

PUBLIC PROSECUTOR VS- JIMMY WIGUET

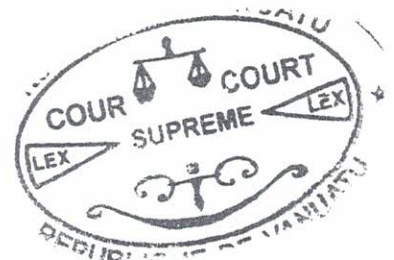
Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Ken Massing for Public Prosecutor
Junior Garae for Defendant*

Date of Plea: *7th May 2018*
Date of Sentence: *11th May 2018*

SENTENCE

1. Jimmy Wiguet, you are here for sentence today for having pleaded guilty to one representative count of incest contrary to section 95 (1) (a) of the Penal Code Act [Cap. 135]. The maximum penalty for this offence has since 2016 , been increased from 10 years to 15 years. This increase reflects the seriousness of this offence by Parliament.
2. Your victim was and is your very own biological daughter. She was 20 years old at the time of the offending in June 2017. The offendings occurred on several occasions commencing in June through to December 2017. It happened at times in the bushes and sometimes at grandmother's house at Palon. One night in June 2017 at grandmother's house you opened the door and asked to have sex with her. You entered, removed her clothes and had penile intercourse with her. After that you left and told her not to tell anyone about what you did.
3. You persistently had sex with her on many occasions thereafter in grandmother's house until you caused her to be pregnant with a child. You then discovered she was pregnant and told her to lie about the paternity of the child. You told her to lie to anyone that the father was a man from Malekula. You also told her you were prepared to look after the baby.

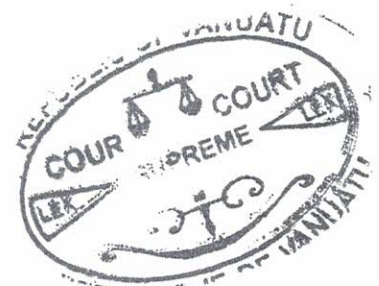


4. The last time you had sex with her was in December 2017. The victim was medically examined and found to be 34 weeks pregnant. She was expected for delivery on 29th April 2018.
5. In considering and assessing sentence, I accept and adopt the sentencing principles established in the Court of Appeal cases of Solisi Abednigo.v. PP CAC 3/1990, Peter Talivov.vs PP CAC 2 of 1996 and PP.v. Bae [2003] VUCA 13.

In Bae's case the Court of Appeal said:

“ The principles are simple. 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. This Court would anticipate that it will only be in the most truly exceptional circumstances, which are clearly and unequivocally demonstrated to exist, that this will not apply..... ”

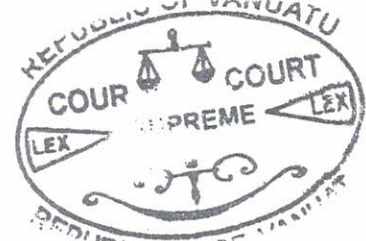
6. It is clear therefore that the most appropriate sentence for you is to be a term of imprisonment. This is to serve as-
 - a) Marking seriousness of the offence,
 - b) Marking the Court's disapproval of your actions,
 - c) A deterrence to you and to others,
 - d) Protection towards the weak and vulnerable, and
 - e) An adequate punishment for your action.
7. The aggravating features that add to the seriousness of your offendings are-
 - a) Your close relationship as father and daughter.
 - b) The serious breach of trust of the relationship.
 - c) The repetitive actions on your part.
 - d) The consequences of your actions resulting in pregnancy.
 - e) The age disparity between you and your victim.
 - f) The mental and physical impact on the victim.
 - g) The degree of planning of your actions.
 - h) Your encouragement to the victim to lie.



8. Taking all those together, I consider that your starting sentence shall be 9 years imprisonment with no uplift. Your degree of culpability falls just below that of Tu's case[2006] VUSC 20 but a little more serious than AR's [2015] VUSC 31. There are some similarities in those two cases but not altogether the same.
9. In mitigation I note your personal history and character in your pre-sentence report. Obviously you have family problems because it appears you are a sexually nocturnal person. You have the lowest level of education finishing off in class 3. You have gardening and diving skills. You appear to have some health issues but there are no medical reports to confirm these. And in a country like Vanuatu it is sad to see that you do not attend any spiritual nourishment in any church at all. None of these factors will earn you any reduction of sentence.
10. The only factors of relevance are-
 - a) Your willingness to perform custom reconciliation (though not accepted).
 - b) Your family performing a “ Klinim Face” custom ceremony to the victim’s brother and mother on your behalf.
 - c) Your cooperation with the police at investigations, and
 - d) Your clean previous record.

For all these, I reduce your starting sentence of 9 years by 12 months down to 8 years.

11. Finally for your guilty plea at first opportunity I allow 1/3 reduction from 8 years which is equivalent to 2 years and 6 months. The balance remaining is 5 years and 6 months.
12. You are therefore sentenced to an end sentence of 5 years and 6 months imprisonment.
13. Your sentence of 5 years and 6 months is backdated to 24th February 2018 when you were first remanded in custody.



14. That is the sentence of the Court. You have a right to appeal within 14 days if you do not agree with this sentence.

DATED at Luganville this 11th day of May 2018

BY THE COURT


OLIVER.A.SAKSAK

Judge

