

PUBLIC PROSECUTOR

- v -

JOHN TANGIAT

*Coram: V. Lunabek CJ
Mr Leon Malatugun for Public Prosecutor
Mr Andrew Bal for Defendant*

Date: 26th February 2014

SENTENCE

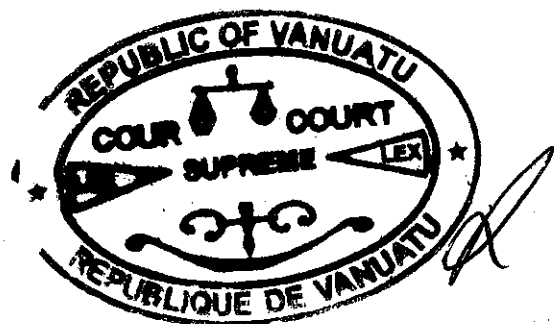
This is the sentence of Defendant, John Tangiat. John Tangiat, you are from Iopuna, West Epi. You are charged with following three (3) counts:

- Indecent Assault, contrary to s.98(a) of Penal Code Act ("the Act"); and
- Abusive or threatening language, contrary to s.121 of the Act; and
- Sexual intercourse without consent, contrary to s.91 of the Act.

In early November 2013, you entered a guilty plea on count 1 of Indecent Assault. You also entered not guilty pleas in respect to counts 2 and 3 of abusive or threatening language and sexual intercourse without consent respectively.

After completion of your trial on counts 2 and 3 on 25 February 2014, you are found not guilty, discharged and acquitted of both counts 2 and 3. However, in respect to count 3 of sexual intercourse without consent, you are convicted of Incest contrary to Section 95(a) of Penal Code Act as an alternative but lesser offence pursuant to section 113 of the Criminal Procedure Code Act.

You are today sentenced and convicted for the offences of indecent assault and incest, contrary to s.s 98(a) and 95(1) of the Penal Code Act respectively.



The facts of this case are as provided by the prosecution. They are accepted by the Defence. They are set out as follows:-

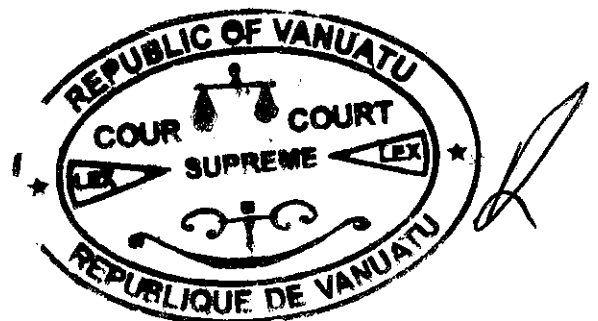
On Sunday 1 September 2013, at about 8-9.00am o'clock in the morning, the complainant [C.T.] walk along the sand beach at Iopuna village, west Epi. The complainant is the stepdaughter of the Defendant. She walked on the beach on a distance of about 200 meters and she walked back to her house. She did not notice that her stepfather, Defendant John Tangiat, walked towards her. She did not notice her stepfather because there are trees and branches around her. She was surprised that her stepfather grabbed her and held her neck with his left hand and pulled her towards him.

At the same time, he held and touched her breasts with his right hand. The complainant was taken by surprise and pushed away the right hand of the Defendant. The complainant then continued walking on the beach while her stepfather returned back to their house. The complainant also returned back to the house and called on her mother who is the wife of the Defendant. The complainant intended to tell her mother of what happened to her on the beach. But when the Defendant heard that the complainant called her mother, the Defendant intervened and told the mother to go and feed the pigs. When the mother went to feed the pigs, the complainant followed her mother with the intention to tell her of what happened to her on the beach. But the complainant did not manage to tell her mother of what the Defendant did to her because the Defendant also followed both of them to the place where the mother fed the pigs.

On the next day, Monday 2nd September 2013, in the morning, people of Iopuna Village were involved in the building of a youth house. On that date, the complainant was alone at home. She cooked the meal for the people who built the youth house. Before lunch time, the Defendant returned back to his house. He saw the complainant in his house. He then initiated and insisted to have sexual intercourse with the Complainant. He had then sexual intercourse with his stepdaughter in his house.

Indecent assault and incest are two most insidious crimes. Indecent assault attracts a sentence up to 7 years imprisonment and incest attracts a maximum penalty of 10 years imprisonment.

It is well understood throughout all communities that it is wrong for a person to indecently assault another member of the community. It is also well understood throughout all communities that it is wrong for



members of the same family to have sexual intercourse with each other.

The crime of incest can have a number of consequences. There are a number of very good reason why members of the same family should not have sexual intercourse. One reason is simply that there is a greater risk of birth defects if the woman become pregnant. Another is that it tends to destroy the family as the relationships become confused or fractured.

In the present case, the offending is aggravated by the following factors:

First, the offences of indecent assault and incest took place entirely on the initiative and insistence of the Defendant.

Second, for both offences, there is a breach of trust by the Defendant. The Defendant is the stepfather of the complainant. The Complainant looks upon the Defendant as her father. The Defendant marries the mother of the complainant. The Defendant had abused the trust by having sexual intercourse with his stepdaughter.

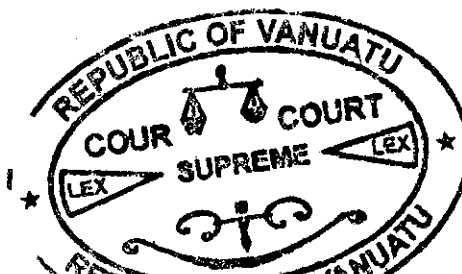
Third, there is a differential age between the Defendant's and the complainant's age. The Defendant is 40 years of age and the complainant is 21 years of age. There is a differential age of 20 years between the Defendant and the complainant. The Defendant is an adult and mature person.

As to an appropriate sentence, Mr Malantugun submitted that a starting point for the offence of indecent assault should be 2 years while a starting point for incest should be 4 years.

For the defence, Mr Bal submitted by conceding the facts and the aggravating features as provided by the Prosecution on behalf of the State.

Mr Bal submitted the following mitigating factors are present in the present case:

- That the defendant pleads guilty at the first opportunity given to him by the court in respect to the offence of indecent assault and it is a sign of remorse and contrition. As a result of which the court should allow 1/3 deduction of the sentence for the Defendant's early guilty plea.



- That the Defendant is a first time offender and that he has no previous convictions.
- That he cooperated with the police.
- That he had promise not to commit the same offence or any other offences.
- That he has performed a custom reconciliation ceremony to the victim complainant at the nakamal at lopuna village.

Unfortunately, the view of the victim is not known. However, given that there has been a reconciliation ceremony which required the Defendant to provide a pig, 2 heads of kava, 2 mats and 500 vatu in November 2013, it would appear that there has been some healing in the disturbed relationships within the wider family.

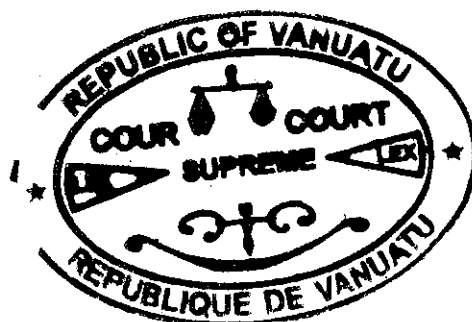
Mr Bal submitted and accepted a suspended 9 months imprisonment for the offence of indecent assault and a sentence of 2 years imprisonment for the offence of Incest.

The police investigation into this complaint resulted in the Defendant being arrested and detained in September 2013 from 27 September to 19 December 2013, (a total period of 2 months and 19 days) before the trial.

In my view, for a father to commit indecent assault on his daughter and to initiate sexual intercourse is the same as a stepfather with his stepdaughter as in the present case.

Offences of sexual nature always attract an imprisonment sentence term. The courts of the republic condemn in the strongest terms sexual offences in general and particularly sexual abuses involving children and family.

The general approach of the court in respect of sexual offending both within the family and generally are fully discussed in public prosecutor –v- Gratien Bae [2003] VUCA 1, Criminal Appeal Case No. 3 of 2003 which is consistent with earlier decision of that court in Public prosecutor-v- Kevin Gideon [2002] VUCA7; Criminal Appeal case No.3 of 2001 and which is then followed what is said by the same court in Peter Talivo –v- Public Prosecutor [1996] VUCAV 2: Criminal Appeal No. 2 of 1996. The position of the court is reflected in the following passage:



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"There is an overwhelming need for the court on behalf of the community to condemn in the strongest terms any who abuses young people in the community... It is totally wrong for adults to take advantage of their immaturity.

It will be in the most extreme of cases that suspension could ever be contemplated in the case of sexual abuse. There is nothing in this case which brings into that category. Men must learn that they cannot obtain sexual gratification at the expense of the weak and the vulnerable. What occurred is a tragedy for all involved. Men who take advantage sexually of young people forfeit the right to remain in the community: (Public Prosecutor -v Kevin Gedion [2002] VUCA 7)

In this case, considering the seriousness and the aggravating factors, an appropriate starting point is:

- 3 years for indecent assault;
- 4 years for incest.

I accept that the Defendant is remorseful for his actions which is reflected in the acknowledgement that a custom reconciliation ceremony has been undertaken.

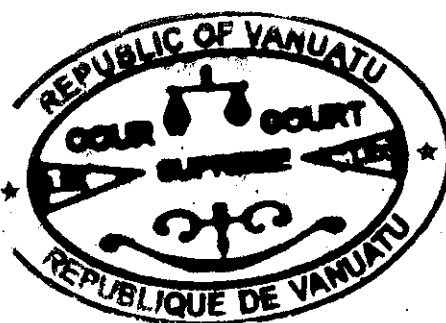
In respect to the offence of indecent assault, the Defendant pleads guilty at the first opportunity given to him by the court. He is entitled to one third (1/3) deduction which results in a sentence of 24 months imprisonment.

In respect to both offences of Indecent Assault and Incest, I make a deduction of 12 months against the sentence that would otherwise been imposed on both offences. That leaves me with a sentence of 12 months imprisonment on Indecent Assault and 36 months of Incest.

I also consider the fact that the Defendant has been in custody for almost 3 months. This will be accounted in the sentences that would otherwise have been imposed.

In the end, I sentence Defendant John Tangiat to 12 months imprisonment for Indecent Assault and 36 months imprisonment for Incest.

I treat the two offendings as part of the same criminal transactions which are initiated and insisted upon by the Defendant with his stepdaughter.



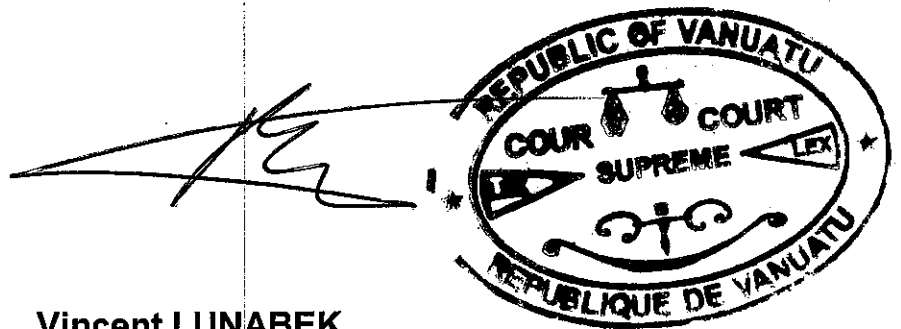
I order that the Defendant shall serve his sentences on both offences concurrently. This means that Defendant John Tangiat shall serve a total imprisonment term of 36 months.

I further order that the Defendant's sentence of 36 months imprisonment is deemed to start on 19 December 2013.

Defendant John Tangiat has 14 days to appeal this sentence if he is unsatisfied with it.

DATED at Rovo Bay, Epi this 26th day of February 2014

BY THE COURT



**Vincent LUNABEK
Chief Justice**