

PUBLIC PROSECUTOR –VS- CHARLIE EDGEL

Coram: J. Weir

Counsel: Mr. S. Blessing for the Public Prosecutor
Mr. H. Vira for the accused.

SENTENCE

1. Charlie Edgel, it is my duty to sentence you on the following counts:-
 - (i) a representative count of unlawful sexual intercourse pursuant to section 97(1) of the Penal Code (a maximum sentence of 14 years)
 - (ii) a representative count of sexual intercourse with a child under your care or protection pursuant to section 96 of the Penal Code. (a maximum sentence of imprisonment of 10 years)
2. You initially were arrested and appeared before the court on these 2 counts plus one further count of sexual intercourse without consent pursuant to section 91. You pleaded not guilty to all 3 counts and you were remanded in custody for a trial date to be set.
3. On the 14th of April you again appeared and your counsel confirmed your pleas of not guilty indicating that the defence was consent. This was despite the fact that the complainant at the material time was aged between 9 – 14, and consent was therefore not a defence. The case was set down for trial on the 28th and 29th April.

4. You finally pleaded guilty to the above 2 counts on the morning of the trial, and the public prosecutor withdrew the count pursuant to section 91.
5. The brief facts filed state that your sexual offending against the complainant began in 2003 when she was only 9 years of age, continuing right through until 2008 when she was aged 14. The brief facts also indicate that over these years you threatened to cut her with a knife if she told anyone and on occasions you would hold a knife to her. The brief facts also confirm that you paid a customary fine to the complainant and members of her family. You also gave a voluntary statement which did not display any remorse.

The Victim. There is no victim impact report on file. The pre-sentence report simply indicates that she was interviewed by telephone and she stated that she felt that you should be punished by the law for what you did to her from 2003 to 2008.

I have taken the precaution of reading, with the assistance of the Chief Registrar, the statements which the victim made to the Police.

In those statements she describes how you violated her continuously from 2003, when she was only 9 years of age. You were her step father having married her mother after her original father had left.

She described you violating her frequently, this occurring when everyone was asleep or when her mother wasn't there. She refers to the fact that she was small, you were big and that she couldn't push you off. She describes the physical pain that she felt. You would violate her orally, and with full intercourse until ejaculation which sometimes would occur inside her. You initially tried to persuade her that what you were doing to her was not a bad thing, but a good thing. She was afraid of you and didn't tell "mummy" because you said it was a good thing.

Later on when she began to resist, you would put your hand over her mouth to stop her calling out, you would threaten to cut her with a knife if she did not have sex with you, or if she told anyone. There were occasions that you actually had a knife in your hand when you violated her. You were very strict with her, generally keeping her confined to the compound, you would call out to her if she was talking to anyone on the road. You would talk dirty to her, and when she did not respond, you would become angry with her and tell her off for even the smallest thing she did in the house, then at night you'd show her the knife and force her to have sex with you.

You turned her into your sexual slave. Quite apart from the physical pain you inflicted on her, you inflicted enormous emotional harm on her. She says that you spoiled her body when she was not mature. You were supposed to be her "Daddy" and you ruined her childhood.

You ruined her time at school because she couldn't concentrate on her lessons as she was thinking about all the bad things that had happened to her. She describes those years as a "living nightmare".

7. Your explanation for your conduct as explained to the probation officer was that she started the whole thing when she approached you to body massage her. That explanation is effectively repeated in your statement to the police officer. Your attempts to explain your actions fall nothing short of displaying a callous and brutal attitude to her. Your explanation was and is self serving, and immoral and the court rejects it entirely.
8. Today for the first time, at the 11th hour, you, through your lawyer deny threatening her with a knife, and also allege that your violation only commenced when she was 11, and at her invitation, but that you are remorseful.
9. I do not accept your so called explanation. The fact of the matter is that you pleaded guilty on the basis of the brief

facts which were put before the Court and that is the basis on which I intend to sentence you.

10. I have to say, that once again your explanation that this occurred "at her invitation" is yet another indication of your complete abdication of responsibility for this heinous offending. You are not only attempting to minimize your behavior, but incredibly you are also trying to blame this young girl.
11. At the same time you are seeking on entirely merciful sentence based on your own health and your family needs when you have not in any way demonstrated a change in attitude. It is also interesting to note that your offending against this young girl commenced when you had already been suffering from diabetes for a number of years.
12. The Public Prosecutor at paragraph 20 of his submissions refers to a number of guideline judgments for sentencing in sexual offending. These are:-

Public Prosecutor v. Gideon [2002] VUCA 7; Criminal Appeal case 03 of 2001 (26 April 2020), Public prosecutor v. Scott [2002] VUCA 29; CA 02-02 (24 October 2002) and Public Prosecutor v. Bae [2003] VUCA 14; Criminal Appeal Case 03 of 2003 (31 October 2003), Talivo v. Public Prosecutor [1996] VUCA 2.
13. They all are authority for the general proposition that women in general, and children in particular are entitled to be protected from sexual predation by men and, conversely that men who do not observe that general rubric forfeit their right to remain in the community.
14. I have received particular assistance from a recent decision of the Court of Appeal namely *Public Prosecutor v. Andy*. (Criminal Appeal Case No.9 of 2010)
This case involved an appeal against a sentence imposed by the Supreme Court for 1 charge of unlawful sexual intercourse contrary to section 97(1) of the Penal Code Act. It was an appeal by the Public Prosecutor and the court

therefore in allowing the appeal imposed the lowest sentence available within the range imposed. That is not the position in your case, however in that case the lowest starting point that the court found that could be imposed was six years imprisonment.

15. The facts of that case briefly stated involved an isolated incident of sexual assault against the 10 year old female friend of the defendants daughter. The victim was staying at the defendants house with his daughter, having been invited there. The offence involved the defendant licking the victims vagina and digitally penetrating her vagina and anus while he was masturbating. The victim then requested to go to the toilet, and the prisoner let her go.
16. In that case the court allowed a 15% discount from the minimum starting point of 6 years taking account of 3 factors namely the prisoners good character, his remorse and the fact that a custom ceremony had been performed. A further one third was allowed for the defendants early guilty plea and a further small allowance was made for the fact that the defendant complied with the original deferred sentence imposed bringing the total discount to 50%. The end sentence imposed was 3 years imprisonment.
17. In arriving at that conclusion, the court applied a 3 step process namely the starting point for offending of this type, the assessment of factors personal to the offender and finally the allowance, or deduction for a guilty plea.
18. I apply the same methodology, bearing in mind that the maximum sentence for the lead charge under S.96(1) is 14 years imprisonment.
19. At paragraph 22 of its decision the court outlined factors relevant to assessing culpability in order to fix a starting point.

- (a) The age of the victim. As a general principle, the younger the victim, the more culpable the offending. In this case she was 9 when her abuse started.
- (b) The harm suffered by the victim. In her case, the harm is enormous. Quite apart from the pain which you inflicted on her over years, there is no suggestion that you took any precautions. In other words by having unprotected sex with her, there was a risk of pregnancy or infection. The mental anguish she has suffered I have already alluded to. Experience tells us that what you have put her through will affect the way she will be able to relate to others generally, and in particular to have an intimate relationship with another person. She also appears to be estranged from her mother through no fault of her own. The probation report refers to the fact that her mother, (your wife) misses you so much and there is "a gap in the home". There is not the slightest mention of the anguish and disgust which one would normally expect of a mother who has discovered that her husband has been abusing her daughter. You say in the same report that you maintain a good relationship with your "family". The emotional harm suffered by her, therefore is significant.
- (c) Breach of Trust. As the court indicated, offending within the family environment where children should be secure is particularly serious. That pertains here.
- (d) The age of the offender. This disparity speaks for itself. You are now 64 and apparently infirm. The offending commenced when you were aged 56 – she was 9.
- (e) The degree of violation. The seriousness increases as the degree of violation increases. Once again your behavior can only be described as very serious.
- (f) Premeditation. A planned episode will be more serious than a spontaneous event. Your offending could never be described as spontaneous.

(g)The scale of the offending. Repeat offending over a prolonged period of time will be more serious. You subjected this innocent young girl to this depraved, appalling behavior for 6 years from when she was 9 years old until she turned 14.

20. In light of my findings as outlined, having regard to the maximum sentence of 14 years imprisonment. In my view the starting point in this case can be no less than 10 years on the lead charge.

21. **FACTORS RELEVANT TO THE OFFENDER**

There are no aggravating factors relevant to you. There are several relevant mitigating factors. Firstly, you have no previous convictions. Secondly you have participated in a custom reconciliation ceremony and paid monetary compensation to the victim. Thirdly you are described by your chief as being a well known member in the community and you participate well in community activities.

All of those factors would, in my view have greater impact if you demonstrated remorse, whereas in fact that is not the case. You still continue to attempt to shift the blame onto the victim, despite the fact that she was only 9 when these violations began. Finally I note that you have diabetes and high blood pressure and that you were recently admitted to Vila Central hospital for 3 weeks. In my view those mitigating factors, such as they are, warrant a deduction of 10%.

22. **THE GUILTY PLEA**


The guilty plea was not entered at the first reasonable opportunity. In fact the guilty plea was only entered on the morning of the trial, despite the admission that you had made to the police. Whether that was a tactic employed to attempt to avoid this trial proceeding because the victim did not turn up to give evidence is unclear, but it is clear that there should only be a minimal deduction for such a late plea. In my view your guilty plea warrants a deduction of 10%.

23. The end sentence, therefore is one of 8 years imprisonment. On the lesser charge under s.96 the sentence is 6 years which is a concurrent term.
24. From this must be deducted the amount of time which you have already spent in custody. You have been in custody since the 12th April, a period of approximately 2 months.
25. You are accordingly sentenced to imprisonment for a period of 7 years and 10 months.

You have the right to appeal this sentence within 14 days if you do not agree with it.

DATED at Port Vila *1st* day of *June* 2011.

BY THE COURT



J. WEIR

Judge