

PUBLIC PROSECUTOR VS- AVOCK KENSEN

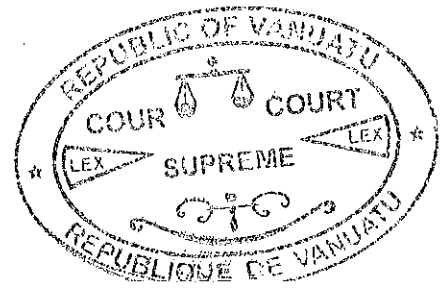
Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Losana Matariki for the State
Andrew Bal for the Defendant*

Date: *23rd April 2015*

SENTENCE

1. Avock Kensen you are for sentence today for having pleaded guilty to one Count of incest contrary to section 95 (1) (a) of the Penal Code Act [Cap. 135] (the Act).
2. The maximum penalty for this offence is 10 years imprisonment.
3. You are a 62 year old man. Your victim is 18 years old. She is your adopted child. She was the same victim of your first offending in 2011 when you committed unlawful sexual intercourse with her and was sentenced to 2 years imprisonment on 19th June 2011. You were released on Parole on 22nd June 2012. Your earlier sentence ended on 22nd June 2013. Sometimes in the same month of June 2013 you resumed having sexual intercourse with your adopted daughter again. She made a formal complaint to the police on 17th and 21st November 2014. You had admitted having sexual intercourse with your daughter only once during the month of June 2013 in your Record of Interview in your answer to Question 21. You have made admission also in your pre-sentence Report dated 24th March 2015.
4. Your pre-sentence report also indicates that you regretted your action and that you felt sorry for your adopted daughter because you did this to her a second time. However it appears that your remorse is not genuine as the report also indicates that you have not performed any custom reconciliation to your daughter at anytime.



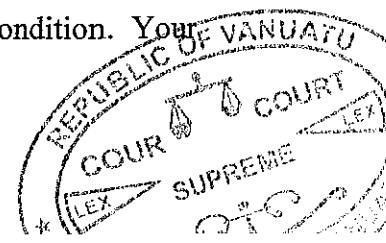
5. You appear to be shifting the blame and responsibility on your victim by saying that she should not have returned to your house after your release on Parole. But that did not excuse your actions. She was and is your adopted daughter and was still under your care and protection as her adoptive father. You owed her a duty of care and trust. Your action amounted to a serious breach of trust. And you are a second time offender. I consider these as the aggravating features of your offending.

6. As to what sentence the Court will impose the Court adopts the sentencing principle in **PP.v.Bae** [2003] VUCA 14 which lays down a clear and simple principle in sexual offendings of incest that.... **“Parents who use their children for their own gratification will go to prison. It is almost impossible to imagine circumstances in which that will not be a necessary response. This Court could anticipate it only in the most truly exceptional circumstances, which are clearly and unequivocally demonstrated to exist, that this will not apply”**.
The Court of Appeal upheld the sentence of 2 years imprisonment but cancelled the suspension. The Court of Appeal was of the view that a sentence of 3 to 5 years imprisonment would have withstood an appeal.

7. In an earlier case in 1996 **Talivo.v.PP** [1996] VUCA 2 the Court of Appeal said this-
“All children are entitled to be protected by adults. Children must be safe in their own houses. When men who have the care of children abuse that trust, we agree with the Chief Justice that they forfeit the right to remain within the community....”

8. You are therefore sentenced to a term of imprisonment. The starting point for you is 5 years imprisonment taking into account the aggravating features of your offending. There will be no further uplift. And there will be no suspension of sentence as there are no exceptional circumstances demonstrated in your case.

9. In mitigation, I consider that you are entitled to a 1/3 reduction due to your guilty plea. That means that 1 year and 8 months are deducted from your total of 5 years imprisonment leaving the balance at 3 years and 4 months. Your pre-sentence report indicates that you are an old man of 62 years and that you suffer from asthma from time to time. However there is no medical report to confirm this condition. Your



report also indicates that you had spent 2 months in custody from 11th December 2014 to 12th February 2015 when you were released on bail. And you have been faithfully attending Court conferences prior to trial. For these factors the Court deducts the 4 months leaving your end sentence with only 3 years imprisonment.

10. Your end sentence is therefore 3 years imprisonment at the Correctional Centre in Port Vila.

11. Your Sentence of 3 years imprisonment is effective as of today, Thursday 23rd April 2015.


12. This lengthy sentence reflects-

- a) The seriousness of your offending.
- b) The Court's and the public condemnation of your action.
- c) A deterrence element for you and men of like minds.
- d) The duty of the Court to protect young children living under care of adult parents.
- e) An adequate punishment for you.

13. You have a right of appeal against this sentence within 14 days if you do not agree with it.

DATED at Port Vila this 23rd day of April 2015.

BY THE COURT


OLIVER.A.SAKSAK

Judge

