

PUBLIC PROSECUTOR

- v -

JOHN PATRICK

Corum: V. Lunabek CJ

*Counsel: Mrs Tabisa Harrison for Public Prosecutor
Mr Francis Tasso for Defendant*

SENTENCE

John Patrick, you appear for sentence. You are charged with one count of unlawful sexual intercourse, contrary to section 97 (1) of Penal Code Act. On 29 October 2014, you entered a guilty plea to the one count.

The brief facts of this case is this. The complainant of this case is a girl of 9 years of age. For the purpose of the sentence, she will be called Lola. She is from Tanna island and she ordinarily resides at Erakor Half Road with you. You are also from Tanna and you are Lola's uncle. Lola is a student.

This offence occurred on 14th of October 2013. Lola was already asleep when you confronted her. After you had Kava, you entered Lola's room and removed your trousers. You approached Lola and removed her underwear and told her to keep quiet. She was frightened by your actions to her given the situation she was forced to endure.

Your licked your fingers and touched Lola's vagina. You laid on top of her and inserted your penis into her vagina. You removed you off her, you rubbed you penis on her leg until you ejaculated. You then told her not to tell anyone or else the police will come and take you away.

You got dressed and went to the toilet. You returned momentarily and started touching Lola again. When you saw that Lola started to cry, you withdraw, promised to give VT100 to her and you left the room.

After school the following day the complainant went to her aunt's house and refused to return to Erakor Half Road. When her aunt insisted she responded to this effect "mi no wantem go back mi fraet long uncle John from se sipos mi talem wan samting bae ol



police oli kam karem hem” (Translation: “I don’t want to as I am afraid of uncle John because if I say something the police will come and take him away”).

Her aunt quickly sensed that something wrong must have happened at Erakor Half Road. She arranged with a teacher to speak with the complainant. The complainant informed the teacher what you had done to her.

A complaint was lodged. Lola was medically examined about a month after the alleged offending. You were arrested on the 4th of December 2013. You were interviewed under caution. You admitted that you inserted your penis half way into the vagina of the complainant and that you had ejaculated.

Section 97(1) of Penal Code Act is the offending provision. It provides:

“97. Unlawful sexual intercourse.

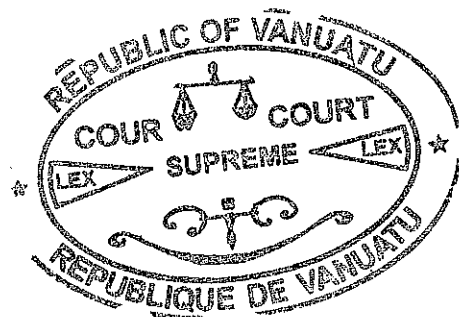
(1) No person shall have sexual intercourse with any child under the age of 13 years.

Penalty: Imprisonment for 14 years...”

This is a serious offending as reflected by the maximum penalty of 14 years imprisonment. In the present case, the seriousness of the offending is aggravated by the following aggravating factors:

The age of the victim. She was 9 years of age. She was still very much a little girl on the evidence as you used your fingers to penetrate her. The digital penetration was painful for her. It involved a breach of trust in that she was in her uncle’s house where she resides and she had expected to be protected and safe. You are a mature man of 27. The offence was repeated the same night. There was a psychological effect of the crime on the child. She refused to return to her uncle’s house. She was afraid of you.

Having regard to the maximum sentence of 14 years imprisonment, I consider that these factors require a starting point of 7 years imprisonment.



In mitigation, you are a first time offender. You have no prior convictions and that you have been of good character. You are in good terms with your parents, brothers and sisters. You are helpful to others in the community. You had performed a custom compensation ceremony towards the complainant girl and her parents and family. You are remorseful and apologise for you wrong doing. Those factors warrant a significant deduction of approximately 12 months.

You pleaded guilty at the first opportunity given to you by the court. The entry of the guilty plea saved the victim girl of the ordeal of giving evidence at a trial. Given this, and the saving of costs arising from the lack of a need for a trial, I am prepared to give the maximum discount of one third.

I also take into account of the 2 weeks pre-trial custody period from 4 December 2013 to 18 December 2013 I am prepared to make 1 month.

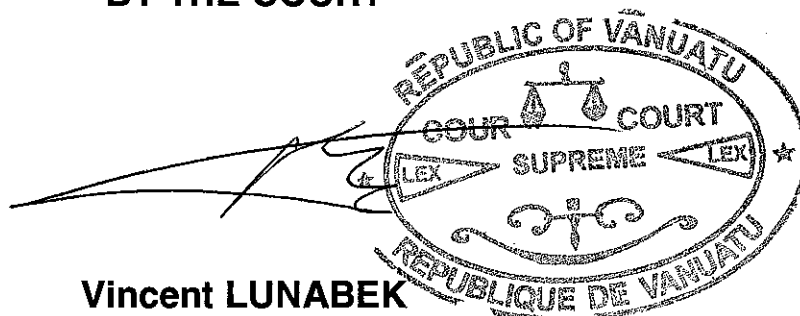
You have an end sentence of 3 years and 8 months imprisonment. *PP -v- Andy [2011] VUCA 14* is the guideline authority.

You are ordered to serve 3 years and 8 months imprisonment and this with immediate effect.

You have 14 days to appeal this sentence if you are unsatisfied with it.

DATED at Port Vila, this 4th day of December 2014

BY THE COURT



**Vincent LUNABEK
Chief Justice**