

BETWEEN: Public Prosecutor

**AND: 1. Ayong Philip
2. Kaltap Kalsaf
3. Taru Kalsaf**
Defendants

Date: Wednesday, 6 June 2018
By: Justice G.A. Andrée Wiltens
Counsel: Mr S. Blessing for the Public Prosecutor
Mr R. Kapapa for the Third Defendant

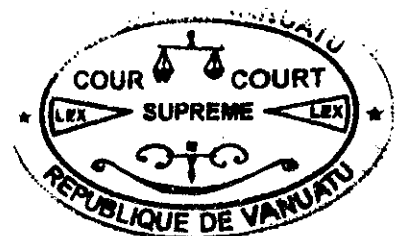
Sentence

A. Introduction

1. Mr Taru Kalsaf pleaded guilty to one charge of assault, laid contrary to section 107(b) of the Penal Code [Cap 135]. The maximum sentence for this offence, if temporary damage is caused, is a term of 12 months imprisonment.

B. The Facts

2. On 30 October 2015, Mr Kevin Kalmet was at a social gathering when, unexpectedly, Mr Kalsaf quickly approached him and berated him, asking him what he doing there. Mr Kalsaf then punched Mr Kalmet to the head, causing Mr Kalmet to fall to the ground, unconscious. Mr Kalmet had to be resuscitated by another at the gathering as he had stopped breathing.



C. Submissions

3. The prosecution submissions as to sentence refer to a number of cases dealing with the sentencing of others in relation to assaults. In particular, Mr Blessing points to the following cases as assisting the Court to set the benchmark for this offending:

- *PP v Alvea* [2013] VUSC 82. This case involved the use of a machete by the defendant on his brother. He was sentenced to 10 months imprisonment, suspended for 3 years, and supervision.
- *PP v Boe* [2014] VUSC 34. The assault in this case, on a female, involved the use of 2 bricks. The defendant was sentenced to 9 months imprisonment suspended for 2 years, and ordered to perform custom reconciliation.
- *PP v Noal* [2016] VUSC 198. This defendant assaulted his wife with an axe, a piece of wood, and he kicked her. The Court adopted a starting point of 9 months imprisonment. The end sentence imposed was 6 months imprisonment.

4. Mr Kapapa submitted these authorities were of little assistance to the Court.

D. Starting Point

5. The prosecution submitted this was a vicious, unprovoked and cowardly attack, aggravated by the victim being rendered unconscious and the subsequent throwing of stones at him as he was leaving.
6. The prosecution submitted that the appropriate starting point in terms of Step 1 as prescribed by *PP v Andy* [2011] VUCA 14 was in the order of 6 to 8 months imprisonment.

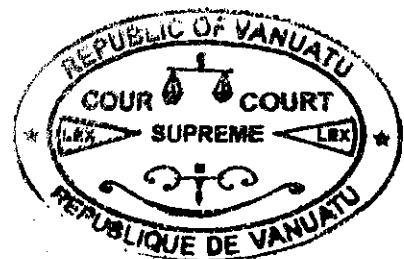
E. Personal Factors

7. In terms of step 2 of *PP v Andy*, Mr Kapapa made the following points:

- Mr Kalsaf is 25 years of age, unemployed and living with his parents – he has a wife and son to support
- He was remanded in custody following his arrest for 15 days
- Mr Kalsaf has no previous convictions
- Mr Kalsaf is remorseful.

F. Plea

8. Mr Kalsaf pleaded guilty at the first available opportunity. The discount available to him for that is a maximum of one-third of the sentence: see *PP v Andy*.



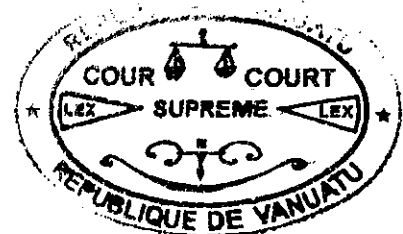
G. Sentence

9. The main purposes and sentencing principles relating to in this type of offending are to:
- hold the offender accountable for his dishonest conduct and the harm done to the complainant
 - promote a sense of responsibility for the harm done
 - provide for reparation
 - denounce the conduct
 - deter the offender and the public at large from this type of behaviour
 - protect the community
 - assist in the offender's rehabilitation and re-integration
 - take into account the gravity of the offending
 - take into account the seriousness of the offending in comparison with other offending, and
 - consider consistency of sentencing and parity of sentences.
10. The authorities referred to by Mr Blessing are quite different to the offending committed by Mr Kalsaf. In particular, there was no weapon used in the initial event. However, any attack to the head, as opposed to any other part of the body, is an aggravating factor.
11. I set Mr Kalsaf's criminal culpability, bearing in mind that Mr Kalmet appears to have done nothing to provoke the attack and that he was rendered unconscious.
12. I am prepared to give Mr Kalsaf some discounts from the starting point due to his personal factors. The fact that Mr Kalsaf was affected by alcohol is not a mitigating factor – despite what he and the Pre-Sentence Report writer might think. In Mr Kalsaf's case, discounts for his time spent in custody following arrest, and his lack of previous convictions permits a reduction of 3 months imprisonment from the start point.
13. Lastly, Mr Kalsaf is entitled to one-third further discount for his prompt plea. The end sentence is therefore set at 4 months imprisonment.

H. Suspension

14. Section 57(1) of the Penal Code requires the Court to consider whether the end sentence should be imposed immediately or suspended. The Court has jurisdiction to suspend the sentence if immediate incarceration is inappropriate:

- In view of the circumstances,



- In particular, the nature of the crime, and
- The character of the offender.

15. In my analysis, Mr Kalsaf's sentence must be suspended – for the reasons articulated previously relating to Mr Kalsaf's personal factors. This is his first offence, and the criminal culpability of his actions does not warrant immediate incarceration. To not suspend the sentence would be a condign punishment for what took place.

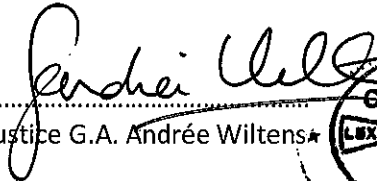
16. The sentence of 4 months imprisonment is accordingly suspended for 2 years. Mr Kalsaf needs to understand he needs to remain offence free for 2 years from today, or he will be incarcerated for 4 months.

1. Suspending a sentence is often accompanied by a direction that the offender be subject to a period of supervision by the Probation service, to ensure that re-offending risks are minimised. I do not consider that is required in this instance. However, to make good to the community for this offending, I direct that Mr Kalsaf complete 120 hours of Community Work.

17. There has been no custom reconciliation, although Mr Kalsaf has apparently expressed a willingness to do so. In the circumstances, I also consider it appropriate for Mr Kalsaf to make good the pain and humiliation suffered by Mr Kalmet by a financial compensation order – he is to pay Mr Kalmet VT 60,000 within 2 months. If Mr Kalsaf was currently employed, I would have ordered him to pay VT 120,000 compensation.

18. Mr Kalsaf has 14 days to appeal this sentence if he disagrees with it.

Dated at Port Vila this 6th day of June 2018
BY THE COURT


Justice G.A. Andrée Wiltens★

