

Registry -

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

Criminal Case No. 02 of 2013

PUBLIC PROSECUTOR

V

HENRY NALAU

Coram: *Mrs. Justice M.M.Sey*

Counsel: *Mr. Damien D. Boe for the Public Prosecutor*
Mr. Brian Livo for the Defendant

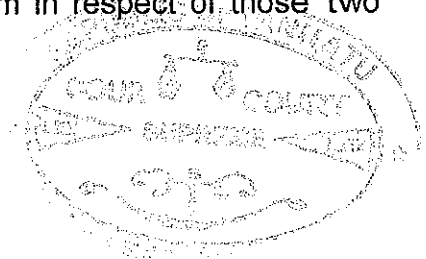
Date: *28 August 2014*

SENTENCE

1. The defendant was initially charged with three counts of Sexual Intercourse Without Consent contrary to section 90 and 91 of the Penal Code Act [CAP 135].
2. On 18th March 2014 the defendant pleaded not guilty to counts 1 and 2, which alleged that he had had sexual intercourse without consent with his two step daughters, and guilty to count 3 which alleged sexual intercourse without consent with his biological daughter.
3. The case was adjourned for two days trial on 23rd and 24th April in respect of the not guilty pleas in counts 1 and 2.



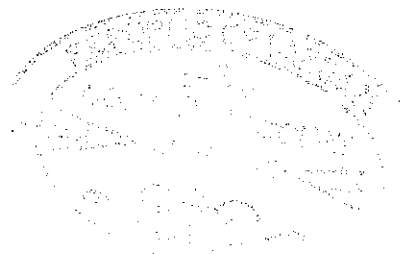
4. Before arriving at my sentence it is necessary to say something about the apparent delay in prosecuting this case.
5. On 23rd April 2014, the prosecutor, Mr. Simca Blessing, made an application pursuant to section 150 of the CPC for a postponement of the trial on the basis that he was unable to summon witnesses because he had mixed up the trial dates with other case under his carriage. The application was granted and the case was adjourned to 16th June 2014 for trial.
6. However, on the adjourned date the prosecutor could still not proceed on account of the same reasons advanced earlier. Defence counsel intimated that the prosecutor should consider withdrawing counts 1 and 2 or entering a nolle prosequi in respect of them.
7. The Court reluctantly granted the application for an adjournment and the prosecutor was ordered to take steps to advance the case on the next adjourned date.
8. On 29th July 2014, the Court was again informed that the prosecutor was not ready to proceed with the case due to the non-availability of the witnesses, including the complainant who was in Ambae.
9. At that stage, the Court deemed it necessary to order separate trials in respect of the three counts. In light of the fact that the defendant had entered a guilty plea on count 3, he was convicted accordingly and the case was adjourned to 5th August 2014 for sentencing after the Court had ordered that a pre-sentence report and sentencing submissions were to be filed.
10. On 5th August 2014, the pre-sentence report had been filed but counsel's sentencing submissions had still not been submitted to the Court. The prosecutor entered a nolle prosequi against the defendant in respect of counts 1 and 2 and the Court accordingly discharged him in respect of those two counts.



that a 12 year-old has encouraged or initiated sexual intimacy is rejected. If a twelve year-old is acting foolishly then they need protection from adults. It is totally wrong for adults to take advantage of their immaturity.

It will only be in most extreme of cases that suspension could ever be contemplated in a case of sexual abuse. There is nothing in this case which brings it into that category. Men must learn that they cannot obtain sexual gratification at the expense of the weak and the vulnerable. What occurred is a tragedy for all involved. Men who take advantage sexually of young people forfeit the right to remain in the community."

16. **Henry Nalau**, I accept that you pleaded guilty to the offence at the earliest opportunity and that counts in your favour as indicating an acceptance of responsibility and showing remorse on your part. Moreover, it saves the complainant from having to relive her ordeal in a trial.
17. What you did to your 19 year old daughter in 2011 was disgusting and utterly disgraceful. You had sexual intercourse with her until she got pregnant and even after she delivered the baby you continued to have sexual intercourse with her without her consent over the years until March 2013. Your actions are totally despicable and sickening to say the least.
18. As a starting point for your offending I consider a sentence of 5 years imprisonment is appropriate. To that, I will add 2 more years to reflect the aggravating factors in the case including the repeated nature of the offending, making a sentence of 7 years (84 months) imprisonment.
19. What is important is that this sentence not only tells you but sends the message out to the general community that the Courts will be consistent and they will be clear in their condemnation of the sexual abuse of the young and vulnerable members of the community. You had a responsibility as her father to keep her safe and you failed her so significantly. The sentence must reflect society's outrage at this appalling conduct.



20. I have perused the pre-sentence report which outlines your personal circumstances. You are 42 years of age and you are from Lamanaruan village on the island of Tanna. You are a Pastor of the Christian Outreach Church and a supportive member of your community. You have skills in gardening and fishing and you also have a Certificate in construction work and building houses as well. I also note from the report that you had performed two custom reconciliation ceremonies to the victim and to your wife as a sign of "klinim Fes."
21. I have also taken into consideration a number of mitigating factors, namely:
- a) The defendant admitted his offending and cooperated well with Police.
 - b) He has pleaded guilty at the first opportunity.
 - c) A first time offender with no prior convictions.
 - d) He is very remorseful and regrets his actions.
22. **Henry Nalau**, from that **84 months** sentence of imprisonment, you are entitled to a full one third credit of 28 months for your guilty plea and a further 8 months for the time you have already spent remanded in custody to await your trial and sentence, making a total reduction of 36 months, which leaves you with an end sentence of **48 months** i.e. 4 years imprisonment.
23. You have 14 days within which to file a notice of appeal against this sentence if you do not like it.

Dated at Port Vila, this 28th day of August, 2014.

BY THE COURT


M.M. SEY

Judge

