

**PUBLIC PROSECUTOR v HARRISON TUAME**

**Before:** Chief Justice V. Lunabek

**Appearances:** Mr D Boe for the State  
Ms L Bakokoto for the Defendant

**Date of Plea:** 24 April 2023

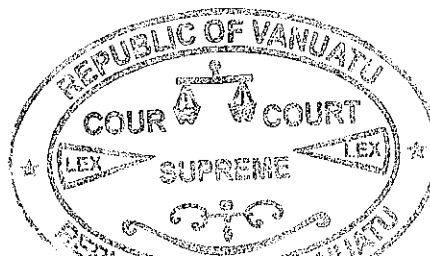
**Date of Sentence:** 3 May 2023

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**SENTENCE**

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1. Harrison Tuame, you appear today for sentence after you entered a guilty plea on one count of unlawful sexual intercourse charged against you on the information, contrary to Section 97(2) of the Penal Code.
2. You are from Malekula and you reside at Musina, Vanualava, Banks.
3. The complainant girl was born on 31 March 2008. She was 14 years at the time of the incident. You were 18 years of age at that time. She is a student at Arep Secondary School and she lives at Vanualava.
4. On 25 December 2022 around 8:00pm in the evening, the complainant and her two friends, Jacobet and Melissa were drinking alcohol with some boys. You were among those boys.
5. while you were all drinking you called the complainant to go down to the nakamal with you. The complainant came with you at the nakamal for a while until her friend Melissa called her out.
6. The complainant's friend Melissa was very drunk and wanted to go back home so the complainant and Jacobet helped Melissa.
7. While helping Melissa you told Jacobet to tell the complainant to meet you down at the beach.

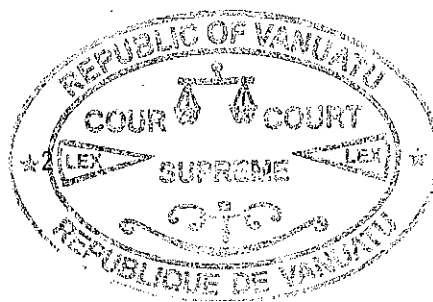


8. When the complainant and Jacobet brought Melissa back to her house, Jacobet told the complainant to follow her back to the main road to find a lavalava that fell down on the road.
9. The complainant followed Jacobet to the main road and continued to follow her down to the beach when Jacobet told the complainant that they will go down to an aunt's house.
10. The complainant followed Jacobet down to the beach, while they walked along the beach the complainant saw two boys coming down to the beach. She recognized one of the boys to be you.
11. Then you approached them, Jacobet walked over to see the other boy.
12. You then took the complainant's hand and told her to follow you. You took the complainant to an area a bit further away, you pushed her down on the sand, you removed her trousers and panty. You then penetrated her vagina with your penis and had sexual intercourse with her.
13. The complainant told you that she felt pain but you continued to have sexual intercourse with her.
14. After the sexual intercourse she wore back her clothes and you both walked back to where Jacobet and the other boy were.
15. A medical report was conducted on 26 December 2022. On examination, it was found there was slight redness over the complainant's vaginal area. In the opinion of the medical examiner, there was penetration of the vagina resulting in the complainant being sexually abused by you.
16. You were cautioned and record of interview was conducted on 10 January 2023. You admitted to have sexual intercourse with the complainant and that you apologized as you did not know she was 14 years old.
17. Sexual intercourse with a child under 15 years of age is prohibited by Section 97(2) of the Penal Code. Section 97(2) provides:

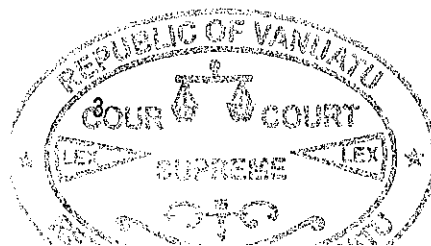
*"(2) No person shall have sexual intercourse with any child under the age of 15 years but of or over the age of 13 years.  
Penalty: imprisonment for 15 years.*

*(3) It is no defence to a charge under this section that the child consented or that the person charged believed that the child was of or over the age in question.*

*(4) ..."*



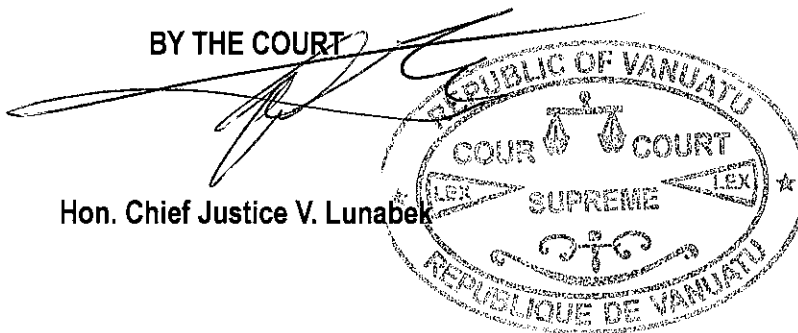
18. There was no personal circumstances of the offending but the following aggravating features exist in this case:
- (i) There was a degree of planning involved;
  - (ii) The force was used and above to commit the unlawful sexual intercourse;
  - (iii) The age difference between you and the complainant;
  - (iv) The effect upon the victim, whether physical or mental.
19. I adopt a start point sentence of 5 years imprisonment based on the following comparable cases: PP v Sandy [2022] VUSC 24; PP v Lengkon [2022] VUSC 18 and Shing v PP [2021] VUCA 21. In Shing case, the defendant pleaded guilty to a charge of unlawful sexual intercourse with a 14 year-old girl. The sentencing judge adopted a start point sentence of 4 years and 6 months imprisonment. The sentence was undisturbed though the Court of Appeal accepted that Mr Shing was entitled to a full one third deduction for his guilty plea because he had always admitted his sexual actions to the police and ultimately to the Court.
20. In mitigation, you are from small Tautu on Malekula island. You have 4 sisters and you are the only son of your family. Your parents depended on you. You pleaded guilty at the earlier opportunity. You are entitled to a full one third of your start point sentence. Your sentence is reduced to 40 months imprisonment.
21. You are a first time offender with unblemished history. You cooperated with the police and you admitted your offending to the police. You apologized for your offending. This is an indication that you admit your wrongdoing and accept responsibility for your wrong. You are further remorseful for your offending. I give you an allowance of 10 months to reflect these. Your sentence is further reduced to 30 months.
22. I consider further that you are a young offender. As a young man of 18 years old, you committed this offence. I note and consider that a young man of your age is pushed by his sexual desire, you are not equipped with reasoning and sound decision. It is the duty of the Court to ensure that you are not suffering from immaturity and poor reasoning when you experienced your sexual life at that young age. The judgment of the Court of Appeal in Korthy v PP [2019] is on this point. I allow another reduction of 20%. Your sentence is further reduced to 24 months. That is your end sentence.
23. The pre-sentence report shows that you were detained and remanded on 13 January 2023 until sentenced today. I shall take the time you have already spent in pre-custodial period into account. I do this by factoring and effecting the effective date of your 2 years term of imprisonment sentence from that date. The nature of this offence, its seriousness and gravity of this type of offending do not justify a suspension.



- 24. You are sentenced to 2 years imprisonment deemed to be effective from 13 January 2023.
- 25. You have 14 days to appeal against this sentence if you are unsatisfied with it. The 14 days starts today at the date of this sentence.

**DATED at Luganville, Santo, this 3<sup>rd</sup> day of May, 2023**

**BY THE COURT**



**Hon. Chief Justice V. Lunabe**