

IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU
(Criminal Jurisdiction)

Criminal
Case No. 20/1656 SC/CRML

BETWEEN: The Public Prosecutor

AND: Bethrand Tablibu

Yanyan Tablibu

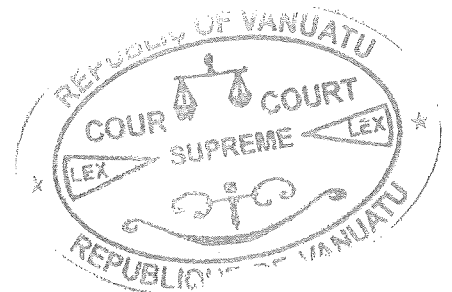
Simon John

Defendants

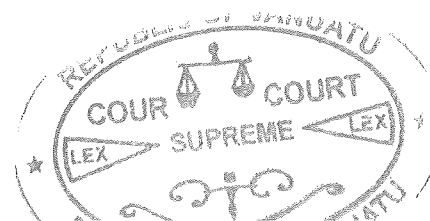
Date of Plea: 10th August 2020
Date of Sentence: 14th August 2020
Before: Justice Oliver Saksak
In Attendance: Mr Damien Boe for Public Prosecutor
Mr Steven Junior Garae for the Defendants

SENTENCE

1. The three defendants Bethrand Tablibu, Yanyan Tablibu and Simon John are for sentence today for having pleaded guilty to one joint charge of unlawful sexual intercourse contrary to section 97 (1) of the Penal Code Act [CAP 135]. It was a representative charge.
2. The maximum penalty for this offence is life imprisonment. This lengthy penalty indicates the offendings by these young offenders are very serious indeed.
3. The victim is a 7 years old school girl from the same village of Tonbang, North Ambrym. At the time of the offendings the victim and the offenders attended the same school, the Topol Primary School. But the offendings occurred many times in different places back at Tonbang Village in the year 2019 through March 2020.
4. Simon John admitted having sex with the under aged victim many times from 2018 through 2020 in the house, bush and garden. The victim told the nurse on examination it was 8 times. These involved anal and vaginal intercourse, kissing, sucking of vagina and insertion of the finger into the vagina.



5. Yanyan Tablibu admitted having sex with the under aged victim at a creek close to their house in 2019. The victim told the examining nurse that Yanyan had sex with her 10 times in the bush. These involved anal and vaginal intercourse, kissing of the mouth and vagina and insertion of the finger into the vagina.
6. Bethrand Tablibu admitted having sex with the under aged victim many times in 2019. The victim told the nurse the defendant had sex with her 5 times in the bush. These involved anal and vaginal intercourse, kissing, sucking of the penis and assault on the head on 27th April 2020.
7. When the victim was examined by a nurse on 28 May 2020 the nurse recorded on the medical report her findings and opinion on the 7 year old victim who had sex with 4 boys whilst under aged. She found her vagina was painful when passing urine and the "**OS open wider**". The anus had "**laceration and bleeding abit with passing faeces**".
8. The victim's age compared with Simon John's age is 10 years difference. Her age with Bethrand's age is 6 years and with Yanyan is a 7 years difference.
9. The victim and the defendants being from the same village have close family ties and relationship.
10. The offendings were repetitive, they were planned and they extended over a period of more than 1 year from 2018 to April 2020.
11. Those are the aggravating features of these defendants' offendings.
12. The mitigating factors available from the explanation for why they offended were-
 - (a) That the victim was flirting with her cousin brother and other boys,
 - (b) That she was a willing participant in all the activities she was made to engage in, and
 - (c) From the earliest offendings in 2018 with Simon John the victim had no issue and did not complain.
13. Young girls must continue to be protected. The victim in this case may have been acting inappropriately but that was no excuse for these young offenders to take advantage of and abuse her sexually repetitively and over a period of more than 1 year. They risked her life to



very serious physical injuries. The offendings occurred in the bushes away from the village where there was a risk of harming her if she did not succumb to their demands or wishes. And she was younger than Simon John by 10 years, Yanyan by 7 years and Bethrand by 6 years, and they were closely related.

14. Taking all these aggravating features together with the seriousness of the offendings, custodial sentences are warranted. However in assessing the defendants' appropriate sentences, I have considered the principles applied in PP v Leona [2018] VUSC 119, PP v Siro [2020] VUSC 158, PP v Rasa [2019] VUSC 38, PP v Anson [2012] VUSC 9.

15. I bear in mind also Article 37 of the Convention on the Rights of A Child to which Vanuatu is a signatory. Further I bear in mind section 54 of the Penal Code Act providing for imprisonment of minors. This section specifically prohibits sentencing of an offender who is under 16 years of age to imprisonment, unless no other method of punishment is appropriate.

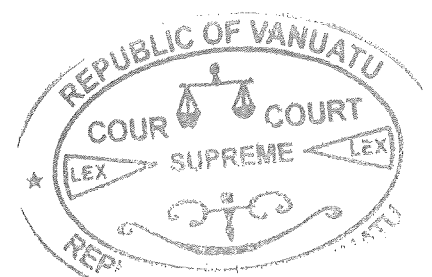
16. Taking those provisions into consideration and the ages of the three defendants, Simon John was 17 years at the time of offendings in 2019 therefore he could be sentenced to imprisonment. However Yanyan and Bethrand's ages fall below 16 years and therefore the Court will consider imposing other forms of punishment available in the Penal Code Act.

17. It is essential the Court ought to impose sentences that will act as a deterrent to these young offenders and which punishment also marks the seriousness of their offendings and the disapproval of the public to such sexual behaviours.

18. As a balancing exercise of course the Court must take into account the rehabilitative factors essential to assist these young offenders reintegrate back to their community and the long future ahead of them.

19. Having said all that I now impose the following sentences=

(a) For Simon John- He being the eldest of the three but he set such a bad example that the other two others followed blindly. A custodial sentence is imposed. And taking all the aggravating features together with the mitigating factors and the seriousness of his offendings, I set his starting sentence at 6 years imprisonment.



(i) **Personal and mitigating Factors**

He is now 19 years old from a family of 4. He has experienced parental separation and is now in the care of his mother. He attends Ranon Junior Secondary School at Year 10. He was arrested and remanded in custody from 22nd June 2020 until he was released on bail on 9th July 2020. His ambition is to be a carpenter. He wishes to continue with his education to achieve his ambition.

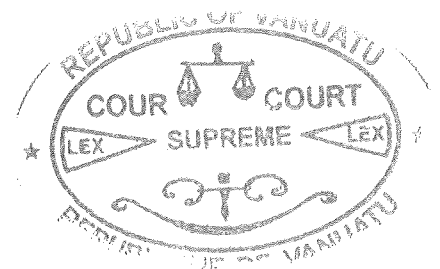
(ii) He has no previous convictions. He is remorseful. He cried when the probation officers spoke with him about his offendings during Pre-Sentence Report interview. He has not performed any reconciliation ceremony but is willing to perform one given the opportunity. He expresses his apology for his actions. And he pleaded guilty at the earliest opportunity saving a lengthy trial and the trauma of the victim having to relate all that happened to her during the offendings in Court and in public.

(iii) For his guilty plea the Court allows the full 1/3 or 33% discount from his 6 years sentence bringing the sentence down to 4 years imprisonment.

(iv) For the other mitigating factors the Court allows a further deduction of 1 year, leaving his end sentence at 3 years imprisonment.

(v) I have regard his youthful age, his ambition and wishes to continue his education to reach that ambition and to have a good job, a good further and family to usefully contribute to the development of Vanuatu, I consider that his end sentence should be suspended for a period of 2 years, under section 57 of the Penal Code Act. He must maintain a good behaviour and not reoffend within the next 2 years. If he does and is charged and convicted, he will be sent to prison to serve his 3 years sentence.

(vi) Accordingly I convict Simon John and sentence him to 3 years imprisonment as an end sentence, but suspend his sentence for a period of 2 years from the date of this sentence.



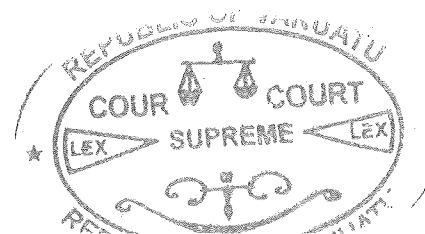
- (vii) In addition, I impose a supervision order under section 58G of the Penal Code Act for the whole period of 2 years of his suspended sentence. This is to reduce the likelihood of him further offending to help him rehabilitate and reintegrate back into his community.

(b) Yanyan Tablibu

- (I) For Yanyan Tablibu- He is 15 years old and a Year 7 student at Tobol Junior Secondary School. His ambition is to complete his education and become a teacher. He has no previous conviction. He was arrested and remanded in custody from 22nd June 2020 and released on bail on 5th August 2020. Considering Section 54 of the Penal Code Act and Article 37 of the Convention on the Rights of the Child, and applying the principles in PP v Kalo [2020] VUSC 25 and PP v Molsir [2020] VUSC I apply section 56 of the Penal Code Act to this young offender. I order Yanyan Tablibu to come up for sentence if called upon do so within a period of 2 years from the date of this sentence. His specific condition is that in the next 2 years, Yanyan Tablibu must not reoffend in any way or in any manner whatsoever. If he does, he will be called up and sentence for this offendings in this case.
- (II) In additional I impose a supervision Order on Yanyan Tablibu for a period of 2 years under sections 58G and 58H, 58I and 58J of the Penal Code Act. This is to reduce the likelihood of him reoffending and to assist him rehabilitate and reintegrate him back into his community.

(c) Bethrand Tablibu

- (i) Finally for Bethrand Tablibu, I treat him in the same basis as Yanyan Tablibu. I apply section 56 of the Act and order him also to come up for sentence within 2 years if called upon, on condition he does not reoffend in anyway or in any manner whatsoever. If he does, he will be called upon and sentenced for his offendings in this case.
- (ii) In addition and like Yanyan Tablibu, I impose a supervision order on him for a period of 2 years under section 58G, 58H, 58I, and 58 J of the Penal Code Act.




This is to reduce the likelihood of him reoffending and to help him rehabilitate and reintegrate him back into his community.

20. Those are the sentences of the Court for each three of you. You all have rights of appeal against your sentence within 14 days if you do not agree with it.

DATED at Port Vila this 14th day of August 2020

BY THE COURT


OLIVER.A.SAKSAK

Judge

