

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

Criminal
Case No. 18/3272 SC/CRML

PUBLIC PROSECUTOR

V

MM

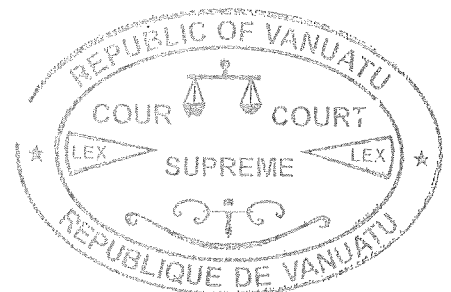
Before: Justice D. V. Fatiaki

Counsel: Bertha Pakoasongi for the Public Prosecutor
Linda Bakokoto for the Defendant

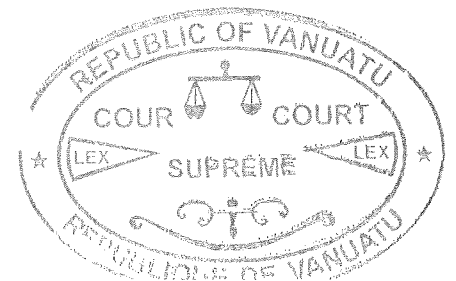
Date of Sentence: 08 March 2019

SENTENCE

1. The defendant (**MM**) was arraigned on 11 December 2018 on charges of Incest (Count 1) and Unlawful Sexual Intercourse (Count 2) with his biological daughter (NM) who was 13 years of age. The defendant pleaded guilty ("*hemi tru*") to both offences but, after discussions between defence counsel and the prosecutor, a nolle prosequi was entered on Count 2 and the defendant's plea was withdrawn and he was discharged in accordance with section 29 of the Criminal Procedure Code (cap. 136).
2. The offence was committed at Folland village, West Epi Island on an unknown date in June 2018. The defendant had gone to where his daughter was sleeping with her siblings and he had called out her name four (4) times until she finally woke up and went to him. He took her to another room and told her to undress but she refused. He then insisted and repeated his demands and eventually, out of fear, she removed her under pants. The defendant made her lie on his bed and after parting her legs he proceeded to have full penile intercourse with her until he ejaculated outside her body. The defendant warned his daughter not to talk about or tell anyone about what he had done to her.



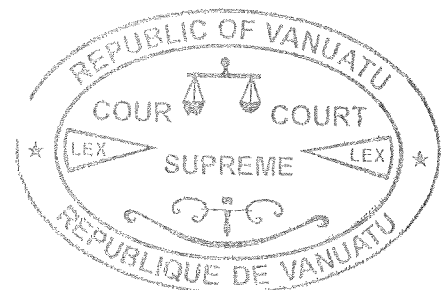
3. The defendant was arrested and under caution made a voluntary statement admitting the offence including warning his daughter not to tell anyone or talk about the incident. He claims he apologised to his daughter after the incident and even said "goodnight" to her before going to bed. Finally as some sort of justification, the defendant claims he committed the offence because his wife had deserted the family 2 years earlier leaving him to raise their 4 daughters and 2 sons on his own.
4. Let me say this at once to you MM. What you did to your daughter was disgraceful and inexcusable. She is not your wife. You also claim that your daughter often sleeps fully naked and that had tempted you to commit the offence. I totally disbelieve you in your belated attempt to justify your behaviour. Firstly, your daughter said after she had gone to you, you insisted several times that she undress which is at odds with her being asleep naked; Secondly, you admit calling out to her while she was sleeping. This latter fact strongly suggests some planning and pre-meditation on your part and is inconsistent with the spontaneous temptation that you claim led to your fall from grace.
5. Even if your daughter sleeps naked as you claim (which I do not accept), as her father you should have exercised more self-restraint and resisted whatever unnatural temptation you might have felt on seeing her in that naked state. In your case instead of nurturing and protecting your daughter, you sexually abused her to satisfy your carnal lust.
6. Your offending is also aggravating by the following factors:
 - The victim was your biological daughter and lived under your care and protection;
 - You are a sexually mature father of 38 years and your young immature daughter was just 13 years of age. There was an age difference of 25 years between you;
 - The offence occurred in the family home you shared with your daughter, a place where she was entitled to feel safe and protected;
 - Intercourse was unprotected and exposed your daughter to the risk of contracting a sexually transmitted disease;
 - As already pointed out, there was an element of pre-mediation and planning in the commission of the offence;



- Finally you warned your daughter not to tell anyone or speak about the incident.
7. Your daughter's victim impact statement prepared in January 2019 speaks of her shame of going to school and walking about with her friends and her fear of being the subject of community gossip. Her concentration has been adversely affected and she has lost interest in schooling. She also feels shame whenever she sees your face and she no longer wishes to see you anymore. In her own touching words:

"Mi wantem talem se taem we mi faisem problem ia nao tingting mo fasin blong mi i change i nomo olsem before. Before tingting blong mi mo fasin blong mi i oraet nomo olsem wan smol girl be taem fasin ia i happen long mi i changem tingting wan taem mo ol behaviour blong mi". (What happened to me changed my thinking and behaviour as a small girl for ever).

8. Incest carries a maximum penalty of 15 years imprisonment. It is a serious offence committed with full knowledge of the close relationship that exists between the offender and his victim. Inevitably there is a power imbalance between the perpetrator and his/her victim. Having said that, I accept that in this case, the offence was not repeated and no observable injuries were caused to the victim. As a starting point I adopt a sentence of 6 years imprisonment.
9. By way of mitigation I extract the following from MM's pre-sentence report and defence counsel submissions:
- The defendant is a first offender and co-operated fully with police investigations and made a voluntary confession under caution;
 - The defendant pleaded guilty at the earliest opportunity;
 - The defendant expressed his shame and remorse to defence counsel;
 - The defendant was deserted by his wife and has had to raise their 6 children on his own for the past 3 years. He was under considerable stress but by all accounts was able to keep his family together and well provided and cared for until the unfortunate incident occurred;
 - The defendant was remanded in custody from 25 August 2018 till 23 November 2018 the equivalent of serving a sentence of 6 months imprisonment;



10. For your personal mitigating factors, I deduct 12 months leaving a sentence of: $(72 - 12) = 60$ months imprisonment. From that 60 months I discount a further one third (ie. 20 months) in recognition of your early guilty plea which has saved your daughter from the additional trauma of having to testify in Court about her ordeal at your hands. Accordingly your end sentence is: $(60 - 20) = 40$ months imprisonment less the 3 months you spent in remand giving a final end sentence of $(40 - 3) = 34$ months (2 years and 10 months) imprisonment with effect from 11 December 2018.

11. Furthermore, in exercise of the Court's power under section 95(3) of the Penal Code (Cap 135) the defendant is divested of all authority and guardianship rights over his daughter NM and in his place, the daughter's natural mother is appointed her sole guardian from hence forth.

12. MM is advised of his right to appeal this sentence if he does not agree with it.

DATED at Port Vila this 8th day of March, 2019.

BY THE COURT



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D. V. FATIAKI

Judge

