

PUBLIC PROSECUTOR – VS – JOEMAE MASSING ROY

Coram: Mr. Justice Oliver A. Saksak

Counsel: Mr. Ken Massing for Public Prosecutor
Ms. Jane Tarl for Defendant

SENTENCE

1. Joemae Massing Roy, you pleaded guilty to two counts of unlawful sexual intercourse contrary to section 97(1) of the Penal Code Act [Cap 135] (the Act).

This section reads:

"1. No person shall have sexual intercourse with any child under the age of 13 years. Penalty: Imprisonment for 14 years."

2. Section 89 A of the Act defines Sexual Intercourse as follows:

"For the purposes of this part, sexual intercourse means any of the following activities, between any male upon a female, any male upon a male, any female upon a female or any female upon a male:-

(a) not relevant

(b) not relevant

(c) not relevant

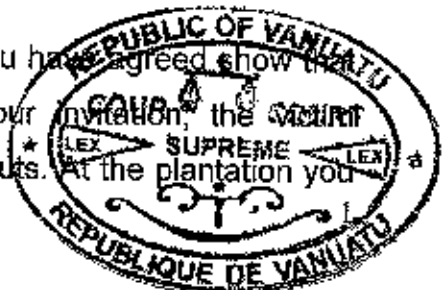
(d) The licking, sucking or kissing, to any extent, of the vulva, vagina, penis or anus of a person; or

(e) not relevant

(f) not relevant

(emphasis added)."

3. The facts presented by the prosecutions to which you have agreed show that sometime in the month of November 2012 at your invitation, the court followed you to a coconut plantation to collect coconuts.



asked the victim to remove her clothes and told her to lie down on the ground and spread her legs. You then licked and sucked on her vagina. She felt pain but you told her not to cry or tell anyone or you would kill her. The second time it happened was in March 2013. You invited your victim again to go with you to the plantation and there you did the same thing to her again. She felt pain but again you told her not to cry or tell anybody or you would kill her. The matter came to light in April 2013 when the victim had abdominal pains and revealed all these to her grand-mother. The victim was born on July 2005 making her about 8 years old. She is related to you as grand-child. She calls you "Abu" meaning grandpa.

4. The victim was examined on 12th April 2013. The Medical Report reveals the following findings –

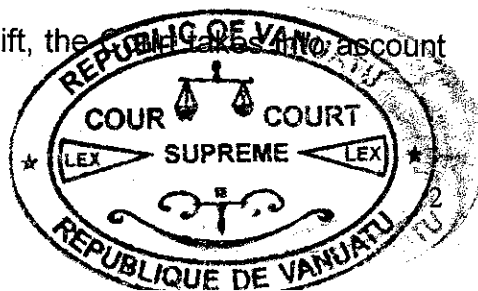
- "1) History of sexual abuse – 4 incidents last incident sometime last month.
2) Developed lower abdominal pain, pain on urination. Has abdominal tenderness.
3) Vaginal examination – Inspection vulva, vaginal normal. Hymen intact but perineum inflamed. Anus Intact."*

The Report concluded there was –

- (a) Child sexual abuse and (b) Urinary tract infection.

5. Both the prosecutions and defence counsel submitted and urged the Court to follow the principles of sentencing in Public Prosecutor v. Gideon Criminal Appeal Case No. 3 of 2001 and Public Prosecutor v. Karl Andy Criminal Appeal Case No. 9 of 2010 and impose a custodial sentence of 6 – 7 years as the starting point. Both cases are distinguished on their facts and circumstances. In this case the circumstances warrant that the starting point be a sentence of 6 years imprisonment. Accordingly, you are convicted and sentenced to 6 years imprisonment on each count.

6. In considering whether there should be an uplift, the Court takes into account the following –



- (a) The victim being only 8 years old.
- (b) Although no physical harm was revealed, she suffered a urinary tract infection and abdominal pains. Psychologically she will relive the memories of her ordeal for a long time to come.
- (c) Breach of trust to a child who knows the defendant as "grandpa".
- (d) The age of the defendant being 50 years old.
- (e) The degree of violation being the use of the tongue.
- (f) The offending was repeated more than once.
- (g) The offending was planned.

7. These aggravating features warrant that there be an uplift to the starting sentence of 6 years. There is therefore an increase of 3 years imprisonment bringing the total to 9 years imprisonment.

8. I now consider mitigating the sentence. I allow 1/3 reduction for guilty plea. That brings the total sentence back down to 6 years. I allow a further 2 years reduction for the following mitigating factors:-

- (a) Remorse leading to customary reconciliation;
- (b) Good cooperation with Police on investigations and interviews;
- (c) Being a first-time offender with clean record.

9. Ultimately, you are convicted and sentenced to 4 years imprisonment as a concurrent sentence for both counts.

10. Your sentence commenced on 12th April 2013 the date you were first remanded into custody.

11. You have a right of appeal against sentence within 14 days if you so choose.

DATED at Luganville this 5th day of August 2013.

BY THE COURT


OLIVER A. SAKSAK
Judge

