

CF

**PUBLIC PROSECUTOR -v- SION ROMAN**

**Coram:** *V. Lunabek CJ*

**Counsel:** *Parkison Wirrick for the Public Prosecutor*  
*Brian Livo for the Defendant*

**Date of hearing:** *12, 13 & 14 December 2011*

**Date of sentence:** *14 December 2011*

**SENTENCE**

Mr Roman Sion, this is your sentence. You are originated from Vatop village, East Vanua Lava and you are 35 years of age. You are initially charged with 4 counts of Incest, contrary to section 95(1)(a) (2) of the Penal Code Act [CAP.135].

On Monday 12 December 2011, at about 2.00pm o'clock in the afternoon, you entered "not guilty" pleas on each of the 4 counts charged against you. A trial was required. The prosecution informed the Court to call 3 witnesses. The prosecution actually opened its case and called its first witness, who is the complainant. For obvious reason, I call the complainant (Ms V.). Ms V. has given her evidence in chief. The Court adjourned the cross-examination of Ms V. by the defence counsel to Tuesday 13 December 2011 at 8.00am o'clock.

On 13 December 2011, before Ms V. is cross-examined, you asked your lawyer to change your original pleas on the 4 counts. The prosecution proceeded with minor amendments on counts 2 and 3 of the Information dated 30 November 2011. The prosecution withdrew count 4 charged against you. The Court then re-arraigned you and you entered "guilty pleas" on counts 1, 2 and 3 on the Information of 30 November 2011. You are convicted of these offences accordingly.

The brief facts of this case can be summarized as follows:

You are originated from Vatop village, East Vanua Lava, Banks group. You are married and you have four(4) children. The complainant of this case is your first born daughter, (Ms V.). In the year 2008, Ms V. attended Year 7 at Arep Junior Secondary School. She was about 16-17 years.



Sometime in April 2008, when you saw your daughter (Ms V.) was at one Abel's house, you asked her to have sexual intercourse with her. She did not respond to your sexual advances so you left and return back to Vatop village.

In August 2008, your daughter (Ms V.) left Arep Junior Secondary School and returned to Vatop village. She refused to return to school. On a night during August 2008, when (Ms V.) was at home, you asked her to have sexual intercourse with you when your wife was not in the house as she was at Sola. Your daughter (Ms V.) followed you in your bedroom and you have sexual intercourse with her in your bedroom. Again you have sexual intercourse with (Ms V.) on the following day after the first one in the day when her sisters were at the river and your wife was still at Sola, Vanua Lava.

The last occasion you have sexual intercourse with (Ms V.) was in your bush house at your garden at Vatop village sometime in 2009. At that time you met (Ms V.) and a little girl of 5 years of age in the garden. You locked yourself up with (V.) in the bush house and you had sex with her after which she returned home with the little girl of 5 years of age.

The law that you have broken is section 95 of the Penal Code Act [CAP.135] which prohibits a parent to have sexual intercourse with his child. This is a criminal offence and it is called incest.

Incest is defined by law under s.95 of the Penal Code Act [CAP.135] ("the Act") and it provides for the maximum penalty and other circumstances under which the offence of Incest is committed by a person.

Section 95 provides:

**"95. Incest**

- (1) *Incest is sexual intercourse between-*
  - (a) *parent and child (including and an adopted child);*
  - (b) *brother and sister, whether of the whole blood or of the half blood, and whether the relationship*
  - (c) *grandparent and grandchild, where the person charged knows of the relationships between the parties.*
- (2) *No person of or over the age of 16 years shall commit incest.*  
*Penalty: Imprisonment for 10 years.*
- (3) *Upon the conviction of any male of an offence or attempted offence under subsection (2) against any female under the age of 18 years, the Court may divest the offender of all authority over such female and if the offender is the guardian of such female, remove him from such guardianship and in such case appoint another guardian in his place."*

The offence of Incest carries a maximum penalty of 10 years imprisonment. It is a serious offence as reflected in the maximum penalty imposed by law.

The prosecution refers the Court to two (2) decisions of the Court of Appeal of Vanuatu which are the leading authorities with regard to the offences of Incest, namely **Public Prosecutor v. Gratien Bae**; Criminal Appeal Case No.03 of 2003 and **Solaise Abedingo v. Public Prosecutor**; Criminal Case No.03 of 1990. The prosecution refers the Court also to the authority of **Public Prosecutor v. Gideon**, Criminal Case No.03 of 2001 which is applicable and set approaches to be followed in sexual offence cases in general.



In **Solaise Abedingo v. Public Prosecutor**, the Appellant was 74 years of age. He was charged and sentenced by the Supreme Court judge for an assault committed against his granddaughter coupled with two other occasions of sexual abuses for a term of 8 years imprisonment. On appeal, the Court of Appeal reduced the sentence of 8 years to 5 years.

The case of **Gratien Bae** follows the approach set by the Court of Appeal in **Solaise Abedingo v. Public Prosecutor** No.03 of 1990.

**Gratien Bae** was charged with one count of incest against his daughter. However, he had continuously and in escalating seriousness, sexually abused his daughter over a number of years beginning when she was 12 years of age.

The Supreme Court judge sentenced **Gratien Bae** to 2 years imprisonment suspended for 2 years after he pleaded guilty to that count of Incest. The Public Prosecutor appealed that sentence and on appeal, the Court of Appeal allowed the appeal and stated that a term of 3 to 5 years imprisonment would be appropriate and the Court of Appeal would not interfere with such a sentence. However in this case because it is a State appeal, leniency was extended to the Respondent (**Gratien Bae**) and he is ordered to serve 2 years imprisonment (and the 2 years term suspension was cancelled).

The prosecution submitted the following aggravating facts are present in this case:

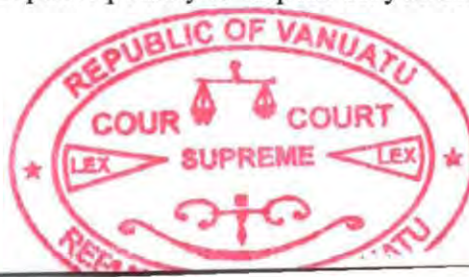
- (i) The age of the victim being 16 or 17 years of age at the first occasion;
- (ii) The grave breach of trust between father and daughter;
- (iii) The age of the defendant and the difference between his age and his daughter's;
- (iv) The offending was committed in the family sleeping house where the victim was supposed to feel safe and secure; and
- (v) The offending was repeated.

The prosecution, therefore, submitted the defendant is convicted on (3) counts of Incest and in light of the aggravating features present a starting point somewhere in the region of 6 to 8 years is appropriate (before mitigation).

The prosecution finally submitted that the usual one third reduction allowed for pleas of guilty entered at the earliest available opportunity is neither available nor appropriate in the defendant's case as the complainant in this case (the daughter of the defendant) was not spared the trauma and anxiety of giving evidence against her own father in open Court. And, so, any discount for the defendant's guilty pleas should be only very minor.

On your own behalf, your lawyer, Mr Brian Livo makes submissions to the effect that you pleaded guilty on three counts of Incest, contrary to section 95(1)(a) (2) of the Penal Code Act [CAP.135] after half day trial. You do not dispute any facts outlined by the prosecution. You admitted having sexual intercourse with your biological daughter during three occasions in 2008 and 2009. You acknowledge the seriousness of your offending which carries a penalty of 10 years imprisonment.

Your lawyer refers the Court to the judgment of the Court of Appeal in **PP v. Gratien Bae** [2003] 14; Criminal Appeal Case No.03 of 2003 (31 October 2003). Your lawyer submits that a custodial sentence would be appropriate penalty to impose on you for your offending



following the judgment of the Court of Appeal in **Gratien Bae** referred to above. Your lawyer submitted also that when imposing a sentence on you the Court should consider the following mitigating factors:

- You pleaded guilty after examination in chief of the complainant;
- You cooperated well with the police officers during the time of arrest and interview;
- You are the sole bread winner of your family of four children and your wife and you pay school fees of your two children;
- In your community, you are a hard working man. You are the chairman of Nelson Primary School and Chairman of Water Committee in your community;
- You are a subsistence farmer and you do farming for your living and your family;
- Your wife has gone through three operations when she gives birth to four children and now she cannot do hard work;
- You have performed a custom ceremony to your daughter and her uncle by giving one (1) pig, one (1) head of kava and 10,000VT to your daughter (V.) and her uncle.
- The custom ceremony was facilitated by Chief Reuben and Chief Esrom. Your daughter (V.) accepted the gifts.

When considering your sentencing, I heard, read and considered the Same Day Report provided by the Probation Officer, Mr Kalep Wilkins and I also heard, read and considered the submissions of the prosecution by Mr Wirrick Parkinson and the submissions of your lawyer, Mr Brian Livo.

Sion Roman, the offence of Incest is a serious offence. The courts on behalf of the community condemn in the strongest term offences of incest and other types of sexual offendings affecting children in the community. Behaviour of parents having sexual intercourse with their own children cannot be tolerated in the society and parents who do behave in this manner have no place in the society. They must be locked up in the Correctional Centres and deprived of their liberty and in the words of the Court of Appeal in [2003] VUCA 14:

*"Parents who used their children for their own sexual gratification will go to prison. It is almost impossible to imagine circumstances in which that will not be necessary response. This Court would anticipate that it will only be in the most truly exceptional circumstances, which are clearly and unequivocally demonstrated to exist, that this will not apply."*

The present case and the circumstances of your offending are not different. They warrant custodial sentence for the following reasons:

1. Imprisonment sentence is to deter other parents and members of the community not to abuse their children.
2. Imprisonment sentence is the highest mark of disapproval that the Court on behalf of the community denounce the behaviour of parents abusing their children.
3. Imprisonment sentence is to punish offenders of this type of offending.
4. Imprisonment sentence is a state response through the Courts to protect children from their parents abusers.



In the present case, the seriousness of your offending is aggravated by the following factors as set out by the prosecution submissions:

1. Your daughter was 16 years of age when you first had had sex with her.
2. Your offending constitutes a grave breach of trust between your daughter and yourself as her father.
3. You are 35 years of age and she is 16 and there is a difference between your age and her age.
4. Your offending was committed in the family's sleeping house where your daughter was supposed to be safe and secure, loved and care for; and
5. Your offending was repeated.

You are sentenced to 7 years imprisonment as a starting point in light of the above circumstances and aggravating features.

I now balance the aggravating features with the mitigating factors and after cross-referencing with each other, I assess and allow 2 years reduction from the 7 years starting point to reflect the fact that you are a first time offender, you cooperate well with the police.

In this case, it is not appropriate to allow the usual one-third reduction allowed for guilty pleas entered at the earliest available opportunity. Your daughter was not spared the trauma and anxiety of giving evidence against you in open Court before strangers before you entered guilty pleas. I give you a minor allowance of 3 months. I note that you have performed a custom ceremony to the victim before the complaints were officially made although you initially challenged the charges laid against you in Court. I take it that you are not remorseful. I allow a minor reduction of 1 month for the custom ceremony under s.35 of the Penal Code Act.

I finally note that you committed the offence of incest in 2008 and 2009 and the complaint was brought before the police authorities in August 2010 and you were dealt with in December 2011. If any delay is to be assessed I allow a further reduction of 3 months.

This brings me to a total end sentence of 4 years and 5 months imprisonment. The circumstances of your offending do not justify a suspension. You are sentenced to 4 years and 5 months imprisonment on each of the three (3) counts and to be served concurrently. You are ordered to serve 4 years and 5 months imprisonment with immediate effect.

You have 14 days from the date of this sentence to appeal this sentence if you are not happy with it.

**DATED at Sola, Banks this 14<sup>th</sup> day of December 2011**

**BY THE COURT**

**Vincent LUNABEK**  
**Chief Justice**

