

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

**Criminal
Case No. 20/498 SC/CRML**

BETWEEN: Public Prosecutor

**AND: Jean Batist Napipi
Defendant**

Date: 28 April 2021
By: Justice G.A. Andrée Wiltens
Counsel: Mr T. Karae for Public Prosecutor
Mr B. Livo for the Defendant

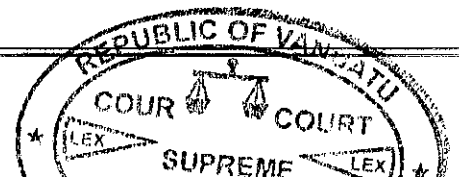
Sentence

A. Introduction

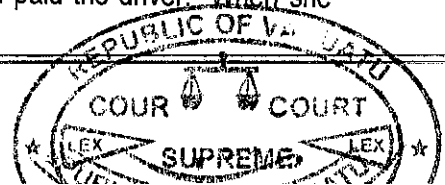
1. Mr Napipi was convicted after trial of 5 charges of unlawful sexual intercourse without consent.

B. Facts

2. The complainant AP resides with her auntie at Bladiniere. She is in year 11 at St Antoine School. She is currently 20 years old. AP's parents have split and her mother resides at Freshwota; her father has re-married and lives at Blacksands.
3. In 2019, AP went to live with her father at her uncle's house at Blacksands. However, certain events occurred with her father which caused her to move in with Aunt Mylene. Those events are the subject of the charges.
4. Charge 1: AP's father called her into the kitchen at some stage in the morning on a Friday in October 2019, and he asked her to lie down on the bed next to him. He started to touch her in various places, including her private part. He told her to go and sleep with him; that he was pleased she was now grown up and a mature woman. AP did what he asked as he was her biological father and she didn't know what he was going to do.



5. While AP was on the bed, her father's hand went under her shirt and he touched her. His hand moved down to her private part and he lifted up her shirt and touched her breasts. She said he pushed his finger up her vagina.
6. AP was unhappy at what occurred; not comfortable. She tried to push his hand away, but he was strong and kept on going. Her father told her that he did this so she would become a fully mature woman. AP did not call out. She was told that she should not report what had occurred, that she shouldn't say anything. AP told him to stop, but he continued to touch her until he allowed her to leave.
7. The event that led to Charge 2 occurred perhaps a week later, around lunchtime. Her father did the same things to her, lifted up her clothes and touched her private part. AP had gone into the kitchen to do something while her father slept. When she entered, her father told her to lie down next to him. AP did as asked because she was afraid of him.
8. He father touched her breasts, sucked one of her breasts, opened up her jeans and pushed his hand down into her private part.
9. While her father touched her, AP did not feel good. She was not happy about it. AP tried to stop him and cried. He told her to be quiet and that AP should not make any noise. The second incident lasted quite some time. AP was crying before her father let her go outside. AP wanted to tell her mother what had occurred but her father told her that if she reported him he would go to jail for life.
10. The basis for Charge 3 followed a request by AP to her father for some money perhaps 2 or 3 days after the second incident. He responded that he could not give AP money in the house as it would make her step-mother cross. AP had to go to town to meet her father in order to get any money. That Friday morning AP went to school. After the school day had ended at lunchtime, AP returned home and showered. She then caught a bus into town.
11. AP went to the Tafea Guesthouse, where she was to meet her father. She telephoned him and he told her he was in Room 4. AP went there and entered to find her father lying on the bed. AP asked for some money and stated that she would then go and help her step-mother prepare some food. Her father told her she couldn't go. He pulled AP down onto the bed and started touching her body and her breasts. He pushed his hand down into her trousers and down into her private part. He pushed his finger inside her vagina.
12. AP did not want her father to do that. She tried to fight him off, but he was stronger. He said he just wanted to hold her, to enjoy her and then she could leave. AP did not agree to that. AP's father gave her VT 7,000, which AP used to buy some clothes before returning home. AP did not tell anyone about the third incident.
13. Charge 4: This occurred after AP again asked her father for money, this time to buy a new telephone. Her father told AP she would have to meet him in town again, and he said he would ring her. He called her and told her to meet him at the Tafea Guesthouse. AP replied she had no money to pay the bus fare, and her father said he would pay when she arrived.
14. AP took a bus to the Tafea Guesthouse and went to Room 6, as instructed. She entered and took the bus fare from some cash on a table inside the room and paid the driver. When she

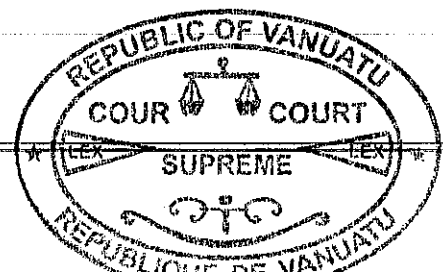


returned to Room 6 she wanted to just get the money from her father and leave. However, her father did not want her to leave and he pulled her onto the bed. He took off her clothes and started to suck her breasts and her vagina. He used his tongue to lick her private part.

15. AP's father tried to force her to touch his private part, but AP did not want to. He was wearing boxer shorts. He did not take them off but did remove his shirt. AP did not agree with what her father was doing. She told him she did not want him doing this, to stop. She cried and said she wanted to leave. She was there for about an hour. She was crying and asking to leave. He gave AP VT 17,000.
16. Charge 5: This event occurred at night time on 23 December 2019. AP and her father had been at AP's friend's nakamal, her father drinking kava with others. Her father went next door to a building site and sent AP's step-mother away to join others so that he could speak with AP. He then took AP onto his lap and started talking in a kindly way "about school stuff" before beginning to touch AP. He opened her trousers and pushed his hand into AP's private part. He told AP that the next day she was to go to Wan Smol Bag theatre and collect some condoms which she was to bring to her father at the Tafea Guesthouse and sleep with him. AP was told she would be able to go home on December 25th.
17. AP was crying and wanting to be left alone. In the end her father allowed AP to go. On December 24th AP did not go to Wan Smol Bag. Instead she made a formal complaint to the police.

C. Sentence Start Point

18. The sentence start point is to be assessed by having regard to the maximum sentence available for this offending, and factoring in both the aggravating and mitigating aspects of the offending.
19. The maximum sentence for sexual intercourse without consent is life imprisonment.
20. There are aggravating factors to this offending, which include:
 - The repeated nature of the offending, over a 3-month period;
 - The breach of trust – Mr Napipi is the biological father of AP;
 - The additional indignities perpetrated – the disrobing of AP, the kissing of her breasts, and the licking of her vagina;
 - The age differential between Mr Napipi and AP at the time of the offending – he was 45 years old, she was 18 years old;
 - The repeated urgings that AP not report the offending;
 - The controlling attitude exhibited, coupled with the clear demonstration that Mr Napipi was entitled to act in this fashion; and



- The fact that some of the offending occurred in the family home, where AP should have been able to feel safe.

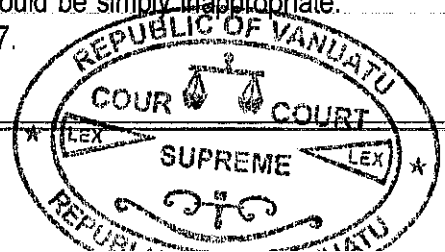
21. There are no mitigating aspects of the offending.
22. Both counsel have sought to differentiate penile penetration from digital penetration. I accept that digital penetration is a less invasive offence.
23. I also note that AP has filed a Victim Impact Statement. Fortunately she appears to be a well-balanced young woman who will not endure long-term effects as a result of the offending. She has forgiven her father.
24. I consider the authority of *Nampo v Public Prosecutor* [2018] VUCA 43 in setting the appropriate starting point. It sets out a number of examples of sentencing for this type of offending and is close to the factual matrix revealed in this case. A close analysis of that case satisfies me that the sentence start point advocated by both counsel is simply inadequate.
25. I adopt a sentence start point of 7 years imprisonment, taking all the 5 charges into account concurrently on a global basis.

D. Personal Factors

26. Mr Napipi is now 48 years old. He is married with the responsibility of several small children to care for. He was previously a security officer, a field of endeavour that will likely no longer be available for him.
27. He has no previous convictions. In cases of sexual offending, the Courts have repeatedly stated that a lack of previous convictions is of limited value as mitigation.
28. Mr Napipi has not taken part in any custom reconciliation ceremony – he apparently sees no need for that. Nor has he shown any remorse for his conduct or insight into his offending; and he still maintains he has done nothing wrong. The PSR writer considers Mr Napipi to be shifting the blame for his offending onto AP.
29. Mr Napipi suffers from high blood pressure. However, that can easily be addressed by suitable medication and it is therefore no reason to reduce the sentence.
30. For Mr Napipi's personal factors, I reduce the sentence start point by 4 months.

E. End Sentence

31. Mr Napipi is sentenced to 6 years 8 months imprisonment. I impose that sentence on all 5 charges concurrently. Mr Napipi has been remanded in custody between 27 December 2019 to 17 December 2020, and again from 3 March 2021 to today. Accordingly it is appropriate to back-date the start date of the sentence to 21 March 2020 to take that into account.
32. The end sentence will not be suspended. This offending is far too serious and due to the nature of the offending, suspending any or all of the sentence would be simply inappropriate. The relevant authority in this regard is *PP v Gideon* [2002] VUCA 7.



33. Mr Napipi has 14 days to appeal the sentence.

34. All details leading to the identification of AP are permanently suppressed.

**Dated at Port Vila this 28th day of April 2021
BY THE COURT**

Gardien Ull
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Justice G.A. Andrée Wiltens

