

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

**Criminal  
Case No. 25/1617 SC/CRML**

**BETWEEN: Public Prosecutor**

**AND: Potter Harry  
Defendant**

**Coram: Justice Dudley Aru**  
**Counsel: Ms. M T Silememea the Public Prosecutor**  
**Mr. C Dehinavanua for the Defendant**

---

## SENTENCE

---

### Introduction

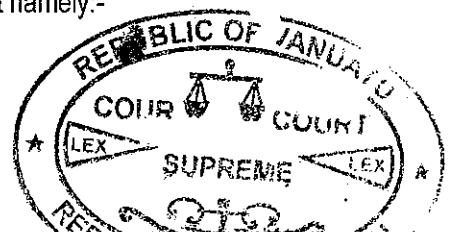
1. The defendant Potter Harry pleaded guilty to a single charge of unlawful sexual intercourse contrary to s97 (1) of the Penal Code [CAP 135]. He is convicted on his guilty plea and the admitted facts. He now appears for sentencing.
2. The maximum penalty for unlawful sexual intercourse is life imprisonment.

### The facts

3. The defendant is 20 years old and the complainant is around 12 years old. They are related as the complainant refers to the defendant as uncle. Sometimes in the month of October 2024 at the complainant's home, the defendant called her to see something. When she approached him the defendant grabbed her and took her into the house and had sexual intercourse with her. After the sexual intercourse the defendant told the complainant not to tell anyone.
4. The defendant on different occasions continued to have sexual intercourse with the complainant in the house and she was afraid to tell anyone. Sometimes in November 2024 the complainant's grandmother noticed the complainant's physical appearance was changing. She observed that the complainant's body was getting smaller. Around February 2025, the complainant informed her relatives that she was pregnant and that the defendant had been having sexual intercourse with her. On 2 April 2025 the complainant was medically examined and the medical report confirmed that she was pregnant.
5. The defendant was cautioned on 3 April 2025 and admitted that he had been having sexual intercourse with the complainant.

### Sentence start point

6. The maximum sentence available for unlawful sexual intercourse is life imprisonment. When considering the offending a number of aggravating factors stand out namely:-

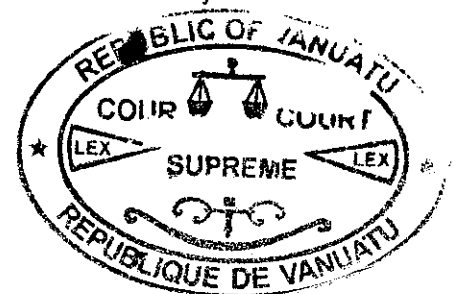


- There is a breach of trust
  - There is an age difference of 8 years
  - The offending occurred in the home where the victim should be protected
  - There is an element of planning involved
  - The offending was repeated
  - The defendant had had unprotected sex with the victim leading to the pregnancy and exposing her to the risk of contracting sexually transmitted diseases
7. There are no mitigating factors of the offending.
  8. The prosecution submitted that the starting point of sentence should be not less than 8 years imprisonment. They referred to PP v Vetgon [2024] VUSC 271 and PP v Kemkem [2020] VUSC 283 where the starting point of sentence was 9 years and 8 years imprisonment respectively.
  9. The defence referred to PP v Clement [2023] VUSC 268 where the Court also adopted a starting point of 8 years imprisonment. Counsel submitted that the circumstances of the offending in that case were more serious than the current case as the offending began when the victim was in grade 4 whilst in the current case although sexual intercourse was repeated a number of times it all happened in 2024.
  10. Counsel submitted that a lower starting point between 4 to 6 years imprisonment should be adopted as there is also a family arrangement that the defendant will look after the victim and the child. It was submitted that the victim is already living with the defendant's mother. This submission is totally rejected as it overlooks the seriousness of the offending in the first place where the defendant took advantage of the vulnerability of the victim. In PP v Gideon [2002] VUCA 7 the Court of appeal remarked that "*there is an overwhelming need for the Court on behalf of the community to condemn in the strongest terms any who abuse young people in the community*".
  11. I adopt a starting of 9 years imprisonment.

#### **Guilty plea and personal factors**

12. The defendant pleaded guilty at the first available opportunity therefore the sentence start point is reduced by 30 %.
13. A Pre-Sentence Report was filed which shows that the defendant is 20 years old and is a first-time offender. He completed his education at year 5 and could not continue due to financial difficulties. He earns his living to support his family by gardening and plants cash crops and vegetables which he sells at the market. He now lives in a de factor relationship with the victim as his partner. He told the report writer that he intends to join the Seasonal Work Program overseas to enable him to build his house and to buy a transport for his market produce.
14. Taking into account the above factors I deduct 8 months from the sentence start point.
15. The report also notes that the defendant performed a custom reconciliation to the victim's family and the victim accepted it. Items presented by the defendant were:

- One head or stampa kava



- Two traditional mats
- VT 10,000 cash

16. The sentence start point is further reduced by 2 months taking into account the custom reconciliation.

**End sentence**

17. The defendant is sentenced to an end sentence rounded off to 5 years imprisonment **effective from the 28 May 2025 when he was remanded into custody**. The Court in *Gideon* said "*it will only be in a most extreme of cases that suspension could ever be contemplated in a case of sexual abuse..*". There are no extreme circumstances in this case that warrant a suspension of of the sentence.

18. The defendant has 14 days to appeal if he is not satisfied with the decision.

DATED at Port Vila this 3<sup>rd</sup> day of October, 2025

BY THE COURT

Dudley Arua  
Judge

