

PUBLIC PROSECUTOR
V
JIMMY NAMPAS

Dates of Verdict: 30 October 2024
Coram: Hon. Chief Justice V. Lunabek
Counsel: R. Siri for the Public Prosecutor
K. B. Karu for the Defendant
Date of Sentence: 13 December 2024

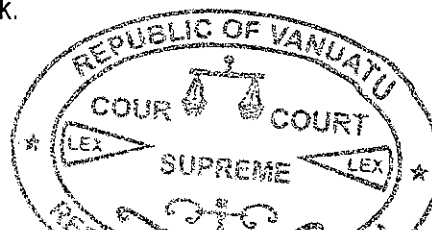
SENTENCE

I. Introduction

1. Mr Jimmy Nampas ("*Mr Nampas*"), you appear today for sentence. You were charged and pleaded not guilty to two (2) counts of unlawful sexual intercourse with a child under the age of 13 years, contrary to Section 97(1) of the Penal Code Act ("*the Act*") [CAP. 135]. After the trial, you were convicted on the two counts of unlawful sexual intercourse under s.97(1) of the Act, on 30 October 2024.

II. Background – Facts

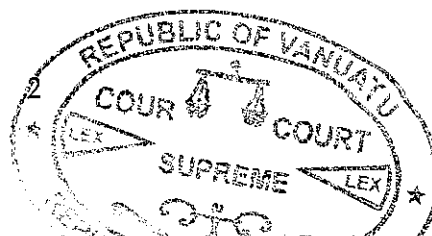
2. The offences occurred in March 2022. The complainant (M) lived with her parents at Teouma Dark Bush. Mr Nampas, you also live at Teouma Dark Bush not far from the complainant's house. Your house is situated at the other side of the road where the complainant lives with her parents.
3. The complainant's date of birth is 27 December 2009. In 2022, she was 12 years old. She was therefore under 13 years of age.
4. In March 2022, Marie, Mr Nampas' daughter, came to see the complainant at her house and asked her to go with her (Marie) to prepare and cook simboro laplap at her house (Marie's).
5. At that time, Mr Nampas, you were at your house. You sent your daughter Marie to go to the shop which is far away from your house. You told the complainant that she was not going with Marie to the shop. She will stay back.



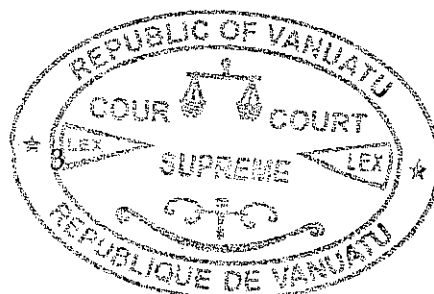
6. So, Mr Nampas, you were with the complainant at your house on March 2022. Mr Nampas, you suggested it was 5 March 2022 which was the national Chiefs' Day and it was also during the lockdown Covid-19. You and the complainant were alone at your house. At that time, the complainant sat in your kitchen. There, Mr Nampas, you first approached the complainant and touched her buttock.
7. You then called the complainant to go into a house and that you will give her some money. Then the complainant went and you opened the door of that house, you put a mat made of coconut leaves on the floor and asked her to sit on it. You, then, removed her skirt, removed your trousers and laid on top of her and you penetrated her vagina with your penis, and had sexual intercourse with her. The complainant felt her vagina was very painful at that time. That was the first sexual intercourse with the complainant on that day.
8. Mr Nampas, you had sexual intercourse with the complainant the second time or the second-round sex on that same day. After the first sex, in the same house, you told the complainant to open her legs so that you could sleep on top of her and had sexual intercourse with her again. The complainant saw that your penis was still strong. After the second time sex, she saw blood coming out of her vagina. You did not give her any money. Marie came back from the shop just after the second sexual intercourse. The complainant returned home to her mother and did not eat simboro laplap as she was afraid of what you did to her.
9. The house where the sex occurred in had doors. The house was made of local materials. It was a sleeping house. The house was no longer there. It was fallen down because of the cyclone or as it was rotten. It was situated near your house (Mr Nampas').
10. After the sex, the complainant returned home and went straight to her room. She was crying as it was painful. Her mother did not notice her as she (her mother) went down to Korman to purchase rice and returned back to Teouma on that day. It was painful in the evening. She slept only in her room in her house. Her mother could not notice her on the following days as she went to the garden while her children including the complainant were still sleeping. Few days after the sex, the complainant was only staying inside the house; she did not come outside or walk around outside because her private part was painful.
11. This was explained by the fact that the complainant was a child of 12 years old; and also by the fact that Mr Nampas, you had two marbles hanging on your penis (at the time of intercourse); and after sexual intercourse, the complainant saw blood coming out of her vagina; she went back to her house; she could not walk around; she was only in bed; her private part was very painful for few day. It is rational to infer that the two marbles that you had on your penis may have contributed to the injuries on the complainant's private part and caused blood coming out of the complainant's vagina and also caused pains to her private part.

III. Sentence start point

12. The sentence start point is to be assessed by having regard to the maximum penalty available and factoring with mitigating aspects of the offending.



13. The maximum sentence for unlawful sexual intercourse with a child under 13 years of age is imprisonment for life.
14. There are no mitigating aspects of the offending. There are however aggravating factors which include:
 - (a) Breach of trust (Family relationship);
 - (b) Differential age between the complainant (M) (12 years) and Mr Nampas (53 years) of 41 years;
 - (c) There was some degree of planning. Mr Nampas, before you had sexual intercourse with the complainant you sent your daughter away to the shop and you ensured that the complainant stayed back so that you could sexually abused her twice;
 - (d) The offending is repeated;
 - (e) Mr Nampas, you used two marbles on your penis (as weapons) causing loss to the complainant of her virginity and or causing damage/injury to the body of the complainant and she suffered pain and blood came out of her vagina as the result of the sexual intercourse. She suffered pain, she could not walk and she only stayed in her room for some days after the sex;
 - (f) The sexual intercourse on the two rounds were unprotected ones exposing the complainant with the risk of earlier pregnancy and or the risk of sexual diseases.
 - (g) The mental impact on the victim/complainant.
15. The prosecution submits for a sentence start point range between 6 to 9 years' imprisonment.
16. The defence submits for a sentence start point of 8 imprisonment as appropriate.
17. I fix a sentence start point of 10 years imprisonment in the present case taking its seriousness and circumstances.
18. Mr Nampas, you have previous criminal convictions for dishonesty in the year 2022 (theft and threatening language). You were sentenced to a fine of VT4,000 before the magistrate's Court.
19. I decide not to uplift that to your sentence start point.



IV. Personal Mitigating Features to the Defendant

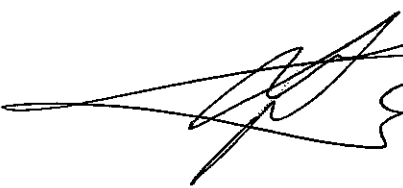
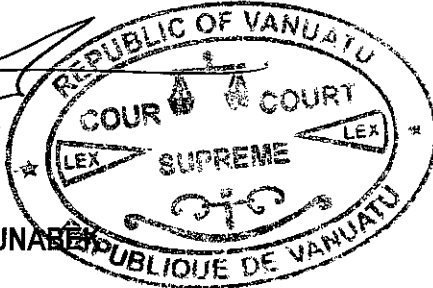
20. Mr Nampas, you are married and you have 7 children and 6 grandchildren. You have good relationship with your family. You have your own Debt Collector Business (Alambas Professional Debt Collector Firm) but you no longer operate it due to this case.
21. The offences of sexual intercourse with a child under 13 years of age occurred in March 2022, you were prosecuted and sentenced in 2024 which is 2 years delay.
22. I give you a reduction of 2 months for this delay in the prosecution of your case.
23. I note that you were remanded in custody for 2 months and 22 days (9 September 2022 – 1 December 2022) which is effectively 5 months and 14 days in pre-custodial period based on the parole right consideration. This period must be deducted from your sentence as you have already spent it.
24. Your sentence is further reduced to 112 months and 16 days i.e., 9 years and 16 days imprisonment.

V. End Sentence

25. Your end sentence is 9 years and 16 days imprisonment.
26. This term of 9 years and 16 days imprisonment sentence is not going to be suspended based on the authorities of Public Prosecutor v Gideon [2002] VUCA; Public Prosecutor v August [2000] VUSC 73 and Public Prosecutor v Scott and Tula [2002] VUCA 29.
27. You are ordered to serve the term of 9 years and 16 days imprisonment with immediate effect.
28. You have 14 days to appeal this sentence if you are unsatisfied with it.

DATED at Port Vila, this 13th day of December, 2024.

BY THE COURT

Hon. Chief Justice Vincent LUNABE