

**BETWEEN: PUBLIC PROSECUTOR**

**AND: SAMUEL ARU**

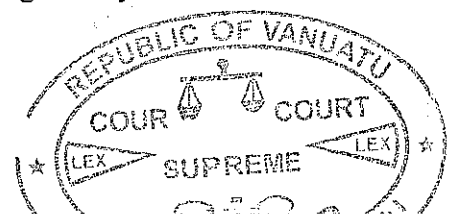
**Date of Plea:** *6<sup>th</sup> day April, 2017*  
**Date of SENTENCE:** *15th day of May, 2017 at 2:00 PM*  
**Before:** *Judge Oliver Saksak*  
**Appearances:** *Betina Ngwele for the Public Prosecutor*  
*Brian Livo for the Defendant*

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**SENTENCE**

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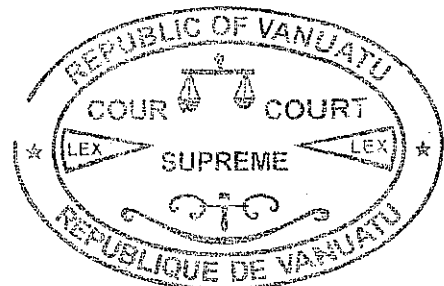
1. Samuel Aru, you are for sentence today for having pleaded guilty to three counts of sexual intercourse without consent, sections 90 and 91, one count of acts of indecency without consent, section 98A, and one count of sexual intercourse with child under care and protection, section 96 (1) of the Penal Code Act CAP. 135 (the Act).
2. These are serious offences because sexual intercourse without consent carries a maximum of life imprisonment, act of indecency without consent carries a maximum of 10 years' imprisonment and sexual intercourse with a child under care and protection carries a maximum of 10 years imprisonment.
3. You are 50 year old man. Your victim is your step daughter of 16 years old but she was only 14 years old in 2015 when you started committing these sexual acts on her. Her mother and her started living with you since the



victim was only 2 years old. She is the only child between the two of you. In 2015 when her mother left to work in New Zealand under the RSE Scheme, you took advantage and started sexually abusing your step-daughter. You started acting indecently towards her by exposing your penis to her and at times you would touch her buttock. And you would tell her not to tell anyone about what you were doing to her. In July 2015 you started having sexual intercourse with her by inserting your finger into her vagina. This occurred three times before sexual intercourse took place. You threatened to kill her by cutting her throat if she told anyone about your actions.

4. During these occasions you would undress her in your bedroom and made her hold your penis. When you did not get an erection you used your finger and inserted it into her vagina. In 2016 you had sexual intercourse with her 5 times by inserting your finger into her vagina. The last time it happened was on 3<sup>rd</sup> January 2017 when the victim's mother caught you both in the act. A complaint was made to the police subsequently. And upon interview you admitted committing these sexual acts on your step-daughter. You have accepted these facts.
5. Inserting a finger into a woman's vagina falls within the definition of sexual intercourse under section 89A of the Act. And when it is done without consent, it becomes an offence under sections 90 and 91 of the Act.
6. These offendings occurred within the confines of your house and your bedroom the very environment where she was supposed to feel safe and cared for. There was a serious breach of trust. You appear to be shifting the blame onto the victim's mother, but as a mature man, that is inexcusable.
7. There were repetitions of the acts which extended over a period of two years from July 2015. You were 49 years old then but now you are 50 years old. There is an age difference of 35 years.
8. Courts have a duty to impose sentences which –
  - a. Mark the seriousness of offences,

- b. Mark public disapproval and condemnation of offender's actions;
  - c. Act as a deterrence to the offender and others,
  - d. Protect the young, the weak and vulnerable members of society, and
  - e. Adequately punish the offender.
9. These purposes would not be achieved if the Court did not impose a custodial sentence on you today.
10. The classic cases of PP v. Scott [2002] VUCA 29 and PP v. Gideon [2002] VUCA 7 are clear authorities that rape is always a serious offence and calls for immediate custody, and that men who take advantage sexually of young girls, forfeit the right to remain in the community.
11. The lead offence in your case is sexual intercourse without consent – counts 1, 3 and 4. Because there was no penile penetration, I accept the defence submissions that your degree of culpability falls within the mid to high range of the scale and makes it a little less serious than the case of PP v. Viralone [2017] VUSC 38. Nonetheless, the actions were repeated in 2016 and 2017. For this reason taking all these factors together, the starting point for this change is to be 8 years imprisonment on each of the 3 counts made to run concurrently.
12. For the offence of act of indecency without consent in Count 5, the starting sentence shall be 7 years imprisonment, concurrent. And for sexual intercourse with a child under care and protection in Count 3 the starting point shall be 7 years imprisonment concurrent.
13. I order that the 7 years imprisonment imposed for the offences in Counts 2 and 5 shall be served concurrently with the sentence for the offences in Counts 1, 3 and 4.
14. That makes your total sentence to be 8 years imprisonment as a concurrent sentence and as a starting sentence.

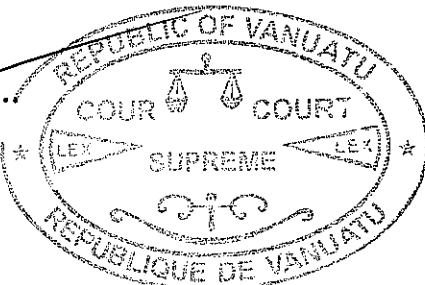


15. I now consider your mitigating factors. First, you are entitled to a 1/3 reduction for your guilty plea, which means 2 years and 8 months are deducted from the 8 years imprisonment, imposed as the starting sentence. That leaves the balance at 5 years and 4 months. Next I consider your clean past and your good cooperation with the police during investigations. I deduct the 4 months imprisonment for these 2 factors.
16. There will be no further deductions. You have not shown any remorse for your actions and you have not performed any customary reconciliation.
17. Samuel Aru, the Court hereby convicts you and sentences you to an end sentence of 5 years imprisonment as a concurrent sentence for the 5 offences in Counts 1, 2, 3, 4 and 5. Your sentence is backdated to 6<sup>th</sup> January 2017 when you were first remanded in custody.
18. There are no exceptional circumstances in your case to warrant a suspension of sentence.
19. That is the sentence of the Court. If you do not agree with it, you have a right to appeal, in which case you should file an appeal within 14 days of the date of this sentence.

**DATED at Port Vila this 15th day of May, 2017**

**BY THE COURT**

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**Oliver Saksak**  
**Judge**

The seal of the Supreme Court of Vanuatu is circular. It features a central scale of justice. The words "REPUBLIC OF VANUATU" are written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. In the center, "COUR" is on the left and "COURT" is on the right, with "SUPREME" below the scale. Two small triangles containing the word "LEX" are positioned on either side of "SUPREME".