

PUBLIC PROSECUTOR -v- KALSIM JOSEPH SACCAS

Coram: Mr Justice SAKSAK Oliver
Mr Graham BIHU State Prosecutor for Public Prosecutor
Mr Stephen JOEL Public Solicitor for the Defendant

JUDGMENT

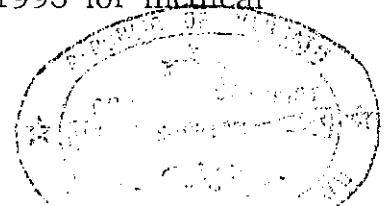
The Defendant appeared before this Court on 4th June for plea to three Counts of Rape contrary to Section 91 , Incest contrary to Section 95(2) and Threats to kill contrary to Section 115 of the Penal Code Act (CAP 135).

Before the Defendant was asked to plead the learned State Prosecutor made application to withdraw the charge of threats to kill due to lack of evidence. The Court accepted the application and the charge of threats to kill was withdrawn accordingly. The Defendant pleaded guilty to both rape and incest.

The brief facts of the case were that the Defendant from Tautu Village, Malekula now living with his Tannese wife on Tanna. It was alleged that sometimes during 1986 when his wife was away in hospital working the Defendant approached his daughter Joan Kalsim and forced her to have sex with him. Penetration took place and the victim felt very sore. She found a lot of blood from her vagina next morning.

This incident took place on four consecutive nights. Each night the mother was away at work. Subsequently the Defendant repeated his actions until 1990. The victim did not tell her mother anything because she was afraid of her. Instead she told of her father's sexual acts to Chief Frank Nonianian who then lodged a formal complaint with the Police.

Mr Stephen Joel speaking on behalf of the Defendant in mitigation told the Court a consistent story. He told the Court that the Defendant was having problems with his wife at the time and because of that he began having "kranky" thoughts about his daughter. He said that the Defendant had realised that what he did was wrong but it was too late. The Defendant was born in 1952 and went to Tanna in 1979 working with the Public Works Department and was terminated one week before the Public Servants strike in or about 1993 for medical



reasons. The defendant has four children and is no longer in gainful employment due to medical reasons. He produced two medical reports dated 20th and 27th February 1997 showing that the Defendant has had surgical operation in December 1996 for hernia and is unfit for heavy duty work. He has not had any trouble with the Law before.

Mr Joel invited the Court to consider the above factors in determining sentence.

In pronouncing the Courts verdict and sentence on 5th June 1997 I said : this Court finds you guilty on 2 Counts ; of Rape against Section 91 and Incest against Section 95(2) of the Penal Code Act on your own pleas of guilty.

You admitted freely that you had sexual intercourse with a girl who was only 11 years old. The girl was your daughter, your own flesh and blood. That is an unlawful act.

You are a father and you have obviously failed your parental duty. You are supposed to educate your children by showing them the right way to live, not to force them to have sex with you as you did to your daughter.

Rape carries a maximum of life imprisonment and Incest carries a maximum sentence of 10 years imprisonment. Before this Court sentences you, I have considered the factors raised by Mr Joel on your behalf.

These are :-

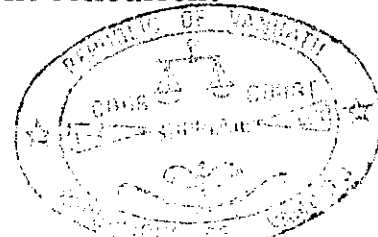
- 1) Your Medical reports of 20th and 27th February 1997 respectively showing your present medical condition.
- 2) That these offences were committed more than 10 and 7 years ago. That the complaint was not by your daughter directly or your wife.
- 3) That from 1990 to date there does not seem to have been a repetition.
- 4) That you pleaded guilty.
- 5) That you have had clean past record.
- 6) That you are now about 45 years old.

Considering those factors this Court will take a lenient view in sentencing you.

The Court therefore sentences you as follows :-

On Count 1 - Rape - Sentence of 5 years imprisonment.

On Count 2 - Incest - Sentence of 3 years imprisonment concurrent on the first Count.



You have a total of 5 years imprisonment but these are suspended for 3 years.

In addition you will pay prosecution costs in the sum of VT8.000 to be paid in by 30th August 1997. If you fail to pay this sum by the given date, you will go to prison for 1 day for each 50 VT outstanding after 2 months from today.

You have a right to appeal and you have 14 days.

DATED AT ISANGEL, this 5th Day of JUNE, 1997

BY THE COURT



Justice OLIVER A. SAKSAK
Judge

