

**BETWEEN:** Kami Shing  
Appellant

**AND:** Public Prosecutor  
Respondent

**Date of Hearing:** 5 May 2021

**Before:** Hon. Chief Justice V. Lunabek  
Hon. Justice R. Asher  
Hon. Justice R. White  
Hon. Justice O. Saksak  
Hon. Justice D. Aru  
Hon. Justice V.M. Trief

**In Attendance:** Mr C. Leo for the Appellant  
Mr T. Karae for the Respondent

**Date of Decision:** 14 May 2021

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## JUDGMENT

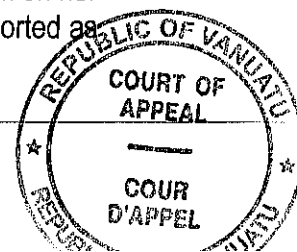
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### A. Introduction

1. This was an appeal against sentence.
2. Mr Shing pleaded guilty to a charge of unlawful sexual intercourse with a 14-year old girl. The maximum penalty available is 15 years imprisonment (subsection 97(2) of the *Penal Code* [CAP. 135]). Mr Shing was sentenced to 3 years imprisonment.

### B. Background

3. Mr Shing is married to the complainant's elder sister.
4. In early 2015, Mr Shing, his wife and their 3 children were residing at Eton Village with his wife's parents and the complainant, "EM".
5. EM was born on 8 February 2000. The offending occurred prior to EM turning 15 years old. The offending occurred at night when Mr Shing went and slept next to EM on her bed. He had previously expressed his love and desire to EM, which she reported as

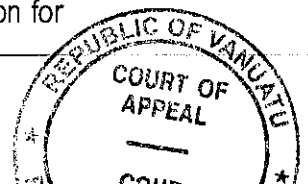


escalating behaviour. In the night, while sleeping on the same bed, Mr Shing pushed two of his fingers into EM's vagina, causing her pain.

6. EM had wanted to report Mr Shing's conduct to her mother, but she did not because Mr Shing had told her to not tell anyone what he had done. Eventually the truth was revealed, which led to a Village meeting and Mr Shing and his immediate family being removed from the family home.
7. Mr Shing admitted the offending when interviewed by the Police.
8. The grounds of the appeal were that the sentence was manifestly excessive, that the sentencing judge could have made a one third deduction for his guilty plea and that the sentence should have been suspended.

### C. Discussion

9. The sentencing judge adopted a sentence start point of 4 years 6 months imprisonment. He did so having noted that the mitigating aspects of the offending were that no force was used to compel EM to submit to Mr Shing's attentions, and that his assertion of a relationship between them was accepted by the Prosecution. The aggravating factors considered included breach of trust as Mr Shing is EM's brother-in-law, the age differential (13 years) and the fact that the offending occurred in EM's home at night, where she is entitled to feel safe and secure, especially at night. The judge also took into account that digital penetration merits a lesser sentence than penile penetration, and that this was a single event without accompanying degrading assaults.
10. Mr Leo cited a number of Supreme Court decisions in support of his submission that the sentence was manifestly excessive. Three of the decisions cited were made before Parliament increased the maximum penalty to 15 years imprisonment and the other 2 decisions concerned other offences therefore were not relevant.
11. The sentencing judge correctly considered the maximum sentence available for this offending, and the mitigating and aggravating factors of the offending, in assessing the sentence start point. We do not see any reason to interfere with that sentence start point.
12. However, we accept the ground of appeal that Mr Shing was entitled to a one third deduction for his guilty plea. Mr Shing had been charged with rape. On the day of trial, the Prosecution amended the charge from sexual intercourse without consent to unlawful sexual intercourse, a less serious crime. Mr Shing immediately entered a guilty plea.
13. Prior to the amendment of the charge Mr Shing might have had a defence based on consent. The circumstances changed when the charge changed. He had always admitted his sexual actions to the Police. He is entitled to a one third deduction for



pleading guilty at the first opportunity which saved the victim from the ordeal of giving evidence at a trial and the saving of the costs of a trial. While the case against him was strong, it was only strong because he had openly admitted the sexual conduct.

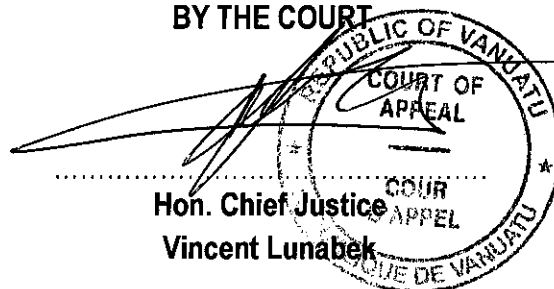
14. Nevertheless, this sexual offending was serious. There were no factors cited by Mr Leo that could properly be described as "exceptional". We therefore reject Mr Leo's submissions in support of suspension of the sentence. We strongly re-iterate our comments in *Public Prosecutor v Scott* [2002] VUCA 29 and *Public Prosecutor v Gideon* [2002] VUCA 7 in relation to the inappropriateness of suspending sentences where serious sexual allegations have been proved or admitted.

**D. Result**

15. The appeal against sentence is allowed. The sentence imposed in the Supreme Court is quashed and substituted by a sentence of 2 years 2 months imprisonment, without suspension.

**DATED at Port Vila this 14<sup>th</sup> day of May 2021**

**BY THE COURT**



**Hon. Chief Justice  
Vincent Lunabek**