

PUBLIC PROSECUTOR

V.

JUDE JOHN

Date of SENTENCE: Wednesday 30th November 2016 at 10:00AM
Before: Justice D. V. Fatiaki
Counsel: L. Young for the State
Jane Tari for the Defendant

SENTENCE

1. The Defendant Jude John has been convicted of two (2) counts of Unlawful Sexual Intercourse after he pleaded guilty ("*itru*") and admitted facts outlined by the prosecution.
2. The offence of Unlawful Sexual Intercourse contrary to Section 97(2) states:
"No person shall have sexual intercourse with any child under the age of 15 years but of or over the age of 13 years".
3. The offence carries a maximum penalty of 5 years imprisonment and a special feature of the offence is the victim of the offence is described as a "*child*" and further, consent of the victim to sexual intercourse is no defence to the charge.
4. In other words, in this offence, the law prohibits the act of sexual intercourse because of the young age of the victim irrespective of whether or not she was a consenting party. So, in your case Jude John, even if the girl consented to both acts of sexual intercourse as you claim, it still means that you have committed the offences.
5. You may wonder why should the law criminalise sexual intercourse between consenting individuals? The answer is that the law doesn't proscribe sexual intercourse between consenting adults, but, in the case of a child whether a boy or a girl, the law, recognising the immaturity and vulnerability of young persons under the ages of 13 and 15 years and with a view to protecting them from their own natural curiosity or promiscuity or more usually, from exploitation by adults, strictly prohibits sexual intercourse.



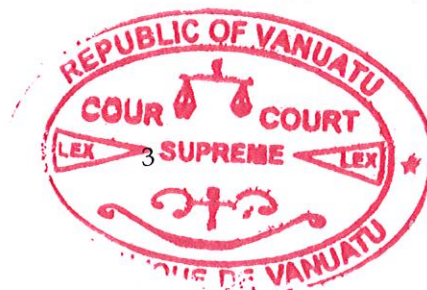
6. Experience shows that boys and especially young girls under 15 years of age although pubescent, are mentally, physically, and emotionally ill-prepared to take on the role of parenthood which is a very real possibility of unprotected sexual intercourse.
7. The 2009 National Population and Housing Census published in 2011 whilst recording a decline in the national average percentage of 8% for teenage pregnancies of mothers aged between 15 to 19 years in four provinces of Vanuatu relevantly states:

"The provinces of Torba Sanma, and Malampa have the highest share of teenage mothers, with the proportion in Torba being almost 14%, the highest in the country ... young mothers often have a primary education or lower ..." (see also: Tables 5, 6a and 6b).
8. The brief facts of the case are that the defendant Jude John had sexual intercourse on 2 occasions on 14 September 2015 and 04 October 2015 with the complainant who was born on 23 July 2002 and would have been just over 13 years of age at the time of the commission of the offences. The defendant who was born on 10 March 1997 was over 18 years of age.
9. After the first incident the complainant noticed blood in her vagina and on her pantie but was too afraid to tell her mother about it. The incidents came to light after the second incident when the complainant's mother noticed she had difficulty walking and questioned her. On 9 October 2015 the complainant lodged a report at the police station with the assistance of a representative of the Violence Against Women Centre in Sola. On the same day the complainant was medically examined and although no injuries or abnormalities were detected her hymen was no longer intact. Fortunately a pregnancy test returned a negative result.
10. On 26 October 2015 the defendant was arrested and admitted the incidents under caution but he claimed that sexual intercourse was consensual. As already highlighted consent is not a defence to the charge which criminalises the act itself. Furthermore it is not suggested the defendant and the complainant were in a steady boyfriend/girlfriend relationship where sexual intercourse might be considered the consummation of their relationship.
11. Prosecuting counsel in a helpful sentencing submission based on PP v. Andy [2011] VUCA 14 concludes that an end sentence of 12 months imprisonment is appropriate for each offence served concurrently and alternatively, if the Court considers a non-immediately custodial measure is appropriate then the sentence should be suspended for 2 years with 40 to 50 hours community work and the performance of a custom reconciliation ceremony to the complainant and her family. Counsel referred to sentencing precedents in this area including

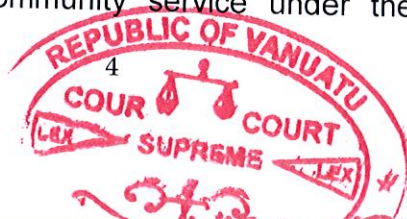


PP v. Gideon [2003] VUCA 7; PP v. Epsi [2011] VUSC 287 and PP v. Aru [2014] VUSC 141.

12. Defence counsel for her part submits in an equally helpful submission that any custodial sentence should be fully suspended having regard to the consensual nature of the sexual intercourse; the minimal disparity in the ages of the defendant and the complainant *ie.* (18 – 13) = 5 years and the character of the defendant who is an uneducated simple villager experiencing sexual relations under peer pressure.
13. The sentencing of young first offenders is never an easy task. The Court is inevitably torn between the need to punish the offender and society's interest that young first offenders should not be unnecessarily removed from the support of their family and village environment if that can be achieved without compromising the safety and welfare of the community.
14. The choice is magnified in Vanuatu where the young offender comes from a remote rural area and the only prisons for the incarceration of adult convicts sentenced to imprisonment, are located in the urban centres of Luganville in Santo and Port Vila in Efate. There is no separate facility for young male detainees.
15. An imprisonment sentence also impacts unequally on a rural offender than it does an urban offender and more so, a young rural offender who is forcibly removed from his familiar village environment and transported to an alien urban adult prison on a distant island without any real possibility of regular contact with and visits from his parents and close family members.
16. Having said that I am grateful to the probation officer who provided the Court with a helpful 1 day pre-sentence report from which I have extracted the following personal data of the defendant:
 - The defendant is 18 years of age from Wasaga village in Vanualava, Torba Province;
 - The defendant has never been to school but assists his family through subsistence farming which helps to pay the school fees of his younger brother;
 - The defendant is a first time offender and cooperated fully with the police enquiries and Court attendances despite the considerable travel costs and distances involved;
 - The defendant pleaded guilty at the first opportunity and is genuinely remorseful;



- The defendant expressed his willingness to perform a custom reconciliation ceremony to the complainant and her family;
 - The defendant is an active member of the Wasaga Anglican Youth.
17. Defence counsel noting the above factors submits that an end sentence of 6 – 12 months is “*not inappropriate*” as well as full suspension which is commonly imposed by the Courts in this lower category of offending between teenagers experimenting with sex.
 18. Even accepting that there was no additional violence or threats used on the complainant beyond the intercourse itself, there can be no doubting given the age and physique of the complainant that the act of intercourse would have been painful and indeed adversely affected her ability to walk normally. The offending was unprotected and also repeated and shows a willingness on the defendant's part to take advantage of the complainant's naivety and vulnerability. It is fortunate that the complainant did not fall pregnant.
 19. To his credit the defendant has never denied the offences and his early guilty pleas and cooperation with police enquiries augers well for his future rehabilitation and prospects.
 20. In all the circumstances I adopt a starting sentence of 12 months imprisonment which I raise to 18 months for aggravating factors including its repetition. I deduct 6 months for the defendant's early guilty plea and a further 4 months for other mitigating factors including his past good behaviour, making an end sentence of 8 months imprisonment in respect of each count, to be served concurrently. The sentence of imprisonment is also ordered to be fully suspended for a period of 2 years.
 21. Jude John what this suspended prison sentence means is that you will not have to go to prison today but this sentence will remain with you for the next 2 years and if you commit another offence in that time and are convicted then you will be immediately arrested and sent to prison to serve this sentence of 8 months imprisonment in addition to any other sentence you may receive for your re-offending.
 22. Jude John this Court has been lenient with you on this occasion but, if you commit another offence within the next 2 years then you cannot expect the same leniency to be extended to you. Take this opportunity to mend your ways and learn to treat young girls with respect and dignity which is what you would expect for your own female relatives.
 23. To further assist you to reform and rehabilitate yourself you are also sentenced to perform 40 hours of community service under the supervision of the



probation officer or Chief Fred Wileng. You are also ordered to perform a custom reconciliation ceremony to the complainant and her family within 14 days to be facilitated and witnessed by the probation officer who is to provide a short written report within 7 days thereafter for retention in the court file.

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

DATED at Sola, Vanualava, Banks, this 30th day of November, 2016.

BY THE COURT

