

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

Criminal
Case No. 24/1414 SC/CRML

PUBLIC PROSECUTOR

v

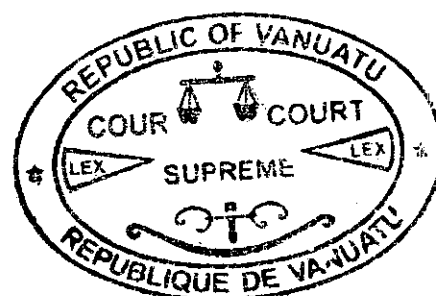
AUGUST MALMERE SAILAS

Date of Plea: 17 June 2024
Date of Sentence: 1 August 2024
Before: Justice M A MacKenzie
Counsel: Mr. L. Young for the Public Prosecutor in Port Vila
Ms. A. Yeeon for the Defendant- via video link in Santo
Defendant on Bail- via video link in Santo

SENTENCE

Introduction

1. Mr August Sailas, you appear for sentence having pleaded guilty to the following charges:
 - a. Unlawful sexual intercourse contrary to ss 97(1) and 89A of the Penal Code [CAP135]
 - b. Act of indecency contrary to s98A of the Penal Code.
2. The maximum penalties for these offences are:
 - a. Unlawful sexual intercourse, contrary to s 97(1) of the Penal Code – life imprisonment
 - b. Act of indecency -10 years imprisonment



The Facts

3. You and the victim are related. You are both from Malekula. At the time of the offending, the victim was aged 11 years and was living with her grandmother at Radio Station. You lived on the same property but had separate living quarters.
4. The offending took place on two occasions between September and October 2023 on Santo.
5. Incident one – On one occasion you gave the victim VT 200 in return for sexual favours. You took the victim to your bedroom and removed her clothing. You opened her legs and inserted a finger into her vagina. While doing so, you used offensive words, kissed the victim to her face and sucked on her breasts.
6. Incident two- The victim spoke up and told her grandmother what had happened. You were told to live elsewhere. Yet at another address, there was another incident. Again, you gave the victim money in return for sexual favours. This time it was VT 100. You removed the victim's clothing and then sucked on the victim's breasts for a period of time. Then you made the victim watch you masturbating until you ejaculated.
7. You instructed the victim not to tell anyone.
8. When spoken to by police, you made some admissions.

Sentencing purposes/principles

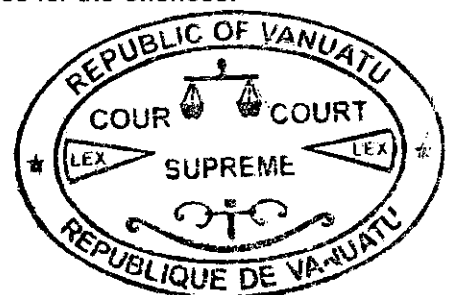
9. The sentence I impose must hold you accountable and must denounce and deter your conduct. The sentence should ensure you take responsibility for your actions, and help you to rehabilitate. It must also be generally consistent.

Approach to sentence

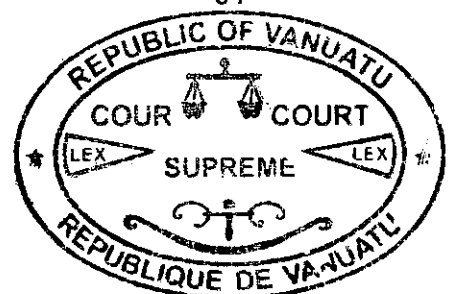
10. Sentencing involves 2 separate steps; *Jimmy Philip v Public Prosecutor* [2020] VUCA 40, which applied *Moses v R* [2020] NZCA 296.

Starting point

11. The first step is to set a starting point to reflect the aggravating and mitigating features of the offending, and with reference to the maximum penalties for the offences.



12. The lead charge is unlawful sexual intercourse. I will set a starting point on a global basis to reflect the totality of the offending.
13. The aggravating factors here are;
 - a. Breach of trust- you and the victim are related and you are both from Malekula.
 - b. This first incident took place at the victim's home where she was entitled to feel safe.
 - c. The victim was vulnerable because of her age and the age disparity. The victim was aged 12 years and you were aged 50 years. The age disparity is 38 years.
 - d. The offending was premeditated. You paid the victim for your sexual gratification.
 - e. The act of indecency involved skin on skin contact as you sucked the victim's breasts. In addition, it involved humiliation as you made her watch you masturbate until you ejaculated.
14. There are no mitigating features of the offending itself.
15. Counsel has cited cases to assist the Court with setting an appropriate starting point. The prosecutor submits there should be a global starting point of 9 years imprisonment. Ms Taleo submits that the appropriate starting point for the charge of unlawful sexual intercourse is 6-8 years imprisonment. For the charge of act of indecency, Ms Taleo submits that a starting point of 2-3 years imprisonment would be appropriate, but to run concurrently.
16. The leading case in this area is *Public Prosecutor v Gideon* [2002] VUCA 7. Like the present case, Gideon involved a charge of unlawful sexual intercourse laid under s 97(1) of the Penal Code. The victim was 12, the defendant was in a position of trust in relation to the victim, was much older, the intercourse happened on 4 occasions and the victim was told not to tell. The victim suffered harm. The Court of Appeal said the starting point should have been no less than 6 years imprisonment. The present case is less serious than *Gideon* for 2 reasons- there was one incident of unlawful sexual intercourse only and no penile penetration.
17. As explained in *Public Prosecutor v Tari* [2023] VUSC 170, in Vanuatu, a distinction is drawn at sentencing between penile and digital penetration of the vagina. In the cases involving digital penetration discussed in *Public Prosecutor v Tari* starting points of between 4-5 years imprisonment were adopted.



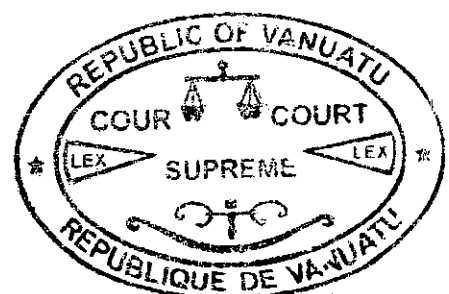
18. Given the aggravating factors here, particularly the age disparity and the premeditation involved, a starting point of 5 years imprisonment is appropriate for the charge of unlawful sexual intercourse. Given those 2 factors, I consider that the offending in the present case is more serious than the circumstances of *Public Prosecutor v Moise* [2016] VUSC 5, where the starting point was 4 years imprisonment for offending involving digital penetration.
19. There is to be an uplift to take into account the act of indecency which involved premeditation, skin on skin contact of the victim's breasts and demeaning behaviour as you made her watch you masturbate. As noted, in written submissions, Ms Taleo submits that the appropriate starting point would be 2-3 years. The prosecutor submitted that the starting point should be 3 years imprisonment.
20. Totality considerations apply and therefore I increase the sentence by 12 months to reflect the act of indecency.
21. The global starting point is 6 years imprisonment.

Guilty plea and personal factors

22. You are entitled to a one-third discount for your guilty plea. There was an early guilty plea. That equates to a discount of 2 years from the starting point.
23. You are now aged 51 years.
24. You acknowledge that your actions were wrong. You were refreshingly frank when speaking to the pre-sentence report writer, admitting to more offending than charged. I assess that you are genuinely remorseful.
25. You appeared in Court in 2021 for domestic violence.
26. I reduce the sentence by 3 months to reflect remorse, which equates to approximately 5 percent.

End Sentence

27. Taking the starting point and the deductions just discussed into account, the end sentence is 3 years 9 months imprisonment for the charge of unlawful sexual intercourse. There is to be a concurrent sentence of 2 years imprisonment on the act of indecency charge.



28. I impose an immediate sentence of imprisonment of 3 years 9 months imprisonment. You have been in custody since 3 November 2023. The sentence is to be backdated to commence from 3 November 2023. For the sake of completeness, I record that suspension of the sentence was not sought.
29. You have 14 days to appeal against the sentence.
30. I make a permanent order suppressing the name and identifying details of the victim.

DATED at Port Vila this 1st day of August 2024
BY THE COURT

