

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

**Criminal
Case No. 18/2480 C/CRML**

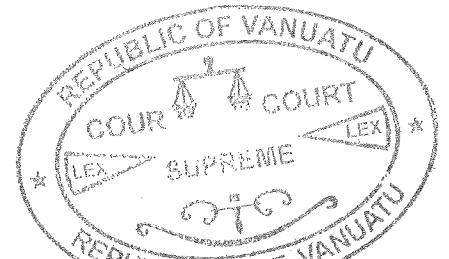
BETWEEN: Public Prosecutor

**AND: Baldwin Kalsau
Defendant**

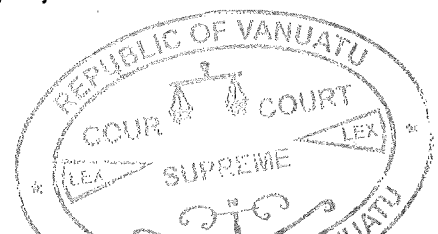
***Date of Verdict: 30th September 2019
Date of Sentence: 6th December 2019
Before: Justice Oliver Saksak
In Attendance: Simcha Blessing for Public Prosecutor
Kylie B Karu for the Defendant***

SENTENCE

1. Baldwin Kalsau, the Court found you guilty on 30th September 2019 of one charge of sexual intercourse without consent (section 90 and 91) and of one other charge of act of indecency without consent (section 98). You are here today for sentence.
2. The offence of sexual intercourse without consent is a very serious offence because it carries life time imprisonment. The offence of act of indecency without consent carries an imprisonment term of 7 years.
3. The full facts of your offendings are stated under paragraph 6 of the verdict of the Court. Relevantly for the purpose of sentencing are that in the early hours of 20th July 2018 at Anambrou rea, you met the complainant. You stopped and had some conversation with her. You persistently asked her to have a ride with you after assuring her you would drop her off at her work place, which was the Au Bon Marche in town. With you assurance she believed you, got onto the truck and you drove off. However instead of taking her directly to Au Bon Marche you took another route via Champagne Estate up to the old Joint Court Area. At the turn off to the old President's House you turned the truck you were driving. And instead of stopping exactly where she asked you to stop, you went further into the bushes and made her suck on the tip of your penis for a short while then you made her masturbate your penis until you ejaculated. After all that you then drove her and dropped her off at the monument near the Reserve Bank. All these happened at dusk and at an isolated place.



4. The actions of licking, sucking or kissing of the penis, vulva or vagina and the introduction of any part of the penis into the mouth of another person falls within the meaning of sexual intercourse in section 89 (d) and (e) of the Penal Code Act.
5. From those relevant facts the aggravating features that can be seen are (a) the breach of trust (b) the risk of being harmed if the complainant did not engage according to your desires (c) the planning involved, (d) the pervaded acts performed against the complainant's will or consent and (e) the effect on the victim seen crying after the incident and ultimately leaving her job.
6. The case of PP.v. Scott [2002] VUCA 29 lays down clear sentencing principles and the starting sentence where certain aggravating features or mitigating factors are present or not present. In your case there are 5 aggravating features. Taking these together with the seriousness of the two offences committed together, the appropriate punishment the Court will impose is to be a custodial sentence.
7. I therefore sentence you as follows-
 - a. For sexual intercourse without consent (sucking of penis) 7 years as the starting sentence.
 - b. For act of indecency without consent (masturbation)- 3 years as the starting sentence to be served concurrently with the 7 years sentence for the sexual intercourse without consent.
 - c. This means altogether your concurrent sentence shall be 7 years imprisonment.
8. In mitigation I have seen your pre-sentence report indicating you are 30 years old with a wife and 3 children. You are the sole breadwinner for your family. You look after your parents who are in the 50 's and your widowed mother-in-law as well. Your chief speaks well of you as a hard working man. Your contribution to your family and the community has won the respect of your church elders. Unfortunately this respect was broken when you acted in the way you did. You had employment with the Municipality of Port Vila. You are a motivated person.
9. You have no previous convictions and this is your first offending against the law.
10. For all those factors I reduce your concurrent sentence of 7 years by 2 years. The balance of your sentence is now 5 years imprisonment.



11. You are entitled to a further reduction of sentence of 4 months for your pre-custodial period from 27th July 2018 when you were first remanded in custody until November 2018 when you were released on bail. The balance of your sentence is therefore 4 years and 8 months.
12. You are not entitled to a 1/3 reduction. And you are not entitled to any suspension of sentence.
13. I therefore sentence you to an end sentence of 4 years and 8 months imprisonment backdated to 30th September 2019 when you were convicted and put back into custody on remand.
14. That is the sentence of the Court. You have a right of appeal against this sentence within 14 days if you do not agree with it.

DATED at Port Vila this 6th day of December 2019

BY THE COURT

OLIVER.A.SAKSAK

Judge

