

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

Criminal Case No. 20 of 2010

PUBLIC PROSECUTOR
V.
ELI ROY

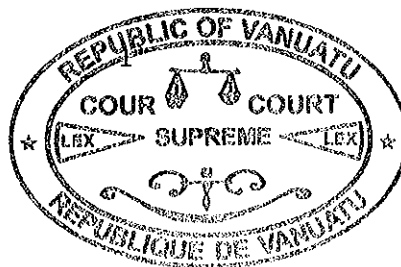
Coram: *Justice D. V. Fatiaki*

Counsels: *Mr. Parkinson Wirrick for the State*
Mr. Brian Livo for the Defendant

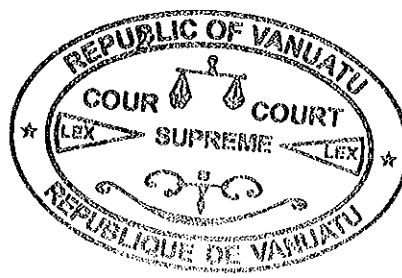
Date of Sentence: *8th June 2011.*

SENTENCE

1. The defendant has been convicted on his pleas of "guilty" to 3 counts of **Unlawful Sexual Intercourse** contrary to **Section 97 (1)** of the **Penal Code**. In respect of each offence, the defendant is alleged to have had sexual intercourse with a young girl who was then under the age of 13 years. Such an offence carries a maximum penalty of 14 years imprisonment.
2. The seriousness of the offence is further highlighted by the fact that the consent of the victim is **not** a defence to the charge **nor** is an accused's belief as to the age of the victim a relevant consideration.
3. The reason for this law is clear. It is intended to protect and prevent young girls from the possible consequences of engaging in sexual activity for which they are physically, emotionally, and psychologically ill-prepared to handle. To put it bluntly, 13 year old girls are far too immature to be exposed to the risk of becoming mothers at such a tender age even if they consent to the sexual activity.
4. In most cases, of which the present case is a prime example, young vulnerable girls fall victim to the predatory behavior and charms of older mature men who are either known to or related to them. These men usually abuse their victims to fulfill their sexual desires with little or no thought for the girls welfare. It is purely fortuitous that the victim did not fall pregnant in this case.



5. The brief facts outlined by the prosecutor and admitted by the defendant tells of how the victim's father Esrom Stabas, who was about to go to prison in December 2006 had asked the defendant to look after his wife and daughter until he returned from prison. This request was later confirmed in a letter he wrote to the defendant from prison and the defendant replied in a letter to the victim's father that he would look after his family and everything would be alright.
6. Almost exactly a year later in January 2008, the defendant began sexually violating the victim who was then aged 12 years and 6 months having been born on 31 July 1995. At the time the victim was also a first year student attending Arep Junior Secondary School.
7. The sexual violation continued for 3 months and eventually a complaint was made to the police. The defendant was interviewed under caution and frankly admitted several incidents of sexual intercourse with the victim.
8. Upon medical examination at the Gatvaes Dispensary the examining nurse confirmed that the victim's hymen was broken with vaginal discharge. There was also slight cervical erosion. No tear or bleeding was detected.
9. Eli Roy, the offences you committed are very serious. At the time you committed them you were 27 years of age married with 3 young children of your own. The victim was less than half your age. This was **not** an isolated solitary incident of a man succumbing to temptation in a moment of weakness. Your offence **Eli Roy**, was intended and repeated, over a period of several months where you took advantage of a young immature girl to fulfill your lustful desires.
10. To make matters worse, you had agreed with the victim's father to look after and care for his daughter during his absence in prison. **Eli Roy**, you knowingly and intentionally betrayed that trust when you took advantage of the unfortunate circumstances that the victim was placed in when her father was imprisoned.
11. In your caution interview, you describe yourself as "*Chief blong Vanua*", let me say this to you, **Eli Roy**, your behavior with the helpless victim was **both** dishonourable and unchiefly. True chiefs protect, lead and guide their people in the right way. Your only concern in this case, was to satisfy your selfish lust without any concern for your position within the community **or** the welfare of the victim.
12. It is difficult to resist the tragic irony so evident in this case, where the victim's father was imprisoned for abusing his young niece who had been entrusted to his protection and care when his brother died (see: **PP v. Esrom Stabas** Criminal Case No. 8 of 2005), and now, in an almost mirror image, the victim's father finds

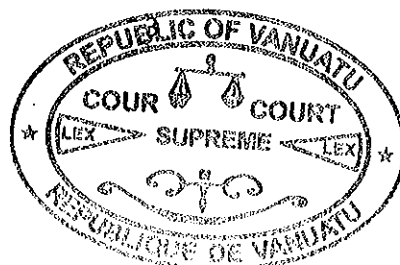


his very own daughter being abused by the defendant to whom he had entrusted her care and protection whilst he was in prison.

13. The similarity in the cases are strikingly uncanny, and the observations of Justice Oliver Saksak bears repeating. In sentencing the victim's father Judge Saksak said:

"The girl who complained was not only 17 years of age at the time of offending, she was your niece, your brother's daughter. Her father died and entrusted her to your care and protection. However you abused that trust by abusing her. There was no need for you to do that as you are a married man with four children. You were double her age when the offending took place ... As a mature man you behaved selfishly by abusing your niece. And you did it three times."

14. In that case Esrom Stabas, the victim's father, was sentenced to an initial term of 6 years imprisonment which was then reduced to a sentence of 3 years and 8 months. **Eli Roy**, the fact that you refer to the victim's father as "*uncle blong mi*" only makes your breach of trust all the more reprehensible.
15. I have considered the defendant's pre-sentence report which was prepared at short notice and which I found of some assistance. I note that you are married with 3 young children of your own. That you had no formal schooling, and that you are supportive and a good provider for your family.
16. Although you claim that the offences were unplanned, the fact that you say in your pre-sentence report that you "*had been watching*" the victim and finally "*tried your luck*", suggests, that the eventual sexual intercourse with the victim was intentional and **not** accidental. The victim also says that some physical force was used to restrain her the first time that intercourse took place between you. She also states you issued threats and warnings to her. And although you paid her "*hush money*" on 2 of the occasions she did not consent to having intercourse with you.
17. To your credit you have performed a custom ceremony to the victim and her family by paying VT10,000, and giving a head of kava and a pig as gifts which have been generously accepted. You also expressed your sincere remorse for your disgraceful behavior and you told the probation officer you are prepared to face the consequences of your actions.
18. **Eli Roy**, this Court has a duty on behalf of the community to condemn your behavior in the clearest possible terms and to punish you for what you have done.

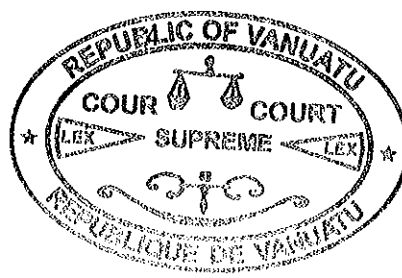


The Court also has a duty to protect young girls and to send a clear message to all men in the community that if they prey on young innocent girls they will go to prison for a long time.

19. In considering the appropriate sentence in this case I have also received helpful written submissions from both prosecuting and defence counsels which I have taken into account.
20. In particular Defence counsel in mitigating on behalf of the defendant, produced a copy of a letter allegedly written by the complainant to the defendant on 10 June 2008 after charges had been laid against the defendant. The handwritten letter amongst, other things, professed the complainant's love for the defendant ('*Awo me det long yu*') and pleads with him not to forget her and to have the courage to tell the Court that they had agreed to have sexual relations. Strangely though the complainant urges the defendant not to reveal her letter to anyone.
21. Counsel sought to suggest that this letter somehow evidences a "*boy and girl*" romantic relationship existed between you and the victim at the time of the offences. I cannot agree. This was **not** a case of adolescent sexual experimentation, but one, where a mature married man was abusing a young vulnerable school girl.
22. In any event as I earlier mentioned consent of the victim is **not** a defence to the charge. If anything, the letter reads more like the ravings of an infatuated young girl writing to her first-time lover. Significantly, the complainant does **not** indicate that she wishes to withdraw her complaint **or** that she was forced into making the complaint in the first place.
23. Whatsmore as was said by the Court of Appeal in **PP v. Gideon** [2002] VUCA 7:

"... there is an overwhelming need for the Court on behalf of the community to condemn in the strongest terms anyone who abuses young people in the community. Children must be protected. Any suggestion that a 12 year old had encouraged or initiated sexual intimacy is rejected. If a 12 year old is acting foolishly then they need protection from adults. It is totally wrong for adults to take advantage of their immaturity."

24. I have also had my attention drawn to the recent decision of the Court of Appeal in **PP v. Kal Andy** [2011] VUCA 14 where the Court set aside a sentence of



deferment and imposed instead, a sentence of 3 years immediate imprisonment for an offence of **Unlawful Sexual Intercourse** with a 10 year old girl and where the mature defendant of 30 years pleaded guilty, was a first offender, and had paid VT100,000 and performed a custom ceremony to the victim and her family.

25. It is unfortunate that it has taken 3 years for this case to be completed but my duty is to sentence you for the offences you have committed.
26. In my view, based on all the circumstances and consistent with the range of past sentences imposed by the Courts for this type of offence. **Eli Roy**, your offending in this case merits an initial sentence of 6 years imprisonment.
27. From that figure, I deduct 2 years in recognition of your past good character and, more importantly, because you readily admitted your wrong-doing to the police and eventually pleaded guilty in Court, thereby, avoiding the expense of a trial and saving the victim from having to relive her ordeal in Court. I deduct a further 6 months for the reconciliation ceremony that you voluntarily performed to the victim and her family. And finally another 2 months for the time you have already spent in custody whilst on remand.
28. The final sentence I arrive at after deducting all the above discounts is a sentence of 3 years and 4 months imprisonment on each count to be served concurrently making a total sentence of **3 years and 4 months imprisonment**. You are required to serve this sentence at the Luganville Correctional Facility on Santo commencing from today.
29. You have 14 days to appeal to the Court of Appeal against this sentence if you do not agree with it.

DATED at Sola, Banks, this 8th day of June, 2011.

BY ORDER OF THE COURT


D. V. FATIAKI
Judge.

