

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

Criminal  
Case No. 20/989 SC/CRML

**BETWEEN:** Public Prosecutor

**AND:** Kami Shing  
Defendant

*Date:* 11 February 2021  
*By:* Justice G.A. Andrée Wiltens  
*Counsel:* Mr T. Karae for Public Prosecutor (absent without explanation)  
Mr L. Moli for the Defendant

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**Sentence**

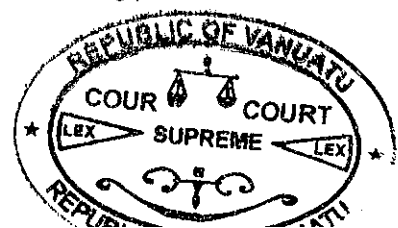
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A. Introduction

1. Mr Shing pleaded guilty an amended charge of unlawful sexual intercourse. He accepted as true and correct the amended summary of facts.

B. Facts

2. Mr Shing is married to the complainant's elder sister, and they have 3 children together.
3. At the time of the offending in early 2015, Mr Shing, his wife and their children were residing at Eton Village with his wife's parents and the complainant, "EM".
4. EM was born on 8 February 2000. The offending was agreed to have occurred prior to EM turning 15 years old. The offending occurred at night when Mr Shing went and slept next to EM on her bed. He had previously expressed his love and desire to EM, which she reported as escalating behaviour. In the night, while sleeping on the same bed, Mr Shing pushed two of his fingers into EM's vagina, causing her pain.



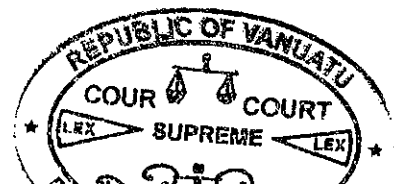
5. EM had wanted to report Mr Shing's conduct to her mother, but she refrained from doing so due to Mr Shing having told her to not tell anyone about what he had done. Eventually the truth was revealed, which led to a Village meeting and the removal from the family home of Mr Shing and his immediate family.
6. When interviewed by the police, Mr Shing admitted his offending and asserted that he and EM were in a relationship.

C. Sentence Start Point

7. The sentence start point is to be assessed by having regard to the maximum sentence available for this offending, and factoring in both the aggravating and mitigating aspects of the offending.
8. The maximum sentence for unlawful sexual intercourse with a child aged between 13 and 15 years is 15 years imprisonment.
9. There is a mitigating aspect to the offending, in that no force was used to compel EM to submit to Mr Shing's attentions. His assertion of a relationship between them is accepted by the prosecution.
10. There are however also aggravating factors, which include:
  - Breach of trust – he is EM's brother-in-law;
  - The age differential – he was 27 years old at the time, EM was 14 years old. Mr Shing's maturity meant EM had limited opportunity to rebuff his advances; and
  - The fact that offending occurred in EM's home at night, where she is entitled to feel safe and secure, especially at night.
11. Mr Karae has submitted a sentence start point of 8 to 12 years imprisonment is appropriate. I reject that submission. The authorities and aggravating factors relied on to arrive at that level of criminal culpability have little bearing to this case.
12. Mr Moli has not addressed the appropriate sentence start point in his submissions. He has however submitted an end sentence of 3 years imprisonment, which is more realistic.
13. I accept the proposition that digital penetration merits a lesser sentence than penile penetration. On the only charge now before the Court, this was an isolated event without accompanying degrading assaults.
14. I adopt a start point of 4 years 6 months imprisonment.

D. Personal Factors

15. Mr Shing did not plead guilty at the first available opportunity. He disputed culpability for this event and several other allegations, as he was entitled to do. On the day of trial, he still disputed his culpability without realising that the issue he sought to avail himself of as a



defence was legally not possible. When it was pointed out that those under the age of 16 cannot consent in law to sexual acts, he negotiated a reduced charge to which he pleaded guilty. I reduce the sentence start point by 15% to reflect the fact that he spared EM, at the last possible moment, the ordeal of having to give evidence and saved Court time and expense. I do not consider the later plea to indicate true remorse.

16. Mr Shing is now 31 years old, married with 3 young school-attending children. He claims to be the main bread-winner for the family, although I note his wife runs their shop.
17. He has no previous convictions.
18. Mr Shing has taken part in a custom reconciliation ceremony, involving apologies and an exchange of gifts to a moderate level.
19. There has been delay in this matter being concluded. The offending occurred in early 2015, and the matter is being concluded only now in early 2021 – 6 years later.
20. For these personal factors, I further reduce Mr Shing's sentence start point by 10 months.

E. Sentence

21. Mr Shing is sentenced to 3 years imprisonment as from today.
22. The sentence will not be suspended. This offending is too serious and due to the nature of the offending, suspending any or all of the sentence is inappropriate.
23. Mr Shing has 14 days to appeal the sentence.
24. All details leading to the identification of EM are permanently suppressed.

Dated at Port Vila this 11th day of February 2021

BY THE COURT

*Gardien Uell*  
Justice G.A. Andrée Wiltens

