

PUBLIC PROSECUTOR – VS – JENDRY WERERE

Coram: Mr. Justice Oliver A. Saksak

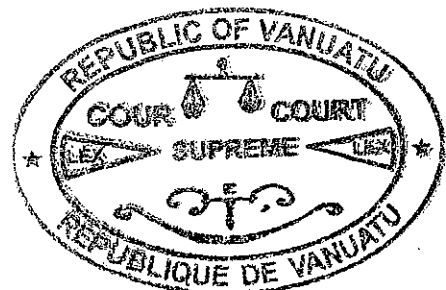
Counsel: Ms. Kayleen Tavoia, Public Prosecutor for the State
Mrs. Marisan P. Vire for the Defendant

Date of Sentence: 11th October 2013
Issued on: 18th October 2013

SENTENCE

1. Jendry Werere, on 14th September 2013 you pleaded guilty to one Count of sexual intercourse without consent contrary to section 91, and to one Count of incest contrary to section 95(1)(a) of the Penal Code Act [Cap. 135].
2. The maximum penalty for an offence under section 91 is life imprisonment and for incest the penalty is 10 years imprisonment.
3. The victim is your biological daughter. She is only 13 years old. You are a mature father of 39 years old married with three children. There is a difference of 26 years between you and her. The offendings took place within the privacy of the family home. What you did to your own daughter is deplorable and warrants that a custodial sentence is the only appropriate punishment to be imposed.
4. The Court of Appeal said very clearly in Public Prosecutor vs. Gratien Bae [2003] VUCA 14 that –

"Parents who use their children for their sexual gratification will go to prison. It is almost impossible to imagine circumstances in which that will not be the necessary response."



Bae's case was a case of incest and he was sentenced initially to 2 years suspended sentence. However, on appeal the Court of Appeal removed the suspension and retained the 2 years sentence. However the Court of Appeal indicated that "a sentence of 3 – 5 years imprisonment would have withstood appeal....."

5. For sexual intercourse without consent the relevant authority is Public Prosecutor vs. Scott and Tula [2002] VUCA 29. The Court of Appeal said this:

".....men must learn not to prey on the weak and vulnerable....."

6. And the case of Public Prosecutor v. Gideon [2002] VUCA 7 is clear authority that *".....men who take advantage sexually of young people forfeit the right to remain in the community."*

7. Based on the above cases, the Court convicts and sentences you as follows:-

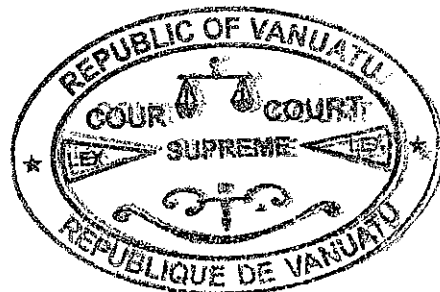
- (a) For sexual intercourse without consent being the lead offence, 5 years imprisonment as the starting point.
- (b) For incest, 3 years imprisonment as the starting point to be served concurrently with the 5 years imprisonment for sexual intercourse without consent.

The total concurrent sentence is therefore 5 years imprisonment.

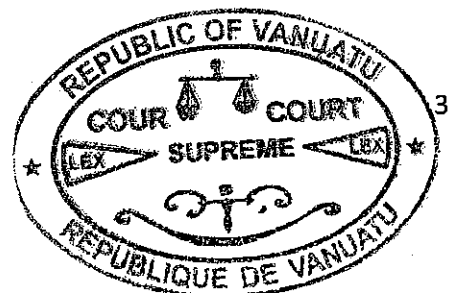
8. I consider that there should be an uplift of 2 years for the aggravating features which are –

- (a) a serious breach of trust in a father and daughter relationship;
- (b) great disparity of age of 26 years difference;
- (c) duplicity of offendings; and
- (d) violation of the sanctity of the marriage home.

That increases your initial sentence of 5 years to 7 years imprisonment.




9. You are however entitled to some reductions due to the following mitigating factors –
- (a) For guilty pleas – a reduction of 2 years and 4 months is made which represents a 1/3 reduction. The balance is 4 years and 8 months.
 - (b) For other mitigating factors such as custom reconciliation ceremony showing remorse and good cooperation with the Police during investigations and interview, 1 year is reduced from 4 years and 8 months leaving the balance of 3 years and 8 months imprisonment.
10. During the oral pronouncement of this Sentence I indicated that it was possible my calculations could be wrong. I also indicated that I would do recalculations to ensure the right number of years were added or deducted. Having done so again, I record that the final sentence of 2 years and 8 months pronounced was wrong. The correct figures should be 3 years and 8 months as the final sentence term. Accordingly, the initial sentence of 2 years and 8 months is vacated and replaced by the sentence of 3 years and 8 months. The Warrant of Commitment issued on 11th October is hereby recalled and a new Warrant be issued in its place with the final sentence of 3 years and 8 months.
11. There will be no suspension of sentence. And your sentence will be immediate but effective from 1st August 2013 when you were first remanded into custody.
12. This sentence serves the following purposes –
- (a) To mark the seriousness of your offendings;
 - (b) To mark public disapproval or condemnation of your actions;
 - (c) To act as a deterrence for you and for others;
 - (d) To protect the young and vulnerable members of the community in particular girls and women generally.
 - (e) To punish you adequately and appropriately.



13. Finally, you have a right of appeal against this Sentence within 14 days, if you so choose.

DATED at Luganville this 11th day of October 2013.

BY THE COURT


OLIVER A. SAKSAK
Judge

