

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

Criminal
Case No. 24/3057 SC/CRML

BETWEEN: Public Prosecutor

AND: Sailas Sairas Kalran
Defendant

Coram: Justice Aru
Counsel: Ms. G. Kanegai for the Public Prosecutor
Mrs. K. Karu for the Defendant

SENTENCE

Introduction

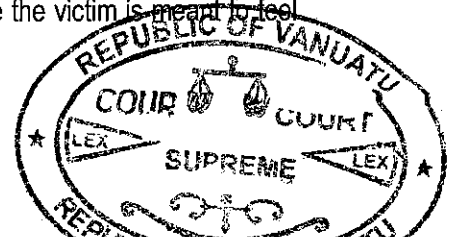
1. Mr Kalran pleaded guilty to one count of unlawful sexual intercourse contrary to s97 (1) of the Penal Code [CAP 135]. He now appears for his sentence.

The Facts

2. The complainant is the defendant's partner and the victim who is a child with special needs is their daughter. At the time of the offending, she was 9 years old. Her mother does everything for her including feeding and bathing her. On 31 July 2024 sometime in the morning the complainant fed her daughter. She then visited a neighbour, and they came back to the house together. The complainant then fed her daughter then had some wine with the defendant and their neighbour. Sometime after lunch she fed her again then went to the garden to harvest some cabbage.
3. On her return she saw the defendant carrying the victim and feeding her. She took her from him and fed her. She later entered their bedroom and noticed that someone had changed the sheets and replaced it with a blanket. The bedsheet was placed at the side of the bed and when she opened it she saw blood stains. She also saw a used diaper on the side of the bed and there were stains on it as well. She asked the defendant who the diaper belonged to but he took the diaper and walked outside.
4. She then removed the diaper worn by her daughter and noticed that she was bleeding from her vaginal area. She immediately took her to the hospital. She obtained a medical report and lodged a complaint with the Police.
5. The defendant was later arrested and cautioned and admitted the offending.

Starting Point

6. The maximum penalty for unlawful sexual intercourse is imprisonment for life. The offending is aggravated by the fact that the offending occurred in a home where the victim is meant to feel



save and be protected, there is an age disparity, the victim was exposed to the risk of sexually transmitted diseases and finally the victim was helpless as a child with special needs.

7. There are no mitigating factors of the offending.
8. The guideline judgment for this type of offending is PP v Gideon [2002] VUCA 7. The Public Prosecutor also referred to PP v Erickson Clement 23/2179 where the starting point of sentence was 8 years imprisonment. and submitted that I adopt a starting point of 10 years imprisonment. Erickson is distinguished on the facts as the offending in that case occurred over a number of years. The offending in this case is a one of incident.
9. Mrs Karu on the other hand referred to a number of cases for comparison. The first is to PP v Tagaro [2016] VUSC 126. There were two victims of the offending. The end sentence was 6 years imprisonment. In PP v Bule [2024] VUSC 56, the victim was a person with special needs but is a mature adult of 30 years. The offending was attempted sexual intercourse without consent and acts of indecency. The defendant was sentenced to 3 years and 3 months imprisonment.
10. Finally, Mrs Karu referred to PP v Christopher [2021] VUSC 21. A case involving a single charge of sexual intercourse without consent. The victim was an older person with special needs. In both cases the maximum penalty for the offending was life imprisonment. The starting point adopted in Christopher was 7 years imprisonment. It was submitted that I adopt a similar approach.
11. I set the starting point at 8 years imprisonment.

Personal factors

12. The defendant pleaded guilty at the first available opportunity which is a sign of remorse on his part therefore the starting of sentence is discounted 33%.
13. No pre-sentence report was filed. Mrs Karu submits that the defendant is a first-time offender and is an active, member of his community. Taking these factors into account I reduce the starting point of sentence by a further 9 months.

End sentence

14. The defendant is sentenced to an end sentence rounded off to 4 years imprisonment effective from 6 August 2024 when he was remanded into custody.
15. The defendant has 14 days to appeal if he disagrees with the decision.

DATED at Port Vila this 3rd day of December, 2024
BY THE COURT

Dudley Ayu
Judge

