

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
(Criminal Jurisdiction)

Criminal
Case No. 20/483 SC/CRML

BETWEEN: Public Prosecutor

AND: Kalpen Kailong
Defendant

Date: 12 March 2020
By: Justice G.A. Andrée Wiltens
Counsel: Mr D. Boe for the Public Prosecutor
Mr J. Garae for the Defendant

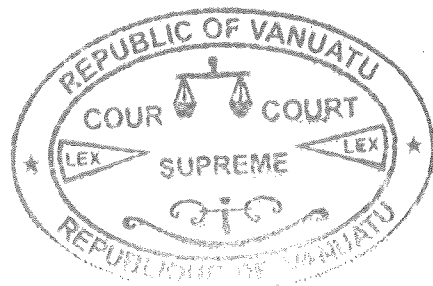
SENTENCE

A. Introduction

1. Mr Kailong pleaded guilty to one representative charge of incest. The maximum sentence for that offence is a term of 15 years imprisonment. It is a very serious offence.

B. Facts

2. Mr Kailong coerced the complainant into having sexual intercourse with him on a number of occasions. He did so by threatening to kill her if she would not have sex with him. As well, he threatened the complainant that if she told members of the family, he would kill her.
3. This offending took place over a period from 2017 to 17 January 2020 - some 2.5 years.



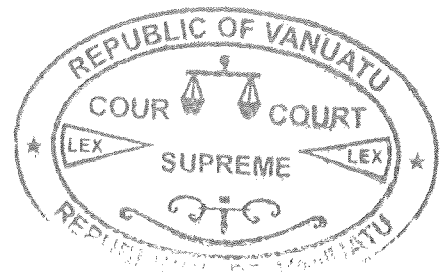
4. The complainant is Mr Kailong's 19-year old biological daughter.
5. When interviewed by the police Mr Kailong made full admissions of both his physical conduct and his verbal threats.

C. Aggravating/Mitigating Factors to the Offending

6. There are a number of aggravating factors to the offending. Firstly, it is aggravating that this offending took place over a 2.5 year period. There is clearly a gross breach of trust involved as the complainant is his biological daughter. As well, the offending took place in the family home, where the complainant should have been safe. No protection was used, so that there was a risk of transmission of sexual diseases and of pregnancy. There was a considerable age differential between them – he is 55, she is 19. There can be little doubt that their unequal status meant the complainant was unable to resist. It is further aggravating that threats were used to gain compliance and also to prevent detection.
7. There are no mitigating factors to the offending.
8. The start point that I adopt as appropriate for this offending and for Mr Kailong's criminal culpability is 6 years imprisonment.

D. Personal Factors

9. Mr Kailong is 55 years of age, married with 4 children. He is a gardener and fisherman. He has no previous convictions, but given the nature and extent of this offending, that stands for very little. It is concerning that the PSR writer considers Mr Kailong to blame the complainant for his offending; and further that he has no insight into his offending.
10. There has been a custom reconciliation ceremony. However that was with Mr Kailong's wife. The only reconciliation offered to the complainant is a verbal apology; nothing more tangible. I do not consider this to be indicative of remorse or truly mitigatory.
11. I allow a reduction from the sentence start point of 3 months for Mr Kailong's personal factors.
12. I accept Mr Kailong has been remanded in custody since 16 February 2020. The sentence will be back-dated to take that into account.
13. The final factor I can take into account is Mr Kailong's plea, which was given at the earliest possible opportunity. As well, the plea has meant that the complainant did not have to give evidence against her father in front of a number of strangers and have to relate embarrassing details. Accordingly, I allow a discount for that and for the saving of Court time and expense as a result of the guilty plea, of a further 33.3%.



E. Sentence

14. The end sentence that I impose on Mr Kailong is one of 3 years 10 months imprisonment. The sentence is to commence on 16 February 2020 to reflect time already served in custody.

F. Suspension

15. The law provides a discretion to suspend all or part of the sentence, pursuant to section 57 of the Penal Code, namely where it is not appropriate to make an offender suffer immediate imprisonment "... (i) in view of the circumstances; and (ii) in particular the nature of the crime; and (iii) the character of the offender".
16. However, there are a substantial number of authorities by the Court of Appeal indicating that where serious sexual offending is involved, it is not appropriate to suspend all or part of the sentence. Accordingly Mr Kailong must serve this sentence in prison.

G. Conclusion

17. Mr Kailong has 14 days in which to appeal this sentence if he does agree with it.

DATED at Luganville this 12th day of March 2020

BY THE COURT


Justice G.A. Andrée Wiltens

