IN THE SUPREME COURT
REPUBLIC OF VANUATU
(Criminal Jurisdiction)

Criminal Case No. 2663 of 2016

PUBLIC PROSECUTOR
-v-
KALSALE KALSONG

Before Chetwynd J
Ms Takai for Prosecution
Mr Rantes for the Defendant
Hearing 18th October 2016

Sentence

1. The Defendant appeared before me on 6th September 2016 and entered a guilty plea to a charge of unlawful sexual intercourse. He appears today for sentence. I had the benefit of a pre-sentence report and submissions from counsel in deciding the appropriate punishment for the offence charged and accepted.

2. The facts of the case are agreed. The complainant was 14 years old at the time of the offence. The Defendant was 21. She had met him earlier in the day and he had told her to come up to his house to see him. She got to his house and he pulled her into his bedroom against her will. There he removed both his and the complainant's clothes. The Complainant told the Defendant several times that she did not to have sex with him but he ignored her protests. This was not consensual sexual intercourse. After he had finished and given the Complainant her clothes back she dressed and ran from the house back to her home.

3. The Complainant eventually told her father what had happened and she was taken to the Central Hospital. The Defendant was arrested and interviewed and admitted having sexual intercourse with the Complainant. He told the police the sex was consensual.

4. The offence is punishable by 5 years imprisonment. When dealing with this type of offence the way the court should approach culpability was described by His Lordship Spear J this way; [1]

> *"The crime of having unlawful sexual intercourse is designed to protect the young and the vulnerable particularly from the old and the mature. The law recognises that a girl aged 12 and 13, even 14, years of age should not be put into the*

[1] *Public Prosecutor v Epsi* [2011] VUSC 287; CRC 65 of 2011 (27 October 2011)

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position of having to make the decision about whether or not to consent to sexual intercourse. There is also a large range in respect of the seriousness of this type of offending. At the lower end of the scale is (what is often described as) adolescence sexual experimentation. At the upper level is the situation where an adult takes advantage of the youth and the vulnerability of the young girl or boy. Your case clearly falls into the second category of serious offending of this type"

His Lordship later said:

"The sentence imposed must also reflect the seriousness of the offending, hold you fully accountable for what you have done and send out the strong message, the consistent message, that the Courts will act decisively with adults who sexually abuse the young and the vulnerable."

5. This is not a case of adolescent sexual experimentation. This is one of those cases which falls into the upper level. The starting point should be 2 years and six months. There are aggravating circumstances. This was not consensual sex and force was used. Not necessarily physical violence but certainly aggressive restraint. There was a difference in age of 6 years between the Defendant and the Complainant. She was badly affected by the experience describing in her statement how she no longer felt comfortable in the company of boys and how she was frightened to go out on her own. Those factors lead to an increase in the sentence of 1 year.

6. The Defendant was hitherto of good character and had never come to the attention of the police before. He has also participated in a custom reconciliation ceremony. He should be given credit for that and for the short time he spent in custody following his arrest. A total of 6 months should be deducted from the sentence leaving a final sentence of 3 years. The custom ceremony would have merited a larger reduction if it had not been tainted by the suggestion the case should be cancelled. I understand the need for reconciliation and I believe it is a very important part of the restorative process. However reconciliation should not come at a cost to justice.

7. The Defendant has entered a guilty plea at the first opportunity and he must be given full credit for that. The sentence shall be reduced by a full one third to 2 years.

8. I am required to consider whether this Defendant can be kept in the community, in other words whether I should suspend all or part of the sentence. [2] I am of the view that this is the type of offence considered in the case of *Gideon* [3] where the court of Appeal said:

[2] Section 37 of the Penal Code [Cap 135]
[3] *Public Prosecutor v Gideon* [2002] VUCA 7; Criminal Appeal Case 03 of 2001 (26 April 2002)

"It will only be in a most extreme of cases that suspension could ever be contemplated in a case of sexual abuse. There is nothing in this case which brings it into that category. Men must learn that they cannot obtain sexual gratification at the expense of the weak and the vulnerable. What occurred is a tragedy for all involved. Men who take advantage sexually of young people forfeit the right to remain in the community."

In all the circumstances I do not think that it would be appropriate to suspend any part of the sentence. The Defendants sentence of 2 years imprisonment will run from today.

9. The Defendant is advised that if he is unhappy with this sentence then he has the right to appeal to Court of Appeal. He must lodge his appeal within 14 days of today.

Dated at Port Vila this 18th day of October 2016

Chetwynd J

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