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

**Criminal
Case No. 24/792 SC/CRML**

PUBLIC PROSECUTOR

v

DIMITRI BABA

Date of Pleas: 22 April 2024
Coram: Hon. Chief Justice V. Lunabek
Counsel: Mr K. Massing for the State
Ms B. Taleo for the Defendant
Date of Sentence: 23 May 2024

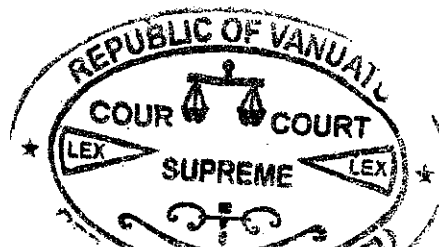
SENTENCE

I. Introduction

1. Mr Dimitri Baba ("*Mr Baba*"), you appear for sentence today having being pleaded guilty to one count of Indecency with a young person, contrary to Section 98A of the Penal Code Act [CAP. 135] ("*the Act*").

II. Facts

2. A formal complaint was made against you for the offence of Act of indecency with a young person.
3. The complainant was over the age of 5 years old when the offending took place. Her date of birth was 5th of March 2018. She attended kindy school at Rowhani primary school.
4. You were 15 years old at the time of the alleged offending. you and the complainant were related. You are her brother-in-law.



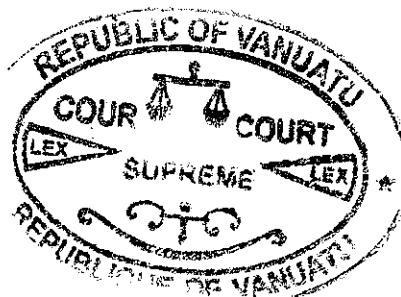
5. The offending took place on the 8th of December 2023. At that time the complainant, her mother and sister were at home. It was in the afternoon when the complainant was about to have shower that you committed the act on her.
6. The actual offending occurred when you approached her and you removed her clothes and your clothing. You then spit on your penis and spit on her vagina. You further rubbed her vagina with your hand. While you were performing the act on her, her mother approached you where you left the scene. Her mother saw what you had done to her.
7. When asked about what had happened to her, she told her mother what you had done to her by rubbing her vagina. She also confirmed in her statement to the police that you told her, for her to look for lices on your head.
8. The matter was reported to the police where you were arrested by the police. You were cautioned and interviewed by the police and you admitted the allegations made against you.

III. Sentence Start Point

9. The maximum sentence for a person who commits an act of indecency upon, or in the presence of another person under the age of 15, is an imprisonment for 10 years.
10. There is no mitigating factor for the offending, but the following aggravating factors exist:
 - (a) There was a degree of planning on your part (Mr Baba);
 - (b) There is age differential of 10 years. You were 15 years old and the victim girl 5 years old;
 - (c) The mental impact on the victim.
11. You are sentenced to 3 years imprisonment as your sentence start point after considering the factual circumstances of the case of Public Prosecutor v Tiobang [2013] VUSC 206 as a comparable case, though, the case of Public Prosecutor v Tiobang is more serious than the present case.

IV. Mitigating factors for the Defendant

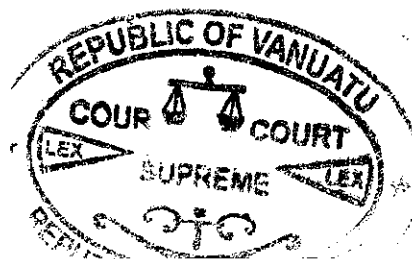
12. You are 15 years of age at the time of the offending. the pre-sentence report contains the following positive information:
 - (a) You are one of 5 children;



- (b) Your mother left you at a very young age. You were then adopted by your mother's sister. You do not know your father;
 - (c) You grew up under the care of your grandfather and aunty;
 - (d) You provide insight for your offending;
 - (e) During your time in custody, you have rehabilitated, coming to understand your wrongdoing and have learnt a lot spiritually undertaking bible studies. You say that you will not commit such offending again;
 - (f) The report writer viewed that the lack of parental support and unstable home is a contributing factor to your sexual urges leading to the offending;
 - (g) Your sexual urges can be addressed through a Sexual Offenders Module to give you the understanding on the pathway to your offending and the truth about factors that led you into your offending. There are various programs run by Probation that you can undertake;
 - (h) You have joinery skills working with your uncles;
 - (i) You are a first-time offender.
13. I give you a reduction of 4 months for your mitigating factors.
14. I give a further reduction of 33% for early guilty plea.
15. The remaining balance of your sentence is 22 months imprisonment.
16. You have already spent time in pre-custodial period from 12 December 2023 to 15 April 2024, a total of 4 months. This has to be deducted from your sentence.
17. Your sentence is further reduced to 18 months.

V. End Sentence and Suspension Consideration

18. 18 months imprisonment is your end sentence.



19. In this case, I consider the nature and circumstances of your offending. I also consider your character as an offender and your age of 15 years at the time of offending. I accept that you have realized your wrongdoing. You accept your responsibility at that young age. I consider the positive information in the pre-sentence in relation to you. I consider further Section 54 of the Act. This case involves an act of sexual abuse by a 15 year old boy on a 5 year old little girl. I remind you, Mr Baba, about what the courts have said on sexual abuse on girls and other vulnerable people in the society that men (of boys or girls) who committed sexual abuses on the weak and vulnerable persons (such as the little girl of 5 years in this case), those men, boys or girls have no place in the community and they must be in prison [see: Public Prosecutor v Kevin Gideon [2002] VUCA 7].
20. In this case, your circumstances described above, justify that your imprisonment sentence of 18 months imprisonment is suspended. It is so suspended for a period of 2 years.
21. In addition, Mr Baba, you are sentenced to 6 months supervision to undertake Sexual Offenders Module and various programs run by the Probation Services that you can undertake as part of your rehabilitation.
22. You have 14 days to appeal this sentence if you are unsatisfied with it. The 14 days starts on the date of this sentence.

DATED at Port Vila, this 23rd day of May, 2024.

BY THE COURT

Hon. Chief Justice Vincent LUNABEK

