

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

Criminal Case No.32 of 2013

PUBLIC PROSECUTOR

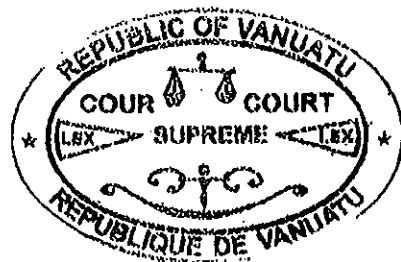
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JAPHET NARAI

Coram: Justice D. V. Fatlali
Counsel: Mr. T. Karae for the State
Mr. H. Vira for the defendant
Date of Sentence: 28 June 2013

SENTENCE

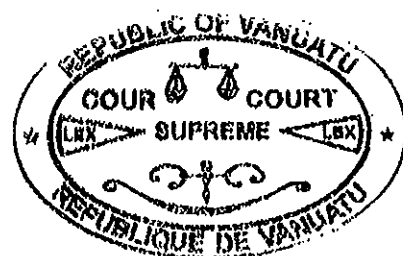
1. Japhet Narai, you were convicted on 4 June 2013 after you pleaded guilty ("*i tru*") to committing two (2) offences of Unlawful Sexual Intercourse contrary to **Section 97 (2) of the Penal Code [CAP. 135]**. In summary, the particulars of the offences are that on numerous occasions between September 2011 and August 2012 you had sexual intercourse with a young girl who was under the age of 15 years. The offences took place at Antioch village on the island of Erromango when the complainant lived with your parents. You are related as cousins.
2. In your police interview, you claim that you and the complainant agreed to have sex and that you paid her money. You deny forcing the complainant to have sex with you and you admitted that the complainant was "*14 or 15 yias olsem*" at the time.
3. In mitigation your counsel states you were tempted to commit the offences because your wife was in Port Vila at the time and you claim that it has only been since you were charged that you have become aware that "*It is wrong to have sex with an underage*".
4. Japhet Narai let me re-emphasis for you what the law says so that you may be absolutely clear about the seriousness of your action:
 - **Section 11 of the Penal Code** says: "*ignorance of the law shall be no defence to any criminal charge*";



- **Section 97 (2) of the Penal Code** under which you are charged states: "*it is no defence to a charge under this section that the child (victim) consented or that the person charged (i.e. you) believed that the child was of or over the age (of 15 years)*";
- **Section 101A of the Penal Code** defines an "*act of child prostitution*" as including "*any sexual service ... provided by a child for the payment of money*" and a "*child*" is defined as "*any child under the age of 18 years*".

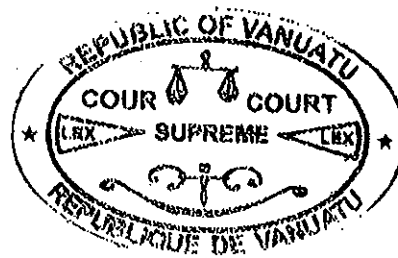
From the foregoing laws of Vanuatu you can see that everything you thought about and did with the victim was wrong and against the law.

5. Now let me say something about why? the law makes it a criminal offence to have sexual intercourse with a girl under 15 years of age. This law is based on society's common understanding and experience of the normal physical and mental development of young girls. It recognizes that girls under 15 years of age are both mentally and physically too immature to engage in sexual activity which can expose them to real physical and mental harm, as well as, unwanted pregnancy.
6. There are already too many unplanned, unwanted pregnancies of young single mothers in this country. Only last week the local media revealed the finding of a new born baby in a pit-toilet.
7. The Courts have a duty to protect young girls from sexual predation by elder more mature men and from their own sexual curiosity and promiscuity. That is why the law says that if the young girl consents to sexual intercourse it is still an offence. In short, sexual intercourse with a girl under 15 years of age is absolutely prohibited under any circumstances. For much the same reason(s) the laws of Vanuatu prohibits any girl "*under the age of 16 years*" from marrying lawfully. The fact that you are related to the victim and refer to her as "*cousin sista blo mi*" and the offence taking place in your home makes your offending even more serious.
8. This is not a case of teenagers experimenting with sex for the first time nor is it a case of sexually experienced girl seducing an older man, no this is a case of a sexually experienced man taking advantage of a young female relative to satisfy his uncontrolled lust with little or no consideration of his victim.
9. Although there is no independent impact report, the victim of your offending told the police:



"Mi wantem talem se long ol times ia Japhet emi bin stap forcem mi nomo mo havem sex wetem mi we mi no wantem be emi stap force nomo mo too emi piknini blong wan daddy ia mo mi singaotem em wan brata mo emi mekem kind fasin ia long mi emi stret fasin nating ..."

10. In those circumstances, you are fortunate that you have not been charged with a more serious offence. It is also pure good fortune that your cousin did not fall pregnant or contracted some sexually transmitted disease. Unlawful Sexual Intercourse is an offence which carries a maximum penalty of 5 years imprisonment. It is a serious offence.
11. In your case Japhet Narai your offending is aggravated by the blatant breach of trust that occurred each time that you took advantage of your "*cousin sista*", your offending was also premeditated, insistent and repetitive and only stopped when the victim left your home. You have brought shame on yourself and your immediate and extended family and have scarred your cousin for life. It does not surprise me at all that your cousin and her parents have rejected your efforts to perform a custom reconciliation ceremony to them.
12. The Court of Appeal in **Peter Talivo v. PP** [1996] VUCA 2 and **PP v. Gideon** [2002] VUCA has repeatedly said that children must be protected and are entitled to feel safe in their homes and men who abuse children's trust or take advantage of their vulnerability "... *forfeit the right to remain within the community*".
13. I understand that you have a young family who will suffer as a result of your actions but you are solely responsible for that suffering which you have brought about because of your inability to control your sexual desires.
14. Japhet Narai the appropriate starting point for your offending is 4 years imprisonment which is reduced to 3 years as this is your first offence. Furthermore, in recognition of your early guilty plea which has saved your cousin from the further trauma of reliving her ordeal in court, I reduce your sentence by a further 12 months making a final sentence of 2 years imprisonment.
15. There is nothing in this case which persuades me to take the exceptional course of suspending it either partially or in full and therefore, the sentence of this Court is that you, Japhet Narai, are sentenced to serve 2 years imprisonment with immediate effect.



16. You have a right to appeal against this sentence if you do not agree with it by filing a Notice of Appeal within 14 days.

DATED at Port Vila, this 28th day of June, 2013.

BY THE COURT

