

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

Criminal
Case No. 20/936 SC/CRML

BETWEEN: Public Prosecutor

AND: Sandy Kaltabang

Date: 18 June 2020
By: Justice G.A. Andrée Wiltens
Counsel: Mr P. Sarai for Public Prosecutor
Mr J. Taiva for the Mr Kaltabang

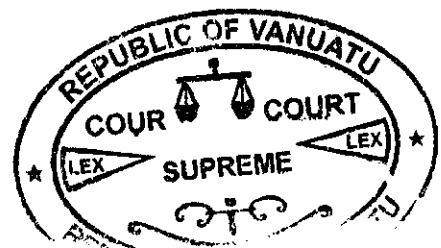
SENTENCE

A. Introduction

1. Mr Kaltabang pleaded guilty to unlawful sexual intercourse with a child under the age of 13 years. The maximum penalty for such offending is life imprisonment

B. Facts

2. On 27 February 2020, TK, then aged 9 years, came home from school and went to play with her friend, a neighbour. Mr Kaltabang told TK her friend was playing down by the sea. When TK turned to go to the sea, Mr Kaltabang grabbed her and told her to follow him to a container house.
3. He led her into a toilet, made her sit on the toilet seat and then put his penis into TK's mouth.
4. Mr Kaltabang next sucked on TK's vagina. He then penetrated her vagina using his finger(s). It hurt TK.
5. Mr Kaltabang next sat on the floor and told TK to sit on his erect penis, which then penetrated into her vagina. This too hurt TK.



6. At some stage Mr Kaltabang took out his mobile phone and took pictures of TK's vagina; and he also took a video clip of his having oral sex with TK.
7. The offending came to light when Mr Kaltabang's wife found the photos on the Mr Kaltabang's phone.

C. Aggravating Factors

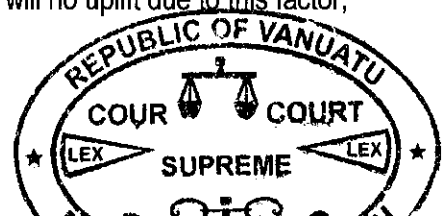
8. There are a number of aggravating factors that need to be taken into account in setting the sentence start point, as follows:
 - The age of the complainant – her DOB is 11 December 2010;
 - The age differential between them – she was 9 yrs old and he was 46 yrs old; and there is a resultant power imbalance which means her ability to resist was compromised;
 - The offending occurred at the complainant's home, where she should be able to feel safe;
 - The offending was perpetrated by her uncle (her mother's brother) – this involves a serious breach of trust;
 - The sheer extent of offending – penis in mouth, sucking on vagina, penetration with finger(s), and finally penetration with his penis; and
 - The continued humiliation involved by the creation of a permanent record of what occurred in the form of photos and the video clip.

D. Sentence Start Point

9. The sentence start point I adopt for this offending is 10 years imprisonment.

E. Personal Factors

10. There are a number of personal factors that must also be taken into account prior to arriving at the end sentence. These are as follows:
 - Mr Kaltabang is now 47 years old; and not surprisingly, is separated from his wife and either 3 or 4 children – counsel says one and the PSR says another;
 - He earned his income from operating a small laundry business;
 - No custom reconciliation ceremony has taken place – but Mr Kaltabang has expressed a willingness to participate in such;
 - Mr Kaltabang has previous convictions – for domestic violence and Cannabis cultivation. He was given an absolutely discharge. Accordingly, there will no uplift due to this factor;



- Mr Kaltabang's counsel submitted that he was remorseful and ashamed. However, according to the PSR writer, he has shown no remorse. In fact he blames the complainant!

11. For his personal factors I reduce the sentence start point by 4 months.

F. Plea

12. I accept Mr Kaltabang pleaded guilty at the earliest available opportunity. The effect of that is that he spared the complainant from having to give evidence. However, there was a very strong prosecution case against him – the exhibits made it virtually impossible to defend; and I accordingly consider that Mr Kaltabang had very little option but to plead guilty. Therefore, the discount available for his prompt plea is set at only 20%.

13. Mr Kaltabang has been remanded in custody since 3 March 2020, when he was arrested. The sentence therefore needs to be back-dated to that date to preserve his parole rights.

G. End Sentence:

14. The end sentence I impose is one of 7 years 9 months imprisonment. That is to commence on 3 March 2020.

H. Suspension:

14. This offending is too serious, and the type of offending also dictates that a suspension of any or all of the sentence is simply not appropriate.

I. Other

15. Mr Kaltabang has 14 days to appeal this sentence if he disagrees with it.

16. All details relating to TK's identity are permanently suppressed.

**Dated at Port Vila this 18th day of June 2020
BY THE COURT**

Justice G.A. Andrée Wiltens
Justice G.A. Andrée Wiltens

