

PUBLIC PROSECUTOR

v

ALEXY BANI

Date: 5 September 2024
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Ms M. Tasso
Defendant – Mr S.G. Junior

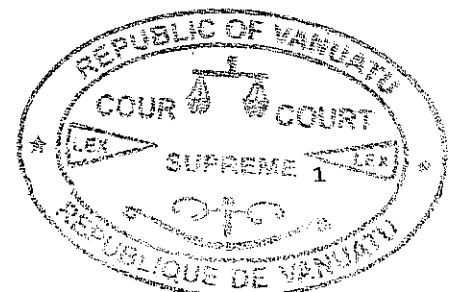
SENTENCE

A. Introduction

1. The Defendant Alexy Bani pleaded guilty to unlawful sexual intercourse with a child under 15 years of age but of or over the age of 13 years contrary to subs. 97(2) of the *Penal Code* [CAP. 135]. He is convicted on his own plea and the admitted facts.

B. Facts

2. At the time of the offending, the complainant SG was 13 years and 5 months old, and Mr Bani was 17 years old. Both are from Ambae island and the offending occurred on Ambae.
3. On 16 June 2023, the complainant SG and her youngest sister EG were walking home from a birthday party. They found a phone in the grass along the road, and gave it to a group of boys nearby. The boys left except for Mr Bani who remained standing with the two girls. He told the two girls to follow him but they refused. Then he told EG to leave him and the complainant alone. When she did not do so, he shouted at EG which caused her to become afraid and run away. Mr Bani then started kissing SG and eventually penetrated her vagina with his penis.



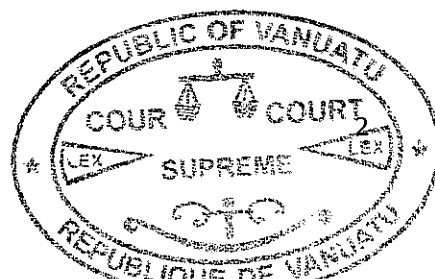
4. EG ran home and immediately told their father what had happened. The father went back along the road, looking for his daughter SG, but could not find her. Later on, they lodged a complaint at the Police headquarters at Saratamata on Ambae. Mr Bani admitted his offending to the Police.

C. Sentence Start Point

5. The sentence start point is assessed having regard to the offending, its aggravating and any mitigating features, the maximum sentence set by Parliament and guidance provided by earlier cases.
6. The maximum sentence for unlawful sexual intercourse with a child under 15 years of age but of or over the age of 13 years of age is 15 years imprisonment: subs. 97(2) of the *Penal Code*.
7. There are no mitigating aspects to this offending. However, there are aggravating factors including:
 - The 6-year age differential;
 - Premeditation; and
 - The defendant exposed the complainant to the risk of sexually transmitted infection and pregnancy.
8. The Prosecution submitted that a sentence starting point of 5 years was appropriate, referring to *Lawi v Public Prosecutor* [2023] VUCA 41 involving the 28 year old defendant and 14 year old complainant, which was a case of non-violent sexual intercourse. Defence counsel cited *Lawi* as well as *Public Prosecutor v Nicholson* [2011] VUSC as comparative cases. The latter case involved a 20 year old defendant and 14 year old complainant, who were in a boyfriend and girlfriend relationship and had sex on many occasions. In *Nicholson*, a 4 year sentence starting point was adopted and the end sentence imposed was 2 years imprisonment suspended for 2 years plus 200 hours community work.
9. Taking all matters into account, the sentence start point adopted is 3 years 6 months imprisonment.

D. Personal Factors

10. One third is deducted from the sentence start point for Mr Bani's early guilty plea.
11. Mr Bani is 19 years old. His parents separated so he has been under the care of his mother's sister ever since. They live at Lolowai Hospital on East Ambae. He is a Year



9 leaver. He works as a boat driver, transporting people to Maewo and Pentecost, and also cuts timber with a chainsaw. He has no prior convictions. He is remorseful and willing to pay compensation in custom to the complainant.

12. I deduct 25% from the sentence start point for Mr Bani's personal factors, particularly his young age and immaturity: *Korthy v Public Prosecutor* [2019] VUCA 19 and *Public Prosecutor v Malkorkor* [2015] VUSC 147.

13. Mr Bani has been held in custody since 30 April 2024 – effectively 8 and a half months imprisonment. Accordingly, a further 8 and a half months is deducted from the sentence start point.

E. End Sentence

14. The end sentence is 9 months imprisonment. This reflects the need to denounce this criminal conduct against young girls and against the values of society, as a general and specific deterrence and to hold Mr Bani accountable for his criminal conduct.

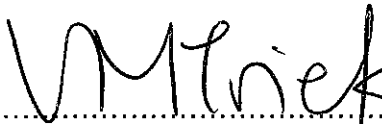
15. Given Mr Bani's youth, employment and prospects for rehabilitation, I suspend the sentence for 2 years. Mr Bani is warned that if he is convicted of any offence during that 2-year period that he will be taken into custody and serve his sentence of imprisonment, as well as the penalty imposed for the further offending. Given the suspension of sentence, Mr Bani is to be immediately released from custody.

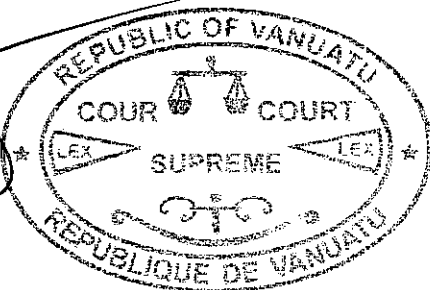
16. In addition, Mr Bani is sentenced to 120 hours community work.

17. Mr Bani has 14 days to appeal against the sentence.

18. The details leading to the identification of SG and EG are permanently suppressed.

**DATED at Port Vila this 5th day of September 2024
BY THE COURT**


Justice Viran Molisa Trief



The seal of the Supreme Court of Vanuatu is circular. It features a central emblem with a scale of justice and a sword. The text 'REPUBLIC OF VANUATU' is written along the top inner edge, and 'REPUBLIQUE DE VANUATU' along the bottom inner edge. In the center, the words 'COUR' and 'COURT' are positioned on either side of the scale, with 'SUPREME' below them. The word 'LEX' is written on two banners flanking the central emblem.