

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

Criminal
Case No. 19/2309 SC/CRML

BETWEEN: Public Prosecutor

AND: Henry Ben
Defendant

Coram: *Justice Aru*

Counsel: *Ms. J. Tete for the Public Prosecutor*
Mrs. P. Malites for the Defendant

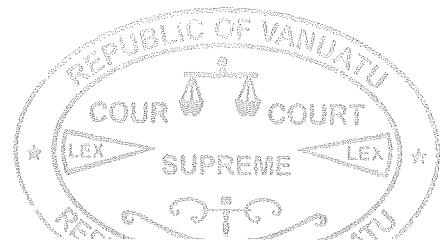
SENTENCE

Introduction

1. Mr Hendry Ben was charged with two (2) counts of incest. On 3 September 2019 he entered guilty pleas to both charges. He is convicted accordingly. The offence of incest committed consensually is punishable by a term of imprisonment not exceeding 15 years.

Facts

2. These offences occurred on the island of Tongoa. The complainant is the biological daughter of the defendant. At the time of the offending the complainant was just over 16 years of age.
3. The first incident occurred on 29 March 2019 when the complainant was at home in her room. She asked her father to bring her mobile phone which he did. Then she asked him to bring her ear piece. When he returned with the ear piece the complainant dropped the lava lava covering herself to expose her naked body. She then pulled out his penis and got him on the bed where they had sexual intercourse.
4. The second incident occurred during the period between 21 April and 10 May 2019. When the complainant was at her grandparents' house. She was at home. After having her bath she had a towel around her body. Her father returned to get something and noticed her in the towel and they had consensual sex.
5. During Easter weekend starting on 19 April 2019 there was a family picnic where everyone went together into camp at Panita village. The camp was held on the beach. The complainant and her family also attended. During the camp, the complainant confided in her aunt Mrs Winnie Sam that her father was having a sexual affair with her. The complainant was worried that she might get pregnant and sought her aunt's assistance to move out of the house. Her aunt agreed to help her and approached other



family members. The complainant's grand parents took the complainant from the house on 10 May 2019.

6. The complainant lodged her complaint with the Police on 17 May 2019. Her mother told the Police she knew nothing of the affair until the defendant admitted the offending to her. During his interview under caution, the defendant admitted to having consensual sexual intercourse with his biological daughter on two occasions.

Aggravating factors

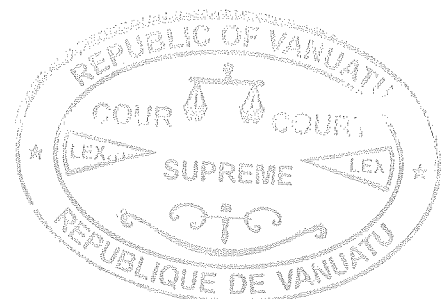
7. There are a number of aggravating factors of the offending. There was a breach of trust between father and daughter. Furthermore there is an age disparity of 23 years. The offending was repeated. And it occurred in a family home where the defendant as a father should act in the best interests of the child in protecting her from such acts.

Starting point

8. The guiding principles for this type of offending are set out in **PP v Bae** [2003] VUCA 14.
9. Although in this case, the complainant took the initiative and seduced her father into having sex with her, he being a mature man did nothing to resist the childish behaviour of his 16 year old daughter.
10. I adopt a starting point of 6 years imprisonment.

Personal factors

11. The defendant is 39 years old and comes from Lumbukuti village on the island of Tongoa. He left school at class 4 and now earns his living as a farmer and gardener. He started off by assisting his father in cutting timber. He participates in community activities and is now married with children, one being the complainant. He suffers from leg pain after being hit by a fallen tree trunk.
12. The defendant is a first time offender and I take that into account and deduct 8 months reducing his sentence to 5 years and 4 months imprisonment. The 4 months is deducted to reflect the time spent in custody further reducing the sentence to 5 years imprisonment.
13. He cooperated with the Police investigation and as a sign of remorse, performed custom reconciliation to his wife and family with a pig valued at VT 15,000, 4 mats and some root crops and fruits. He also entered a guilty plea at the earliest opportunity. Considering these factors he is entitled to the full one third discount on his sentence.

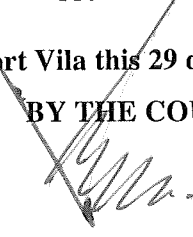


End sentence

14. The end sentence is rounded off to 3 years imprisonment effective from 21 October 2019 when he was remanded into custody pending sentence.
15. Mr. Henry Ben, if you are not happy with this decision, you have 14 days to appeal.

DATED at Port Vila this 29 day of October, 2019

BY THE COURT



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**D. Aru
Judge**

