mr. T. Loughman for Accused*

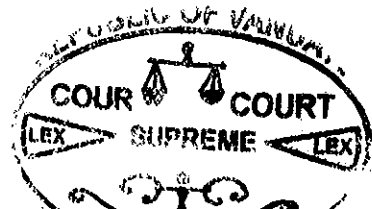
SENTENCE

1. Mr. Tarikau appears in Court today for sentencing on one charge of Unlawful Sexual connection. I note that this offence has a maximum sentence of 5 years imprisonment. The defendant might consider himself lucky given the facts of this case that the maximum sentence is only 5 years, in many jurisdictions it would be far higher. However sentencing will proceed on the basis that the maximum sentence for this offence is 5 years.
2. The facts of this matter are that the Defendant is a cousin of the victim's grandfather. When she was around 11 years of age the Defendant would threaten her to having sex with him. The first offence occurred when the Defendant gave her a pig to look after and told her that she would have to feed the pig. While the victim was taking out coconut husks to the pig, the Defendant came and pushed her to the ground and had sex with her. He then gave her VT 1,000 and told her not to tell anybody. On the second occasion a week later, the Defendant told the complainant to go and feed the pig. The Defendant then came after her grabbed her by the hand, forced her to lie down and had sexual intercourse with her. After sexual intercourse he



gave the victim VT 2,000 and again told her not to tell anybody. On the third occasion the victim stated she went to an uncle's garden to cut some banana leaves to bake food and the Defendant followed her there and asked her to have sex with him. The victim refused and the Defendant threatened to hurt her if she continued to refuse him. The victim then laid down and the Defendant had sexual intercourse with her and gave her VT 1,000. On the fourth occasion the complainant stated she went to her mother's garden to collect dry coconuts when she saw the Defendant. The Defendant grabbed her and told her not to call out or make any noise. He then forced the complainant to lie down and had sexual intercourse with her. On the fifth occasion the complainant went to the garden to collect nuts, and was approached by the Defendant. The Defendant forced the complainant to lie down and had sexual intercourse with her and again gave her VT 1,000. On the sixth occasion the complainant went to the garden to plant manioc and was approached by the Defendant who forced her to lie down and had sexual intercourse with her. Once again the Defendant told her not to tell anybody and once again he gave her money, this time VT 5,000. On a further occasion the victim was with some friends when she was called out to by the Defendant. The victim and her friends ran away and the victim went and told her family what was happening which lead to the arrest of the Defendant.

3. I note Mr. Tarikau that you have no previous convictions. I have read the Probation Report and I have also read the Custom Reconciliation Report and the submissions by prosecutor and defence counsel. In sentencing you it is necessary to hold you accountable for the harm that you have done. It is necessary to denounce you behaviour and it is also very necessary in cases of this sort to impose a sentence that will act as a deterrent, in other words a sentence that will send a message to you and to other people that this offending will not be tolerated. People in our community are entitled to be protected, particularly young people. Particularly young people as young as the 11 year old girl that you offended against. Your sentence needs to reflect the gravity of your offending.
4. There are aggravating factors to your offending. The first is that you threatened violence on more than one occasion and used force to commit some of the offences upon the victim. You also gave the victim money and



told her not to tell anybody. In your submissions you say that you do not realize that having sex with an 11 year old girl was an offence. However the fact that you gave the victim money and told her not to tell her anyone, tends to indicate that is not true. It would indicate you did know it was an offence and you were trying to keep her quiet so she would not tell anyone. There was an abuse of trust in this offending in that you are related to the victim. The victim was also particularly vulnerable as she was a young girl who could not resist you as she was only 11 years of age.

5. There was some premeditation to your offending because it occurred on more than one occasion and you seemed to have put yourself in a position where you could find the victim alone so you could carry out your offending.
6. The fact that the offending occurred on six occasions is also a very high aggravating factor.
7. In mitigation you entered a guilty plea at an early stage and you have expressed remorse for your offending. You were previously a person of good character and you have no previous convictions. You have also now conducted a custom ceremony through your wife who attended on your behalf at a custom ceremony and presented to the family of the victim, one pig; five baskets of manioc; five stampa kava; one bundle coconuts; three mats; two banana and VT 1,000 in cash.
8. The Probation Report notes that you have the support of your family, your community, church and chief and you seemed to be adopting a role in the church as a church deacon. At the time that the Probation Report was written, you had offered a custom ceremony which has now been conducted by your wife on your behalf.
9. Mr. Tarikau, your offending was disgraceful. You used an 11 year old girl for your own sexual gratification without any regard of her welfare or her rights as a human. You claim to be of chiefly states, a man of religion and a man of substance in your community. Your sordid criminal behaviour against a young victim, means that you are not a person deserving of respect. You must go to prison today. When people who hold themselves out as community leaders, such as yourself, do not protect the weak and vulnerable in the community then the Courts must do so. You need to be sentenced so that it is clear to everyone that people in our community are entitled to live abuse free and



free from predatory behaviour like the behaviour you have inflicted upon this young victim.

10. I have taken into account the cases that have been submitted to the Court and the submissions from the prosecution and defence. I have come to the view that a starting point would be to sentence you to a term of imprisonment of 3 years. I then take into account the aggravating factors I have mentioned, particularly the repeated offending, and it is appropriate to increase your sentence to 4 ½ years. I then take into account the mitigating factors including the custom ceremony, and reduce your term of imprisonment to 3 years. You have already served time in custody from 18th December through to today 17th August, 2010. You have also lost some parole opportunity by being in prison on remand. I am therefore reducing your sentence for those factors by a further 10 months and you are required to serve 2 years and 2 months imprisonment from today.
11. You have the right to appeal this sentence. For any appeal you must lodge a notice of appeal within 14 days of today's date.

Dated at Port Vila, this 17th day of August, 2010

BY THE COURT

