

PUBLIC PROSECUTOR

V

LOUIS BOE

CASE No. 53/94

COUNT 1

Indecent Assault - Penal Code Act S 98(1)

COUNT 2

Unlawful Sexual Intercourse - Penal Code Act S 97(2)

COUNT 3

Incest - Penal Code Act S 95(1)

REASONS FOR SENTENCE

The three charges to which the accused has pleaded guilty, are said to be sample charges, which represent a series of offences committed by the accused over a period of more than 6 years. The evidence indicates that the accused established and continued, up until the time of his arrest, a sexual relationship with his daughter, which began when she was approximately 8 years old. In opening the case before me, the Learned Public Prosecutor described the course of conduct of the accused as the gravest example of sexual abuse of a daughter, which began when she was 8 years old. He said that it began with the gravest kind of indecent assaults, involved threats of violence eventually leading to acts of sexual intercourse, which was incest as well.

I agree with the Learned Prosecutor's view of this case and consider his remarks as entirely appropriate. This case represents an abuse of a child, a failure to offer the protection to a child that all children should be able to expect from a father and a practice which if it is common place, is destructive of the individual victims and of society itself. I think that the community should be aware that this conduct exists, because it is only by awareness of it's existence that there can be any move to prevent it.

The girl in her statement to the police, in describing the earliest of the incidents assaults tells how when she said she did not want to do what her father wanted, he threatened her with a knife.

The offences began after the accused's wife, the mother of the girl, went away from the family to teach at a school at Nduindui. The accused and his daughters, for there were three girls, lived at Walaha, West Ambae. The accused was entrusted with the care of his daughters and he abused that trust in the gravest way. For approximately 2 years, the accused repeatedly indecently assaulted his daughter by pushing his finger into her vagina. She did not report the matter to anyone because he threatened to beat her if she did.

From some time in 1990, until 1991, the accused was away from the family, firstly in the Solomon Islands and then working on a fishing boat. When he came back, the indecent assaults continued.

From 1992 until 1994, he commenced to and continued to have sexual intercourse with his daughter. The last time he had sexual intercourse with his daughter was on 5 October, 1994. The reason the offences stopped was not as a result of the accused deciding to stop. His daughter eventually reported the matters to her school principal. The principal reports that there had been obvious behavioural difficulties with the girl and that her attention to her school work and progress had suffered. This is typical of cases of gross sexual abuse.

Following the report to the principal, the matter was reported to the police. It is to be hoped that whenever cases of this kind are discovered, reports of the matter are made to the police. If this conduct is to be stopped or even reduced, then it is vital that the matters be reported. Behaviour of this kind has a lasting and permanent effect upon the victims and is damaging therefor, to the community as a whole. They are not matters which should be kept quiet. They are matters of great seriousness and shame and should be exposed, if ever offences of this kind are to be stopped.

The police acted as promptly as they could in this case and the defendant was interviewed on 19 October. He admitted that the report made by his daughter was true except that he denied that he had had sexual intercourse with her. He gave a detailed account of engaging in masturbation and of oral sex. There is no indication in my view of remorse in the account given by the accused. The reason he gave for doing these things with his daughter was his that wife was away and when he felt that he wanted to have sex, or had a need to have sex, he used his daughter. It was meeting his need, he said. He simply indulged himself without the slightest regard for his daughter.

The accused is 43 years old and is a Pastor of the Church of Christ. That a man of that position could behave in this way is almost beyond belief. It does neither he or his church any credit.

Little can be said by way of mitigation in a case of this nature. The best that can be said is that he has pleaded guilty and has therefor saved his daughter from the trauma of having to tell this shameful story in the courtroom. No doubt this would have been a great and harmful ordeal and I give him some credit for not putting her through it.

He appears in court as a first offender and this is a matter which I take into account in reducing the sentence that otherwise would have been given.

The charge of Indecent assault under Section 98(1) carries a maximum penalty of 10 years imprisonment. Unlawful sexual Intercourse under section 97(2), a maximum term of 5 years and Incest under section 95, 10 years. I think the following sentences appropriate in this case

Count 1. - Indecent assault

5 years imprisonment

Count 2. - Unlawful sexual Intercourse

3 years

Count 3. - Incest

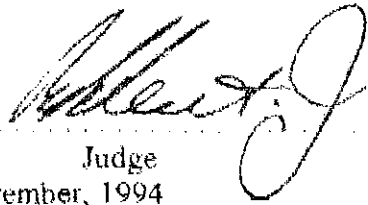
7 years imprisonment

I have to consider questions of concurrency of sentence. Where offences form part of an ongoing series of offences, which have not been detected, I think that it is appropriate to consider the overall criminality of the course of conduct in determining the effective total sentence. The Court must first, however, determine what it considers to be the appropriate sentence for each of the individual counts. The prosecution here has divided the conduct of the accused so as to bring representative counts rather than hundreds of individual counts. Having done so, I think is reasonable and proper in the circumstances. I think that the charges are so framed in a way which means that whilst substantial concurrency is called for, I do not think it appropriate to make the sentences entirely concurrent. The accused began by indecently assaulting his daughter. It might be thought that he was deliberately preparing her so that he could have sexual intercourse with her when she was older. He could have stopped his illegal conduct but he did not do so. After he had been away from the family he resumed the abuse of his daughter. I think that this makes it appropriate order some, but not total concurrency of the sentence on the first count with the sentences on the other 2. With respect to the second and third counts, they both in fact constitute the offence of incest. The third count relates to the last act of sexual intercourse, having occurred on a specific and known date. It was part of the series of offences which had taken place for some time. Accordingly I think that it is appropriate to order that the sentences on these counts be served concurrently.

The sentence of the Court is that three years of the sentence on count 1, be served concurrently with the sentences on count 2 and 3. The sentences on counts 2 and three are to be served concurrently with each other. Total effective sentence, 9 years imprisonment.

The sentence is to commence on 19 October, 1994, the date upon which the defendant was taken into custody.

The accused has the right to appeal against this sentence. If you wish to do so, you must do so in writing within 14 days of this date.



Judge

3 November, 1994

