

PUBLIC PROSECUTOR

v

KEVIN RAU

Coram: *Hon. Chief Justice V. Lunabek*

Counsel: *L Lunabek for the State*
K Amos for the Defendant

Date of Plea: *8th March 2024*

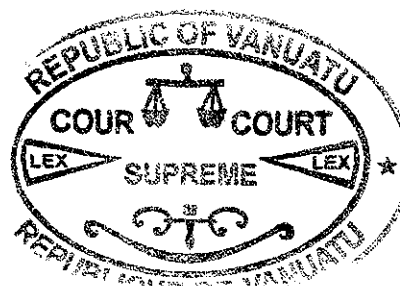
Date of Sentence: *30th April 2024*

SENTENCE

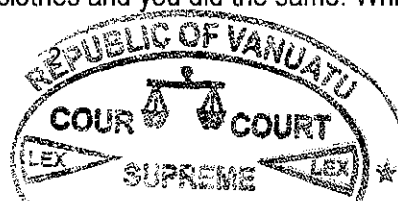
I. Introduction

1. Mr Kevin Rau ("*Mr Rau*"), you appear today for sentence. On the 8th of March 2024, you entered guilty pleas to the following offences: -
 - Obscene publications, contrary to section 147 (1) (a) of the Penal Code [CAP. 135] ("*the Act*") (Count 1);
 - Two counts of unlawful sexual intercourse, contrary to section 97 (2) of the Act (counts 2 and 3);
 - One count of sexual intercourse without consent, contrary to sections 90 (a) and 91 of the Act (count 4); and
 - Two counts of act of indecency, contrary to section 98 (a) of the Act (counts 5 and 6).

II. Facts



2. Mr Rau, you are the partner of the complainant's mother. You are living together in a defacto relationship as husband and wife before the offendings. You lived together at the home of her uncle Thomas Bolango at Holen Nambaga area, Port Vila.
3. The complainant (CT) lived with her mother and you. She started living with her mother and you, Mr Rau, in 2019.
4. In her complaint statement, she refers to you as her step-father. She regarded you as a father figure though you did not adopt her (but you live with her mother and her as her father. She called you "father").
5. The mother of the complainant (Anna Bolango) confirmed that the correct date of birth of the complainant is the 23rd November 2007. She confirmed also that the birth certificate of the complainant does not give the correct date of birth of the complainant. The state did not dispute this fact. It is accepted as such.
6. In the year 2023, the complainant went to school at Erakor Junior Secondary School in Grade 7.
7. Mr Rau, at one time in 2019, you had called the complainant to go inside a room and made her lay on the bed.
8. The complainant tried to leave but you held her hand and told her that you would watch a movie together. You then made her (complainant) watch a pornographic movie.
9. In 2020, the complainant, her mother and you, Mr Rau, moved out of Holen Area and went to stay at Erakor. The complainant was living with both of you. In 2020, the complainant would have been around 13 years of age.
10. When you all went to stay at Erakor, you had asked the complainant to take out her clothes.
11. The complainant refused. You then told her to do it and you would give her VT100. You were at a garden with the complainant and her mother was at home cooking at that time. You then sent her back home and you then told her mother that you sent home the complainant because she did not want to take some cabbages.
12. Another day, you asked the mother of the complainant to go do some shopping.
13. The complainant tried to follow her mother but you stopped her.
14. You then told her to take out her clothes. She did not want to take out her clothes, but you forced her and she took out her clothes and you did the same. While you were both naked,



- you took pictures of you both. You then hold the complainant's shoulder and took a selfie of you both.
15. You then told the complainant to go lay on the bed and that you would suck on her. She was afraid and went to lie on the bed. She was afraid that her mother would come and see you both this way. You then proceeded to suck her breasts and then her vagina.
 16. You then told her that if her vagina had not been small then you would have had sex with her.
 17. The complainant did not like at all what you had done to her.
 18. Still in 2020, she remembered that you had asked her on few occasions to kiss you. She did not want to, but you would pull her towards you and would bite her lips. Usually, it would happen in the garden.
 19. In 2021, when the complainant was 14 years old, you did the same thing and sucked her breasts and her vagina. You then went further and touched her clitoris with a finger and then pushed a finger into her vagina.
 20. The complainant felt pain after that. The complainant was afraid to tell her mother because she was afraid, she would punish her.
 21. In 2022, when the complainant was 15 years old, you continued to do what you were doing to the complainant at Erakor Village which was to suck on her breasts and vagina. Then you would use your finger to touch her clitoris and penetrate her vagina with your finger.
 22. If she refused to do anything, you would assault her which made the complainant afraid of you.
 23. In 2022, you made your pants go down half way and took out your penis and told the complainant to come and suck your penis. The complainant refused and went outside.
 24. In 2023, when the complainant had already turned 16 years old, around the month of June, the complainant's mother went to work and the complainant and you were alone at home.
 25. You then told her to take off her shirt. The complainant refused to do so. You forced her. You then proceed to suck her breasts. You did that only once.
 26. She then went to Holen to see her uncle Thomas and she told her sister-in-law Alexa Bolango about what you were doing to her.



27. Alexa and her aunt Delphine then took her to the police to report everything that had happened.
28. You were cautioned and interviewed on Thursday 2nd of November 2023.
29. You said you did not want to talk during your cautioned interview.

III. Sentence start point

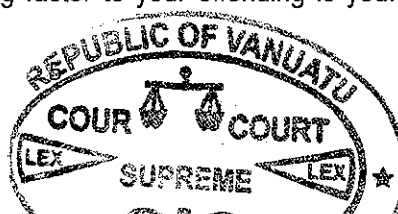
30. The sentence start point is determined having regard to the maximum sentence available for the offending, taking into consideration the aggravating and mitigating features of the offending and having regard to case authorities on the offencings and in particular comparable cases submitted by respective counsels for consistency purposes.
31. In the present case, the maximum sentences available for the offencings in this case are:
 - Obscene publications carries a maximum sentence of 2 years imprisonment;
 - Unlawful sexual intercourse carries a maximum sentence of 15 years imprisonment;
 - Sexual intercourse without consent carries a maximum sentence of life imprisonment; and
 - Acts of indecency without consent carries a maximum penalty of 7 years imprisonment.
32. In this case, there is more than one charge. I deal with the sexual intercourse without consent as the leading offence for the sentencing purpose. I make an overall assessment, the maximum sentence that is available for the current offending (leading offence) is life imprisonment. I will apply it concurrently.
33. I peruse the prosecution submissions on the case law authorities and comparable cases cited to the following effect (among other cases: Public Prosecutor v Kalo [2018] VUSC 14 and others):
 - A sentence start point for the leading offence of sexual intercourse without consent ranging between 8 – 10 years imprisonment;
 - A sentence start point for the offence of unlawful sexual intercourse ranging between 6 – 7 years imprisonment;
 - A sentence start point for the offence of acts of indecency without consent ranging from 2 – 3 years imprisonment; and



- A sentence start point for the offence of obscene publication ranging from 5 – 6 months imprisonment.
34. The prosecution submits for these sentence start points to be all concurrent.
35. I also peruse the defence submissions relying on the case of Public Prosecutor v Tevi [2023] VUSC 154. The defence submits for a sentence start point of 8 years imprisonment concurrently on all offendings.
36. In the present case, there are no mitigating features to the offending but the following aggravating factors exist:
- There is a breach of trust between the complainant and her step-father;
 - Some of these sexual abuses occurred at home when the complainant should feel safe;
 - The length of time the offending happened [from 2019 when the complainant was 12 years to 2023 when she was about 16 years old. She turns 17 in 2024. In 2023, she went to Hoken area to see her uncle Thomas and she reported the matter];
 - There is repetition of these sexual abuses.
37. Here, I set a sentence start point of 8 years imprisonment, concurrently on each and all offending.

IV. Personal Mitigating Features to the Defendant

38. You are 52 years old. You are originally from Haronbwararatu village, North Pentecost Island. You live in a defacto relationship with Ms Ann Bolango. You both have two grown up girls and they all live at Erakor village. You stated to have good relationship with your families and people on Pentecost and around Port Vila.
39. You completed Year 10 level of education. You work as a professional artist for 3 years.
40. You are a first-time offender. You admitted your wrong-doings. You shed tears showing you are remorseful of your actions. You stated you realised what you had done to the complainant affected her school, mind and her relationship with you.
41. The PSR shows that the complainant refuse any form of custom compensation.
42. You stated that you were guilty and shameful of your wrong. You wish to apologize to the victim, your defacto partner, chief and your community for your wrong actions. The report shows that the main contributing factor to your offending is your inability to control your sexual desires.



43. I give you a reduction allowance of 6 months to reflect your remorse and contrition, your apology to the complainant, your partner, your family and community and for your acceptance of responsibility for your wrong-doings.
44. I give you a further reduction of 33% to reflect on your early guilty plea given to the court at the earliest opportunity.
45. The remaining balance of your sentence is 60 months i.e. 5 years imprisonment.

V. End Sentence

46. Your end sentence is 5 years imprisonment.
47. You were remanded in custody on 02 November 2023 until you are sentenced today.
48. The time you have already spent in custody shall be taken into account in your favour.
49. This sentence of imprisonment is not going to be suspended. The nature and circumstances of the offending do not justify a suspension.
50. The imprisonment term of 5 years is necessary, among other matters, to protect girls and the vulnerable people in the society on the authorities of Public Prosecutor v Gideon [2002] VUCA 7.
51. You are ordered to serve 5 years imprisonment which is deemed effective from 02 November 2023 to take into account the time you have already spent.
52. You have 14 days to appeal this sentence if you are unsatisfied with it. The 14 days starts at the date of this sentence.

DATED at Port Vila, this 30th day of April, 2024.

BY THE COURT

Hon. Chief Justice Vincent LUNABEK

