

PUBLIC PROSECUTOR

v

TUELU KALPRAM

Date: 13 September 2024
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr K. Massing
Defendant – Mrs C. Dehinavanua

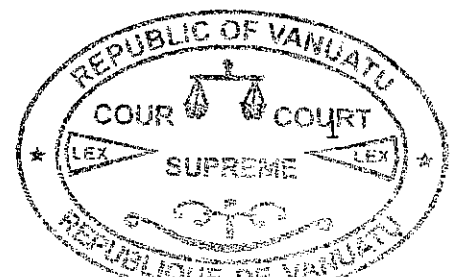
SENTENCE

A. Introduction

1. The Defendant Tuelu Kalpram pleaded guilty to two charges of sexual intercourse without consent contrary to subs. 90(a) and 91 of the *Penal Code* [CAP. 135] (Charges 1 and 2) and to unlawful sexual intercourse contrary to subs. 97(2) of the *Penal Code* (Charge 3). He was convicted on his own pleas and the admitted facts.

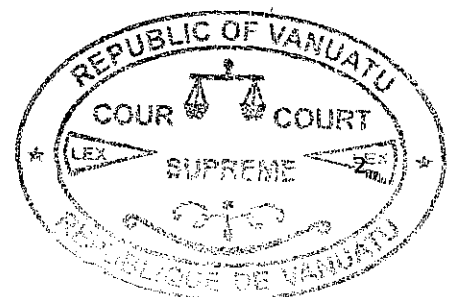
B. Facts

2. Mr Kalpram and the complainant NK are related. She is a grand-daughter to him. They resided close to each other at Erakor village.
3. The offending began in 2019 when NK was only 12 years old. Mr Kalpram began touching her inappropriately, touching her buttocks and breasts.
4. In 2020, NK was walking past the local church building when Mr Kalpram called out to her to enter the church and see him. She went into the church to see him and he



told her to remove her trousers. She refused but he kept on insisting. Then he told her to turn around and as she did, he told her to bend down. He removed her trousers and pushed her legs apart. He then removed his trousers and pushed his penis into her vagina and had sexual intercourse with her until he ejaculated onto the floor.

5. NK was in a lot of pain and crying. Mr Kalpram told her not to tell anyone what he had done to her.
6. Mr Kalpram continued to have sexual intercourse with NK on multiple occasions throughout 2021 and 2022. However, NK could not recall the exact months and dates that occurred. Mr Kalpram repeatedly told her not to tell anyone what he was doing to her (Charge 3).
7. In 2023, Mr Kalpram and NK were at the kitchen of NK's residence. Mr Kalpram told her to remove her trousers. She refused and wanted to leave but he told her not to. He then forced her to remove her trousers and then told her to bend down. She bent down and he pushed his penis into her vagina and had sex with her until he ejaculated onto the mat on the kitchen floor.
8. Mr Kalpram had sexual intercourse with NK on multiple occasions throughout 2023 but she cannot recall every incident in detail (Charge 2).
9. On 27 April 2024 after midday, Mr Kalpram texted NK on her mobile phone to go and see him at a path beside their house. She went and saw him. He was wearing a black shirt and black trousers. He was sitting down on a mat and told her to sit so that they could talk.
10. A few minutes into their conversation, Mr Kalpram told NK to remove her trousers. She refused and wanted to leave but he told her to sit down. Then Mr Kalpram forcefully removed her trousers and pushed his penis into her vagina. He had sex with her until he ejaculated onto the ground.
11. NK wanted to leave but he told her not to go as he wanted to have sex with her again. So he had sex with her for a second time before she returned home that day.
12. NK always succumbed to Mr Kalpram as she was scared of him. Her father was usually overseas on seasonal work and Mr Kalpram was responsible to look after her and her siblings. Mr Kalpram usually beat her up and even squeezed her neck once when her father was away. So she was very scared of Mr Kalpram (Charge 1).
13. The offending came to light the same day, 27 April 2024, when NK finally told her father everything that Mr Kalpram had done to her.

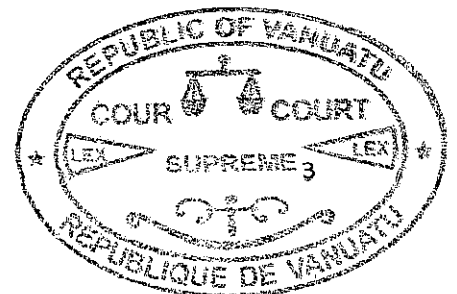


C. Sentence Start Point

14. The sentence start point is assessed having regard to the maximum sentences available, and the mitigating and aggravating factors of the offending.
15. The maximum sentences prescribed in the *Penal Code* are:
 - a) Sexual intercourse without consent – life imprisonment (subs. 90(a) and 91); and
 - b) Unlawful sexual intercourse - 15 years imprisonment (subs. 97(2)).
16. There is no mitigating aspect to the offending.
17. The offending is aggravated by:
 - Breach of trust as Mr Kalpram and the complainant are related and they lived close by to each other, and Mr Kalpram had been entrusted with the complainant's care and protection as her father was overseas for work;
 - The 36-year age differential between Mr Kalpram and the complainant;
 - The rape was repeated over a four-year period;
 - Use of force to effect all of the rapes;
 - Some degree of planning;
 - Skin-to-skin contact;
 - Exposing the complainant to the risk of sexually transmitted infection and pregnancy;
 - The fear and pain caused to the complainant; and
 - Mr Kalpram repeatedly told the complainant not to tell anyone what he did to her.
18. Given the factors set out above, I adopt a global sentence start point of 12 years imprisonment.

D. Personal Factors

19. Mr Kalpram pleaded guilty at the first reasonable opportunity. One third is deducted from the sentence start point.



20. Mr Kalpram is 53 years old. He is married and has two daughters. He is a church elder. He has previously worked overseas in seasonal employment. He has no prior convictions although that is of little relevance to mitigate a sentence in the case of sexual offending.
21. For Mr Kalpram's personal factors, I reduce the sentence start point by a further 2 months.
- E. End Sentence
22. Taking all matters into account, the end sentences imposed concurrently are:
- a) Sexual intercourse without consent (Charges 1 and 2) 7 years 10 months imprisonment; and
 - b) Unlawful sexual intercourse (Charge 3) 7 years imprisonment.
23. The end sentences are back-dated to commence on 20 May 2024 when Mr Kalpram was remanded and commenced serving time in custody.
24. The end sentences will not be suspended as there are no exceptional circumstances warranting suspension. An immediate custodial sentence must be imposed for this serious sexual offending against a child: *Public Prosecutor v Gideon* [2002] VUCA 7, *Public Prosecutor v Scott* [2002] VUCA 29 and *Public Prosecutor v August* [2000] VUSC 73.
25. Mr Kalpram has 14 days to appeal against the sentence.
26. All details leading to the identification of the complainant are permanently suppressed.

**DATED at Port Vila this 13th day of September 2024
BY THE COURT**


Justice Viran Molisa Trief

