

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

Criminal Case No. 54 of 2012

PUBLIC PROSECUTOR

V

ERICKSON SAM

Criminal Case No. 55 of 2012

PUBLIC PROSECUTOR

V.

JEREMIAH SAM

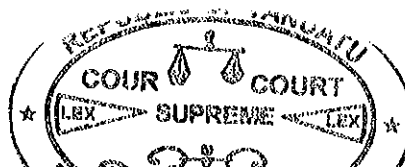
Coram: D. V. FATIAKI

Counsel: Mrs. T. Harrison for the State
Mr. J. Kausiama for the Defendants

Date of Decision: 17 August 2012

SENTENCE

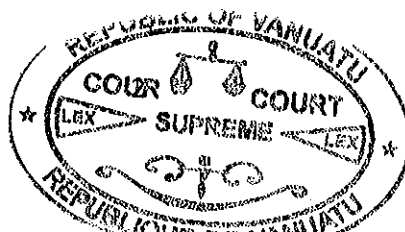
1. Although these two (2) cases were committed separately by the Magistrate Court and separate Informations were filed by the Public Prosecutor, they may be conveniently dealt with together as they involve the same complainant and both defendants are represented by the same counsel and both pleaded guilty.
2. The factors that guide me in assessing the appropriate sentence in this case are set out in the judgment of the Court of Appeal in **Public Prosecutor v. Andy** [2011] VUCA 14 and includes:
 - (a) The age of the victim;
 - (b) The physical and psychological harm suffered by the victim;
 - (c) Breach of trust within the family;
 - (d) The age of the offender. A fully mature man will be more culpable than an immature inexperienced youth;
 - (e) The degree of pre-meditation; and
 - (f) The scale of the offending such as a spontaneous event as against offending over a prolonged period of time.



3. **Erickson Sam** was charged with three (3) offences – Incest (Count 1); Unlawful Sexual Intercourse (Count 2); and Act of Indecency (Count 3). He pleaded “*guilty*” to Counts 1 and 2 and “*not guilty*” to Count 3 which was nollied by the Public Prosecutor.
4. The prosecution facts admitted by the defendant is that during the course of the year 2011 at Malekula the defendant had sexual relations on several occasions with his biological daughter who was born on **16 August 1998**. The matter was reported to the village chief and police at **Lamap** but nothing came of it and the defendant’s offending continued. Eventually, the complainant ran away to an uncle’s home and a second report was lodged with the police. This time, the defendant was arrested and interviewed and he frankly admitted having sex with his daughter “*about twenty (20) times*” because “*mi kat karanke tink tink nomo*”. When asked how he felt about what he was doing to his daughter the defendant replied: “*feelin blong mi, mi harem ino gud, ino stret*”. He also admits assaulting her with a knife on one occasion because she had sex with “*smol brata long mi Jeremiah Sam*”.
5. On that note, I turn to consider the case of the second defendant, **Jeremiah Sam** who was charged with and pleaded “*guilty*” to a single offence of Unlawful Sexual intercourse contrary to section **97 (2)** of the **Penal Code**.
6. The offence occurred in **August 2011** when he had still not yet turned 16 years of age (**D. O. B.:** 12 September 1995) and took place with the complainant his cousin. Initially the complainant refused because you were related, but you persisted and eventually you had consensual sexual intercourse after you told her: “*fuck i blo world nomo ia*”. You also admitted the offence to the police when interviewed and you told them about the traditional fine you received when the incident came to light. The fine imposed by the village chief comprised a pig worth VT3,000 and VT5,000 cash which was accepted by the complainant and her parents in a traditional reconciliation ceremony overseen by the village chief.
7. The personal characteristics and circumstances of the defendants which I have extracted from their respective pre-sentence reports are as follows:

Erickson Sam

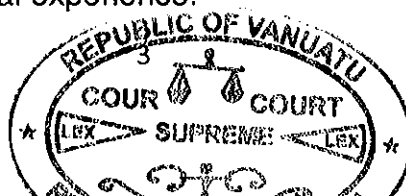
- You are **40 years** of age and a villager of **Akaam Island**, South Malekula;
- You are married and have seven (7) children of which the complainant was your eldest daughter;



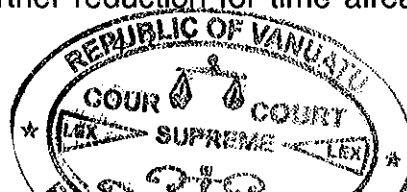
- You make a living as a subsistence farmer and you plant kava and sell copra to obtain cash;
- You are also caring for your elderly parents;
- You are an active member of the community and a Sunday school teacher in your church;
- You attended primary school to year 6 level;
- You are a first time offender;
- You have been remanded in custody since **17 April 2012** and during that time you have complied with the prison rules;

Jeremiah Sam

- You are **17 years** of age, also from **Akaam island** and the youngest of six (6) siblings;
 - You reached class 6 and help your parents with farming and gardening and caring for your father's cattle;
 - You are still single and live with your parents at Tura village;
 - You are a first time offender and closely related to the complainant;
 - You too have been remanded in custody since **17 April 2012** and have been a trouble-free remandee;
8. To your credit, **Jeremiah Sam**, you performed a custom reconciliation ceremony to the complainant and her family in which you gave a small pig worth VT3,000 and VT5,000 cash.
9. You told the probation officer that you regret what you did to the complainant and that this was your very first sexual encounter and you were partly tempted by unsolicited pornographic pictures that were sent to your mobile by your peers. You have expressed your sorrow and remorse for your actions and you say you "*learnt a big lesson ... on remand (in prison) and you will not reoffend*". Your parents speak highly of you as a son "*... who never answers back when being corrected*" and **Pastor Adam** has expressed his willingness to give your spiritual counselling.
10. Although what you did to the complainant cannot be condoned and is aggravated by the fact that you took advantage of a younger albeit sexually more experienced relative of yours, you did not use any additional physical violence on her or repeat the offence which I accept, was your very first sexual experience.



11. I am satisfied **Jeremiah Sam** that your offending was more a case of adolescent sexual experimentation due in large part to your immaturity and inability to control your sexual desires in an appropriate manner. You did not attempt to evade responsibility for your actions and you have readily admitted the offence and expressed genuine contrition to the complainant and have been punished traditionally.
12. I am confident that you have learnt a salutary lesson from your brief incarceration and that you will benefit from a non-custodial sentence. Accordingly, I impose on you **Jeremiah Sam**, a sentence of 12 months **Supervision** with a special condition that you stay away from the complainant and undertake spiritual counseling with **Pastor Adam**. You are also sentenced to **100 hours of Community Work**.
13. I return now to you **Erickson Sam**. Although some consideration must be given for your early guilty plea which has saved your daughter from the further trauma of a trial, your offending is far more serious.
14. You grossly abused the trust of your daughter and you failed to provide the security and protection she should have been able to expect from her father. Indeed you selfishly used her for your own sexual gratification. Your offending was repeated over a lengthy period of time and was accompanied by threats of violence including, getting your daughter to suck your penis. You showed her no mercy or fatherly compassion. In her words "*Daddy has been using me like his wife*". So desperate was she, that she ran away from home and sought refuge with an uncle at Maskelyne Island.
15. To the probation officer, you tried to lay some of the blame on your wife by claiming that on many occasions you were left alone with the complainant as if, somehow, to excuse your disgraceful behaviour towards your daughter and mask your complete inability to control your unnatural lust. You have shown little in the way of remorse.
16. You are a mature and sexually experienced father abusing your own biological daughter in the cruelest possible way. You robbed your daughter of her childhood innocence and most likely scarred her for life. The fact that all the while you were an active member of your church and a Sunday school teacher merely reflects your hypocrisy and the charade that you presented to your community.
17. Incest is a serious offence which carries a maximum penalty of 10 years imprisonment and Unlawful Sexual Intercourse With A Child under 15 years of age carries a maximum penalty of imprisonment for 5 years.
18. In your case **Erickson Sam** I impose on **Count 1** for the offence of Incest a head sentence of 6 years imprisonment which I reduce by 2 years for your guilty plea and a further reduction for time already spent in custody

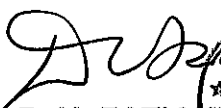


(ie. 4 months) making an end sentence of 3 years 8 months. On **Count 2** for the offence of Unlawful Sexual Intercourse I impose a concurrent sentence of 3 years imprisonment making a total effective sentence of **3 years 8 months imprisonment**.

19. I do not consider that this is an appropriate case to suspend the sentence of imprisonment.
20. Finally in exercise of the Court's powers under **Section 95 (3)** of the **Penal Code**, I order that you be divested of all parental authority over your daughter, **Verbongi**, and I appoint her uncle **Sethy Koa** of **Lutes village, Maskelyne Island** as her guardian from hence forth.
21. If either defendant disagrees with the sentence imposed on him, he has 14 days in which to lodge an appeal with the Court of the Appeal.

DATED at Port Vila, this 17th day of August, 2012.

BY THE COURT


D. V. FATIAKI
Judge.

