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

Criminal
Case No. 17/1934 SC/CRML

PUBLIC PROSECUTOR

V

JACK NAMPO

Date of Sentence: ***31st day of October, 2017 at 9:00 AM***

Before: ***David Chetwynd***

Counsel: ***Tristan Garae for Public Prosecutor***
Pauline Kalwatman for Defendant

SENTENCE

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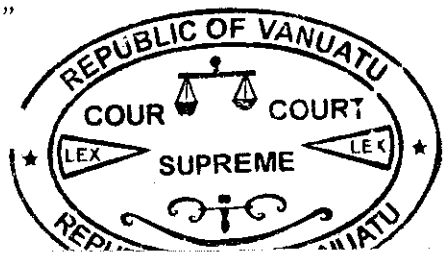
1. The defendant entered a plea of guilty to 3 charges involving sexual intercourse without consent. The victims were his daughters aged 5, 14 and 17. The pleas were entered after a trial had started and two of the victims had given evidence in Court.

2. The offences all occurred at night in the home where the defendant was living with his children and his wife.

3. It is submitted that as this was digital rape the offences should be treated differently. This is the approach taken in other cases, *PP v Enock Tao* and *PP v Harkenson Moise*. I take a different view to the Judges in those cases. The elements of the offence involve, as section 90 makes clear, sexual intercourse where there is no consent. Consent must bear its natural meaning. Sexual intercourse is defined in the Penal Code at section 89A:-

> *"For the purposes of this part sexual intercourse means any of the following activities .....:*
> *(a) the penetration, to any extent, of the vagina or anus of a person by any part of the body of another person..."*



The section does not differentiate between penile or digital penetration. I accept that penile rape may have more aggravating features than digital rape because of the risk of pregnancy or sexually transmitted deceases with the former but I can see no reason why digital rape should be treated less seriously.

4. As has been said in various cases over the years the starting point for an offence of rape committed by an adult with no aggravating or mitigating circumstances should be 5 years. That is where we start in this case.

5. The offence involving a 5 year child must attract a substantial uplift and ever more so when the child is a son or daughter. In addition this was 1 of a series of rapes. A son or daughter would be entitled to feel that he or she will be safe in their own home and would be protected by a parent. When a parent sexually abuses one of their own children in their home this is such a fundamental breach of trust that the sentence should reflect the catastrophic harm, physical and psychological, that such abuse will cause. I do not see that a sentence any less than 15 years should be imposed.

6. For the rape of a 14 year child the sentence should be only slightly less because although less harmful than abuse involving a very young child, the breach of trust and harm caused is still very serious. The sentence should be 12 years imprisonment.

7. When the rape involves a young adult there is still considerable harm and so for the offence involving the 17 year old daughter the defendant will be sentenced to 10 years imprisonment.

8. In mitigation it can only be said the defendant has taken part in a ceremony involving payment of a fine and so has shown some remorse. He also has a clear record up to now. This is of only minor relevance in mitigation. Taking these matters into account the sentences can be reduced by 6 months.

9. As the guilty pleas were entered only after two of the victims had given evidence there can be no credit given to guilty pleas. That leaves sentences of 14 ½ years, 11 ½ and 9 ½ years.

10. The offences were committed over a period of some 12 months and involved 3 separate instances of rape. In those circumstances they cannot be said to have occurred within one course of conduct. The sentences should be consecutive. That would lead to a total sentence of 35 ½ years being imposed.

11. When faced with such a sentence the Court must stand back and look at appropriate totality of sentence to be imposed. 35 ½ years would offend against the principle of totality and in all the circumstances the sentence to be imposed should be 15 years.

12. There is no question of suspending the sentence.

13. The sentence shall be deemed to have started on 25th May 2017.

14. The defendant is entitled to appeal against this sentence and he will have 14 days in which to lodge his appeal with time starting to run when he receives a copy of this decision through his counsel.

DATED at Port Vila this 2nd day of November, 2017.
BY THE COURT

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David Chetwynd
Judge

REPUBLIC OF VANUATU
COUR SUPREME COURT
LEX LEX
REPUBLIQUE DE VANUATU