

**PUBLIC PROSECUTOR**

**-v-**

**PAUL PALE**

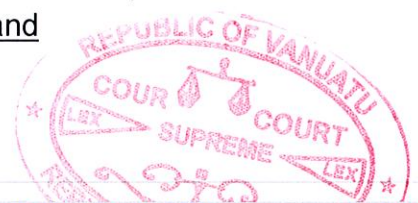
**Coram:** Mr. Justice Daniel Fatiaki

**Counsel:** Mr. S. Blessings for the State  
Mr. E. Molbaleh for the defendant

**Date of Decision:** 30 October 2015

**SENTENCE**

1. The defendant appears today for sentencing for an offence of Sexual Intercourse Without Consent contrary to Section 90 and 91 of the Penal Code. He was originally charged with four (4) counts but these were later amended and reduced to three (3) counts in an amended Information. The defendant pleaded guilty to the second count and the prosecution entered "*nolle prosequi*" in respect of the remaining 2 counts that the defendant denied.
2. Although the defendant has been discharged on 2 counts it is clear that the defendant's illicit activities had been going on for some considerable time over the ensuing months and resulted in the complainant becoming pregnant. This latter fact was only detected in February 2015 when the complainant was medically examined at the request of the police on 13 February 2015 and the examining doctor noted that the complainant had suffered an "*incomplete miscarriage*" and had to be surgically evacuated to remove "... *retained products of conception from her uterus, large amount*".
3. The brief facts of the case are that sometime in August 2014 in Port Vila, the defendant committed the offence on his step-daughter who was born on 10 January 2001 and therefore was 14 years of age at the time of the incident. The defendant was 32 years of age.
4. Other aggravating features of the offence which are taken from the admitted facts outlined by the prosecutor includes:
  - The use of threats to kill the complainant immediately before and after the incident;
  - The use of physical force to overcome the complainant's attempts to resist the defendant during the commission of the offence; and



- The fact that the complainant was the defendant's step-daughter living in the same house with the defendant and her biological mother;
5. Sexual Intercourse Without Consent is one of the most serious offences in the Penal Code of this country. It carries a maximum sentence of life imprisonment and is comparable with an offence of premeditated killing of a human being (see: section 106) or the killing of an unborn child (see: section 113) both of which carries the same maximum penalty.
  6. Scientific research on the effects of sexual abuse also indicates that victims of sexual abuse often have recurring nightmares and experience lasting feelings of nervousness, guilt and shame. They also have difficulty forming and maintaining normal relations with boys or men and have a low sense of self-esteem. As so eloquently stated by the complainant in her VICTIM IMPACT STATEMENT:

*"... afta we Paul emi bin mekem rabis fasin ia long mi, kasem tede mi stap fraet blo stap closap long ol men or boy, mi fraet blong stap wokbaot mi wan, mi nomo gat freedom we mi lusum life blong wan pikinini we should stap yet wetem mi yet today".*

Clearly the complainant has been greatly traumatized by this incident and the loss of her unborn child and it will take some considerable time before her mental wounds can heal.

7. The guideline judgments on the sentencing of sex offenders is not in doubt and is conveniently and helpfully collated in the prosecutor's sentencing submissions. Reference need only be made to: Public Prosecutor v. August Ali [2000] VUSC 73 which was affirmed by the Court of Appeal in Public Prosecutor v. Scott [2002] VUCA 79; also Public Prosecutor v. Gideon [2002] VUCA 7; and Public Prosecutor v. Kal Andy [2011] VUCA 14 where the Court of Appeal has consistently said that the offence of rape or sexual intercourse without consent must be met with a sentence of immediate imprisonment starting with 5 years imprisonment in contested cases or 8 years imprisonment *"... where the offence is committed by a person who is in a position of responsibility towards the victim ..."* such as a step-father, guardian or adult relative.
8. In the present case the prosecutor advances a starting point of nine (9) years imprisonment on the basis of the following aggravating features that exacerbate the offending:
  - (i) *The accused's offending amounted to a serious breach of the victim's trust. The victim was at all material times the step daughter of the accused. The accused should have been someone that the victim was able to look to and trust for her safety and protection;*





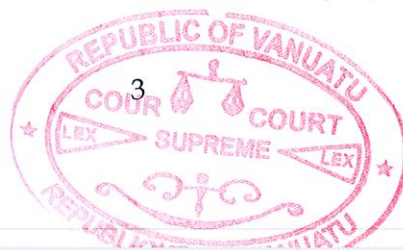
- (ii) *There was a degree of planning, premeditation and was to an extent predatory in nature. The accused used the ruse of asking the victim to help him fix his flashlight in this room. He seized the opportunity, subjected her to sexual abuse and then to full sexual intercourse;*
- (iii) *The accused was persistent in endeavoring to satisfy his sexual desires even after the victim blatantly refused his initial advances;*
- (iv) *The accused threatened violence to the victim should she tell anyone of what had happened;*
- (v) *The accused offended in their home when the victim was alone and at the very place where she should have felt safe and protected;*
- (vi) *The accused was 31 years of age and the victim was a vulnerable 14 years old child at the time of the offending;*
- (vii) *The psychological effect of the offending on the victim. The victim alluded to the fact that she now feels uncomfortable when left alone in the company of a man. While the accuse will move on with his life, what he has done to the victim will stay with her for the rest of her life. The accused has dealt the victim, a life sentence."*

9. In this regard too, the probation officer records in the defendant's pre-sentence report:

*"When assessing his offending the writer identified that Mr. Pale had misunderstood his role as a step-father to the victim. Therefore when he was alone with the victim at home, he doesn't have the ability to control his sexual thoughts in an appropriate manner; thus leaves him to commit the offence ..."*

10. The pre-sentence report also identifies the following personal and mitigating factors in the case:

- (i) The defendant is from Unmet Village in North West Malekula and attended Ransari Primary School, then, Lycée in Port Vila for his secondary education and was later enrolled but did not complete a mechanical course at Vanuatu Institute of Technology ("VIT");
- (ii) The defendant is over 33 years of age, married with 3 children – a son and 2 young daughters. His family lives on a family plot at Teouma Dark Bush area;
- (iii) The defendant is a first offender and has been in custody since 13 February 2015. He is an active member of the Baptist church and has cooperated well whilst in remand;
- (iv) The defendant expressed his regret and remorse for what he had done and *"never thought it would turn out this way"* (whatever that means). He




has offered to conduct a customary reconciliation ceremony to the complainant's biological father but that was, not surprisingly, rejected.

11. In addition, the defendant frankly admitted the offence to the police when questioned and pleaded guilty to the amended Information.
12. Given the aggravated features in the case including the disparity of 18 years between the ages of the defendant a sexually mature man and the young inexperienced complainant; the accompanying threats; the serious abuse of trust and the consequent pregnancy of the complainant, I consider a starting point of 6 years imprisonment is appropriate.
13. From that starting point I deduct 2 years in recognition of the defendant's guilty plea which has not only vindicated the complainant but also saved her from the additional ordeal of having to give evidence in Court. For his willingness to perform a customary reconciliation ceremony and his remorse and blameless life for the past 30 odd years, I deduct a further 12 months leaving an end sentence of 3 years imprisonment which is ordered to commence from 13 February 2015 when the defendant was first remanded in custody.
14. In imposing that sentence I am mindful that the defendant's innocent wife and young family will be deprived of a husband, father, and provider but that is something that the defendant should have considered before committing this serious offence against a young member of his own family within the family home. I also note that the offence was first reported by the defendant's wife who is the complainant's biological mother and who requested the court "*... mus punishim hem wetem full power blong law*".
15. I have also considered and rejected any possibility of suspending the sentence in this case. The sentence of the Court is one of immediate imprisonment for 3 years with effect from 13 February 2015.
16. If you do not agree with this sentence you may lodge an appeal to the Court of Appeal within 14 days.

**DATED at Port Vila, this 30<sup>th</sup> day of October, 2015.**

**BY THE COURT**

  
**D. V. FATIAKI**  
Judge.

