

PUBLIC PROSECUTOR
-V-
MANSAK SAMUEL

Coram: Justice D. Fatiaki
Counsel: Mr. Leon Malantugun for the State
Mr. Tom Loughman for the Defendant
Hearing Date: 28 August 2009
Decision Date: 18 September 2009

SENTENCE

1. Mansak Samuel you have pleaded guilty and been convicted of 3 offences committed against your daughter Karen Samuel. The first offence is Act of Indecency with a Young Person which carries a maximum penalty of 10 years imprisonment and the second and third offences are Intentional Assault which carries a penalty ranging from 3 months to 5 years imprisonment in your particular case.
2. The act of indecency which you admitted, occurred sometime in June 2004 (according to the complainant) when, in the course of accompanying your daughter at night, you acted inappropriately and indecently towards her by touching her breast and then lifting her t-shirt and sucking her breast. You both then immediately returned home where your daughter complained to her mother who counselled and warned you against such behaviour. I note that you have not re-offended in similar manner for the past 5 years and it appears, the incident only came to light when your daughter mentioned it to the police after she had complained about you assaulting her in May and June this year.
3. The circumstances that prompted this rather belated revelation of the sexual misconduct of the accused in 2004 remains unclear but is significant. I say significant advisedly because under section 15(b) of the Penal Code the limitation period for an offence of Indecent Assault under section 98A is 5 years so, it might well be, that the charge in Count 1 is time-barred and therefore has been improperly included in the charges against the accused.



4. Needless to say, given the existence of a statutory limitation period for the commencement of a prosecution for the offence of indecent assault, the date of the offence is an important particular to be set out with some precision in the charge and a charge which alleges the commission of the offence "*santaem long year 2004*" is, in my view, quite inadequate for the purpose of section 71, or for the protection provided by section 139(3) of the Criminal Procedure Code, and may be dismissed, if not amended.
5. Mansak Samuel the assault on your daughter in Counts 2 and 3, both occurred on a Sunday and in both instances, after your daughter had returned from attending services at the NTM church which you did not agree with and which you had previously warned her against attending.
6. Both assaults took place inside your daughter's room and generally took the form of blows delivered to the back of your daughter's head. On the second occasion however, after punching her on the head you followed your daughter outside the house, punched her on the back of the head a second time, tore her clothes and kicked her on the right side of her ribs. Not content with that, when she fell on the ground you kicked your daughter a second time with such force that it fractured her left arm. The assault only stopped when your daughter's aunt intervened and took her away to the safety of her uncle's room. Your daughter was taken to Vila Central Hospital where a medical examination revealed a "*fracture of (the) left ulna (mid shaft) caused as a result of blunt trauma*". No other injuries are recorded in the doctor's report.
7. This is yet another case that has come before this Court in the past month where a parent has been charged with the intentional assault of their child whilst seemingly exercising a parental right of lawful correction. In this case however you Mansak Samuel have admitted the offences, but, even without such an admission, there is not the slightest doubt in my mind that the correction meted out to your daughter in this instance, was wholly excessive and unreasonable and was therefore unlawful.
8. Mansak Samuel you frankly admitted committing the offences on your daughter when you were interviewed by the police and, to the probation officer, you explained that you indecently assaulted your daughter because, you were unable to control you sexual desires at the time. The intentional assaults occurred because of your inability to deal with your anger in an appropriate manner at your daughter's continuing disobedience of your wishes.
9. As for the offence of indecent assault on your daughter, the Hon. Chief Justice said in *PP v. Tungoro [2005] VUSC129*:

"This is another case of sexual abuse of a girl by an adult let alone her own father. The Court in sentencing the defendant must condemn this type of conduct in the most strongest terms"



... Men who take advantage sexually of young people forfeit their right to remain in the community. All children are entitled to be protected by adults. Children must be safe in their own home. When men who have the care of children abuse that right, they forfeit their right to remain within the community [PP v. Gideon Criminal Appeal Case No. 3 of 2001; PP v. Peter Talivo Criminal Appeal Case No. 2 of 1996].

This case is about a breach of trust of a father over his daughter. This is reflected on a total annihilation of the sanctity of family and its value of love, care and protection. By his action to obtain sexual gratification on his own daughter, the Defendant has destroyed the very trust his children, family and the society placed upon him as a father.

This case warrants a custodial sentence. The starting point for this sentence is 3 years imprisonment."

10. In that case despite a custom ceremony being performed, the Hon. Chief Justice imposed an effective sentence of 2 years and 4 months immediate imprisonment. The case is factually distinguishable from this case however, in that the offence was repeated on 3 separate occasions and involved, in part, the insertion of the accused's finger into his daughter's vagina. On each occasion the accused had also demanded sex but did not attempt to force it when his daughter refused.
11. Mansak Samuel I do not need to tell you as a member of the Presbyterian Church that children are a blessing to their parents and parents have a duty to support, protect and nurture the physical, spiritual and mental growth and development of their children. What you did to your daughter is inexcusable and disgraceful. I do not doubt that very soon after you sexually abused your daughter, you realized and regretted your mistake and have since refrained from repeating that shameful act which I will treat, for sentencing purposes, as a "one-off" incident. I also accept your pleas of guilty as a sign of your sincere and genuine remorse for your actions and as reflecting an acceptance of responsibility on your part for the wrongfulness of your behaviour towards your daughter.
12. As for the offences of intentionally assaulting your daughter, Mansak Samuel, the head is not (and I repeat not) an acceptable area for administering corporal punishment nor is punching your child an appropriate means or mode of punishment. Even less acceptable is kicking a child however moderately delivered, and wherever it might be directed on the child's body. In this case you kicked your daughter in her rib cage and on the arm after she had fallen down and was helpless and defenceless. No amount of anger can excuse such a persistent and indiscriminate attack on your daughter who must now live with a broken arm.




13. I have considered both counsels helpful written submissions on the appropriate sentence that should be imposed in this case. I have further considered the comprehensive pre-sentence report provided to the Court by the probation service and have noted in particular, its recommendation that you Mansak Samuel are a "*low risk to the community*" and a person suitable for supervision with a special condition that you undertake spiritual and anger management counseling. Your local pastor and church group have generously offered to assist you in that regard which indicates that your community still accepts you and wishes to assist you to reform yourself and re-integrate you into the community.
14. I have also received and considered a report on the custom reconciliation ceremony that you performed to your daughter, wife, and community which was accepted by all and which I too am obliged to take account of in assessing the sentence to be imposed on you.
15. I am also conscious that you are a first offender and you admitted your wrong doing to the police when you were interviewed. I take into account your guilty pleas which have saved the Court's time and resources but, more importantly, has averted the public embarrassment and additional trauma that would have been caused to your daughter and family had this matter gone to trial.
16. I am also conscious that your daughter, wife, and community have forgiven you and wish to help you re-integrate into the community and this Court is obliged to support their efforts if it is practicable and consistent with their safety.
17. Mansak Samuel since these charges were laid in June 2009 you have been separated from your family for over 3 months and you will be well aware of what it is like to lose the company, love, and support of your family. I trust this short separation has taught you a valuable lesson and is one that you would not wish to experience again.
18. Bearing all that in mind the sentence of the Court is as follows:-
On Count 1 of Indecent Assault I impose a sentence of 12 months imprisonment and on Counts 2 and 3 I impose sentences of 6 months and 9 months imprisonment, to be served concurrently, but consecutive to the sentence imposed in Count 1, making a total effective sentence of (12 + 9) = 21 months imprisonment.
19. However, in view of the circumstances of the offending, and in particular, the solitary nature and age of the indecent assault and treating the intentional assaults as an "*over-reaction*" to your daughter's disobedience, I consider this to be an appropriate case for the exercise of the Court's power under section 57 of the Penal Code.



20. The sentence of 21 months imprisonment is accordingly suspended for a period of 2 years. What this means Mansak Samuel is that you won't have to go to prison today but if you should be convicted of any other offence in the next 2 years, you will be required to serve this sentence of 21 months imprisonment in addition to any other sentence you may receive for your re-offending.
21. Mansak Samuel, I have extended to you considerable leniency in this sentence in the fervent hope that you will return to your family and you will treat them with the love, respect and compassion that this Court has shown to you today and which your family deserves from their father.
22. I also urge you to accept the generous offers of counselling by your pastor and church group to help you to become a better father and person.
23. You have 14 days to appeal against this sentence if you disagree with it.

DATED at Port Vila, this 18th day of September, 2009

BY THE COURT


D. Fatiaki
Judge

