

PUBLIC PROSECUTOR v KETSOM MALSAK

Date of Plea: 14 April 2025

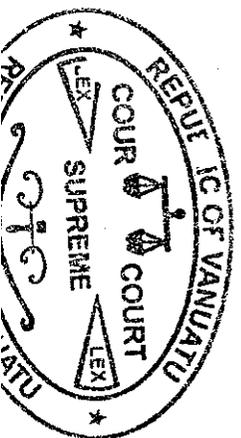
Before: Hon. Chief Justice Vincent Lunabek

In Attendance: J Tele for the Public Prosecutor
B Taleo for the Defendant

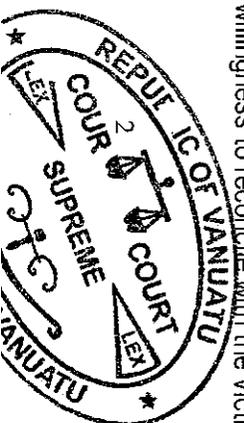
Date of Sentence: 17 April 2025

SENTENCE

1. Mr Malsak pleaded guilty and accepted the summary of facts relating to 3 charges of acts of indecency, contrary to Section 98(a) of the Penal Code Act [CAP. 135]. The maximum sentence for such an offence is 7 years imprisonment.
2. The victim in this case is a 16 year old girl. She is related to the defendant as he is married to her aunt who is her father's biological sister. She had been living with the defendant and his wife at the time of the offending.
3. The victim could not remember the exact date but recalls that the first incident happened sometimes last year 2024 when she, her aunt and the defendant wanted to go throw coconut flakes so they can go search for hermit crab (nakato) at night at Showground area. At that time, the defendant was inside the kitchen and her aunt had sent her to go and check her uncle in the kitchen. On her way she noticed that the kitchen door was closed so she took the coconut flakes and was on her way back to her aunt when she heard noise coming from the kitchen, when she turned around and looked to the kitchen, she saw the defendant standing. She saw that his trouser was halfway and he was holding his penis and was masturbating. While masturbating he was looking at her and making signs for her to go see him. In seeing this she left the coconut flakes and went home.
4. This was another incident of acts of indecency, the victim was also 16 years old at the time of the offending. She could not remember the exact date of the offending but recalls that it was sometimes last year 2024. At that time, she was at showground and was braiding a woman's hair when the defendant approached her from behind and slapped her buttock.



5. Another act of indecency involving another victim girl. She also resides at Showground and was 17 years old at the time of the offending. On the 22nd of January 2025, her father had prepared a custom medicine and gave it to her to give to another father of hers. On her way to deliver the custom medicine she met the defendant on the road and he asked her to take a photo of her but she refused. After delivering the custom medicine she was on her way back to her home when she looked into the defendant's kitchen, she saw him standing inside. She saw that his trouser was halfway down his legs and he was masturbating and he told her to go see him. The victim then walked straight back to her home and went crying to her father and told him of what had just happened.
6. There were not mitigating factors to the offending, but the following aggravating factors exist:
 - The offences of acts of indecency were repeated on young girls in the area of Showground;
 - One of the victims complainant or more are related to Mr Malsak, so his offences of acts of indecency constituted a breach of trust from these girls to Mr Malsak;
 - Some of the acts were committed within the confines of the complainant's home where they were supposed to feel safe.
7. Considering those factors together, I adopt a sentence start point of 4 years imprisonment on each count to run concurrently. Mr Malsak is therefore convicted and sentenced to a total of 4 years imprisonment concurrently.
8. In mitigation, Mr Malsak is 49 years old. He is from Manver Village, West Ambrym Island. He is currently residing at Showground area but while on bail he resides at Pump Station with his daughter.
9. Mr Malsak is married with 5 children. He is unemployed and helps his wife doing house chores. His wife works as a house girl to help sustain living for the family. Mr Malsak is a seaman by profession. He has good relationship with his chief and community.
10. Mr Malsak is a first-time offender. He has been remanded at Luganville Correctional Centre on 29th January 2025 and released on bail on the 25th March 2025 (2 months in pre-custody).
11. Mr Malsak cooperated with the police. He regrets his actions. He is remorseful for what he did realizing it to be wrong.
12. He stated he tried to make arrangements twice for a reconciliation with the victims but the victims and their families rejected. The willingness to reconcile with the victims is there and he and his family are willing to perform custom reconciliation whenever the victims and family with accept.
13. As to Mr Malsak's personal factors, I reduce his sentence start point by taking into account of his guilty pleas given at the first opportunity by the Court and that reduction is by 33% to reflect his early guilty pleas. I reduce also his sentence by 6 months to take into account of his other personal factors including the attempts and willingness to reconcile with the victims and their families.



14. The balance of the remaining sentence is 2 years and 2 months imprisonment. Mr Malsak had spent 2 months in pre-custody period before sentenced which is effectively 4 months.
15. Your end sentence is 20 months i.e. 1 year and 8 months imprisonment.
16. I consider the nature and circumstances of this offending, your character as an offender, I suspend that sentence of 1 year and 8 months imprisonment. During the 2 years suspension, you must not re-offend. If you re-offend during the suspension period of 2 years, your sentence of 1 year and 8 months imprisonment will be re-activated in addition to the new offence that you would face.
17. In addition, I order that you perform 60 hours of community work and 6 months supervision with following special conditions:
 - a) Referral to spiritual counselling;
 - b) Attend sexual offenders' module;
 - c) Choice of good life module.
- d) Mr Malsak has 14 days to appeal this sentence if he disagrees with it.

DATED at Luganville, Santo, this 17th day of April 2025.

BY THE COURT

