

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

Criminal Case No. 27 / 2012

PUBLIC PROSECUTOR

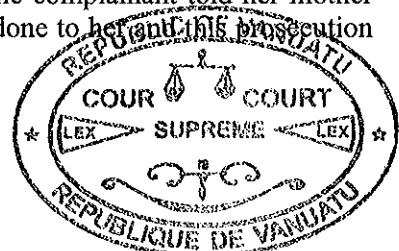
V

JEAN RENNIE MALERE

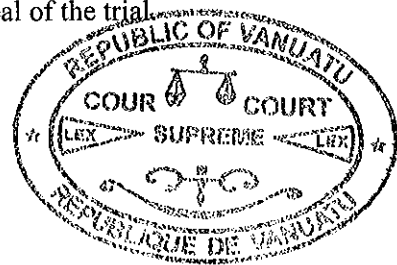
Hearing: 5 April 2012
Before: Justice Robert Spear
Appearances: Tristan Karae for the State
Willie Kapalu for the accused

SENTENCE

1. Jean Rene Malere, you are for sentence having pleaded guilty to one count of having sexual intercourse with a 14 year old girl. This offending occurred at a family New Year's Eve gathering on the 31st of December 2011.
2. You were drinking alcohol throughout the evening. At some stage, you called out to your niece, then age 14 years of age (the complainant) to come over to see you. You grabbed her and kissed her. She managed to escape your clutches and moved back to be with her friends.
3. Later that night, you called out again for her to come to you but she refused. A short time later, you called out again and she came over to you feeling that she could not disobey her Uncle. You grabbed her by the hand, took her forcefully in to a seclude area and told her that you wanted to have sexual intercourse with her. She refused saying that she was menstruating. You indicated that you had a condom. The summary of facts does not deal further with the detail of what occurred except, and quite sufficiently, to say that you then forced her to have sexual intercourse with you.
4. The summary facts does specify that the complainant complied with your demands because you were drunk and she was afraid of what you would do if she refused.
5. It appears that you were interrupted while having sex with her by her Mother and other family members who were looking for her. The complainant told her mother and other family member immediately what you had done to her and this prosecution is the outcome.



6. You are fortunate indeed that you have not been charged with having sexual intercourse without consent as that is what the summary of facts indicates is the appropriate charge. The Prosecution has, however, elected to charge you with having sexual intercourse with a young girl of 14. That is not as serious a charge as sexual intercourse without consent but it is still a serious charge carrying with it a maximum penalty of 5 years imprisonment.
7. There are a number of aggravating features to this offending. The complainant was only 14 years of age although, to an extent that is addressed within the charge and the maximum sentence for the offence. You, however, were 27 years of age and so there is an age difference of 13 years. More significantly you are her uncle and so there was a shocking breach of trust on your part. You were able to use your senior position within the family effectively as a means by which you were able to gain her trust or get her to lower her defences and, of course, you abused the trust which required that you look to protect family members and not harm them.
8. For these reasons, this case is approaching the most serious case of sexual intercourse with a 14 year old girl as you can get and justifies the court considering an offending end point approaching the maximum.
9. You are 27 years of age and you pleaded guilty at the first reasonable opportunity. I note from the pre-sentence report that you have no previous convictions and that you have some skills having completed a tiling course.
10. It appears from the pre-sentence report that you are attempting to minimise this offending saying that the young girl was flirting with other boys. That can only be understood as an attempt by you to place the blame at least partially on the complainant on the basis that her behaviour with others her age (at least as you contend) amounted to an invitation for you to take advantage of her. The probation officer is clear that, during the course of your interview with him, you attempted to minimise your offending and put the blame, to some extent, on to the complainant. I tell you now that this was not her fault in any way. She was a young member of your wider family who should have been able to look to her uncle for her safety and not as a source of harm.
11. The probation report also notes that you have no intention of performing a customary reconciliation ceremony although it does appear that your family had initiated a ceremony with the presentation of mats, yams, kava and money. You were not present during the customary reconciliation ceremony. I cannot give you credit for remorse and I must treat the reconciliation ceremony as being a sensible and mature approach by other family members to resolve difficulties that you caused in the family.
12. I consider that this offending requires me to adopt an offending end point of 3 years' imprisonment against the maximum of 5 years. I allow you 6 months for your otherwise good character and a full one third credit for your early guilty plea. That guilty plea has saved the State the cost of a trial and, more importantly, the complainant and her family have been saved the ordeal of the trial.



13. That bring me down to a sentence of 20 months or 1 year and 8 months. Given the seriousness of the offending, your attempt to minimise the offending and shift the blame partially on to the complainant, and your complete lack of remorse for the harm that you have done to this young girl, I am not prepared to suspend the sentence.
14. You are sentenced to 1 year 8 Months imprisonment which will be considered as commencing 29 days ago to recognise the time that you have been in custody.
15. You have 14 days to appeal this if you do not accept it.

BY THE COURT

