

PUBLIC PROSECUTOR

VS.

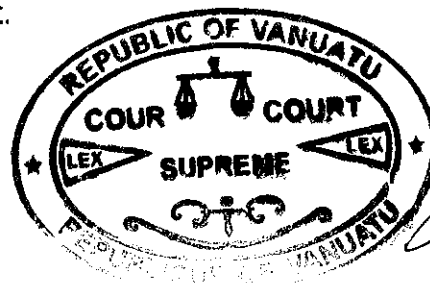
**RUBEN SALE
ARU TAMBE**

Coram: Vincent Lunabek CJ

*Counsel: Mr Kent Massing for Public Prosecutor
Ms Jane Tari for Defendant*

SENTENCE

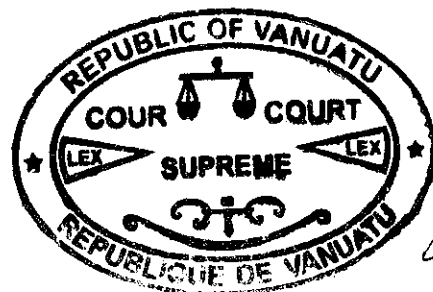
1. Ruben Sale and Aru Tambe you both appear today for sentence. You are both charged and both entered guilty plea for having unlawful sexual intercourse with a girl of 11 years of age on 17 April 2013 at Nasawa village on the Island of Maewo.
2. The brief facts are these. A complaint was made against each and both of you for the offence of unlawful sexual intercourse, contrary to section 97(1) of Penal Code Act [Cap 135].
3. The offence occurred on the 17th day of April 2013 on the Island of Maewo. It occurred in the early evening hours of that date. The complainant was sent by her grandfather to the shop. After she returned from the shop, she went home and then went back to both of you at your home.
4. Inside the house, Defendant Ruben, you removed your clothes and lay on top of her. You then penetrated her vagina with your penis. After you ejaculated, defendant Aru, you went and had sex with her. You penetrated her vagina with your penis. After sex you both then released the complainant back to her home.
5. When she returned home she reveals the matter to her grandparents. Her grandparents then called her parents and told them about the matter. She was then taken out from school to go and live with her parents.
6. The matter was later reported to the police. You were both arrested, cautioned and interviewed by the police.
7. You both admitted having sex with the complainant.



8. The facts of this case show that you have broken the law by having sex with a young girl of 11 years old. The law says that no person shall have sexual intercourse with a girl under the age of 13 years. As a child, she is vulnerable that is why the law protects her like any other girls or boys of her age. You have broken the law and you must be dealt with responsibly.
9. Sexual Intercourse with a girl under 13 years of age carried a maximum penalty of 14 years imprisonment. It is a serious offence. You are both liable to be sentenced to that 14 years imprisonment as the maximum penalty.
10. Without anymore, this type of offending warrants a custodial sentence of 2-3 years imprisonment. Why a custodial sentence? A custodial sentence is necessary for the following reasons:
 1. To mark the graving of your offending
 2. To mark the public disapproval to this type of offending
 3. To punish the offender from the offending
 4. To deter other not to commit the same type of offence again in future
 5. To protect girls in the community
11. But as in any type of sentencing, I must sentence you to the particular circumstances of your offending.
12. The offending occurred on April 17th 2013, when you Ruben Sale, you were about 13 years and going for 14 whilst Aru Tambe, you were about 11 and going on 12 years old. Today Mr Sale and Mr Tambe, you are respectively 17 and 14 years old. The sentence I will impose on you today will reflect your particular circumstances at the time of the commission of your offending.
11. I consider the following mitigating factors in respect to each of you:

Ruben Sale

1. You were 13 going to 14 years old when you committed this offence.
2. You are a first time offender.
3. You cooperated well with the police during investigation.
4. You pleaded guilty at the first time opportunity given to you by the Court.
5. You had performed a custom reconciliation with 1 pig, roll of mats and monetary compensation of VT10,000. The reconciliation was done sometimes in 2015.



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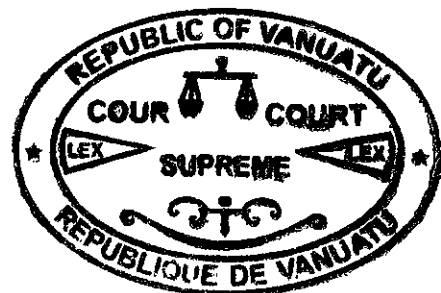
6. You have served a pre-custodial term of 37 days in custody before being released on bail. This is equivalent to 2 months custodial term.
7. It has been 3 years after the commission of the offending and you have not re-offend.
8. Although young, you have started a fairly young family with one very young child.
9. You are the sole bread winner of your own family.

Aru Tambe

1. You were 11 years old during the material time of the offending.
2. You are a first time offender.
3. You cooperated well with the police during investigation.
4. You pleaded guilty at the first opportunity given to you by the Court.
5. You have performed a customary reconciliation with 1 pig, roll of mats and monetary compensation of VT10,000. The reconciliation was done sometimes in 2015.
6. You had served a pre-custodial term of 37 days in custody before being released on bail. This is equivalent to 2 months custodial term.
7. It has been 3 years after the time of offending and you have not re-offended.
12. I agree with the Defence counsel submissions that you were teenagers at the time you committed this offence. You were young and naive. You have made silly choices resulted in your immaturity and curiosity.
13. There are no aggravating features. Although, I note that you have breached the conditions of your bail and you have surrender yourself after a warrant of arrest was issued against you for your arrest.

The culpability in this sort of case will be much lower to the end of the scale of such offending.

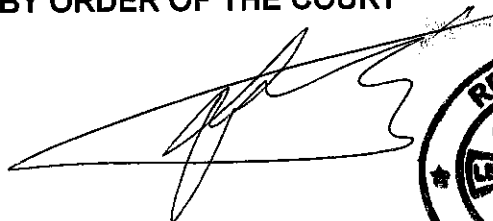
14. I note that you both have spent 37 days in custody. By that time process, you have learnt a lesson in the offending.



15. I note also that the victim complainant and the two boys were both around the vicinity of age group when this offending happened. All of them were naive and young.
16. I further note that it has been 3 years after the offending as the offending was on 17 April 2013. You both have not re-offended since then.
17. I consider a section 55 (4) of the Penal Code Act [Cap 135], a sentence of conviction and discharge. However, I decline to do that. You both show defiance against the law and the court by breaching your bail conditions without any justification.
18. I sentence you to 6 months probation under the general conditions and you will undertake Gudfala Program under the conditions to be set by the probation officers inclusive of respect to the authorities and spiritual leadership be it local.
19. You have 14 days to appeal if you are unsatisfied with this sentence

DATED at Luganville this 24th day of June 2016.

BY ORDER OF THE COURT



VINCENT LUNABEK
Chief Justice

