

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

Criminal
Case No. 23/46 SC/CRML

BETWEEN: Public Prosecutor

AND: Harrison Lawi
Defendant

Coram: *Justice Aru*
Counsel: *Ms. M. Tasso for the Public Prosecutor*
Mr. E. Molbaleh for the Defendant

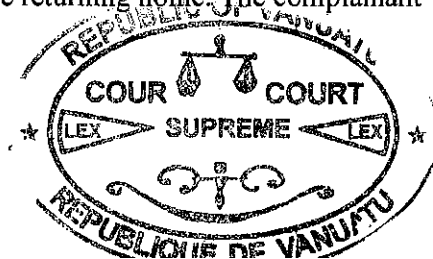
SENTENCE

Introduction

1. The defendant pleaded guilty to a single charge of unlawful sexual intercourse. This is his sentence.

The facts

2. During Christmas holidays around November 2022, the complainant came to Vila and stayed with relatives who were running a kava nakamal opposite the University of the South Pacific. She worked in the nakamal canteen whilst one of her close cousins sold kava.
3. After some time, the defendant who was a bus driver came to know the complainant through her cousin who gave him her phone number. The defendant began calling the complainant and texting her telling her he liked her. On the night of the incident the defendant picked up the complainant and her cousin in the bus he was driving and they went for a ride. They ended up at a guest house at Erakor Half Road. The defendant took the complainant inside the guest house whilst her cousin remained in the bus. The defendant told her cousin he will sleep in the bus. The complaint upon entering the guest house was shown to a room where she sat down on the bed. The defendant joined her then caressed her mouth and breasts then undressed her and penetrated her vagina with his penis. During sexual intercourse the complainant did not fight back and did not call for help. She remained calm and covered her face with her hands. After sex they remained at the guest house till early morning before returning home. The complainant



was later questioned by her relatives and admitted to have sexual intercourse with the defendant. A formal complaint was then lodged with the Police against the defendant.

4. The defendant was later arrested and formally interviewed and cautioned on 18 January 2023. He exercised his rights to say nothing and remained silent.

Starting Point

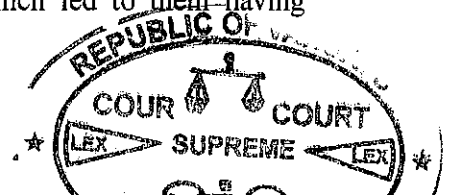
5. The starting point of sentence is arrived at by reference to the maximum penalty available and taking into account any aggravating or mitigating factors of the offending. The maximum penalty for unlawful sexual intercourse with any child under 15 years but of or over the age of 13 years is 15 years imprisonment. The offending is aggravated by the fact that there is an age disparity. The defendant was 28 years older than the complainant. Second, the complainant was exposed to sexually transmitted diseases and the risk of becoming pregnant at a very young age. There is also an element of planning involved. Finally, the incident occurred at night.
6. There are no mitigating factors of the offending.
7. I adopt a starting point of 6 years imprisonment.

Mitigation

8. The defendant pleaded guilty to the charge at the first available opportunity. The sentence start point is therefore discounted by one third.
9. The Pre-Sentence Report filed shows that the defendant is now 30 years old. He is a first-time offender and has a 5 year old son from a previous relationship. He completed his education at College de Luganville, Santo. He now earns his living as a bus driver to support his son and his parents. For his personal factors including the fact that he has no previous conviction, the sentence start point is further reduced by 12 months.
10. No custom reconciliation has been performed to date given the complainant family's refusal to accept it.

End Sentence

11. The defendant is therefore sentenced to 3 years and 2 months imprisonment. The 2 months is deducted to reflect the time spent in custody prior to bail therefore **the end sentence is 3 years imprisonment.**
12. Counsel submits that the end sentence must be suspended. His strongest argument in support of suspension is that there is a strong and unwavering bond of love and friendship between the complainant and the defendant which led to them having

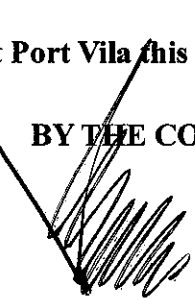


consensual sex. Further that the complainant's intention is to be the future wife of the defendant as confirmed through text messages on the defendant's mobile and little notes of paper passed to the defendant.

13. The factors I need to consider on the question of suspension are circumstances of the offending, nature of the crime and character of the offender as set out in s57 of the Penal Code [CAP 135]. The nature of the crime in this case is that a 28-year-old took advantage of the immaturity of the complainant to indulge her in sexual intercourse. As was highlighted in guideline judgments such as *Public Prosecutor v Gideon [2002] VUCA 7* "Men who take advantage sexually of young people forfeit the right to remain in the community."
14. Mr. Lawi your sentence will not be suspended. A custodial sentence is warranted to hold you accountable for your actions and to deter you and the public at large from such offending. As you have been on bail prior to your sentence, you must present yourself to the Centre Manager of the Correctional Centre in Vila by **no later than 21 June 2023** unless you elect to begin serving your sentence immediately.
15. You have 14 days to appeal if you are dissatisfied with this decision.

DATED at Port Vila this 9th day of June, 2023

BY THE COURT



D. Aru
Judge

