

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

**Criminal
Case No. 21/1070 SC/CRML**

**BETWEEN: The Public Prosecutor
Prosecutor**

**AND: Kalowia Kalsike
Defendant**

Coram: Justice Aru
Counsel Mr. P. Sarai the Public Prosecution
Mr. H. Vira for the Defendant

SENTENCE

Introduction

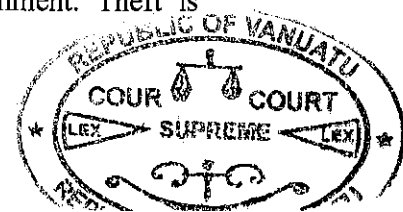
1. Mr. Kalowia Kalsike was charged with one count of attempted sexual intercourse without consent and one count of theft. He pleaded guilty to both charges and is therefore convicted accordingly.

The facts

2. The offending occurred on 4 January 2021 on the island of Emau. The complainant was making her way home when the defendant came out of nowhere and grabbed her tightly and pushed her onto the ground. He sat on top of the complainant. She tried reaching her mobile phone but he grabbed the phone and switched it off. She tried to escape but he pushed her to the ground and strangled her with his right hand. The defendant removed her clothes and lifted her skirt then put his hand in her panty and began touching her vagina. He removed his penis and tried having sexual intercourse several times without success. She could feel his penis touching other parts of her body.
3. She struggled and called out for help. Mr Joshua Daniel heard her cries from his house nearby. He ran towards where the noise was coming from and saw the defendant on top of the victim. The defendant was sitting with his pants down and the complainant with no t-shirt on. He called out to the defendant and the defendant took the victim's mobile phone and ran away.
4. Mr Daniel helped the victim home to her husband.

Starting Point

5. The maximum penalty for attempted sexual intercourse without consent is the same as if the offence was committed and is punishable by life imprisonment. Theft is



punishable by a maximum penalty of 12 years imprisonment. The offending is aggravated by the fact that there is an element of planning involved and force was used to put the complainant on the ground and to keep her pinned to the ground.

6. There are no mitigating factors of the offending.
7. In this case the offences arises from the same set of circumstances .The lead offence is attempted sexual intercourse without consent. I set the starting point at 5 years imprisonment.

Personal factors

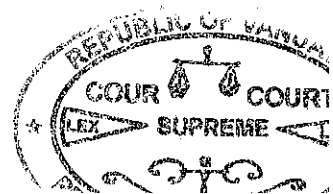
8. The defendant entered his guilty pleas at the first available opportunity. The sentence will be reduced by one third.
9. A Pre-Sentence Report was filed on behalf of the defendant. He is 16 years old from the island of Emau and is a first time offender. He was raised by his father as his mother died when he was still a baby. He attended school up to class 4 but could not continue due to financial difficulties
10. The defendant has skills in gardening, fishing as well as rearing pigs and poultry. He has expressed remorse for his offending and performed a custom reconciliation with the victim by exchanging the following items:-
 - 1 pig
 - Yams and Manioc
 - 10 mats
 - Vt 2000
11. The victim's husband accepted the items exchanged.
12. Taking this factors into account the sentence is further reduced by 16 months.

End sentence

13. The end sentence on the lead offence is 2 years imprisonment. In addition I impose an end sentence of 3months imprisonment for the offence of theft to be served concurrently.

Suspension

14. The prosecution submits that the sentence be suspended in view of the defendant's age. I have considered the provisions of s54 1) of the Penal Code [CAP 135] and article 37 of the Convention on the Rights of the Child which has been ratified by Vanuatu. The defendant is 16 years old and he is a first time offender. Considering the circumstances,



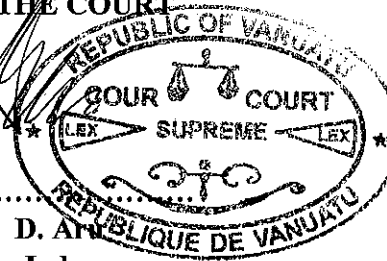
the nature of the crime and character of the offender, I am satisfied that the sentence should be suspended. It is suspended accordingly for a period of 2 years.

15. The defendant will perform 100 hours community work and in addition he will be under supervision for a period of 12 months.

16. The defendant has 14 days to appeal if he disagrees with the decision.

DATED at Port Vila this 24th day of June, 2021

BY THE COURT



.....
D. ATU
Judge