

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

Criminal Case No. 118 of 2009

PUBLIC PROSECUTOR

V.

SAM DANIEL BEN

MORRIS MAKI

NAPUATI SAM

JONAS WILLIE

CHRIS TASSO

VANO NASOM

ALEXANDRE KAPARA

Coram: *Justice D. V. Fatiaki*

Counsel: *Mr. Leon Malantugun for the State
Mr. Eric Molbaleh for the Defendants*

Date of Sentence: *7 October 2010*

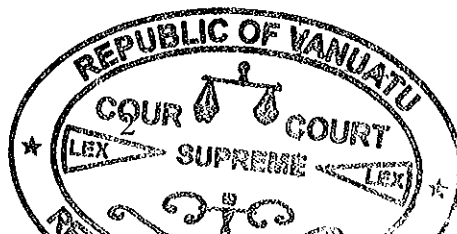
SENTENCE

1. These 7 defendants appear today for sentence. Although the defendants are jointly charged with the same offence namely Unlawful Sexual Intercourse contrary to section 97 of the Penal Code involving the same victim, the offences occurred on four separate occasions spread over a year between July 2008 – August 2009. The victim was born on 6 May 1996 and would have been aged between 12 and 14 years at the time of the offences.
2. In brief the offences occurred at night during independence celebrations in 2008 and 2009 at Etas area where the victim and the defendants lived. The complainant attended the celebrations and on each occasion was on her way home when she was accosted by a named defendant who either took her to nearby bushes or to his home where sexual intercourse took place.
3. The first defendant Sam Daniel Ben had intercourse with the complainant in July 2008 on 2 occasions at his home. Jonas Willie had intercourse with the complainant in May 2009 in nearby bushes. Morris Maki had intercourse with her on two occasions in July 2009, once in the bushes

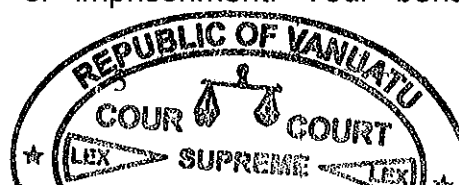


and later that same night at his home. On this latter occasion after having intercourse at his home Morris Maki went and invited Chris Tasso, Alexandre Kapara and Vano Nasom to have intercourse with the complainant and all of them did. The final defendant Napuati Sam had intercourse with the complainant in August 2009 in his bedroom.

4. It is clear from the above recital of the facts that the complainant and the defendants were known to each other prior to the various incidents. It is also clear from the depositions that at the time of the incidents no complaint was laid with the police and matters only came to light when the complainant's parents questioned her when she was late coming home after the last incident.
5. All defendants freely admitted having intercourse with the complainant when they were questioned by the police and all claimed that intercourse was consensual at the time. The law is clear however that consent of the victim is **not**, and I repeat **not**, a defence to the charge of Unlawful Sexual Intercourse. The reason for this is that the offence is in having sexual intercourse with a young underage girl whether or not she agrees.
6. This law is clearly intended to protect young girls, whose mental and physical development is still at a formative and immature stage, from becoming victims of sexually mature men who would seek to prey on them for their own sexual pleasure. In this regard, the defendant Morris Maki's offending is the most serious and aggravated in that, after he had had sexual intercourse with the complainant twice on one night, he went and invited three others to have intercourse with her. He clearly had no respect for her feelings and treated her as a sexual plaything or object to be used by his friends who willingly "lined-up" on her.
7. I have received pre-sentence reports on all the defendants. These indicate that they were aged between 15 years (Morris Maki) and 26 years (Alexandre Kapara) at the time of offending. All defendants profess to an awareness of the wrongfulness of their actions and the shame that it has brought upon their families and community. All denied knowing the complainant's age.
8. I have also considered a report that the defendants' families performed a substantial custom reconciliation ceremony to the victim and her family on 29 August 2009 whilst the defendants were remanded in custody. The ceremony was witnessed by **Chief Willie Asal** and **Chief Fano Tokon**. The presentation of gifts included 3 live pigs, 12 mats, 33 lengths of calico material, baskets of local food and VT8,340 cash with a total estimated value of VT181,840. The custom ceremony was accepted by the victim and her family and relations have returned to "normal". The victim has also left the Etas area since the incident and now lives with her biological parents at Takara village in North Efate.



9. Prosecuting counsel highlights in his submission the following aggravating factors:
- The wide disparity in the age of the complainant and the defendants i.e. between 5 and 12 years;
 - The repetitive nature of the offending; and
 - Against Morris Maki, the fact that he went and invited others to have sex with the victim;
10. Defence counsel on the other hand highlights the individual personal and family circumstances of each defendant and calls for individual measures to be adopted by the Court in sentencing each defendant. He highlights the common mitigating factors as follows:
- All defendants are first offender;
 - All defendants pleaded guilty at the first opportunity;
 - All defendants personally apologized in court showing remorse;
 - The families of the defendants have conducted a custom reconciliation ceremony to the victim and her family which was accepted;
 - The victim no longer lives at Etas and there is no danger of a repetition; and
 - Each defendant has learnt a salutary lesson from having spent over a 6 weeks in remand;
11. Let me say at once that this has not been an easy sentencing exercise. On the one hand the Court has a duty not only to protect young girls from such predatory behaviour but also to deter this kind of behaviour in future, and, on the other hand, the Court is duty bound to try to keep young offenders out of prison if it is just and does not endanger society.
12. Doing the best I can I say at once that these individual defendants do not strike me as posing a threat or danger to society when acting alone. In a group however, they do exhibit a "*pack mentality*" where peer pressure reigns supreme. In most instances however the offence was committed by an individual offender and appears more a case of sexual experimentation than truly criminal behaviour.
13. The Courts have said time and time again that its primary duty in cases of this nature is the safety of girls and the protection of society.
14. Accordingly I sentence the defendants as follows:
- **Sam Daniel Ben** for twice having sex with the complainant, you are sentence to 9 months imprisonment suspended for 2 years;
 - **Morris Maki** if you were not so young I would have sentenced you to an immediate term of imprisonment. Your behaviour was truly




disgraceful and predatory. Your sentence is 18 months imprisonment suspended for 2 years;

- **Chris Tasso, Alexandre Kapara and Vano Nasom** you all were tempted by Morris Maki's invitation and behaved like pack animals. You are each sentenced to 9 months imprisonment suspended for 2 years;
 - **Napuati Sam** you are the eldest of the defendants and you knowingly and intentionally used the complainant as an object for your sexual gratification. Your sentence is 12 months imprisonment suspended for 2 years; and
 - **Jonas Willie** you are sentenced to 6 months imprisonment suspended for 2 years for having sexual intercourse with the complainant on one occasion.
15. What a suspended sentence means is that each of you will not have to go to prison today but if you re-offend in anyway during the next 2 years and are convicted, you will have to serve this prison sentence in addition to any other sentence you may receive for re-offending. If you stay out of trouble for the next 2 years and change your lives for the better then you will not have to serve this sentence. What happens in your life in the next 2 years could change your future forever and I urge you not to abuse this opportunity to become responsible and better men.
16. In addition and to help you stay out of trouble you are each ordered to serve a sentence of supervision for the next 12 months with two special conditions:
- (i) That you each undergo counseling as directed by a probation officer;
 - (ii) You each complete the Niufala Rod Programme; and
 - (iii) That you each have no further contact with the complainant during the time you are under supervision.
17. If you do not agree with this sentence you may file a notice of appeal to the Court of Appeal within 14 days.

DATED at Port Vila, this 7th day of October, 2010.

BY THE COURT


D. V. FATIAKI
Judge.

