

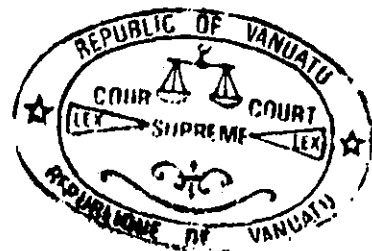
PUBLIC PROSECUTOR

-v-

DANIEL NAIYOU

SENTENCE

The Court finds you guilty under Section 97 (2) of the Penal Code. The penalty for this offence is five (5) years imprisonment. Five years imprisonment is the maximum penalty that the Supreme Court can impose but mainly for those who have been convicted for the same offence twice or more. However if the Public Prosecutor elects to proceed with the matter in the Magistrate's Court the maximum penalty cannot exceed two (2) years. This means there can be a big variation as to the period of sentence imposed by both Courts. As for first offenders imposing the maximum penalty is never the appropriate penalty. The law has set out the lowest and the highest sentences and the law imposes the duty on the Magistrates and Judges to impose a level of punishment between the period of one (1) day to five (5) years or other means of punishment that the law expressly provides for the Magistrates and Judges to impose i.e.: suspended sentences under the Suspension of Sentences Act CAP 67. And this is judicial discretion imposes on the Judges and Magistrates to exercise in-law without being told by others or interfered with by others. Not every cases of similar charge will attract the same penalty all the time. There are many factors that the Court consider in the case itself in imposing what will be the appropriate sentences. Sentences can vary on case by case on similar offences. Likewise, in your case the sentence will have to be different from the others. In your case the girl was aged thirteen (13) years already and she was a willing partner which means that she too wants to have sexual intercourse with you. And that was basically a mutual agreement between you and Hellak. The only wrong thing about it is that she was just over thirteen (13) years old and under fifteen (15) years old and that's exactly what the law prohibits. In my Judgment it is clear that there was no force at all.



Apart from all this you have paid 25kg rice, 2 chickens, VT1000 kava, VT5000 cash which I have found as a form of compensation for the wrongs that you have committed. In other ways you have mitigated your sentence in this form. I heard from Counsels that you are affected very much of the fact that if you have been convicted last year you should have been released with the other convicted persons who are now released on licence. And if you were convicted you would have been released also on licence.

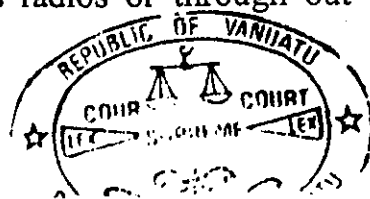
In addition to this there were other factors:

1. You have lost your job which you earn 20,000VT per month, you lost your store because your wife could not run it because you were not there, your wife will run away from you to go back to Ambae if you don't go back to them in Tanna, your brothers also suffered because you have not send money to them.
2. Both Counsels in their submissions expresses that you have cooperated very well with the police. That sexual intercourse occurred once and not repeated. You have expressed being sorry for what you did.

I accept from your Counsel that in the nine (9) months that you were remanded in custody it has made you realize how difficult to be behind bars or fence.

Both Counsels have informed the Court that a suspended sentence will be the most appropriate penalty after the Court seeking from them in assisting the Court as to the assessment of what would be an appropriate penalty. This is not taken as an advice to the Court that the Court will follow but because the matter is one of family circle it is important that all parties in this proceeding must contribute towards what is an appropriate penalty for the Court to impose.

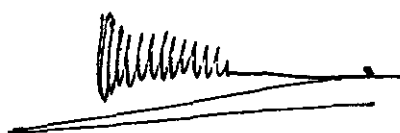
- Sentencing is only one part in making a person realize what he has done is wrong and it should only be taken as a form of punishment but this is not the only way of preventing or reducing cases. The society as a whole, such as Vanuatu National Council of Women or Chiefs in various community through out the Republic of Vanuatu or churches or other organizations or others are also responsible one way or the other in ensuring the reduction of such offences. That is they too must take a leading role in educating the mothers, fathers and their daughters and do a lot of campaigning awareness such as radios or through out the news



paper or schools to make children or mainly daughters aware of the danger of having sexual intercourse with a man at their age. For punishment by the court is not the only solution to the problem. Punishment is a penalty in punishing the offender for the wrong that he has done against the law. And that is only one part to the problem.

Therefore after much discussion on sentence in your case I will sentence you to a period of 18 months. Nine (9) months in custody will be deducted from the period of 18 months. And you shall serve now a period of nine (9) months imprisonment as the appropriate penalty in your case. The period of 9 months is now suspended for a period of twenty four (24) months on the condition that you shall not commit any offence within the period of twenty four (24) months. If you commit any offence and found guilty off within the period of 24 months than you shall be called upon to serve your remaining period of nine (9) months. I believe that nine (9) months behind bars is already a punishment. Nevertheless the suspended sentence will be a reminder to you for that period to keep within the law as a form of reform. And you must understand that you have now a conviction against you for this type of offence. This means that if you appear for this type of offence or similar related offences again and found guilty of than you would expect a much more heavier penalty from the Court for the reason that you have not learned.

Dated at Port Vila, this 16th day of February 2000.



Reggett MARUM MBE
Judge.

