

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

**Criminal**  
**Case No. 20/2967 SC/CRML**

**BETWEEN: The Public Prosecutor**

**AND: Exley Tari**

**Defendant**

**Date of Plea:** 25<sup>th</sup> November 2020  
**Date of Sentence:** 26<sup>th</sup> November 2020  
**Issued:** 10<sup>th</sup> December 2020  
**Before:** Justice Oliver Saksak  
**In Attendance:** Mr Damien Boe for Public Prosecutor  
Mr Rollanson Willie for Defendant

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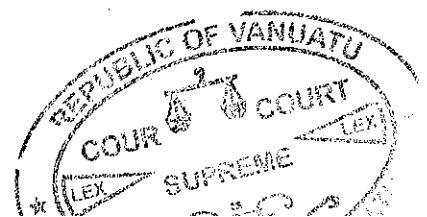
**SENTENCE**

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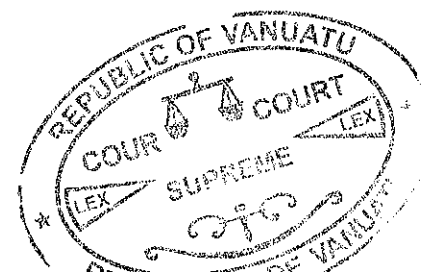
1. Exley Tari is for sentence today for having pleaded guilty to 8 counts of unlawful sexual intercourse and 9 counts of incest.
2. The offence of unlawful sexual intercourse under section 97 (1) of the Penal Code Act carries the maximum penalty of life imprisonment. Incest under section 95 (1) (c) carries the maximum penalty of 10 years imprisonment.
3. These are very serious offendings.

**Facts**

4. In 2016 the defendant began committing acts amounting unlawful sexual intercourse on his 2 very young grandchildren. Delma Banga aged 6 years and was in pre-school in 2016 when the defendant started to suck on the victim's clitoris and thereafter inserted his finger into the victim's vagina. These actions continued into 2017, 2018, 2019 and finally through August 2020 when the defendant started to use his penis to rub it against the victim's vagina. The defendant had used threats to beat the victim if she told anyone about what he was doing. The victim's grandmother finally noted the victim's broken panty and made enquiries after which the victim told her grandmother what the defendant had been doing to her since 2016.



5. The defendant did the same things to Joyceline Banga in 2016 when he inserted his finger into the girls' vagina. She was 7 years old. These continued into 2017, 2018, 2019 and 2020.
6. The defendant has accepted these facts. He took advantage of the victim's omissions or failures to report those happenings to anyone since 2016 and continued to abuse the very young victims.
7. The aggravating features of his offendings are that-
  - (a) Both victims were of very young and tender age in 2016.
  - (b) There was a great age disparity between them.
  - (c) There was a serious breach of trust.
  - (d) Actions were repeated over a period of 4 years.
  - (e) There were degrees of planning.
  - (f) Actions were done within the confines of the family home.
  - (g) There was great risk of sexually transmitted disease.
  - (h) Acts were incestuous.
  - (i) The mental and physical impacts on the victims.
  - (j) Lack of remorse.
8. In sentencing the defendant I have taken into account the totality principle submitted by the prosecuting counsel. I treat the unlawful sexual intercourse charges as the lead offence and treat the incest charges only as an aggravating factor.
9. For victim 1, Delma Banga I convict and sentence the defendant as follows:-
  - (a) For Count 1 and Count 5 together he is sentenced to 3 years imprisonment.
  - (b) For Count 2 and Count 6 together, he is sentenced to 3 years imprisonment.
  - (c) For Count 3 and Count 7 together, he is sentenced to 3 years imprisonment.
  - (d) For Count 4 and 9 together, he is sentenced to 3 years imprisonment.
  - (e) For Count 8 (incest alone), he is sentenced to 1 year imprisonment.
10. As these offendings were committed on different dates from 2016 through 2020 the sentences are to run consecutively making a total of 13 years imprisonment as the starting sentence.
11. For victim 2, Joyceline Banga, I convict and sentence the defendant as follows:-
  - (a) For Counts 10 and 14 together I sentence the defendant to 3 years imprisonment.
  - (b) For Counts 11 and 15 together, I sentence him to 3 years imprisonment.
  - (c) For Counts 12 and 16 together, I sentence him to 3 years imprisonment.
  - (d) For Counts 13 and 17 together, I sentence him to 3 years imprisonment.



12. Again due to the fact that these offences were committed on different dates from 2016 through 2020, the sentences will be served consecutively making a total of 12 years imprisonment as a starting sentence.
13. Applying the totality principle, I order that the two sentences be served concurrently. The total sentence shall therefore be only 13 years imprisonment.
14. I consider mitigation of sentence. First his guilty pleas I allow the full 1/3 reduction. His sentence of 13 years imprisonment is reduced by 4 years and 4 months. I take into account his personal factors such as age being 67 years old. He has had very little reduction. He has separated from his wife. He is a subsistence farmer and a builder. He has contributed to his community. He currently has a medical condition. I note his medical report dated 27<sup>th</sup> October 2020. I allow a deduction of 8 months for these from 8 years and 8 months. The balance of his sentence is 8 years imprisonment.
15. For his clean past record I deduct a further 1 year. His end sentence is therefore 7 years imprisonment.
16. The defendant has spent 1 month and 23 days in custody on remand. This period is deducted accordingly from his balance of 7 years imprisonment.
17. That is the sentence of the Court.
18. The defendant has a right of appeal against this sentence within 14 days if he does not agree with it.
19. The sentence is without suspension.

DATED at Port Vila this 10<sup>th</sup> day of December 2020

BY THE COURT

  
OLIVER.A.SAKSAK

Judge

