

PUBLIC PROSECUTOR – VS – VISIRAF SIVIRAF LIVRAI

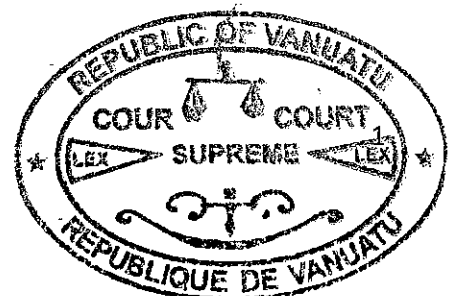
Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Mr. Ken Massing for the State*
Ms. Jane Tari for the Defendant

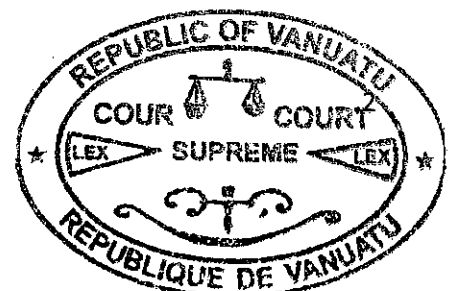
Date: *8th November 2013*

SENTENCE

1. Visiraf Siviraf Livrai you appear for Sentence today for pleading guilty and being convicted of one count of act of indecency with a young person contrary to Section 98A of the Penal Code Act Cap. 135 (the Act). This is an offence carrying a maximum penalty of 10 years imprisonment.
2. The facts which you do not dispute are quite simple. The victim is your step-daughter being the daughter of your wife before you married her. She is 14 years old. On 9th October 2012 in the early hours of the morning, you entered her bedroom and whispered something into her ears. You then touched her on her left cheek, her left breast and her buttock. This made her felt bad and she cried and went out to the kitchen to join her mother cooking water for tea.
3. In your report to the Probation Officer, you stated that your intention was to wake her up to go and help her mother in the kitchen. In so doing, you accepted in the report that you touched her in "inappropriate parts of her body". And that was all there was to it, nothing more, nothing less. As to how many times you touched her is in issue but for the purpose of sentencing today the Court will readily accept that you touched her only once according to your own admission.



4. Your offending falls in the lowest end of the scale for an act of indecency with a young person. It is therefore distinguished from the case of Public Prosecutor v. Matthew [2013] VUSC 79 referred to by the Prosecutor and the cases of Public Prosecutor v. Albert [2013] VUSC 117 and Public Prosecutor v. Keleb [2009] VUSC 111 referred to by defence counsel.
5. I consider that under the circumstances of the case this is an offence where the starting point should be 12 months imprisonment with an uplift of 2 years for aggravating features such as –
- (a) Age disparity of 8 years: the victim 14 and you being 32 years old.
 - (b) You stand in a position of trust and you breached that trust.
 - (c) It occurred in about 0400 hours in the dusk of the morning when there was a risk of some other acts being committed.
- These place your total sentence at 3 years imprisonment.
6. I consider that there should be reduction of 2 years for the following mitigating factors:-
- (a) Your unblemished record and being a first-time offender.
 - (b) Your performance of custom reconciliation during which you paid VT6,000 to the victim and VT3,000 to your wife and made a public apology, which clearly indicates remorse on your part.
 - (c) During the period of 1 year from the date of offending to the date of plea you had lived together with the victim in the family without any repeat or risk of repeating your actions.
 - (d) Good cooperation with the police during investigations and at interviews.
 - (e) Guilty plea at first given opportunity.
- That brings your sentence back down to 12 months or 1 year.
7. I take into account further in reduction of your balance of sentence the 1 month and 18 days you have spent in custody under remand from 20th September 2013.




The period is deducted from your sentence of 12 months imprisonment leaving the balance at 11 months and 12 days.

8. I consider that the balance of your sentence of 11 months and 12 days should be suspended for a period of 12 months from the date of this sentence on conditions that you must not commit this offence or any other criminal offences for which you would be charged and convicted. If you do, you will go directly to prison to serve out your sentence of 11 months and 12 days.
9. The Court suspends your sentence for three basic reasons:-
 - (a) You are a father of 5 children including a new born baby.
 - (b) These are dependent on you for livelihood and school fees to keep the children at school to secure their future; and
 - (c) For the delay in prosecuting your case.
10. That is the sentence of the Court. You have a right of appeal against this sentence if you do not agree with it within 14 days from the date of this sentence.
11. You are released forthwith from custody.

DATED at Luganville this 8th day of November 2013.

BY THE COURT


OLIVER A. SAKSAK
Judge

