

**PUBLIC PROSECUTOR - v - MAUTU MAHIT
MANUA MAHIT**

Coram: *Chief Justice Vincent Lunabek*

Counsel: *Ms Kayleen Tavoia, the Public Prosecutor
Mrs Bertha Pakoasongi for the Defendants*

SENTENCE

This is the sentence of the above-named Defendants: Mautu Mahit and Manua Mahit. They are respectively mother and son. Each of them is charged and pleaded guilty to the offence of Incest, contrary to Section 95(a) of the Penal Code Act [CAP.135].

The brief facts are that both Defendants live at Pango SDA area. From December 2008 to 11 February 2009, on different dates in their garden at Teouma and Pango SDA area, she had sexual intercourse with Manua Mahit, although she knows that Manua Mahit is her son. Defendant Manua Mahit admitted he had sexual intercourse with Defendant Mautu Mahit although he knows that she is his mother on many occasions between December 2008 to 11 February 2009.

Section 95 of the Penal Code Act is the prohibiting section. It provides that:

"95.(1) Incest is sexual intercourse between:

- (a) parent and child (including an adopted child);*
- (b) brother and sister, whether of the whole blood or of the half blood, and whether the relationship is traced through lawful wedlock or not; or*
- (c) grand parent and grandchildren,*



Where the person charged knows of the relationship between the parties.

(2) *No person of over the age of 16 years shall commit incest.*

Penalty: imprisonment for 10 years.

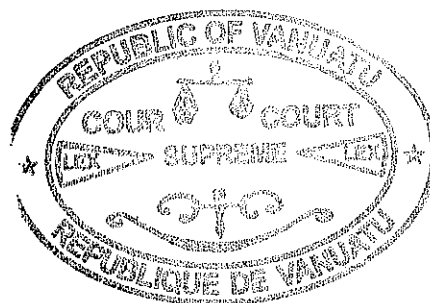
(3) *..."*

Mrs Mautu Mahit

The pre-sentence report shows that you attended Pango French School until class six. You underwent some training with World Vision in care giving with little children and painting.

You were awarded with a Certificate for your attendance. You do not possess any traditional or modern skill. You want to become a successful business woman in the future. You have six children of which five are males and one female. You adopted another girl who attends school with your other daughter. Most of your children live with you at your home in Pango village. After the offending, you had moved to Teouma because of some Court Order. You still maintain a good relationship with your extended families. They support your children while you are in Teouma. Mr John Andrew is your partner. He stated that he is living with you and you both maintain a good relationship together. Mr Collin Mahit is the big brother of your partner, John Andrew. He was previously married to you and you left him for his younger brother, John Andrew. Collin Mahit reported that prior to you and him breaking up, you had been having sexual relations with his younger brother, John Andrew. He said he still maintains a good relationship with you and your children. He said he is looking after your children at the moment.

You are a member of Mormon Church and you attend church every Sunday. You have a few episodes of high blood pressure where you have been hospitalized and this is because you said you worry too much. You do not have a serious alcohol or drugs problem.



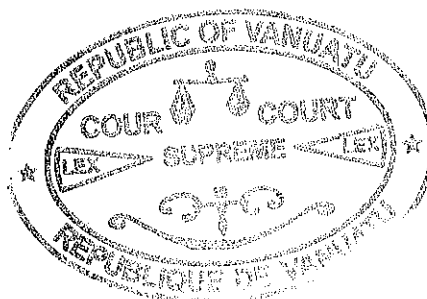
You work part time as house maid and you sell produces from your garden to earn money. You received a loan from Vanwood to set up a shop and received VT55,000 of which you are repaying VT3,500 per week.

You are 42 years of age. You admit and accept the facts alleged against you in the information charge dated 7 April 2009. You said the reason why you had sexual intercourse with your son was because you husband was always drinking kava and you and your husband were not having sex as often as you would like. Your son Manua Mahit was at home. He was 18 at the time of offending. He is now 19 years of age. You said when you were getting dressed he was there so you asked him if he has a "feeling" and he responded by agreeing to have sex with you. You said the sex between you and you son occurred when your partner, John Andrew, was away drinking kava or working. At the time of the offending you felt no guilt because of the pleasure you were receiving from it. You felt it was morally wrong to have sex with your son but you did not know that it was against the law. You thought the law only speaks against men having sex with their daughters. However, you have come to realize that the law also speaks against women having sex with their sons.

Mr Manua Mahit

You left school in 2005. You are now 19 years old. At the time of offending, you willingly participated to the sexual intercourse with your mother. You claimed that it was your fault because you were the one who asked your mother for sex. You feel ashamed when you see your father and your other siblings. Since your remand, you feel even more ashamed when you walk around town and also you worry about the outcome of your mother's sentencing. You do not want your mother to go to custody because she is old and sick.

The law prohibits sexual intercourse between a parent and a child. A parent means the father or mother of the child or the adopted father or mother of the child. The child means the girl or the boy of the parent or the adopted girl or boy of the parent.



The law reflects the prohibition by fixing a penalty. The offence of incest is serious offence. The seriousness of such an offence is shown in the maximum penalty of 10 years imprisonment imposed by Parliament.

Before I pass a sentence on each of you, I consider the intention of Parliament when it imposes a maximum penalty of 10 years. It is an indication of the seriousness of the offence. It warrants a custodial sentence. A mother cannot satisfy her sexual desires and gratification at the expenses of her own son. Equally, a son of 16 years of age cannot have his sexual experiments over his own mother. Both situations are against the law.

The appropriate sentence is 3 years imprisonment.

The prosecution submits that the following are aggravating features:

1. The breach of trust between parent and child.
2. Habitual offences over a period of three months.
3. This child has been psychologically traumatized by these sexual desires.

In this case, the only aggravating feature is the repetition of offending as facts shown from December 2008 to 11 February 2009 at Pango SDA area and Teouma garden for both Defendants.

The suggested aggravated feature based on the breach of trust between parent and child is refused. There is no factual evidence of such an aggravation. The offence is incest. It is admitted. It is consensual on facts as alleged although, not relevant for the nature of incest, contrary to Section 95(a) of the Penal Code Act [CAP.135].

3. The suggested aggravation based on the fact the child has been psychologically traumatized is rejected because there is no such evidence. No victim impact assessment. The child in this case is also charged. He pleaded guilty. He said it was his fault as he asked for sex to his own mother.



The sentence for both Defendants is increased to 4 years to reflect the aggravation.

In mitigation, I take into account all what your counsel say on your behalf and what was said in the pre-sentence report.

I take into consideration the following for each and both of you:

- You are a first time offenders.
- You are remorseful.
- You plead guilty at an early opportunity given to each of you.

I consider the aggravating features with the mitigating factors. I balance both aggravating and mitigating ones.

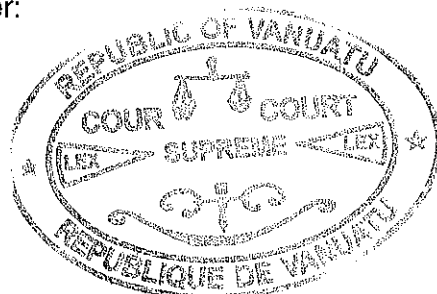
I sentence each of you to 3 years imprisonment.

I consider whether the circumstance of your offending warrant a suspension of your sentence of 3 years. Both of you expressed shame and remorsefulness. No violence committed beyond the facts constituting the offence of incest. Your willingness to perform custom ceremony to each other and to your families; your willingness to attend counseling with a church pastor; and sexual health counseling and engage in life skill programs are encouraged and taken into consideration in your respective sentencing.

I consider the above circumstance in light of the provisions of 37, 38 and 39 of the Penal Code (Amendment) Act [CAP.135]

I am satisfied that the circumstance of your offending justifies a suspension. Your sentence of 3 years imprisonment is suspended for a period of 2 years.

In addition, each of you shall be under a supervision order with the following special conditions and as directed by the Probation Officer:



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- If possible and agreeable by each of you, and if in accord with your custom, then, perform custom ceremony to family and to each of you as reconciliation and peace making process with your family.
- Attend counseling with a Church Pastor.
- Attend sexual health counseling.
- Engage in life skills programs.

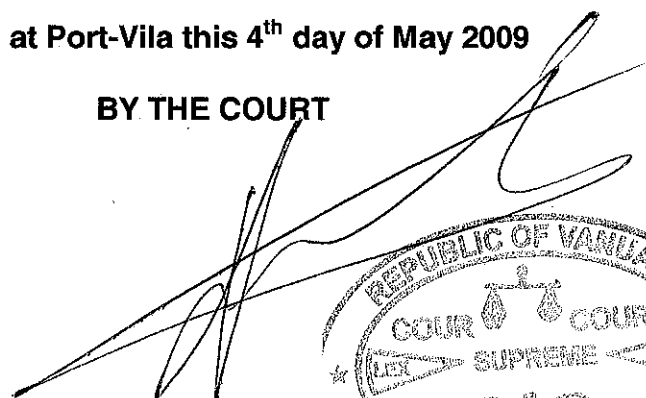
The supervision order is for the 2 years operational period of the suspended sentence.

Your sentence is made under Section 58G of the Penal Code (Amendment) Act No.14 of 2007.

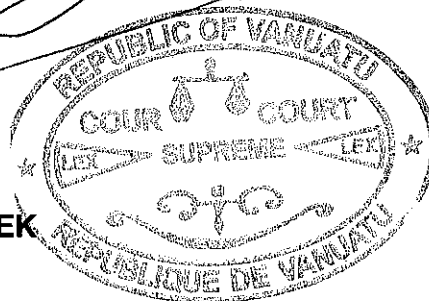
Each of you has 14 days to appeal.

DATED at Port-Vila this 4th day of May 2009

BY THE COURT



Vincent LUNABEK
Chief Justice



The seal of the Supreme Court of Vanuatu is circular. It features a central emblem with a scale of justice and a book. The text around the perimeter includes "REPUBLIC OF VANUATU" at the top and "REPUBLIQUE DE VANUATU" at the bottom. Inside the circle, the words "COUR SUPREME" and "COURT" are visible, along with the word "LEX" on either side of the central emblem.