

PUBLIC PROSECUTOR v QUENDON ADIN

Coram: *Hon. Chief Justice V. Lunabek*

Counsel: *Mr D. D. Boe for the State*
Mr A. E. Bal for the Defendant

Date of Plea: *11 July 2022*

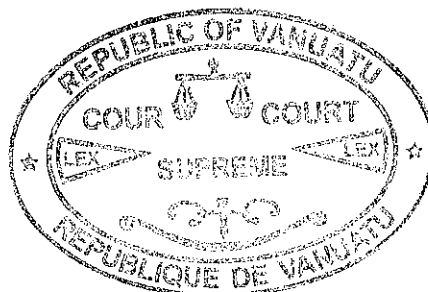
Date of Sentence: *05 August 2022*

SENTENCE

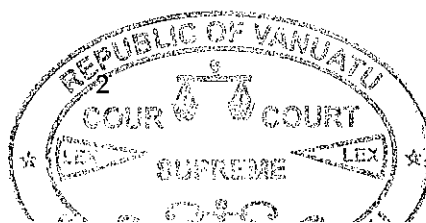
A. INTRODUCTION

1. This matter was initially listed for two (2) days trial to begin on 14 July 2022 in Luganville, Santo.
2. On 11 July 2022, the court was notified of Quendon Adin's intention to change pleas. He was, thus, brought before the court for plea on the same day.
3. Quendon Adin, you appear today for sentence having pleaded guilty to two counts of incest, contrary to section 95(1)(b), 95(4) and 95(5) of the Penal Code.
4. You were discharged for sexual intercourse without consent based on application filed under Section 29 of the Criminal Procedure Code (CPC) by the Prosecution.

B. FACTS

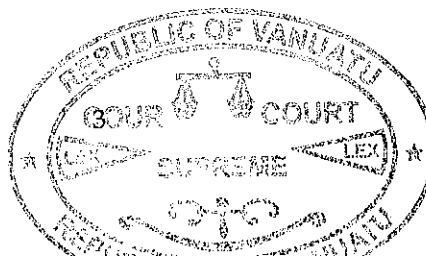


5. On 9 November 2018, the complainant Lydiana Garae lodged her complaint to the police against you.
6. She was sick and hospitalized in 2016. From that year through to 2018, she is required to attend Kerembi hospital for medical check – ups monthly.
7. On one Friday in April 2018, she was returning home after attending Kerembi Hospital for her medical checkup when she saw you driving passed her in your transport truck.
8. On the side of the big road at Nasiusiu area, she was shocked when you run towards her and grasping her hand firmly. You asked her to follow you to the sea side area. You hold her hand sturdily and taking her into cave. You asked her to perform oral sex on you while holding on to her hand. Then, you forced her to seat down. You removed your penis and inserted it into her mouth whilst holding on to her head and hand.
9. Also, you partly pulled down her underwear, removed your penis from her mouth, rose up her leg and inserted your penis into her vagina and had full sexual intercourse with her. She tried to kick but was not successful because your body build is far bigger than her. You continued to have sex with her until you ejaculated into her vagina.
10. She returned home crying and with fear. She did not tell her husband (Jano Garae) immediately until June 2018 when she disclosed it to him in the presence of Basil Garae.
11. Prior to that incident, on one Monday of April 2018, she was returning home from her medical checkup and she met you on her way. You offered her lift to Narovorovo. You stopped the truck at Malanvaliu ad indicated to her that you wanted to go out with her but she refused. She told you that you are cousins and she regarded you as brother because your grandmothers are biological sisters.
12. Basil Garae and Jano Garae confirmed that the complainant told them in June 2018 that you had caused her to perform oral sex on you and that you had sex with her.
13. The complainant and you are closely family related. You are cousins. She regarded you as brother and you regarded her as sister. Your grandmothers are sisters. You know about this relationship.
14. In your caution statement, whilst acknowledging your rights you admitted that:



- You had sex with the complainant but said that it was consensual;
- Because the complainant does not have money to pay for transport fare so she offered her body to you for sex;
- You had oral sex first before inserting your penis into her vagina;
- You did not force her and that you gave her VT2,000;
- The complainant is your cousin sister.

15. I peruse the submissions of the prosecution and the defence counsel. I consider the statement of the Court of Appeal in *Public Prosecutor v Gideon* [2002] VUCA 7. I have also read the judgment of the Supreme Court in *Public Prosecutor v Bulewak* [2013] VUSC 149; Criminal Case 27 of 2013 (4 September 2013) where a mother (of 47 years old) and her biological son (of 27 years old) have sexual intercourse. The maximum sentence was 10 years imprisonment. Both defendants (mother and son) received 8 years imprisonment as a starting point sentence. The son received an end sentence of 3 years 8 months imprisonment effective from 19 June 2013. The mother received an end sentence of 3 years and 8 months and the judge suspended it for a period of 2 years. The difference between the mother and her son was that the son was the instigator with two other sexual intercourse with her biological mother. The imprisonment term of the mother was suspended because of her family circumstances and responsibilities to her children and relatives in the absence of her husband.
16. I take note that in 2016, Section 95(2) of the Penal Code has been amended. The maximum sentence was increased from 10 to 15 years imprisonment. It was effective from 24 February 2017.
17. In the present case, the following aggravating circumstances are present:
- (i) Some degree of planning;
 - (ii) The offending was repeated;
 - (iii) The sex was unprotected;
 - (iv) There is some degree of force used by the defendant to commit sexual intercourse; and
 - (v) The emotional stress by the victim as she was sick at the time.



18. I set an appropriate start sentence of 4 years and uplifted to 5 years considering the aggravating factors. The total sentence is 5 years imprisonment.
19. In mitigation, the defendant is a first time offender; he cooperated well with the police and admitted the allegations of incest from the start. He was remorseful and has performed a custom reconciliation with the victim and her husband. I allow 1 year for those mitigating factors. The sentence is reduced now to 4 years. I allow another 3 months for the delay in the prosecution of the defendant from the commission of the offence in 2018. The sentence is reduced further to 3 years and 9 months imprisonment. I allow 25% of that sentence to reflect on his guilty pleas from the start. The sentence is further reduced to 2 years and 10 months imprisonment. That is the end sentence of the defendant.
20. I consider that it is a serious offence bearing in mind of the new maximum sentence of 15 years imprisonment (since 2017) which reflected the intention of the legislature to that effect and few cases referred to me and including the case of *PP v Bulewak* [2013] VUSC 149. In the present case, I decline to suspend the defendant's end sentence of 2 years 10 months imprisonment. I note that the defendant has already spend in remand:
- 57 days in 18 December 2018 to 30 January 2019; and
 - 6 months in 2022 from 22 March 2022 to his sentence on 22 August 2022.
21. I deduct 57 days spent in 2018 – 2019 from the end sentence of 2 years and 10 months. The remaining end sentence is 2 years 9 months and 3 days imprisonment.
22. I order that defendant Quendon Adin shall serve an end sentence of 2 years 9 months and 3 days deemed to commence on 22 March 2022.
23. Defendant Quendon Adin has 14 days to appeal this sentence if he is dissatisfied with it.

DATED at Port Vila, this 22nd day of August 2022.

BY THE COURT


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Hon. Chief Justice V. Lunabek

