

**PUBLIC PROSECUTOR**

**V**

**ROBERT KASSO**

***Date of Sentence:*** 31<sup>st</sup> day of May, 2018 at 9:00 AM

***Before:*** David Chetwynd

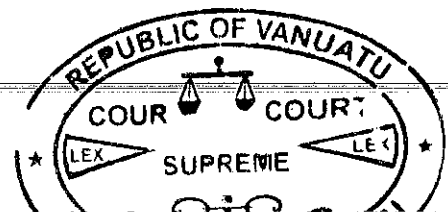
***Counsel:*** Ms Laura Lunabek for Public Prosecutor  
Mr Less John Napuati for Defendant

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**SENTENCE**

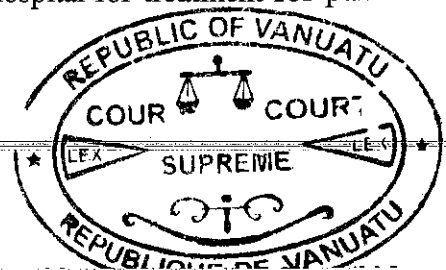
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1. The defendant Robert Kasso has entered guilty pleas to charges of unlawful sexual intercourse and assault. His victim was aged just 12 years at the time of the offending that is in August 2016.
2. The defendant was aged 23. He was a bus driver and the victim was a near neighbor. She was returning from the shops when the defendant stopped his bus and told her to jump in. She was close to home and said she didn't want to. The defendant continued to tell her to get in the bus and eventually she did thinking he would drive to her home. She was not too concerned because she knew the defendant's wife quite well.
3. Instead of driving to her home the defendant continued with his normal service but when it began to get dark the victim asked the defendant to take her home. He ignored her and instead drove to the Nambatri area and picked up a friend. The defendant then travelled towards the Champagne area and he and his friend bought some beers. They then drove to Manples to pick up the friend's partner.
4. Whilst driving to Manples the defendant told his friend to give the victim a beer. She said she didn't want it but the defendant said you drink it or I will



beat you. She tried to spill the beer out of the bus but the defendant told her not to.

5. The defendant then drove her to Club 21. Whilst there she met one of her brothers. When she told him the defendant had taken her there the brother spoke to him and told him to take her home.
6. Instead of doing that the defendant took her to another night club. There he purchased more beer and forced her to drink it.
7. They left the club and met the defendant's friend who had been driving the bus. There seems to have been some kind of argument because the friend and his partner got out of the bus and walked away.
8. The defendant then drove the Freshwater 4 and they arrived there at about 4 am. By now the victim was affected by all the alcohol she had been forced to drink. She was too frightened to go home and face her parents so she went into the defendant's home. They slept in the same room but in different beds.
9. Later that morning the defendant got into the same bed as the victim and began touching her on the shoulder. The victim told him not to and she said she wanted to sleep but he kept grabbing or touching her.
10. The defendant then hit the victim in the face and in the body. She began to cry and said she would report him but that did not stop the defendant from continuing to molest her.
11. The defendant then told the victim to perform oral sex on him. She was frightened he would hit her if she refused. She tried to stop but the defendant insisted she continued until he ejaculated. He then just laughed.
12. It was already daylight by then and they left the house. Rather than take her home the defendant started his normal bus service driving to Blacksand and back into town. As they were driving through Fatumaru Bay the police stopped the bus and took them both to the police station where the defendant was interviewed. The victim was taken to the hospital for treatment for pain in left jaw and a painful chest.



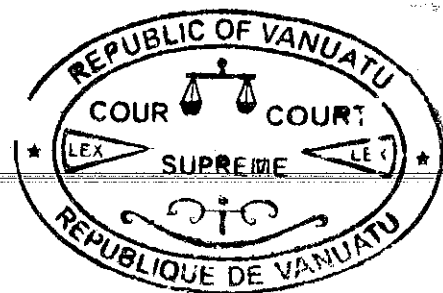
13. The defendant was originally charged with rape, assault and indecent assault. He indicated pleas of not guilty. It is difficult to understand on what basis a not guilty plea could succeed. He admitted what he had done and a birth certificate had been produced showing the victim's birth date as September 2003.
14. When the case was called on for trial the victim failed to appear. It was suggested that she may have been frightened off and there is now a separate police investigation about possible witness interference. Before a new trial could be arranged the defendant asked to be re-arraigned on the "new" charges to which he pleaded guilty.
15. There is no doubt that sexual intercourse took place. The definition of sexual intercourse in section 89 A of the Penal Code is unambiguous on defining oral sex as sexual intercourse.
16. I am sentencing the defendant in respect of charges of unlawful sexual intercourse and assault. Given the proviso of section 97(3) age has a bearing on consent.

*"It is no defence to a charge under this section that the child consented...."*

By reason of the amendments to the Penal Code<sup>1</sup> as from 24<sup>th</sup> February 2017 it would make no difference now whether the defendant had been charged with rape or unlawful sexual intercourse. However as these offences took place before that date the maximum sentence is 14 years.

17. There is no doubt that the facts as admitted by the defendant constitute an offence of aggravated sexual intercourse contrary to section 97A of the Penal Code. Again I remind myself the defendant has been charged with and has pleaded to the lesser (at the time) offence of unlawful sexual intercourse. It maybe that the prosecutor took the decision to proceed with the lesser charge

<sup>1</sup> Penal Code (Amendment) Act No. 15 of 2016



to save the victim the trauma of having to appear in Court. If that is the case the decision cannot be criticized.

18. As for the defendant, he was convicted of an assault on a young boy in July 2017. The offence occurred in August 2015. It cannot be said he is a man of good character. He spent time in prison in respect of that offence and has also spent time on remand in this case. As best as can be determined the defendant has spent 22 weeks in prison on remand.

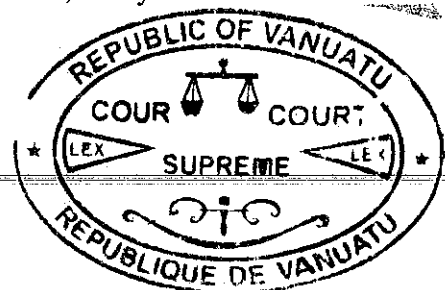
19. It is accepted that the defendant has taken part in a custom reconciliation ceremony. The compensation paid to the victim's father was quite substantial.

20. At the risk of repeating myself, I am dealing with an offence of unlawful sexual intercourse. This was a serious case and it is clear that the act was not consensual either in fact or in law. There was a physical assault which preceded the sexual intercourse. The defendant is nearly twice the age of the victim.

21. I can take guidance from the Court of Appeal as to the appropriate sentence. When that Court dealt with non-consensual sexual intercourse it said such an act merited at least 5 years imprisonment. This offence was aggravated by the age difference and the assault. Also by the defendant's callous disregard for the victim. He would have taken his young victim home when she asked him to. He ignored that request. He should have taken her home when her brother told him to, he did not. Being the gentleman he is he couldn't even be bothered to take the victim home in the morning and her ordeal only ended when the police stopped the defendant's bus.

22. He could have mitigated his behavior by sleeping in separate beds. He chose not to. He forced himself on the young girl and when she protested the defendant hit her in the face and around her body.

23. The starting point, taking these matters into account, 7 ½ years.



24. In taking the second step in the Andy<sup>2</sup> process of sentencing there is little to say. Although at the time of this offence the defendant had no previous convictions he had committed an assault on the young boy in 2015. He was charged with an offence of assault with another man. That other man contested the charge which delayed the conviction and sentencing of the defendant until 2017. What this means is the defendant, having admitted the charge against him, cannot be treated as a man of good character. This is especially so given the nature of the 2015 offence and the assault charged in the present Information.

25. The defendant has sought sought to satisfy custom by going through a reconciliation ceremony. It is not entirely clear whether the victim was involved but at least her family was. I will acknowledge that by reducing his sentence by 6 months. This will leave a sentence of 7 years imprisonment.

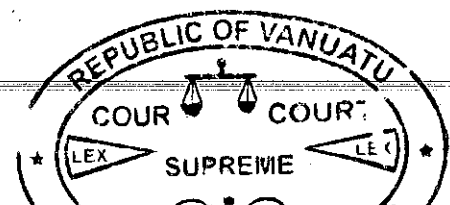
26. I will also give the defendant credit for the time he has spent in custody on remand. The time he has spent on remand in this case would equate to 44 weeks or 11 months' time served. This would result in a sentence of 73 months.

27. The third step in the Andy process is to consider credit for the guilty a plea. In this case it cannot be said the defendant is entitled to a full 1/3<sup>rd</sup> deduction. He only entered a guilty plea after the case had been called on for trial and after the charges were amended. I will give some credit for the eventual plea but it can only be roughly 10% rather than 33%. Rather than make an exact calculation of a specific percentage I will reduce the sentence by 9 months. The final sentence to be served is 5 years and 4 months.

28. I must now consider whether to suspend the sentence. There is ample guidance from the Court of Appeal that it would only be in the most exceptional circumstances that a sentence of imprisonment imposed for an offence involving sexual abuse could be suspended<sup>3</sup>. There is nothing exceptional about this case or the defendant's circumstances. The defendant

<sup>2</sup> *Public Prosecutor v Andy* [2011] VUCA 14; *Criminal Appeal Case 09 of 2010* (8 April 2011)

<sup>3</sup> *Public Prosecutor v Gideon* [2002] VUCA 7; *Criminal Appeal Case 03 of 2001* (26 April 2002)



will serve the sentence of 5 years and 4 months starting on from 8<sup>th</sup> June 2018.

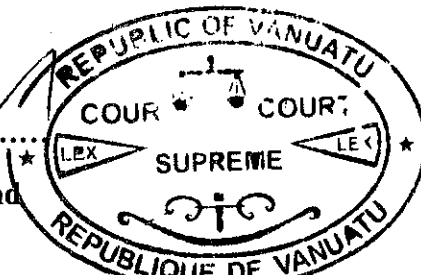
29. If the defendant is dissatisfied with the sentence imposed he has 14 days in which to lodge an appeal. Time will only start to run when a copy of these reasons is provided to his counsel.

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**DATED at Port Vila this 14<sup>th</sup> day of June, 2018.**

**BY THE COURT**

*D. Chetwynd*  
.....  
David Chetwynd  
Judge

The seal of the Supreme Court of Vanuatu is circular. The outer ring contains the text "REPUBLIC OF VANUATU" at the top and "REPUBLIQUE DE VANUATU" at the bottom. Inside the ring, the words "COUR" and "COURT" are positioned on either side of a central scale of justice. Below the scale, the word "SUPREME" is written in a larger font. On the left and right sides of the seal, the word "LEX" is written within a decorative frame. The seal is stamped in black ink.