

PUBLIC PROSECUTOR

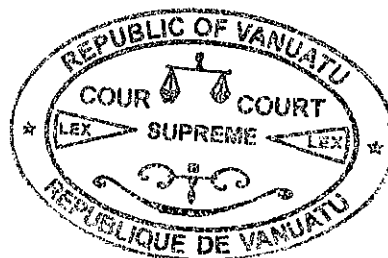
-v-

REX DALILI

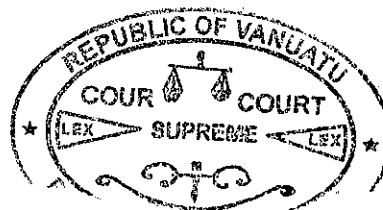
Coram: Justice JP Geoghegan
Date of Sentence: Tuesday, December 6th 2016
Counsel: Mr Philip Toaliu for the Public Prosecutor
Mr Harrison Rantes for the Defendant

SENTENCE

1. Rex Dalili you appear for sentence today on 2 counts of sexual intercourse without consent contrary to sections 90 and 91 of the Penal Code Act [CAP 135]. Those offences carry a maximum term of life imprisonment.
2. The summary of facts, which is accepted, is set out in Mr Toaliu's submissions and these charges are in respect of the rape of two sisters who were aged 9 and 14 years at the time. You were entrusted with the care of those children while their legal guardian was out of the country. Both children have been the subject of previous sexual abuse of a very serious nature at the hands of several trusted family members of another family group. I have confirmed with you through your counsel today that you were aware of their tragic, difficult and troubled past at the time you chose to commit these offences.
3. In respect of the 9 year old victim the offending took place on September 4th, 2016. At the time she was with her older sister at home and after doing some household chores she went to her room and slept. You have entered her room and carried her from her bed onto the floor at which point she has woken up. You have removed her pants and then inserted your penis into her vagina. You told her not to tell anyone or you would smack her. You then made her lick your penis several times.



4. On December 10th, the 9 year old victim's oldest sister who was 14 was at home. In the evening she was folding clothes inside her room when you have opened the door and entered the room. You have then made some obscure enquiry of her which is clearly a request for sex. She told you that she did not want to do whatever you wanted to do but you have proceeded to remove your clothing and approach her. You have removed her clothes and engaged in sexual intercourse with her. You have licked her vagina and sucked on her breast. You then told her not to tell anyone and left the room.
5. This was horrendous offending by someone given the specific task to care for and protect these extremely vulnerable victims. The impact of this offending upon them is, in my view, impossible to measure. But there can be no doubt that it has been devastating and will continue to have very significant impact upon these victims for rest of their lives.
6. In this case the Court has had the benefit of a psychological assessment which has been undertaken in respect of both victims. That psychological assessment, not surprisingly refers to the previous abuse they have suffered at the hands of other family members. The younger victim is suffering from severe anxiety, acute post-traumatic stress, impaired relations with others and possible impairment of her ability to progress academically. The older victim is suffering from acute post-traumatic stress and major depression with resulting behavioural changes and significant impediment of her level of functioning in social and academic situations.
7. In short the consequences of your offending, occurring as it has after the victims already being the subject of sexual offending, is nothing short of catastrophic.
8. I have read the pre-sentence report which has been prepared in respect of this matter. You are described by one who knows you as a very cooperative person within your community who participates well within the community and interacts well with others. You clearly have skills in the area of general mechanics and considerable knowledge also in that area. You informed the probation writer that you had an ambition to purchase a piece of land and build a permanent home for your family. Instead of that plan being achieved you had managed to destroy a family. Your behaviour at the Correctional Unit is described as good since you were remanded in custody. You have not yet performed a custom reconciliation for this offending and the guardian of the children has said she is not willing at this point to accept any

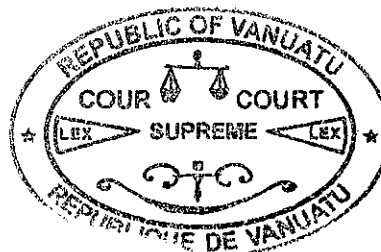


custom reconciliation and that is not surprising. The report tells me that you have expressed insight for your offending and that you are deeply sorry for your actions toward the victims. Unfortunately however, the report fails to provide any details as to how that insight was demonstrated and one wonders whether in fact you do.

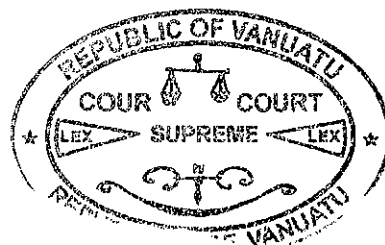
9. Mr Toaliu for the Public Prosecutor has referred in his submissions to the well-known authorities of the **Public Prosecutor v. Ali August**¹ and the **Public Prosecutor v. Gideon**² which emphasise the seriousness of this type of offending and the approach which the Court will take regarding sentencing. They refer also to various aggravating features which inevitably increase the seriousness of particular offending. I do not propose to repeat what was said in those cases. Mr Toaliu has referred to a number of aggravating features and I want to just refer to those briefly.
10. Mr Toaliu refers to the seriousness of the offence as an aggravating feature. What must be emphasised is that all rape cases are serious. It is the particular features of each case which need to be taken into account when assessing an appropriate sentence.
11. The age of the victims and the fact they were very young when these offences were committed. I agree that is an aggravating feature and a very significant aggravating feature.
12. It is submitted that the offending was repeated. I do not necessarily accept that submission. As you will have heard me say to Mr Toaliu earlier, there is no repeated offending thankfully in respect of each victim. What is significant however is that you have deliberately targeted different victims when you are in a position of trust in respect of each one.
13. A breach of trust as the victim looked upon you as a guardian and called you daddy. I readily accept that this is a gross breach of trust which is seriously aggravated by the fact that you were aware, as I have said, of the tragic and difficult background of these girls.
14. There is reference to you taking advantage of the fact of the victims previous sexual abuse and I consider that is really incorporated in the general abuse of trust.

¹ [2000] VUSC 73

² [2002] VUCA 7



15. That you threatened to inflict harm on victims if they told anyone. You certainly threatened the younger victim with physical retribution and that is certainly an aggravating feature.
16. The psychological damage suffered. I have already referred to that.
17. It is submitted that you engaged in unprotected sex and that you had been diagnosed with hepatitis B and had unprotected sex with the victims knowing that. I have spent some time discussing that particular issue with counsel. It is apparent from what I have been told by Mr Toaliu that that information has been conveyed by the girls' guardian. There is no medical evidence of it and there is no admission by you as to it. You have told me through Mr Rantes that you do not accept that you suffered from hepatitis B and in those circumstances that is not a factor which I can, or will, take into account.
18. In his submissions Mr Toaliu had submitted that in all of circumstances the Court should adopt a starting point of 20 years imprisonment. I had asked Mr Toaliu to provide me with any authority which supported that starting point at which point he told me that in fact that had been an error and his submitted that 16 years imprisonment is an appropriate starting point.
19. On your behalf Mr Rantes refers to 3 aggravating features only, namely:-
- (a) The breach of trust.
 - (b) The age difference between you and your victims.
 - (c) The psychological impact of your offending upon the victims.
20. While those 3 aggravating features are certainly present there are far more aggravating features as I have already referred to, and in particular your exploitation of the vulnerability of these victims knowing their troubled past,
21. Mr Rantes also points to the fact that you have entered a guilty plea at the earliest available opportunity and you are a first time offender both of those things being accepted. He submits that taking into account the aggravating features referred to, the appropriate starting point should be one of 10 years imprisonment.



22. In the Court of Appeal decision in **Boesalana v. Public Prosecutor**³ paragraph 6 the Court of Appeal stated:

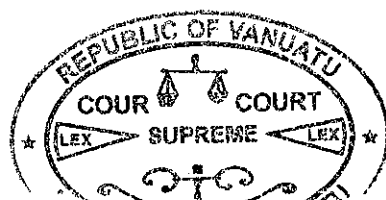
“There can be a substantial debate as the approaches which can be applied in sentencing. But it is essential that the Court not become lost in formulae or arithmetic calculations and rather looks in a general and realistic way at the entire offending assessing all relevant aggravating and mitigating factors and then reaches a sentence fortunate totality properly reflects the culpability which has being established.”

23. It is also important to maintain a broad consistency in sentencing, even though the particular circumstances in which this type of offending occurs, vary significantly. In that regard it is worthy of note that **Boesalana** involved the consideration by the Court of Appeal of a sentence of 26 years imposed in respect of a total of 11 counts of rape, 2 counts of indecency with a young person, 1 of attempted rape and 8 of incest. That offending occurred against two of the offenders daughters and commenced when they were 8 and 13 years old respectively and took place over a significant period of time. The Court of Appeal held that taking account of the relevant aggravating features, a starting point of 18 years was appropriate.
24. The case of **Public Prosecutor v. Welegtabit**⁴ involved sentencing of an offender on 2 counts of rape and 1 of indecency involving offending against his daughter who was aged 25 years at the time. It was considered in that case that a starting point of 10 years was appropriate.
25. In **Public Prosecutor v. Boroni**⁵ which involved sentencing on 1 representative charge of rape which involved offending against the offenders step daughter which commenced at the age of 10, I adopted a starting point of 11 years imprisonment.
26. Against the backdrop of those decisions, even taking into account the appalling nature of this offending I have considered that it is difficult to see how the Public Prosecutor could justify a starting point of 20 years, and now of course the Public Prosecutor accepts that is not appropriate. In that regard it also needs to be said that if there is to be a review of sentencing levels in respect of offending of this kind it is

³ [2011] VUCA 33 at paragraph 6

⁴ [2016] VUCA 48

⁵ Unreported, Vanuatu Supreme Court, Criminal Case 2900/16, 09/09/16 Geoghegan J.



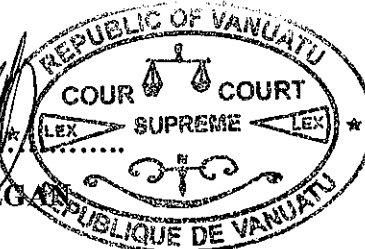
necessary that such a review be undertaken by the Court of Appeal. It is not for the Supreme Court to engage in such a task. Having said that I am also satisfied that the starting point of 10 years as suggested by Mr Rantes is too low and the aggravating features as already referred to suggest very strongly but the starting point should be considerably greater than that.

27. This was predatory offending against extremely vulnerable victims and the starting point should reflect that. Taking all matters into account I consider an appropriate starting point as one of 15 years imprisonment. I deduct from that starting point 5 years being a 1/3 allowance for the entry of a guilty plea at the first opportunity. I also deduct a further 6 months to take account of your being a first time offender.
28. Your sentence is therefore one of 9 years and 6 months imprisonment in respect of both charges and will be served concurrently.
29. There is no submission that the Court should entertain a suspension of the sentence and indeed that would be completely inappropriate. You are accordingly sentenced to 9 years and 6 months imprisonment. Your sentence is deemed to have commenced on 13th October 2016 when you were taken into custody.
30. You have 14 days to appeal.

DATED at Port Vila this 6th day of December 2016.

BY THE COURT

.....
JP GEORGHEGAN
Judge

The seal of the Republic of Vanuatu Supreme Court is circular. It features a central emblem with a scale of justice and a sword. The text "REPUBLIC OF VANUATU" is written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. In the center, the words "COUR SUPREME" are written, with "COUR" on either side of "SUPREME". The word "LEX" is written in two small boxes on either side of "SUPREME".