

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

SIMON JOHN ARU TAMBE

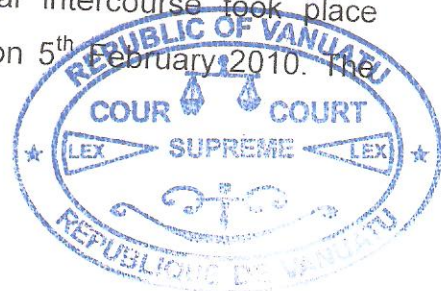
Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

Mrs Kayleen Tavoia – Public Prosecutor
Mr Henzler Vira for the Defendant

Date of Re-arraignment: 12th April 2010
Date of Sentence: 13th April 2010

SENTENCE

1. On 15th March 2010, this Court sitting at Luganville Santo entered Not-Guilty pleas by the Accused to 2 counts of Incest contrary to Section 95 91)(a) and (2) of the Penal Code Act Cap. 135. As such, trial was set down for hearing on 12th April 2010 at Saratamata, East Ambae.
2. Yesterday 12 April 2010, Counsel informed the Court the Accused wanted an opportunity to re-plead to the charges. Leave was granted and he was re-arraigned. He pleaded guilty to both counts.
3. The offending by this Accused took place twice. The first incident occurred between March and September 2005 when the Accused worked as the Chief Cook at Ambaebulu Junior Secondary School. The victim of this offending was attending year 7. She was 13 years old at the time. The second time, sexual intercourse took place between the Accused and the victim was on 5th February 2010. The



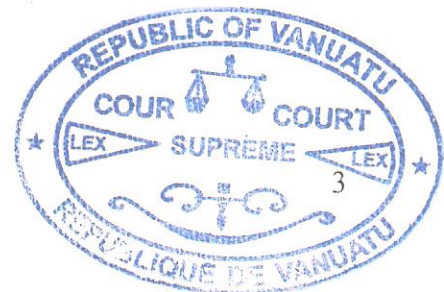
victim's boyfriend discovered this had happened and the whole story came into the limelight. There were some acts of indecency committed as well but no charges were been laid in respect of them. No charges have been laid for unlawful sexual intercourse. The Court will not be concerned with these but will consider sentence only for the offences of incest which carries a maximum penalty of 10 years imprisonment.

4. Defence Counsel requested a Same Day Report to be provided by the Probation Officer. Leave was granted and the matter was adjourned for hearing of submissions as to sentence to Tuesday 13th April 2010.
5. As submitted and from the facts, the aggravating features of this case are that:-
 - (a) The Accused being a mature man (of 40 years and married).
 - (b) The close relationship between him and the victim as father.
 - (c) As such he breached the trust and confidence placed on him by his daughter by –
 - (i) Abusing his daughter and making her lose her dignity and self-esteem. (See Victim Impact Statement).
 - (ii) Failing to maintain her at school making her unable to complete her year 8.
 - (d) Actions were repetative.
 - (e) Some degree of verbal threats used.
6. The case of Kevin Gideon v. Public Prosecutor was submitted by the Public Prosecutor as authority for submitting that this Accused be given an immediate sentence of imprisonment. It is correct to assert that all cases of incest either in this Court or in the Court of Appeal indicate that these Courts take a very firm view that in all sexual offences (incest included) only in "wholly exceptional circumstances"



can men who commit them expect^{not} to go to jail. In this case there is nothing "wholly exceptional" about it. o A3,3

7. The same day pre-sentence report has been noted by the Court. The Accused has not given any one justifiable reason why he behaved in such a manner towards his natural daughter. He does not appear to show any remorse whatsoever. And the report recommends a sentence of imprisonment.
8. The Court considers also the submissions in mitigation by the Defence Counsel. The only relevant mitigating factor the Court can accept is the fact that he has no previous convictions indicating that he is a first-time offender. But that is only one factor against 7 aggravating features that make the scale heavily titling against him. Defence Counsel has submitted the starting point should be 5 years but with no supporting case authority.
9. The sentencing option recommended by the Probation Officer is imprisonment. Therefore, the only appropriate sentence for this accused will be a custodial one. This is to act as a deterrence to both the accused and others. Further, it will act as adequate punishment for the accused in the circumstances of his offending.
10. The Court hereby convicts the accused Simon John Aru Tambe and sentences him to imprisonment. The starting point for him is 7 years imprisonment increasing by 1 year for aggravating features. Therefore, he is sentenced as follows –
 - (a) For Incest, Count 1; 8 years imprisonment.



(b) For Incest, Count 2; 8 years imprisonment to be served concurrently with the 8 year term for Count 1.

The total sentence of imprisonment to be served by the Accused at the Correctional Centre in Luganville, Santo shall be 8 years. However, this is reduced by 1/3 due to his mitigating factor which in essence is 4 months. He shall serve the balance of 7 years and 8 months at the Correctional Centre. The accused will be entitled to apply for parole after having served up to a half of 7 years 8 months term.

11. This sentence is deemed to have begun on 19th February 2010 when he was first taken into custody under remand.

DATED at Saratamata, this 13th day of April 2010.

BY THE COURT


OLIVER A. SAKSAK

Judge

