

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

**Criminal
Case No. 20/3552 SC/CRML**

BETWEEN: Public Prosecutor

AND: Massingkon Saksak
Defendant

Coram: *Justice Aru*

Counsel: *Mr. D. Boe for the Public Prosecutor*
Mr. J. Garae for the Defendant

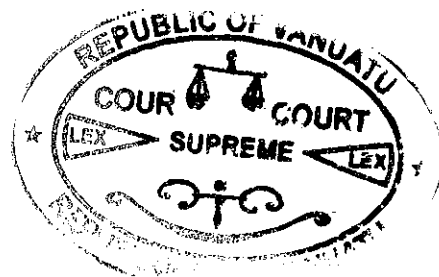
SENTENCE

Introduction

1. Mr Massingkon Saksak was initially charged with three (3) counts of unlawful sexual intercourse. He pleaded guilty to the first count and entered not guilty pleas to the second and third counts. These two latter charges were then nollied by the Prosecuting Counsel. Mr Saksak is now being sentenced on a single charge of unlawful sexual intercourse.

The facts

2. The offending occurred on the island of Malekula at Lavath village. Sometime in May 2020, Mr Saksak befriended the victim on Face Book and asked her to be his girlfriend. She accepted. They chatted over Face Book for some time and Mr Saksak wanted to meet the victim. Around 10 May 2020 at night they met. Mr Saksak took the victim inside her grandfather's house, undressed her and had sexual intercourse with her until he ejaculated.
3. After the incident they went their separate ways with Mr Saksak telling the victim not to tell anyone about what happened.
4. When Mr Saksak was arrested and interviewed by the Police, he admitted the offending.



Sentence start point

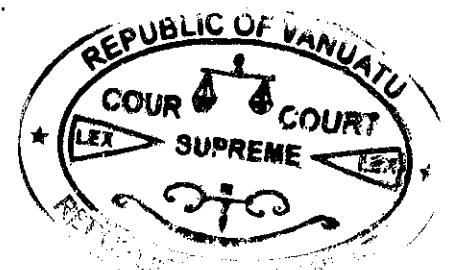
5. Sexual intercourse with a girl who is under 15 years but over 13 years is now punishable by imprisonment of up to 15 years. The offending in this case is aggravated by the following features :
 - There is an age disparity and the victim was also under 15 years of age;
 - There is an element of planning;
 - The victim's loss of dignity and exposure to the risk of pregnancy and sexually transmitted diseases.
6. There are no mitigating factors of the offending.
7. I set the starting point of sentence at 4 years imprisonment.

Personal factors

8. Mr Saksak admitted his offending to the Police and entered a guilty plea to count 1 when called to take his plea. Not guilty pleas were entered for counts 2 and 3 which led the prosecution to nolle these charges. I allow a 6 months reduction in the sentence for the guilty plea.
9. The Same Day Report filed on Mr Saksak's behalf states that he is a first time offender and comes from Makam village, North Ambrym but resides with his parents on Malekula where his father is employed at the Lambubu Coffee Project. He lives in a defacto relationship and his wife is currently 7 months pregnant. Mr Saksak is an active member of his community. He completed primary school from classes 1 to 6 then attended a rural training centre on Maskelyne.
10. He is the breadwinner in his family and earns income from selling food crops, copra and cocoa and owns a small retail business with his wife.
11. Taking these personal factors into account I reduce the sentence by a further 12 months.

End sentence

12. The end sentence is therefore 2 years and 5 months imprisonment effective from 25 September 2020 when Mr Saksak was remanded into custody.



13. He has 14 days to appeal if he is not happy with the decision.

DATED at Luganville this 26th day of February, 2021
BY THE COURT

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D. Aru
Judge

