IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU
(Criminal Jurisdiction)

Criminal Case No. 151 of 2017

PUBLIC PROSECUTOR vs. ROBERT PAKORO

Coram: ***Justice Chetwynd***

Counsel: ***Mr Toaliu for Public Prosecutor***
Mr Vira for Defendant

Date of Hearing: ***28th November 2017 at 9:00am***

SENTENCE

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1. The defendant entered not guilty pleas to a total of 15 counts involving sexual intercourse without consent, incest and acts of indecency with a young person. At his trial I heard evidence from the complainant who is the defendant's biological daughter. None of the daughter's evidence was challenged. The defendant gave evidence. He admitted he had had sexual intercourse with his daughter but he added that he had confessed his sins to the Church and that God had forgiven him and so he could not be guilty of any offence. Based on the uncontested evidence of the daughter he was convicted of 8 of the charges, namely 3 charges of rape, 3 of incest and 2 of acts of indecency with a young person.

2. The evidence clearly established a history of sexual abuse perpetrated by the defendant against his daughter and stretching back to at least 2010 and quite probably starting in 2007. As she was born on 9th June 1999 that means the abuse started when she was only 8 years old.

3. The admitted facts disclose the abuse began with the defendant undressing his daughter and then touching her inappropriately. It progressed to a point when in 2010 he took her clothes off, touched her breasts and then digitally penetrated her. In giving her evidence the daughter could not recall exactly when and how often that happened in 2010 but she did recall a similar incident in 2011 when the defendant again digitally

penetrated her and then forced her to give him fellatio. She did not want to but she was threatened with a beating if she did not do as she was told. The question of consent does not arise because of the age the complainant at that time.

4. In 2012 there were further incidents of digital penetration, inappropriate touching by the defendant and demands that the daughter touched the defendant's penis. This was after the defendant made his daughter watch pornographic videos on his 'phone.

5. The final straw for the complainant was in 2015 when she was again made to undress and when she was once more digitally penetrated. On that occasion the defendant forced his daughter to masturbate him until he ejaculated. She decided to tell her mother what had been happening and the matter came to the attention of the Police.

6. On every occasion he abused his daughter the defendant threatened her with violence if she told her mother, or any one else, what he had done. The defendant does not deny that he held a branch of a Kasis tree when he was abusing his daughter.

7. The pre-sentence report produced for the Court makes it quite clear the defendant feels no remorse for what he has done. He blames his wife for encouraging the complainant to report the matter. He believes he has been forgiven by the Church and by God and so cannot be guilty of any offences. He also says because of the teachings of his Church he does not believe in custom reconciliation and sees no need to perform expensive reconciliation ceremonies.

8. The defendant has been convicted of a number of offences going back some 17 years. If he were to be given consecutive sentences the total sentence would offend the principle of totality. The way a Court should sentence such an offender was dealt with by the Court of Appeal in the case of *Boesaleana* [1].

> *"There can be substantial debate as to the approaches which can be applied in sentencing. But it is essential that the Court does not become lost in formulae*

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[1] *Boesaleana v Public Prosecutor* [2011] VUCA 33; Criminal Appeal 07 of 2011 (25 November 2011)

or arithmetic calculations but rather looks in a general and realistic way at the entire offending, assessing all relevant aggravating and mitigating factors, and then reaches a sentence which in its totality properly reflects the culpability which has been established"

"... it should be remembered that in any case the sentencing of a prisoner is not an exact mathematical science but a nuanced art. It is essential that every Judge, whatever methodology they employ, looks to see whether the overall sentence is commensurate with the established culpability of the particular accused person."

9. The facts of *Boesaleana* were similar to those in the present case:

"It is now clear that from 2007 the Appellant had been abusing an adopted daughter and one of his own natural children. ... the offending included various offences of sexual activity all of which can be condemned in the strongest terms."

10. In the case of *Boesaleana* the Court of Appeal stated:

When a Court is having to sentence a convicted person who faces many counts and more than one victim, it is often beneficial to decide what is the most serious offending and to impose a lead sentence on that which properly takes account of all aggravating factors and then to impose concurrent sentences in respect of other offending as that is appropriate."

"That would be the best way to deal with matters like this. Across the entire spectrum, it is clear that the most serious offences are those of rape. The starting point for rape is 5 years but what are the aggravating factors here?"

11. Having then set out the aggravating factors in the case the Court of Appeal concluded:

"When these factors are all assessed, starting from the 5 year starting point, we are satisfied that on all the rape counts, the appropriate end point at this stage could not be less than 18 years."

"When the most serious offending is dealt with in that way, it is then not appropriate to impose additional cumulative sentences in respect of matters which have already been encompassed as aggravating factors. The inter family aspect which is incest has been captured. The various attempts to commit offences become part of that overall situation. The three counts of act of indecency which were having intercourse with one daughter while using the other as a guard or lookout, equally are subsumed within the assessment which has occurred."

12. In order to arrive at the final sentence to be imposed the Court was then required to consider whether there were any mitigating factors :

"Having undertaken that exercise the Court is then required to consider the mitigating factors which exist".

"By undertaking this exercise we have ensured that all the relevant factors which require attention in sentencing are considered but only once. Further, it ensures that overall there is a sentence which in its totality is commensurate with the admitted culpability."

13. The defendant has been convicted of a number of charges but the most serious of them are those for rape. The evidence in the present case shows there are clearly a number of severe aggravating factors. All these offences involved a father and his young child. The abuse started at a very early age and continued for 10 years. It was continuous humiliating and corrupting behaviour by a father towards someone he should have sheltered and protected. This was a grave and shameful breach of trust. The offences occurred in or near the family home, a place the complaint should have felt safe and secure in.

14. The sexual abuse of the young child caused pain but fortunately does not appear to have resulted in permanent physical harm. One can only imagine the psychological damage she has suffered. The other sexual acts the complainant was

forced to endure must have added to the daughter's sense of degradation and humiliation.

15. Much of the abuse appears to have been planned and some included the use of pornographic material which the complainant was coerced into watching.

16. All the abuse appears to have been backed by threats of violence against the complainant.

17. Taking these aggravating factors into account mind at this stage the offending is likely to attract a sentence of not less than18 years.

18. There are no mitigating factors in this case. The defendant has shown no remorse for what he has done and maintains his innocence because he has been forgiven by his Church. Not only that, he also blames his wife for encouraging his abused daughter to report the matter to the police.

19. The defendant is not entitled to any deduction for an early guilty plea. He maintained not guilty pleas and was convicted after trial. Just as he shows no remorse the defendant accepts no guilt and told the Probation Officer that he will never plead guilty to any offences as he believes God has already forgiven him in 2015.

20. On count 1, the charge of sexual intercourse without consent, the defendant is sentenced to 18 years imprisonment. The sentence shall be deemed to have commenced on 15th December 2016. The defendant will be sentenced to 18 years imprisonment on the remaining counts of rape. Those sentences will be served concurrently with that for count 1. In relation to counts 7, 8 and 10 (Incest) the defendant shall serve 8 years imprisonment concurrent with the other sentences. The offences were committed prior to the effective date of the Penal Code (Amendment) Act of 2016, namely 24th February 2017, when the penalty for incest was increased to 15 years. Finally, in respect of the remaining two charges, acts of indecency with a young person, the defendant is sentenced to terms of imprisonment of 8 years. Those sentences will be served concurrently.

21. There are no exceptional circumstances which could be considered by me and which would allow the sentence to be suspended. In accordance with the well known guidelines set out in numerous cases by the Court of Appeal and by this Court the defendant will serve his sentence immediately.

DATED at Port Vila, this 30th day of November, 2017.

BY THE COURT

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D. CHETWYND

Judge