

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

Criminal case No.21/2013
SC/CRML

PUBLIC PROSECUTOR

V

MALRES KALORIS
Defendant

Before: Justice Oliver A. Saksak

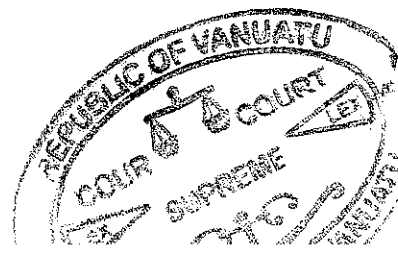
In Attendance: Mr Ken Massing for Public Prosecutor
Mr Kalo Shem Amos for the Defendant

Date of Plea: 19TH October 2022

Date of Sentence: 21st October 2022

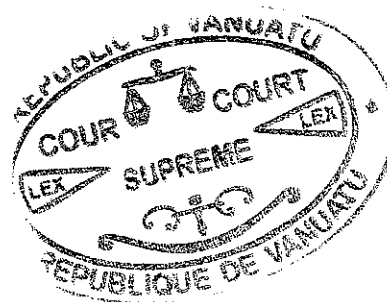
SENTENCE

1. The defendant was initially charged with one count of sexual intercourse without consent (sections 90 and 91) and with domestic violence (section 10 of the Family Protection Act).
2. He pleaded not guilty to sexual intercourse without consent and Prosecutions entered nolle prosequi pursuant to section 29 of the Criminal Procedure Code Act [Cap 136]. He was acquitted of the charge.
3. The defendant is for sentence for the domestic violence charge.
4. This offence carries the maximum penalty of not exceeding 5 years imprisonment or a fine not exceeding VT 100,000, or both.
5. The complainant was the defendant's wife. She was 7 months pregnant at the time of the assault. On 18th March 2021 the defendant accompanied by another woman named Angeline approached the complainant. They asked her who the father of the child was. Angeline then assaulted the complainant. The defendant in turn assaulted the complainant on her face and kicked her on the ribs causing her a lot of pain and discomfort.
6. The only reason given by the defendant for the violence on the complainant was that the baby she was carrying was another man's child. This made him angry. But this could not be a good excuse.



His absence from his wife and children over a period of 7 times for seasonal work overseas contributed directly and he could not blame the complainant solely for her behavior.

7. The history of this defendant's case shows that this was not the only occasion he had committed domestic violence against the complainant. He had done it on other occasions as well which resulted in the complainant applying to the Magistrates Court on 21st May 2021 for ex parte temporary restraining and protection orders.
8. The violence towards the complainant was unwarranted and uncalled for. The defendant and Angeline had taken the law into their own hands by assaulting the complainant in her vulnerable state of being 7 months pregnant. They put her and the baby's life to great risk of losses of lives. There was a serious breach of trust by the defendant treating his wife in that manner. The assault caused pain and suffering to the victim and the baby within her. There was a joint enterprise and a degree of planning involved. These are the aggravating features of the defendant's offending.
9. Taking all those features together I set the start sentence for the defendant to be a custodial sentence of 18 months imprisonment.
10. In mitigation I reduce his sentence by only 3 months for his early guilty plea. He has not shown any remorse. He has put the complainant completely out of his life and taken another defacto partner despite their living together for 15 years and having 2 children by that relationship who are now 15 and 3 years old. He has not performed any reconciliation with the victim on her family relatives.
11. I take note of the defendant's character and personal history contained in his Same Day Report dated 19th October 2022 but I do not think he deserves any further credit for these other than a 2 months reduction.
12. I therefore sentence the defendant to an end sentence of 14 months imprisonment. I Order that this sentence be suspended for a period of 2 years from the date of this sentence. The suspension is made under section 57 of the Penal Code Act [CAP 135]. This means the defendant must continue to remain in the community but he must not reoffend by committing this offence or any other offence for which he would be charged and convicted. If he does, he will go to prison for 14 months.
13. To mark the seriousness of this offending, to deter the defendant and other like-minded people and to protect the vulnerable members of the society the Court orders that the defendant performs 20 hours of community work within a period of 12 months. He must report to the Probation Service within 72 hours from the date of this sentence to further the sentence of Community work.



14. That is the sentence imposed by the Court on the defendant. He had a right of appeal against the sentence within 14 days if he does not agree with it.

**DATED at Lakatoro this 21st day of October 2022
BY THE COURT**


Oliver A. Saksak
Judge.

