

PUBLIC PROSECUTOR

- v -

SERGE ATUARY

Coram: V. Lunabek CJ
Counsel: Ms Tabisa Harrison for Public Prosecutor
Mr Francis Tasso for the Defendant

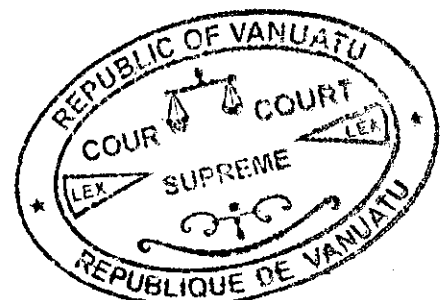
Date: 29 September 2014 at Port Vila

SENTENCE

Serge Atuary, you appear today to receive your sentence. You are initially charged with one count of attempted sexual intercourse and one count of act of indecency without consent. The prosecution entered a nolle prosequi in respect to the attempted sexual intercourse count. You are discharged of it. You enter a guilty plea to one charge of indecency without consent, contrary to s. 98 (a) of the Penal Code. The penalty for this offence is imprisonment for 7 years. No dispute is taken with the summary of facts presented by the Prosecution.

You are from Malekula and North Efate. On 20th July 2014 around 7.00pm you entered the bathroom when the complainant Chrissie Samsom was having a shower. Chrissie removed her clothes and had a shower inside the bathroom. It was a common bathroom and the door of this bathroom can not be locked. While showering she didn't know how you entered the bathroom. You were naked and were trying to shut the door of the bathroom, she was terrified and yelled out loud and continued to yell at same time shaking. People heard her scream so they came running to the bathroom. She wrapped the towel around her and went inside the house to change but somehow you fled from the scene. When neighbours enquired she told them that you entered the bathroom while she was showering naked. The victim wants you to be dealt with accordingly by this court.

You were arrested by the police and you also gave a written statement on 21st July 2014. On this statement you stated that on 20th July 2014 you went boozing and you were going to sleep so you decided to go to the toilet when you saw the complainant going into the bathroom. You also stated that you spied on her two times. When Chrissie was showering you had evil feelings so you went behind the bathroom removed your clothes and go inside the bathroom thinking of having sex but she refused and screamed loud so you came outside put back your clothes but left your underpants inside the bathroom. You also stated you have been doing this because your mum and Dad are too strict with you and they favour other brothers and sisters and they have no consideration on you. You ask forgiveness from the victim.



This is an appalling offending, you are a man in your 30s, endeavouring to take sexual advantaged of a woman and not just any woman but your niece who was living in your house under your care and protection. She trusted you and you have broken that trust relationship.

I have read the pre-sentence report prepared by the probation office on 10 September 2014. It explains that you are 30 years of age and of mixed parentage from Malekula and North Efate. You have four (4) sisters and a brother and you are the third eldest in the family. You attended primary and secondary schools. You also attended Maritime College where you study "safety" for overseas rating, chemicals, tanner and container which deals with cargo ships. You gained your 20 master which means you obtained a captains licence. From 2004-2012, you worked with several vessels servicing the costal islands of Vanuatu. Currently, you are unemployed.

You had a bad relationship with your parents due to your parents disapproving of your first de factor partner with whom you had a child, but you got separated with her due to your parents' opposition. You are now living in a defacto relationship with a new partner with whom you have a child (son) of a year old. You state your family hated you and did not support you. You are a member of Assemblies of God (AOG) but you did not attend to church most of the time.

The report shows that you are an active person in your community at Fresh water two (2) Port-Vila. You are in good health conditions.

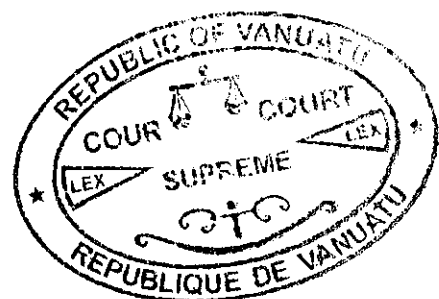
The offence of indecency without consent is a serious offence. Its seriousness will attract a custodial sentence. The dominant feature of this sentence must be one of punishment and deterrence. The report shows that you were remanded for offences of criminal trespass, unlawful entry and theft from 7 september 2013 to 17 september 2013 but it does not show whether you have been convicted for those offences. For the purposes of your current sentence, I consider it that you have no previous convictions. I note that you are remanded for your current offending from 4 August 2014 to 18 August 2014 (a total of two weeks).

Serge Atuary, you must now understand that if you commit the same offence again, you will go to prison for lengthy period. In the present case, I intend to impose a sentence that does not send you directly to prison.

Ms Harrison acknowledged and submitted that an appropriate sentence would be one of suspended sentence of imprisonment with some additions that I am prepared to accept.

The appropriate sentence as a starting point is one of 12 months imprisonment which I will reduce by one third (1/3) to 8 months imprisonment to recognise your early guilty plea and other penalties that I propose to impose upon you.

The sentence of this Court is that you are sentenced to 8 months imprisonment which I suspend for a period of 2 years.

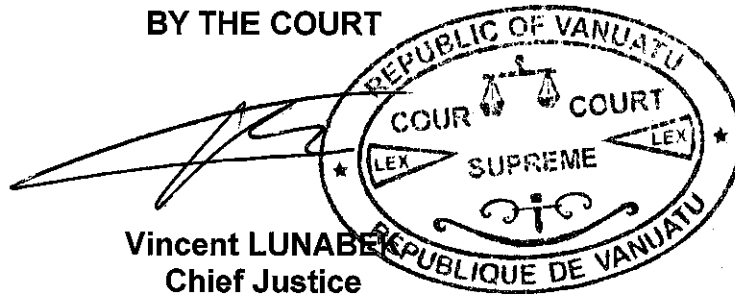


In addition, you are ordered to carry out 100 hours community work.

You have 14 days to appeal this sentence if you do not accept.

DATED at Port-Vila this 29th day of September 2014

BY THE COURT



Vincent LUNABE
Chief Justice