

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**

(Criminal Jurisdiction)

CRIMINAL CASE No.1452 OF 2016

PUBLIC PROSECUTOR

- v -

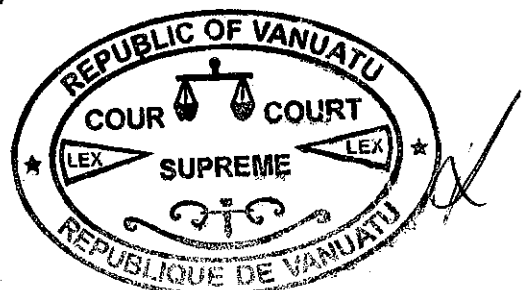
JOHNSON NAUPIR

Coram: Lunabek Vincent CJ

*Counsel: Mr Philip Toaliu for Public Prosecutor
Mr Stephen Carlo for Defendant*

SENTENCE

1. This is your sentence Mr Johnson Naupir for one count of unlawful sexual intercourse after you pleaded guilty to that offence on 18 May 2016.
2. The brief facts of your offending are provided by the prosecution in the prosecution's brief dated 29 April 2016. You and your lawyer accepted these facts before you entered a guilty plea on the offence. They are to the following effect:-
3. You are charged with one count of unlawful sexual intercourse with child under 13 years of age. The charge (Information) relates to four different incidents between the months of May and July of 2015. You had penile intercourse with the complainant girl who was 10 years old at the time of offence. On these different occasions, you threatened to assault or kill the complainant if she told anyone of what you had done to her. She had also physically suffered on these occasions.
4. The complainant is from Enapkasu village on Tanna. She was at all material times a student of 10 years of age and living with her father who is your elder brother.
5. You are from the same village as the complainant. You are a gardener and the complainant's "small daddy" (uncle).



The First incident

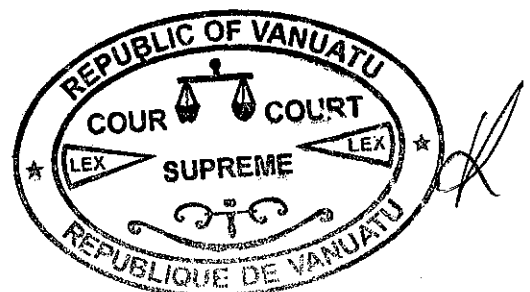
6. The first incident occurred sometimes in the Month of May 2015. The complainant was with her grandmother when you came by. The grandmother then told you to take care of the complainant as she had to go to the garden.
7. You actually carried the complainant to a spot close to their house under an orange tree. You then told the complainant to remove her clothes and lie on the ground. She did as she was told. You removed your pants, lay on top of the complainant and had full penile intercourse with her. She felt you thrusting and then felt her vagina wet. You then removed yourself of her.

The Second incident

8. Sometimes between May and July of 2015, the complainant was playing at her house under the supervision of her grandmother. When her grandmother went to cook the food in the kitchen, you arrived and called the complainant to come and see you at your house.
9. The complainant went and you told her to remove her clothes and lie on bed. She did as she was told. You removed your pants and lay on top of the complaint and again had full penile intercourse with her. She felt you thrusting and then felt her vagina wet. You then removed yourself of her.

The Third incident

10. The third incident happened when the complainant was taking a short cut to her "bigfala tati's house. You intercepted her and again carried her into a bush by the side of the road close to a fence near her father's garden.
11. You had sex there again with her until the complainant's father saw you and the complainant.
12. A meeting was held shortly at the nakamal in an attempt to resolve this matter.



The Fourth incident

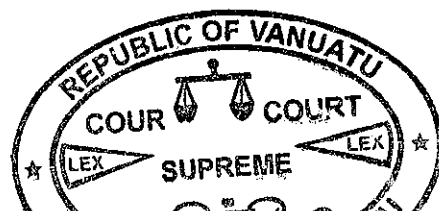
13. The Fourth incident happened shortly after the custom reconciliation undertaken by you to the complainant and her father.
14. The complainant was at her grandmother's house when you came along. Her grandmother had gone to the garden and she instructed the complainant to stay at home and watch the food she had brought home earlier.
15. You arrived and seeing that she was alone, you further carried her to the orange tree next to the house. There, you told her to remove her clothes and lie down. She did as she was told. You lay on top of her and had full penile intercourse with her.
16. The complainant felt you thrusting until you ejaculated onto her vagina.
17. Sexual intercourse with children is prohibited and sanctioned by the law of Vanuatu.
18. In your case, you had sexual intercourse with a child girl under 13 years of age. The law says this:

"Unlawful sexual intercourse

(1) No person shall have sexual intercourse with any child under the age of 13 years

Penalty: Imprisonment for 14 years."

19. This is a serious offence. The seriousness of this offence is as reflected in the maximum penalty of 14 years imprisonment imposed by law.
20. When I sentence you, I am guided by case authorities in same nature type offence and in similar type case circumstances of offending. I also read and take into account of the submissions of the prosecution and those of your lawyer made on your behalf. I also consider the pre-sentence report (if one is provided).
21. In the present case, I am guided by the judgment of the Court of Appeal in Public Prosecutor –v- Gideon [2002] VUCA 7; Criminal Appeal Case 03 of 2001 (26 April 2002) which was also referred to the



Court by the prosecution and your lawyer and other relevant cases also.

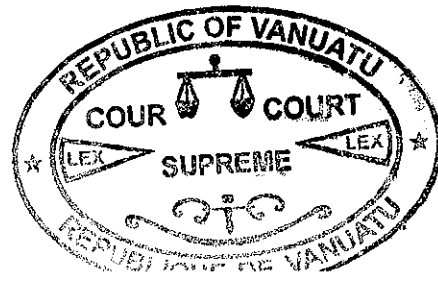
22. In that case, Gideon was charged with the offence of unlawful sexual intercourse with a 12 year old girl. Gideon had sex with the girl on four separate occasions. He was charged and pleaded guilty to the offence. He was sentenced by the Supreme Court to a term of 18 months imprisonment suspended for a period of 24 months. On appeal, the Court of Appeal held that the imprisonment of 18 months suspended for 24 months was insufficiently too low. The Court of Appeal in considering the circumstances and the critical factors of the case stated the following:

"...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 our community. Children must be protected. Any suggestion that a 12 year-old has encouraged or initiated sexual intimacy is rejected. If a twelve year-old is acting foolishly then they need protection from adults. It is totally wrong for adults to take advantage of their immaturity.

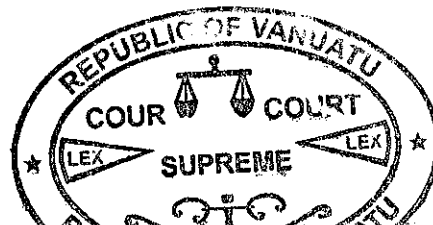
The sentencing Judge expressed himself as being of the view that there should be suspension of the sentence that he imposed because of the custom settlement which had occurred. In the light of what we have said above about custom settlement it will be clear that in and of itself is not a justification for suspension of sentence.

It will only be in a most extreme of cases that suspension could ever be contemplated in a case of sexual abuse. There is nothing in this case which brings it into that category. Men must learn that they cannot obtain sexual gratification at the expense of the weak and the vulnerable. What occurred is a tragedy for all involved. Men who take advantage sexually of young people forfeit the right to remain in the community."

23. The Court of Appeal decided that the starting point of such an offending should not be less than 6 years. The Court then set a starting point of 6 years imprisonment and after considering the mitigating factors, the Court imposed an imprisonment term of 3 years without suspension.
24. In the present case, not only you have committed a serious offence but the circumstances of your offending and the manner you offended and the number of times you offended aggravated the circumstance of your commission of the offence in the following way:



- (a) There is a difference of age between you and the girl complainant. The girl was 10 years old while you are 25 years of age. You are an adult person.
- (b) There is a serious breach of trust because of the domestic relationship which existed between you and the complainant. You are the younger brother of the complainant's father. The complainant looks upon you as her small "daddy". She expects you to protect her but not to sexually abuse her to satisfy your sexual gratification.
- (c) The offence occurred on more than one occasion.
- (d) The offence occurred within the surrounding of the complainant's home which should be the place where the complainant should have been safe.
- (e) You have threatened to assault or kill the complainant if she told anyone that you have sexually abused her.
- (f) The complainant suffered physical damage on her body.
25. The seriousness and aggravation of the offence in this case warrant an imprisonment sentence for the following reasons:
- (a) To mark the gravity of your offending;
 - (b) to mark the public's disapproval and condemnation of your actions;
 - (c) To act as a deterrence for you and for others who would commit the same offence in the future; and
 - (d) to punish you adequately your offending.
26. The prosecution submitted that the appropriate sentence starting point should be 6 years imprisonment based on Gideon case (inclusive of the aggravating factors).
27. I assess the seriousness and aggravation of the offending and I consider the Court of Appeal guideline judgment in Gideon and I consider the circumstances of this case and I note that the complainant in this case is much younger than the complainant in the Gideon case coupled with other critical factors, I am of the view that the appropriate sentence starting point is 7 years imprisonment (inclusive of the aggravating factors).



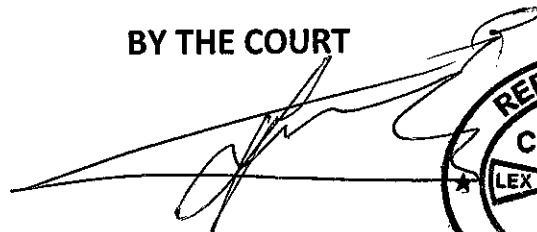
28. In mitigation, I note you entered guilty pleas at the first opportunity given to you by the court. You are a first time offender. You are remorseful and sorry for your actions. You cooperate well with the police during investigation and you admitted your offending to the police authority. You also apologise to the court and the victim. You are willing to perform a custom ceremony to the victim and her family. You promise not to commit the same offence and any other offences in the future.
29. On balance between the aggravating and mitigating factors and on cross assessing each with others, I reduce your sentence of 7 years imprisonment to one third (1/3) to reflect your guilty pleas as this saves the cost and the court's time for conducting a trial.
30. You are now sentenced to 5 years imprisonment. I reduce that term of 5 years imprisonment further for a period of 6 months to reflect your other mitigating factors.

Your sentence is now reduced to 4 years and 6 months imprisonment.

31. I note that you have already served 6 months pre-custodial period awaiting your plea and sentence as you were remanded since 22 January 2016. This will be taken also into account in your favour.
32. Your end sentence is 4 years and 6 months imprisonment. This sentence is of immediate effect. However, since you have already spent some time in pre-custodial period, I order that you are deemed to serve your sentence of 4 years and 6 months imprisonment from the date of 22 January 2016.
33. You have 14 days to appeal this sentence if you are unsatisfied with it.

DATED at Port-Vila this 23rd day of June 2016

BY THE COURT



**Vincent LUNABEK
Chief Justice**

