

PUBLIC PROSECUTOR

v

USUA PHILIP

Date: 25 November 2022
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr G. Simeon
Defendant – Mr R. Melsul

SENTENCE

A. Introduction

1. The Defendant Usua Philip pleaded guilty and accepted the brief facts relating to 3 charges of incest. He was convicted on his own pleas and the admitted facts.

B. Facts

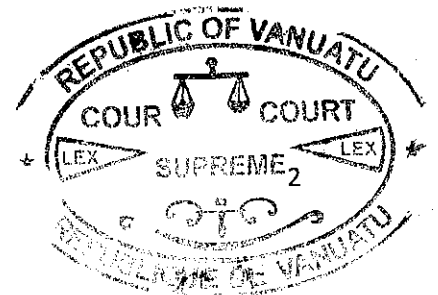
2. At the time of the offending, the complainant was 16 years old and Mr Philip 48 years old. Mr Philip is the complainant's biological father.
3. The offending occurred on 3 occasions: twice on 29 April 2022 and once on 30 April 2022.
4. Early in the morning on 29 April 2022, Mr Philip went into the kitchen where everyone was sleeping and started groping the complainant who was asleep. She awoke petrified. She begged Mr Philip to stop. This infuriated him. He told the complainant that he would assault her with a bottle of wine and kill her. He told her to get up and follow him to Entani Lodge. She did as she was told.
5. On the way, he told her to follow him to an isolated area. There, he told her to remove her clothes. She cried and told him that she would not do it because he is her father. Mr Philip again threatened to kill her if she did not do what he said. The complainant removed her clothes and lay on the cloth that Mr Philip had taken from the house and laid

on the ground. He then removed his clothes and lay on top of the complainant and had sexual intercourse with her. He ejaculated into her vagina, removed himself off her and told her to get dressed. She had cried throughout the ordeal and was shaking all over. She was a virgin prior to the intercourse so felt extreme pain. Mr Philip berated her for crying and told her to stop. He also warned her not to tell anyone or he would kill her. As a result, she did not tell anyone including her mother. They returned home shortly afterwards (Charge 1).

6. At about 7am on 29 April 2022, Mr Philip asked the complainant to help him fetch water from a nearby creek. On their way home, he told her that they would follow another route home. She hesitated and asked why they needed to take a longer route. Mr Philip grabbed a piece of wood and threatened to beat her with it so she did not say anything else and followed him.
7. On the way, Mr Philip told the complainant to again remove her clothes. She refused. Infuriated, he threatened again to kill her and so she gave in, removed her clothes and lay on the ground. Mr Philip had sexual intercourse with her again. He ejaculated into her vagina, removed himself of her and instructed her to get dressed. He warned her to act normal so that no one at the house would get suspicious (Charge 2).
8. At about 6am the next day, 30 April 2022, Mr Philip told his wife that the complainant would help him to collect a piece of corrugated roofing from the Council's House. When they arrived at the house, Mr Philip asked the complainant to have sex with him again. She refused. He grabbed a piece of window louvre and threatened to hit her with it. The complainant succumbed to his demands, lying on the floor and he had sexual intercourse with her. He ejaculated into her vagina again, removed himself and told her to get dressed. He threatened that if she told her mother or anyone else and if he goes to prison, he will kill her when he is released from prison. He told her that if her mother asked why they had taken a long time to return home, she was to say that it rained so they were only able to return home after the rain had stopped (Charge 3).
9. The complainant eventually told her relative Mrs Keimat Philip what her father had done to her. The next day, 1 May 2022, Mrs Philip took the complainant to the Police Station at Isangel to lodge a complaint.
10. Mr Philip elected to remain silent when interviewed by the Police.

C. Sentence Start Point

11. The sentence start point is assessed having regard to the offending, its aggravating and any mitigating features, the maximum sentence set by Parliament and guidance provided by earlier cases.
12. The maximum penalties for offending against subss 95(1)(a), (4) and (5) of the *Penal Code* [CAP. 135] is 15 years imprisonment.
13. There are no mitigating aspects of the offending.



14. The aggravating factors include:

- The 32-year age differential. The Defendant took advantage of the complainant's vulnerability;
- The use of threats to make sexual intercourse happen;
- Exposing the complainant to the risk of sexually transmitted infection, pregnancy and congenital abnormalities associated with incestuous intercourse or 'in-breeding';
- The complainant was a virgin prior to the offending;
- He told the complainant not to tell anyone what had happened;
- The physical and psychological effect on the complainant;
- The offending was planned and premeditated; and
- The offending was repeated.

15. The Prosecution submitted that a sentence starting point of between 8-10 years imprisonment was appropriate, citing the cases of *Wotu v Public Prosecutor* [2011] VUCA 36, *Public Prosecutor v Ulas* [2018] VUSC 110, *Public Prosecutor v John* [2017] VUSC 103, *Public Prosecutor v Blessing* [2015] VUSC 31 and *Public Prosecutor v Philip* [2019] VUSC 15.

16. Mr Melsul submitted that the *Wotu*, *John* and *Philip* cases were distinguishable on the facts. He submitted that the *Blessing* case involved entirely different offences. He submitted therefore that the Court should adopt a 6-7 years imprisonment start point.

17. Having considered the submissions, and taking all matters into account, the global sentence start point adopted is 8 years imprisonment.

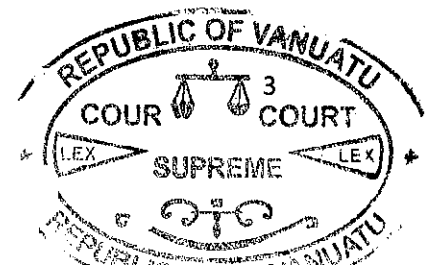
D. Mitigation

18. Mr Philip pleaded guilty at the earliest opportunity after the charges were amended. One third is deducted for his prompt guilty pleas.

19. Mr Philip is 48 years old. He lives with his wife and 4 sons, two of which he is supporting in school. He supports his wife to obtain medical treatment for her hypertension. They live next to Yasur volcano where planting crops is difficult therefore they rely on his earning money from his carpentry skills for their daily living. He is preparing for his sons' circumcision ceremonies.

20. Mr Philip has no previous convictions although that has little mitigatory value in cases of a sexual nature.

21. He has not performed a custom reconciliation ceremony with the complainant as she is residing with her mother on Aneityum. He is willing to.



22. Finally, Mr Philip has an important role in custom of *leninies*, taking care of the community nakamal and visitors to the community.

23. Two months are deducted for Mr Philip's personal factors.

24. Mr Philip served time in custody from 13 May 2022 to 3 August 2022 (effectively a 6-month period of imprisonment) and again since 24 November 2022. Accordingly, a further 6 months are deducted.

E: End Sentence

25. Taking all of those matters into account, the end sentences imposed concurrently are:

- a. Incest (Charge 1) 4 years 8 months imprisonment;
- b. Incest (Charge 2) 4 years 8 months imprisonment; and
- c. Incest (Charge 3) 4 years 8 months imprisonment.

26. These sentences are back-dated to commence from 24 November 2022.

27. The offending is too serious for the sentences to be suspended: *Public Prosecutor v Gideon* [2002] VUCA 7 and *Public Prosecutor v Bae* [2003] VUCA 14.

28. Mr Philip has 14 days to appeal.

**DATED at Isangel, Tanna this 25th day of November 2022
BY THE COURT**

VM Trier
Justice Viran Molisa Trier

