

IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU
(CRIMINAL JURISDICTION)

CRIMINAL CASE NO. 154 OF 2014

PUBLIC PROSECUTOR

V

BULU SIMEON

Coram: Justice Mary Sey

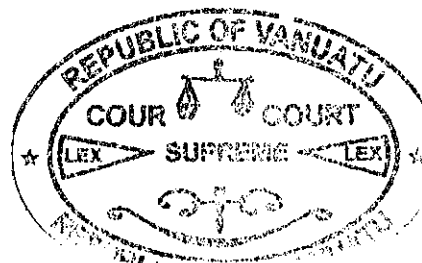
Counsel: Damien Boe for the Public Prosecutor
Jacob Kausiama for the Defendant

Date of Sentence: 6 March 2015

SENTENCE

1. **Bulu Simeon**, you are for sentence today having pleaded guilty on 14th November 2014 on two representative charges of committing incest contrary to Section 95(1)(a) of the Penal Code Act [Cap.135].
2. You accept the summary of facts as presented by the prosecution as follows:

On 15th August 2014, the complainant lodged a complaint at Santo Police Station against you. You are the complainant's biological father and both of you reside at Wailabu Village on South Santo. The incident first occurred when the complainant was sixteen years of age and then you continued to have sex with her until she was 22 years old. The complainant could not re-call the exact dates when you had sex with her. However, she alleged that sometime in July 2013, you got angry with her when she returned from a village called Belmol. You invited her into your room to speak with her but, instead of talking to her, you touched her body and removed

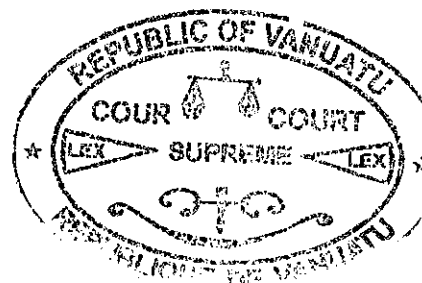


her clothes and you made her lie on the bed naked. Then you removed your clothes and sucked her vagina and you proceeded to insert your penis into her vagina and you then had full sexual intercourse with her. After the sexual intercourse you fled the scene.

Another date the complainant could recall was 6th of July 2014 which was the last time you had sex with her. It is alleged that on that date you held the complainant's breast and told her that she will be your wife. After uttering those words, you removed her clothes and you laid on top of her. You inserted your penis into her vagina and had full sexual intercourse with her.

In her statement to the police, the complainant stated that you threatened to kill her if she revealed all that you had done to her to anyone. She also stated that between the year 2013 and 2014 you had sex with her almost every day. After she had lodged her complaint against you, she was taken to the hospital where she was medically examined and then issued with a medical report. You were cautioned and interviewed by the police and you admitted that you had committed the offence of incest with your biological daughter.

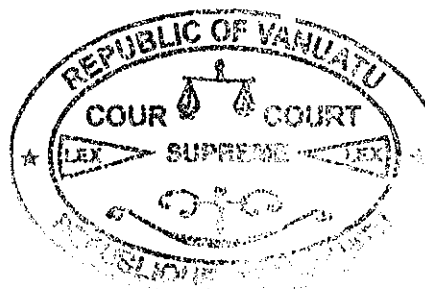
3. The seriousness of the offending is reflected in the maximum penalty of 10 years imprisonment. The defence acknowledges that you have committed a very serious offence. The defence also submits that there are some significant aggravating features common to offences of this type which are present in this case and that the Court would have regard to that in approaching your sentencing.
4. However, defence counsel has tried to distinguish the facts in this case from the facts in other cases in which incest was committed. Counsel submits that it is almost exclusively the situation in those cases that the offender is in a position of power and authority over a young victim and that he uses this to facilitate the commission of the offence. Counsel submits that in this present case the victim is a mature adult with significant understanding of what is wrong and what is right or what is taboo.



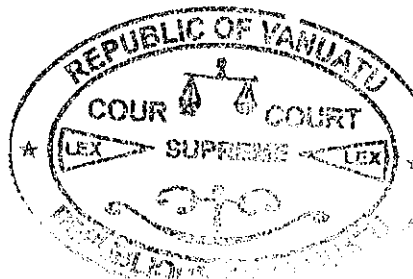
5. In my view, what the defendant did was despicable and totally unacceptable regardless of the age of the victim. As the Court observed in the case of Public Prosecutor v. Peter (2013) VUSC 108, *“there is a very good reason why there is a crime of incest. It is simply wrong for anyone within a family to have sex with another family member outside the relationship of husband and wife. It upsets the family dynamics. It can destroy families; and often does. It can result in birth effects through inbreeding. There are so many excellent reasons why this should not happen.”*
- 6, The principles applying to sentences under Section 95 of the Penal Code were summarized in Solisi Abednigo v. Public Prosecutor VUCA Case No. 3 of 1990 and repeated in Peter Talivo v. Public Prosecutor Court of Appeal Case No. 2 of 1996. In Public Prosecutor v Bae [2003] VUCA 14, the Court of Appeal stated that:

“The principles are simple. Parents who use their children for their own sexual gratification will go to prison. It is almost impossible to imagine circumstances in which that will not be the necessary response. This Court would anticipate that it will only be in the most truly exceptional circumstances, which are clearly and unequivocally demonstrated to exist, that this will not apply. We had considered that there were sufficiently clear statements of the principles from this Court that there could have been no doubt about the situation but there have been drawn to our attention an alarming number of cases at first instance where that correct approach has not been followed.

The prosecuting authorities have a duty to innocent children who have been abused in this intolerable way to ensure that sentences which do not follow that approach are subject to prosecution appeal for correction in this Court.”



7. The aggravating features in this case are that there was a breach of trust by the defendant and the offending was also repeated. Another aggravating factor is the age disparity between the complainant (aged 22) and the defendant who was born on 14 July 1952 (almost 63 years old).
7. **Bulu Simeon**, this is offending that requires a severe sanction and the Court is required to denounce such deplorable behaviour. Given the culpability of your offending, I am of the view that an appropriate starting point for your sentence should be 5 years with an uplift of one year for the aggravating features. Accordingly, I hereby sentence you to 6 years imprisonment.
8. In mitigation, the defence submits that the defendant has no prior criminal record. Further, that he co-operated with the police and he showed remorse and pleaded guilty to the offence at the earliest opportunity. I also note from the pre-sentence report that you are a father of five children but, unfortunately, you lost one of your sons in an accident and one is disabled from birth and that you are responsible for his welfare. In addition, your wife died in 1993 leaving you with the four children. You are a member of the Presbyterian Church in which you have served for 38 years. The report also states that as a result of your old age you occasionally suffer from high blood pressure.
9. I allow you a full one third credit of the sentence because of your early guilty plea which leaves you with a sentence of 4 years imprisonment. From that I will deduct 12 months because of your age and another 6 months for other mitigating circumstances leaving you with an end sentence of 2 years and 6 months.
10. The pre-sentence report states that the defendant was remanded in custody on 21st August 2014 until present day with "good compliance." The defence submits that the defendant is entitled to a further discount on sentence taking into account the judgment of the Court of Appeal in Whitford v PP [2007] VUCA 20 where the Court of Appeal considered the position of a defendant who had been held in custody on remand for some period and noted that as a result that defendant



would not gain the benefit of the availability of parole in respect of the time spent on remand. The Court of Appeal stated that:

“Under the new regime in the Correctional Service Act (No.10 of 2006) Section 51, every person is eligible for parole after they have served half of their sentence. Where a person has been in custody and the Judge takes that into account as required in the effective sentence imposed, it means that in respect of the period in custody prior to sentence the potential for parole is not available. If a person has been in custody for days or a few weeks then no serious injustice may arise. But in this case Mr. Whitford had been in custody for more than 26 and half months.”

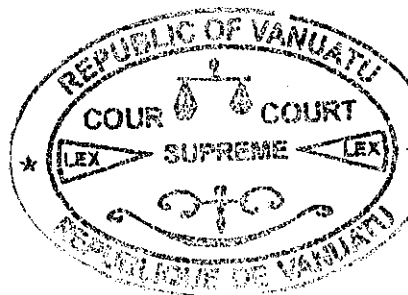
11. The Court of Appeal was concerned that a fundamental problem had emerged. It went on to state as follows:

“As demonstrated in this case and as will arise in any case in which a person has been in custody prior to sentence in respect of the charge upon which they are sentenced, there is a potential anomaly.

We have difficulty in seeing how the clear words of section 51 can be avoided. The danger of injustice arising could be avoided if the Court was required under the statute to impose the sentence which it deemed appropriate, and for it to operate from the date upon which a person went into custody in respect of that charge. Then the parole entitlement would apply to the whole sentence.

Under the present arrangement, where there has been a substantial period in custody it is necessary for a judge in assessing what the effective sentence should be to allow for the fact that there is this potential injustice to arise. The Judge will have to make an assessment having regard to a person's background, behaviour in prison, remorse, and the like in deciding an allowance is necessary because of this anomaly and what allowance should be made for it.”

12. In light of the above authority, I consider that an allowance is necessary in this present case to cater for the pre-sentence custody period. Accordingly, I hereby order that the period between 21st August 2014 and 6th March 2015 be deducted by the




Correctional Service Department during computation of the defendant's end sentence of 2 years 6 months imprisonment.

13. You have 14 days to appeal against this sentence if you do not agree with it.

Dated at Port Vila this 6th day of March, 2015.

BY THE COURT



M.M.SEY
Judge

