

PUBLIC PROSECUTOR vs. EDMON OBED

Coram: *Justice Chetwynd*

Counsel: *Ms Taiki for Public Prosecutor
Mr Tevi for Defendant*

Date of Hearing: *28th November 2017 at 9:00am*

SENTENCE

1. I have read and heard the very helpful submissions of prosecution and defence counsel. I have also taken note of what is said in pre-sentence report from the Probation Service.

2. The Defendant has entered pleas of guilty to 7 counts of sexual intercourse without consent contrary to sections 90(a) and 91 of the Penal Code [Cap 135]. The complainants are the adopted daughter and wife of the defendant. The offences took place over a period of some 18 months from May 2015. The daughter was 19 years old at the time. On some occasions when sexual intercourse took place the daughter was also made to carry out acts of fellatio and was subjected to acts cunnilingus. On other occasions the daughter was made to have sex whilst her step mother was present. All the sexual activity was unprotected. Most of the offences were committed in or near the family home.

3. Both complainants were frightened of the defendant. He often made threats against them and got angry if they did not do as they were told. They knew him as a violent man and had no doubts that he would beat them if they continued to refuse what he told them to do. The adopted daughter has described how she was very uncomfortable about what was going on and how she did not want to participate in the sexual activity. She did not consent to what she was told to do but feared the defendant would retaliate against her or her step mother. The step mother was also

a reluctant participant but was just as concerned for her safety and that of her children including her adopted daughter. Both complainants were adamant they did not consent to what they were told to do.

4. It is obvious that the defendant is bound to receive a substantial sentence in respect of the offences admitted but the difficulty in sentencing him for so many offences committed at different times is that if sentences were made to run consecutively the total sentence would likely as not offend against the principles of totality. This issue was discussed by the Court of Appeal in the case of *Boesaleana*¹.

“There can be substantial debate as to the approaches which can be applied in sentencing. But it is essential that the Court does not become lost in formulae or arithmetic calculations but rather looks in a general and realistic way at the entire offending, assessing all relevant aggravating and mitigating factors, and then reaches a sentence which in its totality properly reflects the culpability which has been established”

Later the court said:

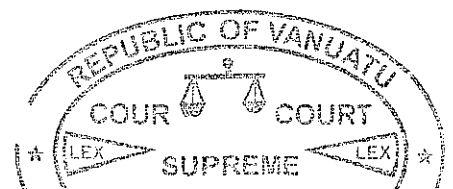
“... it should be remembered that in any case the sentencing of a prisoner is not an exact mathematical science but a nuanced art. It is essential that every Judge, whatever methodology they employ, looks to see whether the overall sentence is commensurate with the established culpability of the particular accused person.”

5. The facts of *Boesaleana* were similar to those in the present case:

“It is now clear that from 2007 the Appellant had been abusing an adopted daughter and one of his own natural children. ... the offending included various offences of sexual activity all of which can be condemned in the strongest terms.”

The Court of Appeal suggested a way to deal with sentencing in such cases:

¹*Boesaleana v Public Prosecutor* [2011] VUCA 33; Criminal Appeal 07 of 2011 (25 November 2011)



When a Court is having to sentence a convicted person who faces many counts and more than one victim, it is often beneficial to decide what is the most serious offending and to impose a lead sentence on that which properly takes account of all aggravating factors and then to impose concurrent sentences in respect of other offending as that is appropriate."

The Court added:

"That would be the best way to deal with matters like this. Across the entire spectrum, it is clear that the most serious offences are those of rape. The starting point for rape is 5 years but what are the aggravating factors here?"

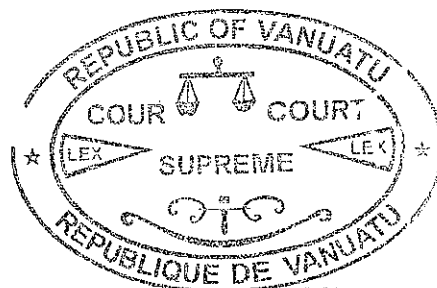
The Court then went on to consider various aggravating factors found in the case and then concluded:

"When these factors are all assessed, starting from the 5 year starting point, we are satisfied that on all the rape counts, the appropriate end point at this stage could not be less than 18 years."

Next the court said:

"When the most serious offending is dealt with in that way, it is then not appropriate to impose additional cumulative sentences in respect of matters which have already been encompassed as aggravating factors. The inter family aspect which is incest has been captured. The various attempts to commit offences become part of that overall situation. The three counts of act of indecency which were having intercourse with one daughter while using the other as a guard or lookout, equally are subsumed within the assessment which has occurred."

6. The final matters the Court was required to bear in mind in deciding on the final sentence were the mitigating factors :

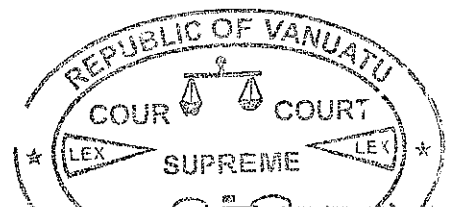


"Having undertaken that exercise the Court is then required to consider the mitigating factors which exist".

Having considered all these issues the Court was in a position to decide the final sentence:

"By undertaking this exercise we have ensured that all the relevant factors which require attention in sentencing are considered but only once. Further, it ensures that overall there is a sentence which in its totality is commensurate with the admitted culpability."

7. In the present case it is therefore necessary to look at aggravating factors. There are a number of grave aggravating factors in this case. First, these offences involved a father and his child, albeit an adopted child. The adopted daughter had been living with the defendant since 2008. She was entitled to expect she would be treated and protected just like any other child of the family. Instead she was sexually abused and that cannot be considered to be anything other than a contemptible breach of trust.
8. Furthermore the offences occurred in or near the family home. The complainants would have believed that to be a safe place but clearly it wasn't
9. Although the daughter was not a young child at 19 the age difference was quite marked as she was just half the age of the defendant. Even as a young adult her mental well-being would have been substantially harmed by what she had had to undergo. She lost her innocence in most cruel circumstances.
10. The sexual abuse involved unprotected sex with all the dangers that entails and there were other sexual acts that the complainants were forced to participate in which no doubt added to the daughters sense of degradation and humiliation. The abuse was repeated regularly over a period of 18 months.
11. Bearing all these aggravating factors in mind and given that any offence of rape without aggravating factors or mitigation is likely to attract a sentence of 5



was put in *Boesaleana*, "the appropriate end point at this stage" could not be less than 18 to 20 years.

12. The mitigating factors in this case are rather limited. The defendant is a man of good character and of course should be given some credit for that. His sentence should be reduced by 9 months. He also participated in a custom reconciliation ceremony when extensive custom compensation was paid over. Whilst the amount of compensation is not in itself important, participation in the ceremony does show the defendant feels some remorse for his despicable behaviour. He is entitled to a further 12 months reduction in sentence. He is also entitled to have time served taken into account. He has been in custody 3 times spending 3 months there. That equates to 6 months time served.

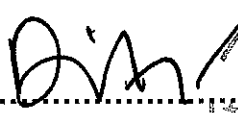
13. The defendant is not entitled to any deduction for an early guilty plea. He maintained not guilty pleas up until trial and it was only after the two complainants had completed giving evidence that he changed his pleas to guilty.

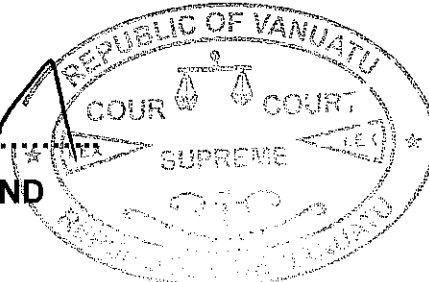
14. Taking the lower figure as set out in paragraph 11 above and then deducting those allowances in mitigation the end sentence is 15 years and 9 months imprisonment. For the remaining 6 counts of rape the defendant is sentenced to 15 years and 9 months imprisonment on each count, to be served concurrently.

15. There are no exceptional circumstances which could be considered to allow the sentence to be suspended. The defendant will serve the sentence of 15 years and nine months immediately and the sentence will be deemed to have started on 1st November when the defendant was last taken into custody.

DATED at Port Vila, this 30th day of November, 2017.

BY THE COURT


.....
D. CHETWYND
Judge



The seal is circular with the text "REPUBLIC OF VANUATU" at the top and "SUPREME COURT" in the center. It features a scale of justice and a star.