

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

Criminal Case No.184 of 2014

PUBLIC PROSECUTOR
-V-
JOHNA KALORAN

Criminal Case No.185 of 2014

PUBLIC PROSECUTOR
-V-
SANDRINO ROMMONA

Coram: Justice D. V. Fatiaki
Counsels: Mr. L. Malantugun for the State
Mr. A. Bal for the Defendants
Date of Sentence: 12 February 2015

SENTENCE

1. Although the defendants were separately indicted there are several common features in the cases that makes it convenient to deal with them both in one judgment. These include, the identity of the charge – Unlawful Sexual Intercourse and each defendant's guilty plea; the defendant's relative youth being 16 years and 13 years of age at the time of offending and the tender ages of their victims who were 10 years and 5 years respectively.
2. The offence of Unlawful Sexual Intercourse is an offence contrary to **Section 97 (1) of the Penal Code**. The section reads: "*No person shall have sexual intercourse with any child under the age of 13 years*" and imposes a maximum penalty of imprisonment for 14 years. It is undoubtedly a serious offence and is intended for the protection and preservation of young immature girls. This is exemplified by the fact that consent of the girl is no excuse or defence nor is an offender's mistaken belief as to the age of the victim. Plainly, sexual intercourse with a child under 13 years of age is strictly forbidden under any and all circumstances.



3. For completeness, **Section 89A** of the **Penal Code** defines “*sexual intercourse*” as including: “... *penetration to any extent, of the vagina or anus of a person by any part of the body of another person ...*”. In other words penetration of the vagina or any part of the it by a penis, finger, tongue or by an inanimate object is considered by law, to be “*sexual intercourse*” with or without ejaculation of semen.
4. In your case **Johna** you were attending the same school as the victim. You were a class 5 student and the victim was in class 4. You committed the offence on 8 September 2014 after the victim naively followed you into an outside toilet at your invitation. In the toilet you both undressed and you told the victim “*bae mi brekem you*” before you penetrated her vagina with your penis. The victim experienced pain and bleeding from the vagina which you wiped with a cloth. The victim continued to bleed into her panty the following day and this was noticed by her aunt who reported it to her husband the school headmaster. A week later the victim was examined by a nurse practitioner who confirmed signs of recent sexual intercourse and prescribed a course of antibiotics.
5. In your case **Sandrino** and the victim was your cousin and only 5 years of age. You also lived with the victim’s family. On 24 September 2014 you gave your cousin a ride after school on your bicycle. As you were nearing home you stopped and took your cousin into a bush where you undressed her and penetrated her vagina with your penis causing her to experience pain and bleeding. After intercourse you left your helpless cousin to find her own way home. Fortunately on the way she met her father who also called you to accompany them home. The victim related the incident to her mother (your aunt) and she was taken and examined at Vila Central Hospital. On examination the doctor noted that the victim’s hymen was “*not intact*” and look red and raw. There was also small bleeding seen in her vagina due to “*recent penetrative sexual intercourse*”. The victim was prescribed antibiotics.
6. You were both later interviewed by the police and to your credit you both admitted the incident and cooperated fully with the police inquiries. To the police you, **Johna**, said: “*Mi save se fasin we mi mekem ya ino stret*”. You also denied using any force or pulling the victim’s hand or even undressing her but, as I have already said, the victim’s consent or voluntary participation is no defence. I accept this was your first sexual experience.
7. In your case **Sandrino**, you said to the police: “*Mi wantem talem aot se report we sista blo mi iputum akensem mi hemi tru*”. You also admitted undressing your cousin (“*karem aot kilot blo hem*”). This too was your first sexual experience.
8. I have received and considered your pre-sentence reports prepared by the probation officer and have extracted the following relevant personal details:



Johna Kaloran

- You are originally from Mangarongo village on Emau Island and are the youngest in a family of 3;
- Although your pre-sentence report states you are "13 years of age", your birth certificate records your year of birth as "1998" making you closer to 16 years of age at the time of the offence;
- Your mother left the family early in your childhood and you were greatly affected by the breakup of your home and family;
- You developed an early interest in and became skilled in repairing electrical items without any formal training;
- You are well regarded by your family members and your community and have never been in trouble before and your chief is willing to assist with your rehabilitation;
- You told the probation officer that you became sexually curious after reading about human reproductive organs in a biology book you found in the school compound and this led you into committing the offence.
- In his assessment of you the probation officer writes:

"Kalory has not been properly matured (sic) or taught during childhood due to his parent's divorce (and) developed a life of exploring and experiencing new things he is interested in by his own self ... As a teenager he does not have the ability to control his sexual thoughts in an appropriate manner, thus leading him to commit the offence.

When questioned about the offence Kalory stated that he felt sorry and much regret and insight for what he had done and never thought that he had broken the law and it would turn out this way."

9. Although your victim admitted to the probation officer that she was a willing participant, later " ... she realized that she had done wrong and was afraid and embarrassed ... she has lost her virginity and she will not be the same anymore. Her friends at school often teased her (and) she was eventually expelled from school ... Today her movements are restricted by her parents and she stays home at all times."



Sandrino Rommona

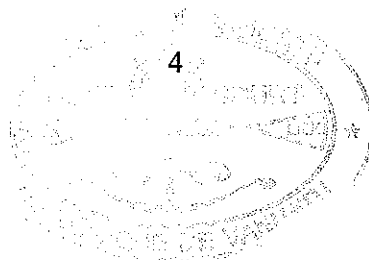
- Your birth certificate records you were born on 4 September 2001 in Santo. You would have been barely 13 years of age at the time of the offence but visually you appear closer to 15 or 16 years. You were adopted and live with your adopted mother at Bladinière in Port Vila;
- You are attending class 6 at Vila North Primary School and have never been in trouble;
- You maintain a good relationship with your family and community members and help with household chores and planting root crops;
- During your interview with the probation officer you are reported to have said:

"... after carrying your cousin on your bike for some time, you felt you wanted to have sexual intercourse with her. You did not understand what was going on in your mind but you were very sorry after you realized that the act was unacceptable and you felt sorry for your cousin. You said you will never commit another offence again";

- In the probation officer's assessment: *"the main contributing factor to the offending is that (you) could not control (your) sexual feeling when you were alone with the victim"*.
10. I am grateful to both counsels for the very helpful and comprehensive sentencing submissions I am particularly assisted by the submissions of prosecuting counsel where he refers to special statutory provisions dealing with the criminal culpability of minors, in particular, **Section 17** of the **Penal Code** (*"Age of Responsibility"*). Likewise defence counsel draws the Court's attention to **Section 54** of the **Penal Code** (*"Imprisonment of Minors"*) and **Article 37(b)** of the **Convention on the Rights of the Child** (*"CRC"*) which has been ratified by Vanuatu and provides that: *"... imprisonment of a child shall be in conformity with the law and shall be used as a measure of last resort and for the shortest period of time"*.
11. In the leading case of **Public Prosecutor v. Kal Andy** [2011] VUCA 14 the Court of Appeal highlighted the relevant factors to be considered on a charge of Unlawful Sexual Intercourse when it said (at **para. 22**):

"The relevant factors to assessing culpability ... are as follows:

- (a) *The age of the victim. As a general principal, the younger the victim, the more culpable the offending;*



- (b) *The harm suffered by the victim. The more harmful the offending the more serious it is ... The psychological impact on the victim is also important;*
- (c) *Breach of trust ...;*
- (d) *The age of the offender. A fully matured offender will be more culpable than an immature young person;*
- (e) *The degree of violation;*
- (f) *Premeditation. A planned episode will be more serious than a spontaneous event;*
- (g) *The scale of the offending".*

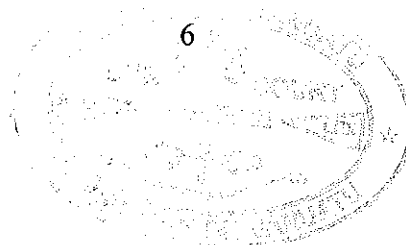
In that case however, the Court of Appeal was dealing with a mature married father of 30 years who sexually molested his daughter's 10 year old friend who was sleeping-over at their home. By contrast, this court is here dealing with young immature offenders having their first sexual experience.

12. The sentencing of young offenders and immature minors is a most difficult exercise and brings into sharp focus the public interest and the dual sentencing objectives of punishment and rehabilitation. There can be little doubt as to the public interest in ensuring that, in the long term, young offenders eventually grow into responsible and useful law-abiding citizens. Equally it is important that young offenders take responsibility for their actions and realize that criminal behavior has consequences and, in this particular instance, that young immature girls must be protected from any form of sexual activity.
13. In your case **Johna Kaloran**, your offence is aggravated by the element of premeditation and planning that preceded its commission. Under the guise of requesting a cup to drink water with, you persuaded your victim to follow you into an outside toilet and, although she was a willing participant, you were the elder person and were well aware of what you were doing and you persisted even after you failed at your first attempted penetration.
14. Your offence **Sandrino Rommona** is differently aggravated. Your victim was a close relative of yours that you had offered a ride on your bicycle when she had missed the school bus. That kind and brotherly gesture was completely overtaken by your later disgraceful conduct. Your cousin trusted you and you abused her trust to satisfy your sexual curiosity. You were the older person and you should have controlled your sexual urge.
15. What you both did to your victims was traumatizing and caused them much pain and bleeding and permanently damaged them physically. Your victim **Johna** also experienced fear and shame. She was also subjected to



teasing at school and was eventually expelled. In her own words: "*she has lost her virginity and will not be the same any more*". She has become withdrawn and her movements are restricted by her parents. Your victim **Sandrino** has also lost her virginity but because she was so young it is difficult to predict with certainty what the long term mental consequences will be for her.

16. Having said that there is not the slightest doubt in my mind that the commission of the offence in both these cases might be reasonably categorized as adolescent sexual experimentation. This is not a case of predatory behaviour by a mature man, rather, the offenders are inexperienced pubescent teenagers having their first sexual encounter.
17. I also accept that you are both genuinely remorseful for your actions and you both understand and acknowledge that what you did to your victims was wrong and you both accept responsibility for your behavior. I am confident that there is no danger of a repetition of these offences. I trust that your experience with the police and the Courts will be a salutary lesson to you both and one that you wish never to be repeated.
18. I am mindful that at your ages, a criminal conviction is already a life-long blemish and serves as a deterrent reminder of your misbehavior. Equally there is no correctional facility for housing or detaining young offenders in Port Vila. I am also mindful that under **Section 37** of the **Penal Code**, I: "*must ... have regard to the possibility of keeping (you) in the community so far as that is practicable and consistent with the safety of the community*". In my view nothing would be gained by your incarceration in an adult prison with hardened criminals nor does the safety of the community demand it. Accordingly, I do not propose to impose a prison sentence on either of you, instead, I shall adopt the more lenient rehabilitative community based sentence which I consider a more appropriate method of punishment.
19. **Johna Kaloran and Sandrino Rommona** you are each sentenced to Supervision for two years with the following special conditions:
 - (1) That each defendant is required to perform a custom reconciliation to his victim and her family as convenient and with the assistance of his chief and immediate family. Such ceremony to take place within 3 months and be witnessed by a Probation Officer who is to provide a written report of the ceremony to the Court within 7 days of its occurrence;
 - (2) That each defendant is to undertake counselling with a spiritual counsellor of their respective churches;
 - (3) That each defendant undertake and complete the Niufala Rod program;




(4) That each defendant attend any other appropriate awareness courses, programs and training required by his probation officer.

20. You have 14 days to appeal this sentence if you do not agree with it.

DATED at Port Vila, this 12th day of February, 2015.

BY THE COURT


D. V. FATIAKI
Judge

