

PUBLIC PROSECUTOR – VS – EMILE DAVID DICK

Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Mrs. Losana Matariki for the Public Prosecutor and State*
Mr. Henzler Vira for the Defendant

Date: *23rd May 2014*

SENTENCE

1. Emile David Dick, you are for Sentence today for having pleaded guilty to one count of Act of Indecency on a young person, contrary to section 98 A of the Penal Code Act Cap.135.
2. The maximum penalty for this offence is 10 years imprisonment. This indicates that this offence is considered serious by Parliament.
3. You are a 52 year old man. Your victim is only 10 years old who attends class 4 at Anamburu School. The offending occurred in the early hours of 16th February 2014 at the victim's home. The victim was fast asleep beside her mother in the sitting room. She got woken up by you touching her panty and her private part. Upon finding out the victim had awakened, you removed your hand, walked to the door and held on to the handle of the door. The victim being so scared began to cry. She related the incident to her mother and the matter was then reported to the Police who investigated the complaint.
4. You have agreed to the facts as set out in the proceeding paragraph.
5. The aggravating features of your offending were-
 - a) The age disparity between you being 52 years old, a mature man and a 10 year old school girl.
 - b) The offence was committed in the presence of the victim's mother who was sleeping just beside her.
 - c) The victim was fast asleep with a risk that some other unlawful acts could have occurred.
6. Your offending involved only the touching of the victim's private part outside of her panty. Fortunately enough she had her mother sleeping beside her at the time. Otherwise something else would have happened. Your action therefore fell at the lower end of the scale for this offending.
7. The Court is guided by the case authority of **Public Prosecutor v. Visiraf Sivirai Livrai** [2013] VUSC 205. which has some similarities to your case. The differences were that in Livrai's case that victim was awake and she was

alone in her bedroom. And she got touched on her breasts and her buttock. Here, the victim was touched only once but outside of her private part.

8. The Court must stress that in sexual cases of this nature there has to be a purpose of why a punishment is imposed. In your case the purposes of imposing a Sentence of imprisonment are-
 - a) To mark the gravity of your offending.
 - b) To mark public disapproval of your action..
 - c) To deter you and other like-minded people
 - d) To protect children, young girls and woman.
 - e) To punish you adequately and appropriately.
9. The appropriate punishment for you will be a sentence of imprisonment but it will be suspended. The starting point is 6 months imprisonment. There will be a uplift of 12 months for the aggravating features increasing your sentence to 1 year and 6 months imprisonment.
 - a) You are entitled to reductions being for the following mitigating factors:-
 - 1/3 reduction for early guilty plea- 9 months.
 - b) Good cooperation with police and custom reconciliation showing remorse – 4 monthsThe balance of your sentence is 5 months imprisonment.
10. You are therefore convicted and Sentenced to 5 months imprisonment. However because you have spent well over a month in custody from 17th February 2014 to 4th April 2014 when you applied and was granted bail, it is necessary to suspend your sentence of 5 months imprisonment.
11. This suspension is made under section 57 of the Penal Code Act Cap.135. I note in your Report the chief has stated that this is not the first time you have done this sort of things to young people in the village. You must realize that you simply have to stop. And the Court gives you this last chance. If you do not stop doing this type of thing, and you are caught and charged and brought back to Court, you will go straight to prison to serve your 5 months imprisonment term.
12. That is the Sentence of the Court. You have a right of appeal within 14 days if you do not agree with this sentence.

**DATED at Port Vila this 23rd Day of May 2014.
BY THE COURT.**

