

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

**Criminal
Case No. 20/1332 SC/CRML**

BETWEEN: The Public Prosecutor

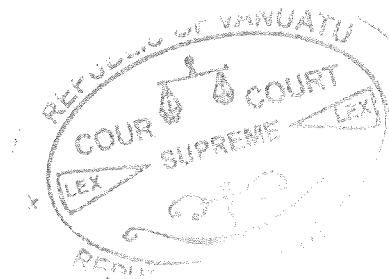
AND: Rubeni Tabi

Defendant

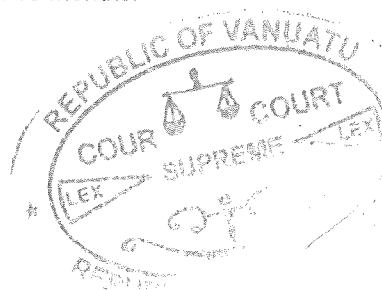
Date of Plea: 16th September 2020
Date of Sentence: 17th September 2020
Before: Justice Oliver Saksak
In Attendance: Mr Damien Boe for Public Prosecutor
Mr Steven Garae Junior for Defendant

SENTENCE

1. Rubeni Tabi was taken by boat from Bwatnapni, Central Pentecost to Saratamata by a Police Officer and the Public Prosecutor and Defence Counsel yesterday (16.09.2020).
2. He pleaded not guilty to sexual intercourse without consent (Count 1) but guilty to unlawful sexual intercourse (Count 2) contrary to section 97 (2) of the Penal Code Act [CAP 135], as the alternative charge.
3. The Prosecutor informed the Court he would not continue with the charge in Count 1 and invited the Court to enter nolle prosequi under section 29 of the Criminal Procedure Code Act [CAP.136].
4. Accordingly the Court entered nolle prosequi in respect of the charge of sexual intercourse without consent and acquitted the defendant of the charge.
5. Rubeni Tabi will be sentenced only in relation to the alternative charge of unlawful sexual intercourse with a girl under 15 years but over the age of 13 years old.
6. Sometimes between 1st July 2019 and 31st December 2019 the defendant had sexual intercourse with the victim and complainant who was 14 years old. The defendant is currently 18 years old and attending school. They are closely related. During a school holiday in 2019 the defendant had consensual sex with the victim in the house. It happened only once.



7. The maximum penalty for unlawful sexual intercourse with a girl of less than 15 years but more than 13 years is 15 years imprisonment.
8. Applying PP v Gideon [2002] VUCA 7 the appropriate punishment for the defendant is to be a custodial sentence to mark the seriousness of the offence, the public condemnation, the deterrence and protection of the vulnerable members of the society.
9. The aggravating features of the offending are that-
 - a) There was a serious breach of trust,
 - b) the sexual intercourse was unprotected,
 - c) There was an age disparity of 4 years,
 - d) The physical and mental impact on the victim.
10. The only mitigating circumstance was that the girl had acted inappropriately to the act of sexual intercourse.
11. Taking all those factors together, I set the starting sentence at 5 years imprisonment as submitted by the Prosecution.
12. In mitigation I allow 1/3 reduction for guilty plea. I reduce the starting sentence by 1 year and 8 months. The sentence is now reduced to 3 years and 4 months.
13. For personal factors I note he is currently a student. He has ambition to complete his education and become a ship captain to help his community. He has no previous criminal record. He was remanded in custody for some 18 days until his release on bail in July 2020. He has realised his mistake and has promised not to repeat what he did.
14. I allow a further deduction of 6 months for his personal factors, leaving his end sentence at 2 years 10 months.
15. Both the Prosecutor and defence counsel agree that his sentence should be suspended. This is due to the fact he is still young, he is an ambitious student and is prepared to be rehabilitated.
16. Given those circumstances, the nature of the offending and the character of the defendant, I accept and order that the defendant's end sentence of 2 years and 10 months imprisonment be suspended for a period of 2 years on good behaviour under section 57 of the Penal Code Act. This means that within the period of 2 years from the date of this sentence the defendant must not commit this offence again or any other criminal offences for which he would be charged and convicted. If he does, he will go to prison for 2 years and 10 months.



17. Finally I accept submissions from both counsel that a supervision sentence should also be imposed. Accordingly, I sentence the defendant under section 58F of the Act to supervision for the period of his 2 years of suspended sentence.
18. Right of Appeal within 14 days if defendant does not agree with it is advised.

DATED at Saratamata this 17th day of September 2020

BY THE COURT


OLIVER.A.SAKSAK

Judge

