

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

**Criminal
Case No. 22/1573**

BETWEEN: Public Prosecutor

AND: Amos Awell
Defendant

Coram: *Justice Aru*
Counsel: *Ms. L. Lunabek for Public Prosecutor*
Mrs. P. Malites for the Defendant

SENTENCE

Introduction

1. Mr Amos Awell pleaded guilty to two (2) counts of unlawful sexual intercourse. This is his sentence.

The facts

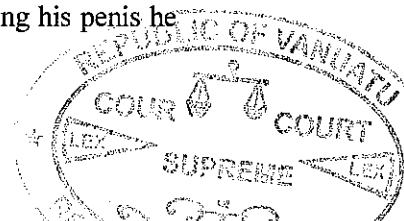
2. The offending occurred on 13 October 2021 when the complainant was 13 years of age. Both the complainant and defendant reside at Melemaat area and the offending occurred at Mele River.

Count 1

3. On 13 October 2021 in the afternoon the complainant was at home when her aunt told her to follow her to the river. On arrival they saw the defendant riding his bicycle near the river. The complainant's aunt went for a swim in the river when the defendant approached the complainant and told her to follow him. She followed him and enquired about what they will do. He told her in Bislama 'yu spel'. He walked close to her and grabbed her buttocks and pulled her close to him. The defendant then pushed her towards a nearby tree and started touching her breasts and tried kissing her but she refused. She tried moving but he held her tightly and pushed his hands inside her trousers and pushed two finger inside her vagina when she felt pain.

Count 2

4. The defendant pulled down the complainants pants and lifted her leg. He then took out his trousers and asked that she touch his penis but she refused. He put on a condom, lifted the complainant's legs and inserted his penis into her vagina. Upon withdrawing his penis he



tried kissing the complainant and touching her breasts. He threw away the condom and the complainant ran to her aunt.

5. When the matter was reported, the defendant was arrested. After being cautioned and interviewed, he admitted the offending.

Starting point

6. The starting point of sentence is to be determined by considering the maximum sentence available for the offence and taking into account any aggravating or mitigating factors of the offending. The maximum sentence available for unlawful sexual intercourse is 15 years imprisonment. The offending is aggravated by the fact that there is an age disparity. At the time of the offending the defendant was 23 years old and the complainant was 13. There is also an element of planning involved. There are no mitigating factors of the offending.
7. Taking the above factors into account I set the starting point of sentence at 5 Years imprisonment on each count.

Mitigation

8. The defendant pleaded guilty at the earliest opportunity as a sign of remorse. The sentence will be reduced by 33%.
9. No pre-sentence report has been filed as directed. The prosecution submits that the defendant is a first-time offender. Defence Counsel also submits that the defendant has spent roughly a month in custody before being released on bail. Taking both these factors into account I reduce the sentence further by 12 months.

End sentence

10. The end sentence is therefore rounded off to 2 years imprisonment on each count to run concurrently. The defendant has appeared to day in answer to bail and has not been remanded in custody since his conviction. His sentence will commence not later than 27 October 2022 unless he elects to begin serving his sentence immediately in accordance with the provisions of s 50 of the Penal Code [CAP 135]. He needs to present himself at the correctional centre.
11. The defendant has 14 days to appeal if he is not satisfied with the decision.

DATED at Port Vila, this 14 day of October, 2022.

BY THE COURT

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D. ARU
Judge

