

PUBLIC PROSECUTOR

v.

**MELTEN JOHN
LEISONG JOHN**

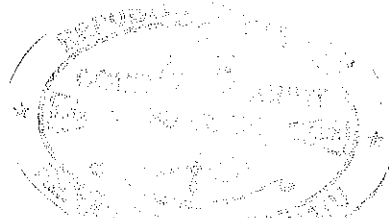
Coram: *Justice D. V. Fatiaki*

Counsel: *Ms. Micheline Tasso for the State
Ms. Linda Bakokoto for the Defendants*

Date of Sentence: *11 August 2017*

SENTENCE

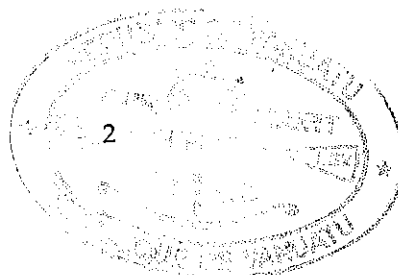
1. On 4 July the defendants who are father and daughter pleaded guilty ("*i tru*") to separate counts of Incest contrary to Section 95(2) of the Penal Code.
2. The brief facts of the charge are that the defendants were seen having sexual intercourse in the bush by a villager of Saama village at North Efate who had gone in the early morning of 10 January 2017 to collect mangoes and check wild pig traps that he had set in his garden .
3. The matter was relayed to the village chief who reported it to the police. The defendants were subsequently interviewed under caution and both frankly admitted starting a sexual relationship since the 1990s when the father was in his 40s and the daughter in her late teens. As a result of that relationship the daughter became pregnant twice but lost both babies who were still-born. On one occasion the defendants were confronted by their village chief about their rumoured sexual relationship which they vigorously denied.
4. Upon their conviction pre-sentence reports and sentencing submissions were ordered and received. I am grateful for the assistance provided.
5. I extract the following personal details from the father's pre-sentence report:
 - He was born on 2 December 1955 at Saama village, North Efate;
 - He attended classes 1 to 6 at Ulei Primary School and once attended an animal husbandry course in Australia;



- He is married and has four daughters and a son who is a police officer at Vila Police station;
- He is a member of the Seventh Day Adventist ("SDA") Church and is well regarded in the community;
- On 21 May 2017 he performed a custom reconciliation ceremony to his wife, the second defendant and his village chief in which he presented 4 mats, 54 metres of calico material; 13kgs rice; 6kgs chicken wings and a live chicken and VT3,000 cash. The ceremony was witnessed by 14 people including the first defendant's other children, village council members and church leaders. The defendant also expressed his sincere remorse and apologies which was accepted by his wife and daughter;
- Questioned about his offending the defendant said: "*he had groomed his daughter (victim) into having sex with her since 2006 ...*". He also sought to shift some of the blame onto his sickly wife who was "*... unable to accept his demand for sexual intercourse*".

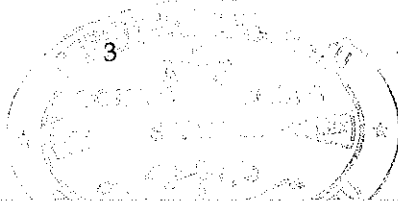
6. Information on the daughter is also extracted from her pre-sentence report as follows:

- She was born on 22 October 1978 at Saama village, North Efate and is the eldest of 5 children;
- She was educated at Malatia Primary School up to grade 4;
- She maintains a good relationship with her family and wider community and participates in village and church activities;
- She has 2 children from a previous marriage;
- She is a practicing member of the Assemblies of God (AOG) church;
- She is engaged to a man from Ambrym for the past 4 years and they are currently living in a defacto relationship at the Crystal Blue resort area at South East Efate;
- On 11 July 2017 after her arraignment and guilty plea, she performed a custom reconciliation to her village chief, mother and siblings in which she presented 4 mats; 4kg rice; 6kg chicken wings; 5 yards calico material and VT3,000 in cash. The items were accepted and she was forgiven and all were reconciled;



- To the probation officer she admitted that she had consensual sexual relations with her father “*as they lived together and their close relationship made it easier for her to give in to sexual intercourse*”. She also said “... *she was sorry for the unlawful actions committed and this made her move out and reside in a different place*”.
7. Incest is an offence that carries a maximum penalty of 10 years imprisonment. It is a serious offence. It has biblical prohibitions (see: Levitius 18:8-18 and 20:11-21) and there are sound medical reasons against it such as to prevent “*in breeding*” and reduce the risk of congenital abnormalities, developmental and physical disability and death. More often than not the offence occurs in a situation of unequal power and influence and under circumstances of duress and coercion. It also has the potential to seriously undermine and destroy familial relationships.
 8. In the present case both defendants also accept in their caution statements that incest is morally wrong. In the father’s words: “... *ino stret blo wan papa ifuckem stret gel blo hem from mi wantem nao mi mekem olsem long hem*” and from the daughter: “... *mi wantem talem aot se mi na mi rong spos dady iaskem fuck long mi, mi no should acceptem. Mi should talem no long hem. Be mi save se mi rong mo talem yes long hem ...*”. The daughter also confirms losing both infants that she conceived as a result of their incestuous relationship.
 9. The offending in the present case is aggravating by its repetition over many years; by the unprotected nature of the intercourse giving rise to two still-born pregnancies; and the brazen denial by both defendants when they were confronted by their village chief several years before they were “*caught in the act*”.
 10. Although the offending occurred over a period of 20 years, I shall limit my consideration of that aggravating factor to the past 5 years in light of the provisions of Section 15(b) of the Penal Code.
 11. I accept both defendants profess to being remorseful, but, as the Court of Appeal relevantly observed in Abednigo v. Public Prosecutor [1990] VUCA 2:

“... *repetition (of Incest), ... would have been a serious aggravation. Having committed such an offence, many may have regretted it but to repeat the offence shows a very different attitude and a lack of contrition or remorse*”.
 12. I have also considered the judgment of the Court of Appeal in Wotu v. Public Prosecutor [2011] VUCA 36 where the Court upheld a maximum starting point of 10 years imprisonment for an offence of repeated Incest between a father and his teenage daughter over a period of 3 years. I have also considered Public Prosecutor v. Gratien Bae [2003] VUCA 14 where the Court of Appeal cancelled



an order of suspension of an "extraordinarily light sentence" of 2 years imprisonment for a father who "had used his daughter as a means of obtaining sexual gratification" over a lengthy period of time. The Court also affirmed the relevant sentencing principle namely: "Parents who use their children for their own sexual gratification will go to prison. It is almost impossible to imagine circumstances in which that will not be the necessary response" (see also: Peter Talivo v. Public Prosecutor [1996] VUCA 2).

13. I accept that the present case is unusual in that both participants in the offence are charged with the same offence in the same Information, but given the unusually frank admissions of the father and daughter, the charges were entirely appropriate. They are equally culpable and knowingly and willingly participated in the offence. There has been no suggestion of any force, threats, co-ercion or dissent involved in the commission of the offence as related by the eye-witness:

"Leison ino traem blo pusum aot dadi blo hem or mekem sam action se hemi no wantem. Hemi relax gud mo letem papa blo hem ifuckem hem".

Intercourse was fully consensual. Consent however is not a defence to Incest. Fathers and daughters are strictly forbidden by the criminal law under any and all circumstances from having sexual intercourse. Indeed consent might be considered an aggravating factor.


14. The starting point I adopt for this offending is 7 years imprisonment which I reduce by 18 months in recognition of the separate custom reconciliation ceremony that was performed by each defendant and the fact that this is each defendant's first conviction. They both also cooperated with police investigations and made full and frank admissions under caution. For their guilty pleas I make a further reduction of one third (22 months) giving an end sentence of (84 – 40) = 44 months imprisonment.
15. The next question that needs to be addressed is whether – Any differentiation should be made between the defendants?
16. I accept the inevitable power imbalance especially at the beginning, between the father and his daughter whom he had "groomed" from her teenage years and the fact that it was the father who initiated sexual relations including on the date of the offence charged. But by the time of the offence the daughter was no longer an immature teenager, instead she was a mature independent mother of 38 years who was already living in a stable defacto relationship away from her father albeit that her partner was away in Ambrym at the relevant time.
17. This case is unlike the more usual case of a father taking advantage of his young innocent daughter, this was an incident where both father and daughter with full knowledge and consent willingly participated in sexual intercourse in broad daylight at a semi-public place to which other villagers had access. This was

wanton risk-taking to satisfy unnatural lust that deserves to be condemned, punished and deterred in the strongest terms.

18. No proper grounds exist for treating the defendants differently.
19. I have noted both defendants willingness expressed to the probation officer, to undertake a community-based sentence but reject it as inappropriate in this case and inconsistent with the applicable sentencing principle.
20. I am also not unmindful of the second defendant's defacto's statement to the probation officer that the second defendant cares really well for their children who look up to her. Unfortunately having a steady relationship with dependent children and a trusting husband was not enough to deter the second defendant from having sexual intercourse twice again with her father in her defacto's absence. Although her defacto has forgiven her this latest transgression for their family and children's sake, Incest is more than just a private matter, it is also a crime against the values and mores of society.
21. Accordingly each defendant is sentenced to 3 years and 8 months imprisonment with immediate effect.
22. The defendants are advised that they have 14 days to appeal against their respective sentence if they do not agree with it.

DATED at Port Vila, this 11th day of August, 2017.

BY THE COURT


D. V. FATIAKI
Judge.

