



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

Criminal
Case No. 20/1623 SC/CRML

BETWEEN: Public Prosecutor

AND: Jacque Kalkandi
Defendant

Date: 22 July 2020
By: Justice G.A. Andrée Wiltens
Counsel: Mr L. Young for the Public Prosecutor
Mr S Garae for the Defendant

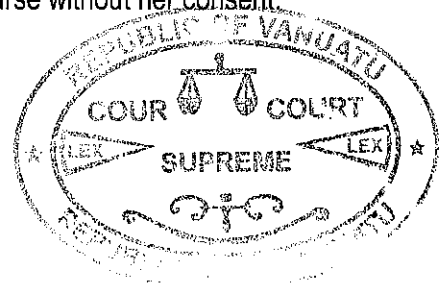
SENTENCE

A. Introduction

1. Mr Kalkandi pleaded guilty to a representative charge of sexual intercourse without consent, domestic violence and escape from lawful custody. The maximum sentence respectively for these offences is life imprisonment 5 years imprisonment and/or Vt 100,000 fine, and 5 years imprisonment.

B. Facts

2. In 2010, Mr Kalkandi had sexual intercourse with his step daughter MNK when she was 19 years old. He forced her to remove her trousers and he had sexual intercourse with her in her bed. On a second occasion he forced her to have sexual intercourse in the garden when there was no one else nearby. He was then 43 years old.
3. In 2012, when MNK was 21 years old, Mr Kalkandi slapped her until she agreed to have sexual intercourse with him, which then duly occurred.
4. In 2015, MNK became pregnant to Mr Kalkandi and gave birth to his child as a result of further sexual intercourse between them. MNK did not consent to that occurring.
5. In March 2019, Mr Kalkandi again forced MNK to have sexual intercourse without her consent.



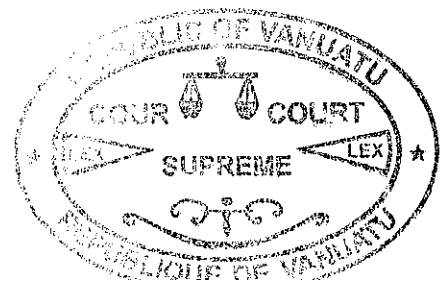
6. As a subsequent 'klinim face' ceremony between their families MNK mentioned going to the police. This argued Mr Kalkandi who assaulted MNK's back, pushing and pulling her and resulting in her clothes tearing. She was 7 months pregnant at the time Mr Kalkandi also threatened MNK's husband at that time.
7. On 10 December 2019 Magistrate Trevor issued a warrant of remand for Mr Kalkandi. However as there is no prison on Malekula, Mr Kalkandi was permitted bail on his own recognizance. In breach of his promise to surrender as and when required, when the police came to Mr Kalkandi's house to transport him to the airport at Norsup and then onto Luganville, Mr Kalkandi evaded them. He was later arrested.
8. When interviewed by the police Mr Kalkandi admitted this offending.

C. Sentence Start Point

9. The maximum penalties available and the criminal culpability of the offending inform the sentence start point assessment. There are no mitigating aspects to this offending. However there are aggravating factors, as follows:
 - Breach of trust – MNK is Mr Kalkandi's step-daughter
 - There is a significant age differential between them – she was 28, he was 52
 - The sexual intercourse took place without precautions being taken, exposing MNK to sexually transmitted disease and actually making her pregnant
 - The repeat nature of the offending – 5x sexual intercourse without consent, plus two other types of offending – both serious; and
 - The assault was on a 7 month pregnant woman.
10. In the circumstances, Mr Kalkandi's sentence start point is set, on a global basis taking all the offending into account, at 9 years imprisonment.

D. Personal Factors

11. Mr Kalkandi has frankly admitted his offending at the first available opportunity. He is given a 1/3 discount for that factor.
12. Mr Kalkandi is now 58, married with 5 children. He supports the family through farming. He has no previous convictions. He suffers from Hepatitis B positive.
13. Mr Kalkandi blames MNK for his offending. The PSR records that he remains at risk of committing further similar offences. I note he has not participated in a custom reconciliation ceremony. In the circumstances it is difficult to accept this professed remorse.
14. For Mr Kalkandi's personal factors I further reduce the sentence start point by 8 months, mainly for his previous clear record and his medical issue.

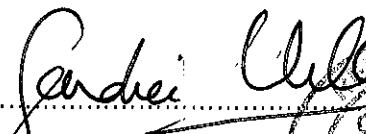


E. End Sentence

15. Mr Kalkandi is sentenced to 5 years 4 months imprisonment. That is imposed on the representative charge of sexual intercourse without consent. He is sentenced to 12 months imprisonment for the assault, and 6 months imprisonment for escaping from lawful custody.
16. The sentences are to run concurrently, with the start date being 4 June 2020 to reflect the time already spent in custody.
17. The seriousness and the nature of the charges preclude the possibility of any of the sentence being suspended.
18. Mr Kalkandi has 14 days to appeal the sentence if he does not agree with it.

DATED at Luganville this 22nd day of July 2020

BY THE COURT


Justice G.A. Andrée Wiltens

