

PUBLIC PROSECUTOR

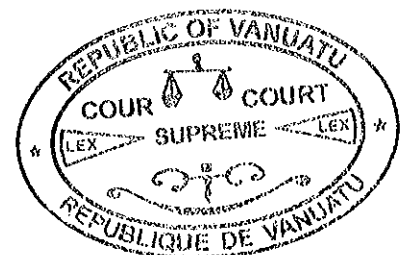
V

MANUEL MALSUNGAI

Hearing: 19 May 2011
Before: Justice Robert Spear
Appearances: Simcha Blessing for the State
Tom J Botleng for the Accused

SENTENCE

1. You are for sentence having pleaded guilty to two charges - Count 1, sexual intercourse without consent and Count 2, sexual intercourse with a child under care or protection.
2. You entered your pleas of guilty to these charges on 12 April 2011. Initially, you pleaded not guilty to those charges. You then had a further discussion with Mr Botleng and asked to be re-arraigned at which time you changed your plea to one of guilty in respect of both charges.
3. This sentencing is to proceed on the basis that, for a period of over 7 months, you sexually violated your step daughter who was 14 years of age at that time. You did so repeatedly and that is why both counts are presented as being representative of that course of conduct.
4. The question is now raised as to why there is a need for Count 2? It is, to an effective and significant degree, a duplication of the Count 1. It is clear that the fact that the complainant was under your care and protection is an aggravating feature to the sexual violation without consent charge. I have raised that with counsel and they agree that is appropriate that this is addressed by your discharge on Count 2. You are discharged accordingly on count 2 leaving you facing only one count of sexual intercourse without consent or, as it is often known, rape.
5. The offending occurred, as I have mentioned, over a 7 month period from February 2010 to September 2010. The complainant was living as a member of your family as she was the daughter of your partner. She was 14 years of age.



6. From about February 2010, you started sexually harassing her which quickly proceeded to indecent touching and then, again very quickly, to full sexual intercourse involving "oral sex" and full penile penetration to the point of ejaculation. This sexual violation of your stepdaughter occurred regularly and persistently over that 7 month period. It came to an end only because the complainant found some support and comfort with her aunt at a time when you clearly wanted to have sexual intercourse with her and she refused. At that time, you threaten to beat her up. She turned to her aunt who took her under her care and protection and that brought an end the abusive regime that you had imposed on her.
7. This was appalling, disgusting conduct on your part. Not only was it regular and persistent offending of a gross and intrusive nature but it occurred without any consideration at all for the feelings of that young girl who was entitled to look to you, as her step father, for her security and safety. Instead, what she received was persistent sexual abuse.
8. The aggravating features to this offending are obvious. The complainant was only 14 years of age at that time. She was a member of your family and as such there was a shocking abuse of trust on your part. There is the age difference in that you were between 38 and 39 years of age at the time. It was not an isolated occasion but it occurred regularly over a period of some 7 months. It is also clear that this young complainant felt unable to go to her mother to complain about your hold on her life and that was no doubt because she was concerned that her mother may take your side rather than hers.
9. You have dealt that young girl a life sentence. She will never fully recover from this offending. It will be a black day in her history book for the rest of her life. Experience in these matters tells us that it will affect the way that she is able to relate to other young people and it will affect her ability to form relationship with others. Of course, you did not concern yourself with what effect your offending might have on her as you are interested only in your own sexual gratification. You used her as a sexual plaything - a sexual toy. You must be held fully accountable for what you have done.
10. In Vanuatu, the starting point for a contested rape without remarkable features is 5 years imprisonment. It is the starting point that I adopt here and it is one that counsel both acknowledge is the appropriate starting point.
11. I then need to look at what aggravating or mitigating circumstances there are in respect of the offending. There are certainly no mitigating circumstances but there are plenty of aggravating circumstances and I have identified them already. In my view, they warrant an uplift of 3 years from the 5 years I have identified already.
12. I then need to give consideration to what aggravating or mitigating circumstances there are in respect of you, the offender. Conversely, there are no aggravating circumstances and few that can count in mitigation. Indeed, the only significant mitigating factor is that the guilty plea was



entered at the first reasonable opportunity. You are entitled to credit of one third against the sentence that would otherwise have been imposed upon you.

13. I am told that you are a first offender but this offending is of such a serious, enduring and severe nature that I am not satisfied that there is cause or justification for a further reduction just for the fact that you appear without previous convictions.
14. Allowing you one third credit for your guilty plea, I am brought from 96 months imprisonment to 64 months imprisonment. You have already served 1 month and 7 days in custody. I take account of that and round it down (which in your favour) to a final result of 62 months imprisonment. I consider that to be the appropriate sentence.
15. You are sentenced to 5 years 2 months imprisonment.
16. You have the right to appeal this sentence within 14 days if you do not agree with it.

BY THE COURT

