

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

Criminal
Case No. 25/360 SC/CRML

PUBLIC PROSECUTOR

v

GIDEON PATUNVANU

Date of Plea: 1st April 2025
Before: Justice J. K. Naigulevu
Counsels: Public Prosecutor – Ms. S. Langon
Public Solicitor – Ms. L. Bakokoto

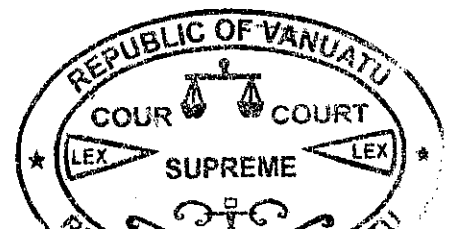
SENTENCE

Introduction

1. Mr. Patunvanu, you pleaded guilty to a count of unlawful sexual intercourse contrary to section 97 (1) of the Penal Code, and a further count of Attempted unlawful sexual intercourse contrary to sections 97 (1) and 28 of the Penal Code, when you were arraigned on the 8th April 2025.
2. You were duly convicted on your pleas.

Facts

3. The victim was 4 years old; you were 39 at the time of the offending. She was your niece, you being the stepbrother of her mother. You lived together in the same house at Erakor Half Road area.
4. On the 3rd December 2024, you were observed lying on your back in a clearing inside a bush not far from your home. You wore a trousers, but your penis was exposed. The victim laid on top of you, with only a dress but no panties. You sucked her vagina, whilst she did the same on your penis. At one point you held her head and forced the victim to suck your penis.



5. You were also seen at some point laying on top of the victim, your trousers drawn down to your knees. The victim was on her back, her legs apart. You were observed attempting to have sexual intercourse with your penis against her vagina, in a grinding motion.
6. The victim was medically examined the next day, after a report was lodged with the police. She was reported to have been in a state of shock and had obviously been affected.
7. When interviewed by the police on the 5th December 2024, you admitted the offending.

Statutory Definition and Sentence

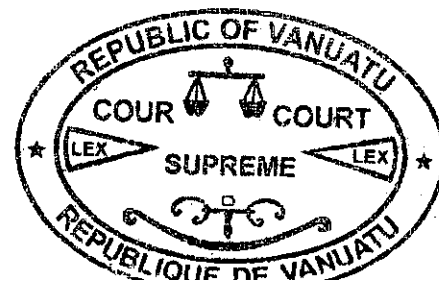
8. The act of introducing any part of the penis into the mouth of another person, or licking or sucking of the vagina, amount to sexual intercourse within the meaning of the term in section 89A of the Penal Code. It also includes the act of penetration, to any extent of the vagina by any part of another person's body.
9. A conviction for unlawful sexual intercourse charged under section 97 (1) of the Penal Code attracts a penalty of life imprisonment.

Sentencing purpose and Guideline

10. There are several principles that guide the sentence to be imposed on you. They include the proposition that you must be held accountable and must take responsibility for your action. Additionally, your action is the kind that is denounced by society, and that similar future acts by you and others will be deterred.
11. Equally important is that you must be given ample opportunity to rehabilitate and reintegrate.
12. The approach taken in the present case follows the guidance given by the Court of Appeal in the case *Philip v Public Prosecutor* [2020] VUCA 40.

Aggravating Factors

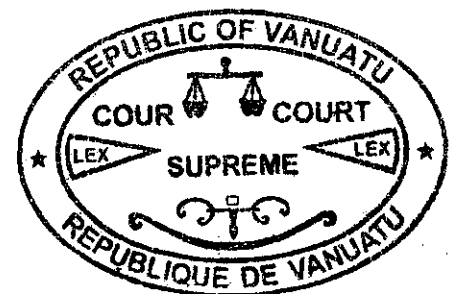
13. The following circumstances constitute the aggravating factors in the present case:
 - a) *You took advantage of and manipulated the victim's young, vulnerable state of mind;*



- b) *You exposed the victim to the risk of sexually transmitted disease and infection;*
- c) *The preliminary medical examination of the victim indicated the potential onset of emotional and psychological harm to the victim. The child's mother expressed a similar concern in her interview with the probation officer;*
- d) *It involved skin to skin touching;*
- e) *As a close relative, you owed her a duty of care, one that expected protection and security, not the violation of her body occasioned by your need for sexual gratification;*
- f) *There was a significant age difference between you and the victim: you were 39 and she was 4;*
- g) *A certain degree of planning was apparent, involving your taking the victim into the bush, away from your home;*
- h) *She will grow to understand that that violation she suffered has affected her sense of dignity and self-esteem.*

Starting Point

- 14. In assessing the appropriate starting point, I have taken into account the statutory maximum sentence, as well as the aggravating and mitigating factors of the offending.
- 15. I have considered the submissions of counsel as well as the authorities they have referred to, for the Court's consideration.
- 16. Your counsel referred me to the cases *PP v Kamisak [2021] VUSC 19* and *PP v Kemkem [2020] VUSC 283* in which this Court adopted starting points of 8 years imprisonment. She proposed a starting point ranging from 6 to 8 years in the instant case.
- 17. The prosecuting counsel referred this Court to a number of cases which adopted starting points ranging from 5 to 14 years imprisonment.
- 18. I have taken into account the matters referred to earlier, and noted the very young age of the victim compared to the ages of victims in the cases referred to me, and adopt a starting point of 8 years.



19. I am reminded by a statement by the Court of Appeal in *Peter Talivo v Public Prosecutor* [1996] VUCA 2:

"All children are entitled to be protected by adults. Children must be safe in their own homes..."

The statement was made in the context of abuse by adults of children under their care.

Guilty Plea

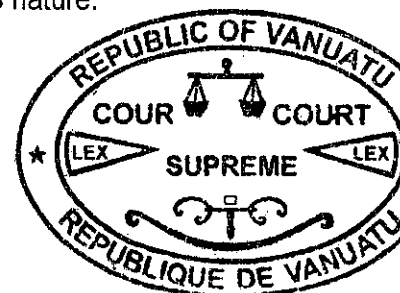
20. You entered a plea of guilty at the earliest opportunity. It indicates that you have accepted responsibility for your wrong doing. You saved the child from revisiting the trauma she experienced as the result of your actions. I reduce your sentence by 25% from the starting point.

Mitigating and Personal Factors

21. You are 40 years old, are single and live with your stepparents at Erakor village. You are unemployed and rely entirely on the income of your step father Augusten Minto. He is your chief as well and has not provided a positive report about you.
22. You have no previous conviction. You made admissions to the police when confronted. Whilst this may indicate the acceptance of your wrong doing, it does not invariably demonstrate remorse.
23. A modest custom reconciliation ceremony was performed on your behalf. You were not present.
24. For these personal and mitigating factors, I reduce the starting point by a further 12 months.

End Sentence

25. I have taken all these matters into consideration and impose an end sentence of 5 years for count 1 and 4 years 6 months for count 2.
26. I will now turn to consider how these sentences will be served. In doing so, I am guided by the statements made by the Court of Appeal in relation to cases of this nature.
27. In *Public Prosecutor v Scott* [2002] VUCA 7, the Court of Appeal said:



"In that case we said that it will only be in the most exceptional cases that suspension could ever be contemplated in a case of sexual abuse. There is nothing in this case which brings it into that category. Men must learn that they cannot obtain sexual gratification at the expense of the weak and the vulnerable. What occurred is a tragedy for all involved but man who took advantage sexually of women forfeit the right to remain in the community."

The Court went on to say:

"The offence of rape is always the most serious crime. Other than in wholly exceptional circumstances, rape calls for an immediate custodial sentence. This was certainly so in the present case. A custodial sentence is necessary for a variety of reasons: First of all, to mark the gravity of the offence. Secondly to emphasise public disapproval. Thirdly to serve as a warning to others. Fourthly to punish the offender, and last but by no means the least, to protect women."

It added:

"There can be no room for any deviation from these fundamental and essential principles', The rights of women must be recognised, maintained and upheld."

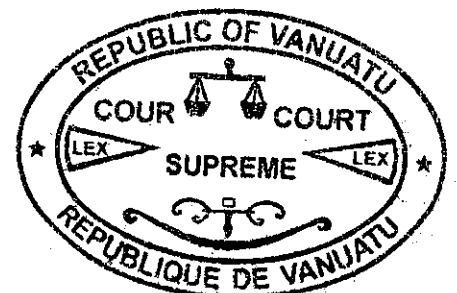
28. In the case *Talivo v PP [1996] VUCA 2*, the Court of Appeal made similar remarks:

"All children are entitled to be protected by adults...When men who have the care of children abuse that trust...they forfeit the right to remain within the community."

29. I have borne in mind these principles', as well as the operation of section 57 of the Criminal Procedure Code relating to the suspension of sentences on imprisonment, and am of the view that this is not a case in which the suspension of sentences is appropriate. You are therefore to serve an immediate custodial sentence.

30. Accordingly, your sentences will be served concurrently with immediate effect. The 5 years term of imprisonment is back dated to the admission date of your pre-arraignment custody, which commenced on the 5th December 2025: *Obed v Public Prosecutor [2019] VUCA 19*.

31. You have 14 days to appeal this sentence.



DATED at Port Vila this 8th day of July 2025
BY THE COURT

