

PUBLIC PROSECUTOR

v

LISONG KALLAN MALSAYE

Date: 7 August 2020  
Before: Justice V.M. Trief  
Counsel: Public Prosecutor – Ms M. Taiki  
Defendant – Ms L. Bakokoto

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SENTENCE

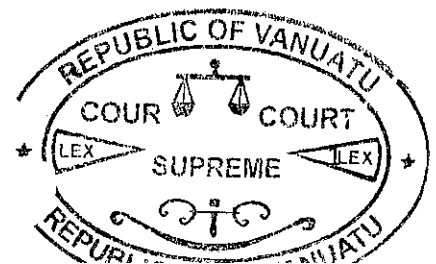
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A. Introduction

1. Mr Malsaye pleaded guilty to one charge of sexual intercourse without consent. The maximum sentence is life imprisonment.

B. Facts

2. Mr Malsaye is Ms P's uncle through marriage. He is 58 years old. She is 17. They are from Atchin, Malekula.
3. On 31 December 2019, Mr Malsaye called Ms P who was at Rano and told her that he would buy her alcohol for New Year's. At around 9am, Mr Malsaye and Ms P went to the Lakatoro market house at Malekula. Mr Malsaye told Ms P to follow him along a shortcut from the market house to the LTC shopping centre where he would purchase the alcohol. The shortcut was through an area of cassis bush. Mr Malsaye told Ms P not to be afraid because he was her uncle and would not do anything to her. She believed him.
4. Along the way, Mr Malsaye told Ms P to walk in front of him. She became afraid and started to run towards LTC. Mr Malsaye ran after her and grabbed her. His grip was too strong and Ms P could not get away.



5. Mr Malsaye removed his clothes and told Ms P to remove her clothes. He pushed Ms P to the ground. She could not get up. Mr Malsaye removed her clothes. He forced her to open her legs and lay on top of her. Mr Malsaye knew Ms P was not consenting but went ahead to have sexual intercourse with her by digitally penetrating her vagina with his finger and then with his penis.
6. On her return home, Ms P told her older sister what had happened. Her sister took her to Norsup Hospital for treatment then to the Police Station.
7. Sentence Start Point
8. The aggravating factors of the offending are:
  - There has been a breach of trust. Mr Malsaye is Ms P's uncle through marriage. Ms P is a child. He had a responsibility to care for his family member, moreover as she is a child.
  - The age differential – Mr Malsaye is 58 years old and Ms P 17 years old.
  - Degree of planning and premeditation – Mr Malsaye lured Ms P to Lakatoro under the pretence that he would purchase alcohol for her for the New Year's celebration. He told her to follow him through a shortcut to the shop where he would buy the alcohol. He took steps to get her alone with him at Lakatoro, and then into an isolated area where they would be alone. He told her not to be afraid as he was her uncle and would not do anything to her.
  - The place of offending – the offending occurred in an isolated area after Mr Malsaye lured Ms P there, which made Ms P more vulnerable.
  - The harm suffered by the victim – the offending involved unprotected penile penetration which exposed Ms P to the risk of unwanted pregnancy and sexually transmitted infection. Ms P was traumatised by the fact that her uncle did this to her. Ms P stated in her Victim Impact Statement that she feels ashamed as a result of what happened, and is afraid to leave the house without a family member. She does not think she will forget what happened to her.
9. There are no mitigating factors related to the offending.
10. I consider that the factors set out above require a sentence start point of 6 years imprisonment.

C. Deduction for Guilty Plea

11. Mr Malsaye did not plead guilty at the first opportunity. He put the complainant through the trauma and humiliation of giving evidence about intimate details of the sexual abuse including a lengthy cross-examination before he requested re-arraignment. Court time was not saved. Mr Malsaye has acknowledged his wrong-doing only after putting the complainant through the ordeal of giving evidence. Remorse is not indicated by the timing of Mr Malsaye's plea. Mr Malsaye is entitled to a 10% deduction from the sentence start point (7 months).



D. Personal Factors

12. Mr Malsaye is 58 years old. He is married with three children. He is an entrepreneur, having recently completed 7 bungalows for his guesthouse business. Mr Malsaye also has a cattle project. He is regarded as a leader within his community including being part of an anti-corruption group appointed by the Police.
13. Ms P and her family have refused any custom reconciliation ceremony by Mr Malsaye.
14. Mr Malsaye has no previous convictions. However, in offences of sexual nature, a person's previous good character has very little relevance in mitigating a sentence.
15. For Mr Malsaye's personal factors, I deduct a further 15% (9 months).

E. End Sentence

16. The sentencing principles applicable in this case are holding Mr Malsaye accountable for his conduct, protecting the community, to emphasize public disapproval, to serve as a warning to others and to deter him and others from acting in this manner in future.
17. Taking all of those matters into account, the end sentence that must be imposed is 4 years 8 months imprisonment. The sentence is to commence from 16 July 2020 to take into account the period Mr Malsaye spent in custody from 16 February 2020 to 9 March 2020.

F. Suspension

18. It is well settled that it will only be in the most extreme cases that a suspended sentence will ever be contemplated in a case of sexual abuse. It is inappropriate to suspend Mr Malsaye's sentence. I decline to exercise my discretion.
19. Mr Malsaye has 14 days to appeal this sentence if he disagrees with it.
20. The name and details leading to the identification of Ms P are permanently suppressed.

**DATED at Lakatoro, Malekula this 7<sup>th</sup> day of August 2020  
BY THE COURT**

*UMTrief*  
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Viran Molisa Trief  
Judge

