

PUBLIC PROSECUTOR

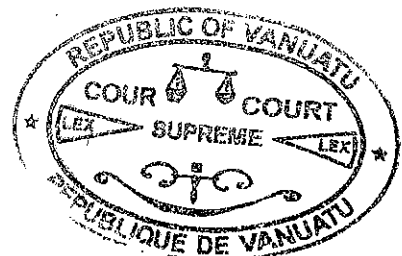
V

RICHARD NALINE

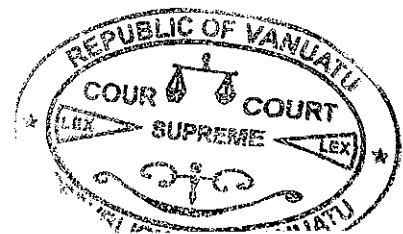
Hearing: Friday 6th May 2016 at 3 pm
Before: Justice JP Geoghegan
Appearances: Mr Young for the Public Prosecutor
Mr Livo (PSO) for the Defendant

SENTENCE

1. Mr Naline you appear for sentence today on one charge of unlawful sexual intercourse pursuant to section 97 (2) of the Penal Code Act. That is a serious offence and it carries a maximum term of imprisonment of 5 years.
2. Today was to have been the subject of what is called a disputed facts hearing because you had disputed some of the facts alleged by the prosecution and those facts really centred around whether or not the victim of your offending had engaged in intercourse with you by consent. But I see now because of the filing of an amended statement of facts and the prosecution submissions that the prosecution accepts that this act of intercourse occurred with the consent of the victim and that is very, very important in the context of this sentencing.
3. Referring to that statement of facts, that tells me that this incident occurred on 10th of July 2015 at which time the victim was 13 years old and you were 17 years old. The two of you were known to each other and after a church program that evening you asked the victim to come home with you. She has come to your home and sexual intercourse by consent has taken place. The complainant felt some pain during that intercourse because it was the first occasion on which she had engaged in sex.



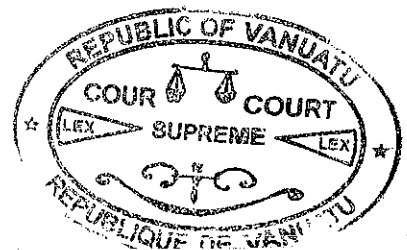
4. The statement of facts says that the victim further said that during the course of intercourse you bit her on the neck and cheek, however, you deny that and in the overall context of a sentencing exercise that matter is of little significance because the principal issues have been agreed. Approximately 5 days later, the victim told her friend at school about the incident and that was relayed to her parents who have then taken steps to complain to the police. You were arrested, you have immediately cooperated with the police and you have admitted what has occurred and you further stated that the victim was in fact your girlfriend.
5. This charge has been laid because the victim of your offending was 13 years old and the law has prescribed that a victim of that kind; of that age; of that vulnerability; needs special protection of the law. And so whether there was consent or not, doesn't make any difference to your liability for this offending.
6. You appear here as a 17 year old with no previous convictions. I have read your pre-sentence report and that tells me that you come from North East Malekula and it appears from the report that you have had a positive and normal upbringing. You are described by an uncle as being timid in character, very helpful to your community and in church programs and very supportive of your parents. In short, you are a decent young man. You are currently undertaking a preliminary course at the University of the South Pacific so clearly you also have some academic ability. And to those spoken to by the person who prepared the pre-sentence report your behaviour seems totally out of character for you.
7. Your explanation for your offending is that you didn't think that you were breaking the law. You say that the victim had been your girlfriend for some years and was your customary wife. You say that she had initially asked to come and sleep with you and that you refused, due to other family members being with your family at that time and it was subsequent to that that this offending has taken place. But I hope that you now understand that what you



did was wrong and it was illegal. Putting aside the legality of it, it was wrong because the victim was far too young to make any mature decision about whether she should be involved in a sexual relationship with anyone. You are described as motivated to undertake any community based sentence and you have family support to assist you in undertaking any such sentence. You and your family have attempted to undertake a custom reconciliation ceremony with the victim's family, however I am told that the victim's family would prefer to wait until the outcome of this sentencing. You have referred to land disputes between your family and the victim's family as perhaps explaining why a complaint to the police was made and why a reconciliation ceremony has not been undertaken. But in the absence of any corroboration or supporting evidence for that I take no account of any such alleged background issues. The reality for you is that you have to accept responsibility for this and I think that you do.

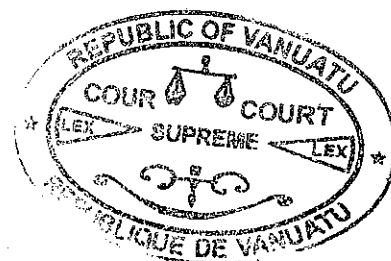
8. You heard me say to counsel, I have received some very helpful submissions. The prosecution suggest that an appropriate starting point in looking at your offending is one of 4 years and 6 months imprisonment with an end sentence for appropriate factors of 2 years. Mr Livo on your behalf urges the imposition of a non-custodial sentence.

9. So the first thing I have to do is to fix a starting point for your offending. I have to say in that regard that I do not agree with the prosecution submission that the seriousness of this offence is an aggravating feature. While this is a serious offence, that is reflected in the maximum term of imprisonment prescribed for the offence. The focus of the Court must be on the facts of this particular offending and it is those facts which determine aggravating features. Looking at the Court of Appeal decision in the PP v. Andy, the following features of the offending can be regarded as assisting in fixing an appropriate starting point:-
 - 1) The age of the victim. She was 13 years old as I have said with associated vulnerability and lack of maturity.
 - 2) The harm suffered. It is difficult to assess because of the lack of information relating to the victim but it is safe to assume



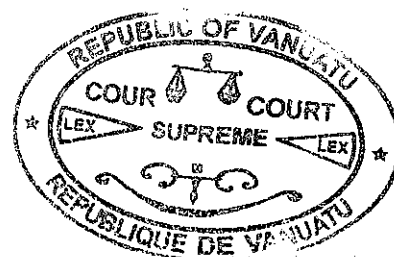
however that this had had a detrimental effect upon her psychological wellbeing.

- 3) Breach of trust. It could not be said that this offending involved a breach of trust.
 - 4) Your age. You were 17 at the time of this offending so you were quite a young man yourself and according to you, you have been in a relationship with this victim. There is not a huge age difference between you.
 - 5) The degree of violation. This involves full sexual intercourse so in that sense the offending is more serious and the act of intercourse caused pain to the victim in this case.
 - 6) Pre-meditation. There is no particular evidence of any pre-mediation in this offending.
 - 7) As to the scale of the offending, this involves offending on one occasion only. That therefore reduces the seriousness of the offending when one assesses the overall circumstances.
10. Mr Livo has very helpfully referred me to a number of cases involving offending of this kind by what might be categorized as young offenders ranging from 14 years old to 20 years old and I am going to refer to some of those. The PP v. Vuti involved a 16 year old offender engaging in sex with a 12 year old victim. From a starting point of 5 years imprisonment the sentence imposed was 1 year imprisonment suspended for 2 years plus 150 hours community work and 12 months supervision. PP v. Tamara, involved a 16 year old offender and a 14 year old victim where they have been in a relationship. The victim became pregnant, 100 hours community work was imposed in that case. In PP v. Yasul, a 19 year old offender had sex on several occasions with his 13 year old victim who was also his girlfriend. Twelve month's imprisonment was imposed there, suspended, plus 150 hours community work.
11. The Public Prosecutor refers to the Court of Appeal's very clear remarks in a case called the Public Prosecutor v. Gideon and also to the cases of the Public



Prosecutor v. Seul and the Public Prosecutor v Kalokis. It is submitted that the facts in Kalokis are similar.

12. But at this point I record that the prosecution accepts that you and the victim were in a relationship and that there was an agreement that you have sexual intercourse. I have to say that I do not accept the prosecution's submission that your offending should be seen as more serious than the offending in Kalokis as that involved a 21 year old offender who offended on 2 separate occasions. The offending in Kalokis was, it could be argued, more serious than in your case.
13. In addition the fact that reconciliation ceremony has not yet occurred in your case cannot be held against you. You and your family are as I understand it ready willing and able to engage in such a ceremony. The victim's family are entitled to refuse to engage in such a ceremony until the outcome of this sentencing. But that is not something for which you should be penalised.
14. Looking at the authorities and the circumstances of this case I consider an appropriate starting point to be one of 3 years imprisonment. There are no personal aggravating features in this case which would warrant an uplift of that sentence. I accept that you are remorseful and that you and your family have offered, as I have said, to engage in a custom reconciliation. In addition you are a young man with no previous convictions. I deduct 12 months to take account of those factors. I deduct a further 8 months for your guilty plea which leaves an end sentence of 16 months imprisonment.
15. The question is then whether that sentence should be suspended given the Court of Appeal's clearly expressed view in Gideon that it will only be in extreme cases that suspension could ever be contemplated in the case of sexual abuse. I consider that the appropriate factors to take into account are the need to hold you accountable and responsible for your offending to denounce your conduct; to deter you and others from offending in this way; to take account of the interests of the victim and to provide of course for your rehabilitation. In addition section 37 of the Penal Code requires me to have



regard to the possibility of keeping offenders in the community so far as is practical and consistent with the safety of the community. In that regard there is no suggestion at all that you are a threat to the community. You are to all intents and purposes a young man with your life ahead of you. I consider that all of the circumstances that I have referred to warrant the imposition of a suspended sentence. In short no useful purpose could be served by sending you to prison. For that reason you are sentenced to 18 months imprisonment with that sentence suspended for 2 years. You are sentenced to 12 months supervision on the conditions set out in the pre-sentence report. So those conditions are clear they are:

- a) to perform a custom reconciliation to the victim and her family;
- b) not to make any conduct with the victim; and
- c) to undertake any rehabilitation program as directed by a probation officer. No doubt a probation officer will provide you and your family with some assistance in undertaking that custom reconciliation ceremony.

16. You are advised that you have 14 days to appeal this sentence.

Dated at Port Vila this Friday 6th of May 2016

BY THE COURT


JP GEOGHEGAN
JUDGE

