

PUBLIC PROSECUTOR

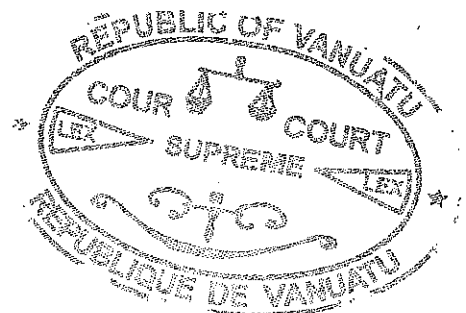
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BRUCE SAM

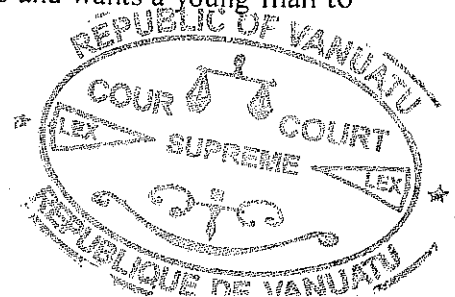
Sentence: Friday 10 July 2015 at 9 am at Liro, Paama Island
Before: Justice Stephen Harrop
Appearances: Damien Boe for the Public Prosecutor
Pauline Kalwatman and Stephen Carlo (PSO) for the Defendant

SENTENCE

1. Mr Sam, you appear for sentence today on three counts of unlawful sexual intercourse at Liro Nesa, near to this courtroom, in December 2012. You pleaded guilty on 8th of July 2015 after not guilty pleas had been entered to those three counts before Justice Sey on the 3rd of September 2013. Because the victim was 14 at the time, under section 97 (2) of the Penal Code, the maximum penalty is five years' imprisonment for each of those charges.
2. It is important to note immediately what I think is the dominating sentencing factor here and that is that you were only 15 at the time. Your date of birth is the 2nd of August 1997 so you do not turn 18 until next month and in December 2012 you had only fairly recently turned 15. This is an important fact distinguishing this case, and the appropriate sentence for it, from a case where the defendant's age is say 20 or 21, some six or seven years older than the victim, or indeed older than that. In such cases the likely outcome is a prison sentence which is not suspended and for several years but in this case as I have already indicated this morning, in my view the appropriate outcome is a sentence of community work and not even a suspended sentence of imprisonment as Mr Boe has submitted I should impose.

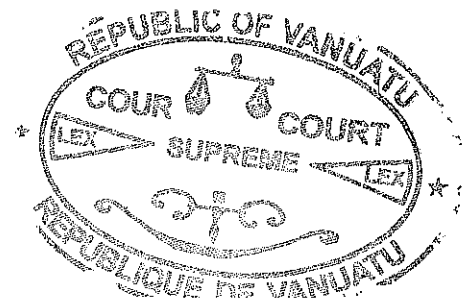


3. The facts of the case are that there were these three incidents in 2012, you approached the victim [whom I will not name to protect her identity] and asked her to follow you outside. You walked up to the PWMU Hall at Liro Nesa, you told her to remove her clothes which she did and then you lay down on top of her and you had sex with her. You then left her in the hall. She got dressed and went home. The second incident was, I infer in the same month, when you came to her house and asked her to follow you. You went to a nearby house belonging to her family. You told her to remove her clothes and she did and again sexual intercourse occurred. The third incident occurred at a house belonging to Mr Lishi and was of a similar nature.
4. Matters then came to public attention, the chiefs became aware and the Police became involved. On the 8th of February 2013, you were interviewed and admitted what had happened. I understand that at a date shortly after that a custom reconciliation ceremony occurred and I will mention that shortly.
5. While the fact that there are three incidents clearly aggravates this case from the situation where there was just one, there is no indication of any force being used or of any threats; after the first incident it appears that the victim quite willingly went with you twice more. Now of course consent, if indeed there was consent and there is no indication otherwise, is no defence to the charges and you have properly pleaded guilty; nor is it an ameliorating factor reducing the seriousness of the offending. But what can be said is that, because of the apparent consent, this case does not contain any of the aggravating factors that are so often present in cases of this kind, involving threats actual violence, physical domination and perhaps a breach of trust where the offending is a family member. None of those things are present here and the age difference as I have already mentioned is small.
6. So, while not in any way condoning what occurred, it can be said that this case is more in the category of adolescent experimentation rather than sexual violence. But even without those aggravating features I need to emphasize to you that the reason for this offence being in the Penal Code is to protect young girls, even against themselves. It is a serious offence; even if the girl's age is 13 to 15, the penalty is still five years imprisonment. Even if a young girl starts the whole process and wants a young man to

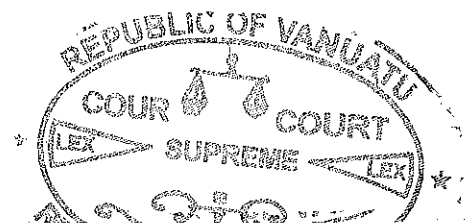


have sex with her and does all the encouraging, it is still an offence for the young man to take advantage of that.

7. So the Court must impose a sentence which marks this as serious offending and deters you from any such further offending and importantly tells others in the community that a prison sentence is very likely where this kind of thing occurs. In short, the offence reflects a serious disrespect of young girls while they are growing up and the law in Vanuatu is designed to protect them against this kind of thing.
8. In a leading case of *PP v. Gideon* [2002] VUCA 7, the Court said there was an overwhelming need for the Court on behalf of the community to condemn in the strongest terms any sexual abuse of young people in our community, children must be protected. It will only be in a most extreme of cases that suspension could ever be contemplated in a case of sexual abuse. There was nothing in that case which brought it into that category. The Court added : *"Men must learn that they cannot obtain sexual gratification at the expense of the weak and vulnerable, what occurred is a tragedy for all involved. Men who advantage sexually of young people forfeit the right to remain the community"*.
9. Now as you can gather from those words the Court of Appeal there was dealing with an adult offender and you were not an adult. You were only 15. So this case is very different even though the basic principle the Court of Appeal was highlighting is one that I must apply.
10. There is another statutory provision though which I consider is the starting point here and that is section 54 of the Penal Code. This provides that a person under the age of 16 years is not to be sentenced to imprisonment unless no other punishment is appropriate. So while it is possible to impose a prison sentence in a case like this, it can only be done if no other method of punishment is appropriate. There is therefore a strong presumption against imprisoning someone of the age that you were when you committed this offence. Even though you are nearly 18 now, you were only 15 at the time and indeed you had only just turned 15 about three or four months earlier, you were quite a long way short of turning 16.

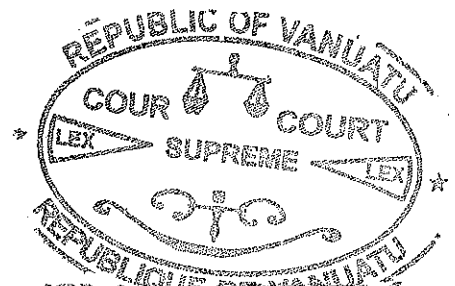


11. The pre-sentence report that has been prepared, and I express my gratitude to the probation officer for doing this at short notice, is brief and tells me that you are remorseful, that you only committed these offences because both of you agreed to have sex and that you regret what happened. You have also carried out a custom reconciliation ceremony to make peace between you and your family and that has been done in the presence of the victim together with her grandfather and was acceptable to them. The probation report rightly highlights that you are a first-time offender, you are youth leader of your church, you are remorseful and suggests the Court could properly impose a community-based sentence. As I have already said, I intend to do that.
12. As to the custom reconciliation ceremony I emphasise the importance of this in the Vanuatu culture and I am required to and will take into account what occurred as mitigating the appropriate sentence. I understand that all three of you who had offended against this victim, that is Ken Houman, Malon Heru and you, carried out a joint ceremony and that you made an appropriate contribution or your family did. The overall total of items given, I understand were 10 mats, kava worth Vt 10,000 vt, a pig worth Vt 12,000, 3 calico shawls and some Vt 20,000 in cash.
13. The submissions made by counsel I will refer to only briefly. Mr Boe submits that there should be a suspended sentence of imprisonment of around 18 months concurrently across all three charges but that this should be suspended and that 200 hours community work should be imposed. However, he makes no reference to your age or to section 54 of the Penal Code, both of which I consider are important determinants of the appropriate sentence here. Ms Kalwatman has emphasised that community based sentences have often been imposed in cases where boys aged 15 to 16 have committed this offence against girls who are over 13 especially where it has been "consensual".
14. I need to decide if a case of a 15 year old boy having sexual intercourse three times within a short period with a 14 year old girl without any aggravating features means that imprisonment is the only appropriate sentence. That is the question which is raised by section 54. I accept that this is serious offending and there is a strong argument in favour of imprisonment but I have concluded that a stern sentence of community work is an appropriate alternative in all of the circumstances here. Those circumstances



include the fact of the custom reconciliation ceremony but also importantly the fact that there has been no suggestion of any further offending of any kind by you in the 2 ½ years or so since the incident. There may be a temptation in these circumstances to impose a suspended sentence of imprisonment as well as community work but that is only possible if the Court first concludes that prison is the appropriate sentence and I am not satisfied of that.

15. I acknowledge that it is unfortunate that this matter has not been finalised long before now but it was your choice not to plead guilty at the earliest opportunity, Mr Houman did plead guilty on 3 September 2013 and for whatever reason you did not. I have been told by Ms Kalwatman that unexpectedly the lawyer who was going to appear for you before Justice Sey could not appear at the last minute and there was some confusion and stress and in the course of that you entered a not guilty plea to all three charges. However, I note that this did not prevent Mr Houman pleading guilty and there has been no attempt since then, until Wednesday this week, for you to change your plea to guilty. It did seem to me curious that you had pleaded not guilty at all because you made admissions to the Police when you were interviewed and you underwent the custom reconciliation ceremony, which is inconsistent with denying criminal responsibility. On the contrary it is a public acknowledgment of responsibility and an attempt to put matters right in the appropriate customary way.
16. I cannot therefore give you as much credit for pleading guilty as I did for Mr Houman whom I sentenced earlier this week. If you had pleaded guilty in 2013, a shorter sentence of community work would have been imposed. It is important to look at this issue from the perspective of the victim. She would have thought, until Wednesday, that you continued to deny the offending and that she would need to give evidence at trial, be cross-examined about what happened and to relive these incidents. Also the Public Prosecutor had to come here to Paama, prepare for the trial and arrange for all of the witnesses to appear. So the result is that I cannot give you very much credit for pleading guilty but I do want to emphasise there is still some credit in that because it is a public acknowledgment of responsibility. It has avoided the victim having to give evidence and that has real value. There are some defendants who are guilty but continue to deny that even after a trial and it has value for a victim to hear the defendant stand up and to plead guilty.



17. I note that in a similar case in 2011, which was referred to by Ms Kalwatman in her submissions, the *PP v. Seule* [2011] VUSC 286, a 15-year old boy was convicted of unlawful sexual intercourse with a 13-year old girl on two or three occasions. Justice Spear in that case sentenced Mr Seule to 200 hours community work, to supervision and to undertake a custom reconciliation ceremony. I understand that supervision is not a possible sentence here on Paama and of course you have already undertaken the custom reconciliation ceremony.
18. An advantage of the delay in finalising this matter is that you have had 2 ½ years to show that you have learned from this, that you are remorseful and that you will not offend again. And you have not offended again. Also I note that you have been on bail conditions since April 2013, so your liberty has been restricted at least in some respects. The bail conditions included an obligation not to offend further, arguably that should never be a bail condition because the law of the land says that, but the reality is that you have been on a form of suspended sentence over the last 2 ½ years or so and you have demonstrated that you can behave appropriately.
19. When I weigh all of these things up, I am satisfied that a sentence of community work is the appropriate outcome and that a sentence of imprisonment suspended or otherwise is not required in terms of section 54 of the Penal Code. I sentence you to 250 hours community work, that sentence is concurrent over all three of those charges.
20. You have 14 days to appeal against this sentence if you are dissatisfied with it. If that is the position, you should talk to Ms Kalwatman immediately after the hearing so that she can take the appropriate steps.

BY THE COURT

