

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

Criminal
Case No. 20/2767 SC/CRML

PUBLIC PROSECUTOR

V

MICHAEL BIHU

Date of Sentence: 22nd day of October, 2020 at 8:30 AM

Before: Justice GA Andrée Wiltens

In Attendance: Public Prosecutor – Damien Boe

Defendant – Rollanson Willie

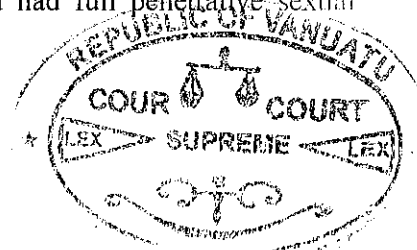
SENTENCE

A. Introduction

1. Mr Bihu pleaded guilty to:
 - Unlawful sexual intercourse with a child aged between 13 and 15; and
 - Act of indecency.

B. Facts

2. In January 2020 the complainant MT, went to sleep at Mr Bihu's house. He was an uncle to her. She was then just 13 years old.
3. During the night the sleeping arrangements changed; and MT, her sister and Mr Bihu went to another house. There the 3 of them shared a bed, with MT in the middle.
4. During the night MT noticed Mr Bihu touching her breasts over the top of her bra.
5. Later, she woke to find herself stripped naked and Mr Bihu with his trousers removed. He moved to be on top of her and had full penetrative sexual

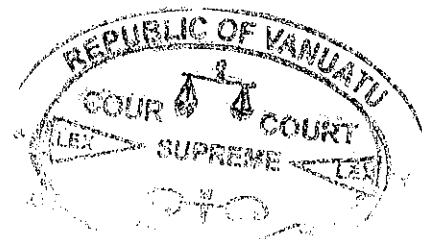


intercourse which MT tried to resist but she was not strong enough and she was also concerned about her sister and the shame that would follow if her sister saw what was happening.

6. The intercourse was painful for MT and she saw blood from her vagina the next morning (Count 2).
7. MT was too ashamed to complain immediately, but she eventually told the police. Mr Bihu was then questioned and admitted the offending.

C. Sentence Start Point

8. The sentence start point is assessed by having regard to the maximum penalty for the offending and factoring in the aggravating and mitigating factors of the offending.
9. The maximum sentences for unlawful sexual intercourse with a child is 15 years imprisonment. The maximum sentence for act of indecency is 10 years imprisonment. These offences are serious.
10. There are no mitigating aspects of the offending. However there are aggravating factors, including:
 - Breach of trust – MT regards, Mr Bihu as her uncle;
 - Offending in the presence of her sister in a home dwelling environment – MT should have been able to feel safe/secure; and
 - The intercourse was without protection, exposing MT to pregnancy and sexually transmitted diseases.
11. These offences are properly dealt with on a concurrent basis, taking the unlawful sexual intercourse as the lead offence with a small uplift for the indecent act. On that basis I set the sentence start point at 6 years imprisonment.

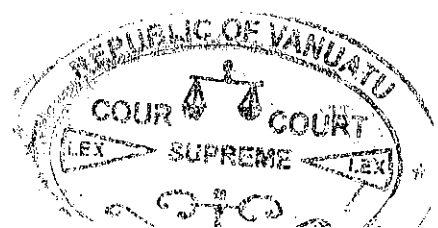


D. Personal Factors

12. Mr Bihu pleaded guilty at the first available opportunity. That spared MT the need to give evidence, and saved Court time/expense. It is also an acknowledgment of wrong-doing and may indicate remorse. The sentence start point is reduced by 33% to reflect this factor.
13. Mr Bihu, a farmer, is still a young person himself, currently 18 years of age who still lives with his mother and 2 younger sisters. He cares for them since his father died last year.
14. There has been an attempt at holding a custom reconciliation ceremony, but it did not take place as MT's family were reluctant.
15. Mr Bihu has been in custody since 27 September 2020 pending the conclusion of this matter. His sentence start date will accordingly be back dated to reflect that and to preserve his parole rights.
16. For his personal factors the sentence start point is further reduced by 18 months – 12 months for his youth, 3 months for his lack of previous convictions and a further 3 months for remorse and the attempted custom reconciliation ceremony.

E. Sentence

17. The end sentence imposed is 30 months imprisonment. I impose that on the lead offence, and impose concurrently a sentence of 6 months imprisonment for the indecent act.
18. The sentence is to commence from 27 September 2020.
19. It is not possible to suspend any or all of the sentence due to the nature and seriousness of the offending. There is ample Court of Appeal authority to the effect that suspension should not be granted in cases of sexual violence.
20. Mr Bihu has 14 days to appeal the sentence if dissatisfied with it.

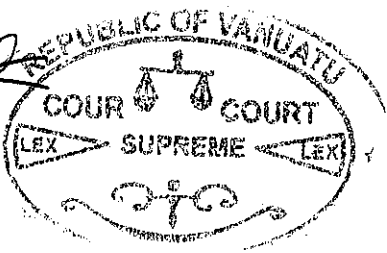


21. MT's details are permanently suppressed.

DATED at Luganville this 23rd day of October, 2020.

BY THE COURT

Andrée Wiltens
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Justice GA Andrée Wiltens



The seal of the Supreme Court of the Republic of Vanuatu is circular. It features a central scale of justice. The words "REPUBLIC OF VANUATU" are written along the top inner edge. "COUR" is on the left and "COURT" is on the right, flanking the scale. "LEX" is written in two boxes on the bottom left and right. "SUPREME" is written in the center below the scale. There is a decorative flourish at the bottom.