

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

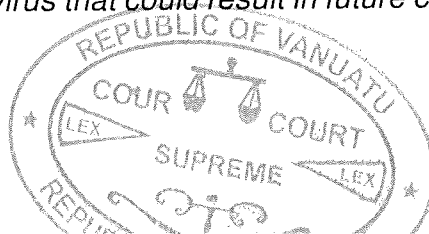
Criminal
Case No. 18/3196 SC/CRML

**PUBLIC PROSECUTOR
v.
ABERT THOMSON PHILIP**

Coram: Justice D. V. Fatiaki
Counsel: Ms. M. Tasso for the State
Ms L. Bakokoto for the Defendant
Date of Sentence: 28 February 2019

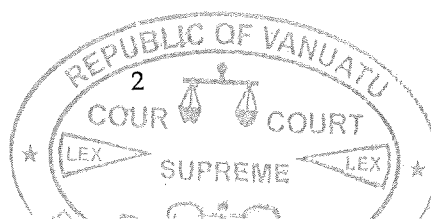
SENTENCE

1. On 11 December 2018 after three amended Informations, the defendant eventually pleaded guilty to an offence of Incest committed on his biological daughter some time in 2014 at Gaua Island. The daughter was about 13 years of age at the time.
2. The defendant is originally from Barret Village on Gaua Island but now lives in Port Vila with his second wife and children. He worked as a crew member on a cruise ship and had returned to Gaua island during his break to visit his elderly parents. That was when the offending occurred.
3. The defendant had gone at night, into his daughter's bedroom and had fondled her breast and vagina before accompanying her to his bedroom where he undressed her and had full penile intercourse with her. The complainant didn't report the matter at the time because she was afraid the defendant might beat her and she felt ashamed and feared that people would gossip about her. The matter was finally reported three (3) years later to a staff member of the Womens Centre who was visiting Gaua Island in October 2017.
4. The complainant was medically examined in November 2017 and her medical report discloses that she "*presented with a sexually transmitted illness causing chronic pelvic pain*". There was also a concern that the complainant may have "*already contracted the HPV virus that could result in future cervical cancer*". The



examining doctor also observed: "*The physical appearance of the vaginal canal and its opening is consistent with long standing sexual activity/abuse*".

5. In this latter regard it is a matter of public record that the complainant's uncle (the defendant's brother) was sentenced in the Supreme Court sitting at Gaua Island on 8 June 2018 to a sentence of 4 years imprisonment on two counts of Unlawful Sexual Intercourse with the complainant over a period of 3 years between 2012 and 2015 (see: Public Prosecutor v Blessing [2018] VUSC 101).
6. Under police caution and in the presence of defence counsel, the defendant beyond admitting that the complainant was his daughter from his first wife, denied he had anything to say about the offence ("*Mi no gat any something blo talem*"). To the probation officer however, the defendant admitted knowing that what he did was wrong but he nevertheless committed the offence because of his inability to properly control his sexual desires. The defendant also performed a custom reconciliation to the victim and his parents and Chief on Gaua Island where: 2 mats, a pig, 40 yards of calico material and VT7,000 cash was given and accepted in the ceremony.
7. Incest is an extremely serious offence. It carries a maximum penalty of 10 years imprisonment. It is an offence that occurs with full knowledge on the offender's part of the blood relationship that exists with his/her victim.
8. Additionally, since the Penal Code (Amendment) Act No. 15 of 2016 which came into force on 24 February 2017, Incest has been extended to cover both consensual and non-consensual intercourse with a 16 years old and carrying an increased maximum penalty of 15 years. Further subsection (8) of the Amended Act makes it an offence to commit incest with a victim under the age of 16 years punishable on conviction to life imprisonment. These amendments make it clear beyond any doubt that Parliament intends that offences of Incest should be viewed seriously and punished accordingly. The defendant is not being sentenced however under the new sentencing regime.
9. Your offending Abert Thomson Philip was opportunistic and premeditated but not repeated. It is aggravated by having occurred within the family home you shared with your daughter. There is an age difference of 30+ years between you and your daughter and your unprotected intercourse exposed her to the real possibility of contracting a sexually transmitted disease and even pregnancy. There is also a clear power imbalance between you and your daughter and the offence involved a gross violation of the nurturing and protective care that should exist between a father and his daughter.
10. What you did to your daughter was selfish and callous. It will adversely affect her for many years to come. Her impact report by the examining doctor clearly

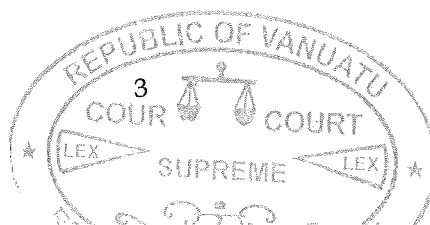


records that your daughter demonstrated all the classical psychological signs of incest and sexual abuse victims such as:

*“(1) Feelings of personal guilt and responsibility;
(2) Loyalty to and protection of her abusers;
(3) Feelings of personal dirtiness and contamination;
(4) Feelings of shame to appear in public;
(5) Confused ideas about her own sexuality ...; and
(6) Toleration of behaviours that most would protest with vigor making her vulnerable to repeated, ongoing sexual abuse in future”.*

The complainant's schooling was also badly affected, she found it hard to concentrate on her school work and eventually she dropped out of school.

11. In your favour and by way of mitigation Abert Philip you have pleaded guilty at the earliest opportunity and saved your daughter the additional trauma of having to publicly relate the sexual abuse she suffered at your hands. I also accept that you are a first offender and you performed a custom reconciliation ceremony shortly after the incident and on the day you left Gaua Island. You are the sole bread winner and provider for your family in Port Vila.
12. I have also considered the cases of: Public Prosecutor v Keven Gideon [2002] VUCA 7; Public Prosecutor v Gratien Bae [2003] VUCA 14; Public Prosecutor v Andy [2011] VUCA 14; Wotu v Public Prosecutor [2011] VUCA 36; Public Prosecutor v AR [2015] VUSC 31; and Public Prosecutor v Blessing [ibid].
13. In the Blessing case where your daughter was sexually abused by your brother over a 3 year period, the Supreme Court adopted a starting point of 8 years imprisonment and after allowing discounts for your brother's guilty pleas; his unblemished past and time spent in remand, the sentencing judge arrived at an end sentence of 4 years imprisonment.
14. In this case which bears a striking similarity to the Blessing case and involves the same victim albeit that the charge is different, I adopt a similar starting point of 8 years (96 months) imprisonment which is discounted by a third ie. 32 months for your early guilty plea and a further discount of 6 months for your unblemished past. Finally I deduct a further 6 months for the custom reconciliation ceremony and time spent on remand as well as paying due regard to the 4 years that have elapsed since the commission of the offence during which time there is no suggestion that you committed other offences. This gives an end sentence of [96 – (32 + 6 + 6)] = 52 months imprisonment ie. 4 years and 4 months imprisonment.
15. I am fortified by the observations of the Court of Appeal in the Gideon case where the Court, in allowing a prosecutor's appeal against a suspended sentence for an offence of Unlawful Sexual Intercourse with a child under 13 years of age, relevantly said:



“... we are of the view that the minimum sentence, which the judge could properly have considered for this respondent even allowing for the fact that this was a 25 year old with no previous convictions, who was in employment and otherwise well spoken of, was four years imprisonment ... there is an overwhelming need for the court on behalf of the community to condemn in the strongest terms any who abuse young people in our community. Children must be protected ... it is totally wrong for adults to take advantage of their immaturity”.


(my highlighting)

A *fortiori* where the adult concerned is the biological father of the child.

16. In summary, Abert Thomson Philip, for this offence you are sentenced to serve 4 years and 4 months imprisonment with effect from 11 December 2018.
17. You have 14 days to appeal this sentence to the Court of Appeal if you do not agree with it.

DATED at Port Vila, this 28th day of February, 2019.

BY THE COURT


D. V. FATIAKI
Judge.

