

PUBLIC PROSECUTOR

- v -

ERNEST WILLIAM JEAN

Coram: Vincent Lunabek - CJ

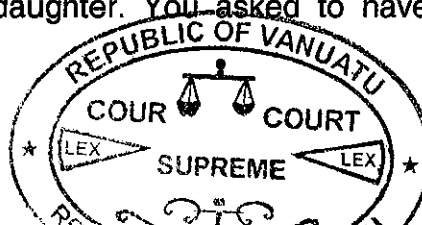
Counsel: Ms Micheline Tasso for Public Prosecutor
Mr Andrew Bal for the Defendant

Date of Sentence: 13th August 2018

SENTENCE

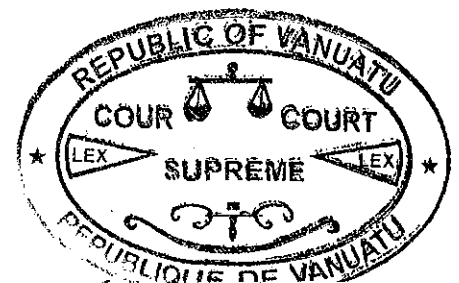
1. Mr Ernest William Jean, you come for sentence. You are charged and on 3 July 2018 you entered a guilty plea on one count of incest, contrary to Section 95(1) of the Penal Code Act [CAP. 135].
2. Section 95(1) provides:

“95. Incest
 - (1) *Incest is sexual intercourse between –*
 - (a) *parent and child (including an adopted child);*
 - (b) *brother and sister, whether of the whole blood or of the half blood, and whether the relationship is traced through lawful wedlock or not; or*
 - (c) *grandparent and grandchild, where the person charged knows of the relationship between the parties.*
 - (2) *No person of or over the age of 16 years shall commit incest.*
Penalty: Imprisonment for 10 years.
 - (3) *...”*
3. This offence occurred between 1st July 2013 and 31st July 2013 at your house at Ohlen area. The complainant was of 23 years of age at the time of the offending and she is your biological daughter. You asked to have sexual



intercourse with her in her room. She told you she was afraid. You insisted that you will have sex with her just one time. She accepted and you inserted and penetrated her vagina with your penis and had sexual intercourse with her. It happened only that time and never happened again.

4. The penalty for the offence of incest has been increased from 10 years imprisonment to 15 years imprisonment. The new penalty is effective from 24th February 2017 the date of its gazettal.
5. You are liable for the maximum penalty of 10 years imprisonment as your offending occurred before the coming into effect of this new law on the sentencing of this offence.
6. I read the pre-sentence report filed to assist in your sentencing. I read and consider your lawyer submissions and submissions filed by the prosecution. I also consider the supporting authorities providing by both of them.
7. Your lawyer submits that a starting point sentence of 5 years imprisonment is appropriate inclusive of aggravating features compared with other cases where the circumstances are more serious than the circumstance of your case here. The prosecution submits that a starting point sentence should be between 5 – 10 years imprisonment. The following aggravating features exist in this case.- (a) breach of trust: you are the biological father of the complainant; She trusted you as you are her father , she can count on you and her safety depends on you at home. You selfishly used her for your own lustful sexual desire. She has lost the peace of mind and safety that she had enjoyed before at her home; (b) There is family disturbance as she has lost the amenity that she enjoyed before in her home; (c) there is a degree of planning as the offence occurred at night time when everyone was asleep and no one would catch you; (d) there is a differential age between you as you are 51 years of age and the complainant is 23 years old and a differential of 28 which is substantial.
8. I consider and take it that 5 years is the appropriate starting point sentence in this case based on its own circumstance and in comparison with cases

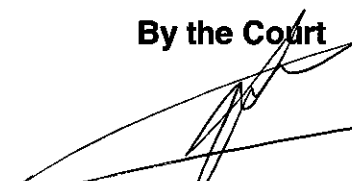


referred to by both counsel's in their respective submissions which are more serious than the present.

9. In mitigation, I take it that you are a first time offender; you cooperate with the police and perform custom reconciliation ceremony with the complainant. I reduce your sentence by 6 months to recognize those mitigating factors; I reduce your sentence further by 6 months to reflect your remorsefulness. I reduce your sentence further by one third (1/3) to reflect that you plead guilty at the first time opportunity given to you by the authorities. Your sentence is now reduced to 2 years and 8 months imprisonment. I give you an additional allowance of 8 months to recognize the delays in the prosecution of your case since the time you committed the offence in July 2013 ie. 5 years delays. Your end sentence is 2 years.
10. The next question is whether the circumstance of your case justifies that your term of 2 years imprisonment be suspended. I answer in the negative. This is a prevalent offence, with more and more matters of this type coming before the Courts. Imprisonment is necessary for various reasons: First, to mark the gravity of the offence; second, to emphasize public disapproval of this offence; third, to serve as warning to others; fourth, to punish offender like you in this case; and the last but not the least is to protect women in the society.
11. You are ordered to serve your term of 2 years imprisonment with immediate effect.
12. You have 14 days to appeal against this sentence with you are unsatisfied with it. The 14 days start today.

Dated at Port Vila, this 13th August 2018.

By the Court


Vincent Lunabek
Chief Justice

