

PUBLIC PROSECUTOR

v

JOSEPH NALIN

Defendant

Coram: Justice Oliver A. Saksak

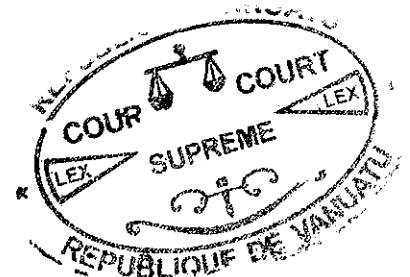
Counsel: Micheline Tasso for Public Prosecutor
Kylie Karu for the Defendant

Date of Plea: 9th April 2024

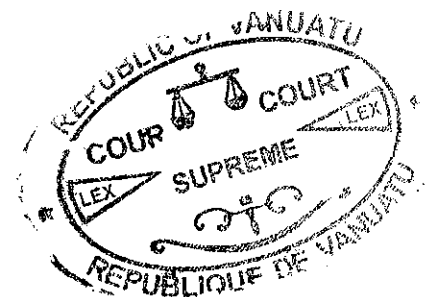
Date of Sentence: 24th May 2024

SENTENCE

1. On re arraignment on 9 April 2024 the defendant Joseph Nalin pleaded guilty to three (3) counts of unlawful sexual intercourse contrary to section 97(2) of the Penal Code Act [Cap. 135]. And he is here for sentence today.
2. The defendant was 23 years old and the complainant was 14 years old at the dates of offending which occurred on 11, 26 and 28 December 2022.
3. On 11 December 2022 the defendant asked the complainant to follow him to a garden. There he asked to have sex with her. She agreed and removed her clothes, laid down on the ground and he had sexual intercourse with her and ejaculated on her body, the subject of Count 2.
4. On 26 December 2022 the defendant followed the complainant on her way to a shop and again asked her for sex which occurred under a breadfruit tree. Sex was consensual, ending with the defendant again ejaculating on her.



5. Finally on 28 December 2022 the defendant again asked the complainant to follow him to the garden where consensual sex occurred, ending with the defendant ejaculating on her body.
6. In assessing the appropriate sentence, I have seen and considered the sentencing submissions filed by Ms Tasso and Mrs Karu. I am grateful to counsel and to the Probation Service for the Pre-Sentence Report filed on 18 April 2024.
7. The Court convicts and sentences the defendant on his own guilty pleas.
8. Unlawful sexual intercourse with a girl less than 15 years carries the maximum penalty of 15 years imprisonment.
9. From the facts there appears to be no mitigating circumstances. Although there was no force or weapon used and it appears the girl was a willing party and was naïve in the sexual conduct, the fact that she was under aged and was in class 7 and was 9 years younger than the defendant being 23 years old at the time, the defendant had taken advantage of her by having sexual and penile intercourse with her with no protective method, putting her to a risk of sexually transmitted disease and teenage pregnancy. There was repetition of the action more than twice. And there was serious breach of trust and a degree of planning.
10. For comparative purposes this case has some similarities with PP v Eli Roy [2010] VSC 20, PP v Daniel Epsi [2011] VSC 65 and Lawi v PP [2003] VUCA 11 which support a start sentence of 6-7 years imprisonment for offences of this nature.
11. Taking all these facts into account, I am of the view the appropriate punishment for the defendant is to be a custodial sentence. I adopt the start sentence of 7 years imprisonment on each count to be served concurrently. The total concurrent sentence shall be 7 years imprisonment.
12. In mitigation, first I reduce the start sentence of 7 years by 10 months for guilty plea representing a 10% reduction.
13. Next, I consider his clean past record, the custom reconciliation ceremony he performed showing remorse and his other personal factors, I allow a further reduction of his sentence by a further 12 months or 1 year. The balance of the sentence shall be 5 years and 2 months.



14. Finally, I take into account the defendant's pre custodial period of 5 months and 22 days adopting a round-up figure of 6 months, the balance of his sentence shall be 56 months or 4 years and 8 months as his end sentence.
15. On whether or not the sentence should be suspended, I accept defence counsel's submission that it should be suspended in part having served up to 5 months and 22 days from 11 February to 2 August 2023.
16. On the basis of Lawi v PP [2003] VUCA 11 and from the facts, it is apparent there was a serious relationship between the defendant and the complainant which makes the case exceptional. Further from the pre-sentence report, it is revealed that the complainant became pregnant as the obvious result of the activities between them. And the defendant has accepted responsibility for and his willingness to care for the complainant and the child.
17. Furthermore, reducing the sentence by 6 months instead of backdating it to 11 February 2023 in view of the grant of bail in August 2023 effectively means that the defendant has lost his parole privilege he would otherwise have been entitled to had his sentence commenced on 11 February 2023.
18. Under those circumstances I order that the defendant's end sentence of 4 years and 8 months be suspended in part. This means the defendant will serve only half of the 4 years and 8 months sentence which is 2 years and 4 months and be released. The other part of the sentence shall be suspended under Section 57 of the Penal Code Act for a period of 2 years, on good behavior.
19. That is the sentence of the Court for the defendant.
20. There is a right of appeal against sentence available to the defendant if he does not agree with it.

DATED at Port Vila this 24th day of May 2024

BY THE COURT


Hon. Oliver A Saksak

Judge

