

BETWEEN: Public Prosecutor

AND: Christian Vahirua

Defendant

Date of Sentence: 6 August 2018
Before: Justice G.A. Andrée Wiltens
Counsel: Mr D. Boe for the Public Prosecutor
Mrs M. Vire for the Defendant

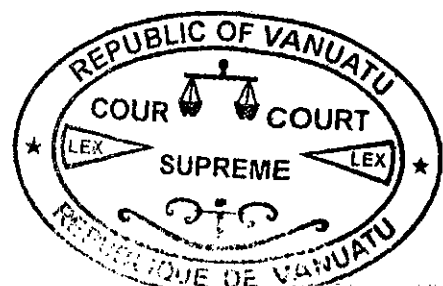
SENTENCE

A. Introduction

1. Mr Vahirua was convicted of 7 charges of Aggravated Sexual Assault on a Child under 15 years, laid contrary to section 97A (2)(d) of the Penal Code Act [Cap 135]. The maximum sentence for each is a term of imprisonment for life.

B. Facts

2. After trial, I was satisfied that the prosecution had established the following matters beyond reasonable doubt, namely that:-
 - MS (name suppressed), was Mr Vahirua's 7 year old step-daughter, born on 1 October 2010
 - Christian become her step-father from about 2012
 - MS was, between January 2017 and March 2018, and generally after 2012, under Christian's authority



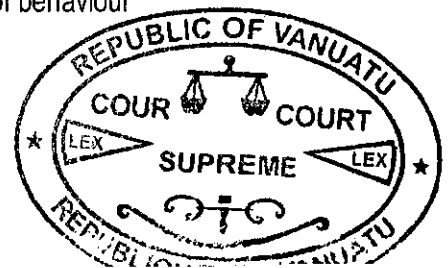
- During that period Christian Vahirua:
 - On several occasions, inserted his finger(s) into MS's vagina
 - On several occasions, licked MS's vagina
 - On at least one occasion, forced MS to perform oral sex on him by inserting his penis into her mouth
 - On several occasions, inserted his penis into MS's vagina
 - On one occasion,, he both licked MS's vagina and inserted his penis into her vagina
 - All of those acts come within the definition of sexual intercourse, as set out in section 89A of the Penal Coda Act
 - On several of those occasions Christian perpetrated those acts to the point of ejaculation
 - On various, if not every occasion, Christian Vahirua threatened MS with a breadknife that if she would not comply with his wishes, she'd be killed dead and never see her mother again; and he also similarly threatened to do that if she reported his offending to her mother.

C. Submissions

3. The prosecution pointed to a large number of authorities to assist the Court in arriving at the appropriate sentence. The suggested starting point for the offending was submitted to be 30 years imprisonment. I am mindful of the Court of Appeal's recent decision in *RL v. PP, Criminal Appeal 17/3607* which confirms that in cases similar to this lengthy imprisonment sentences are warranted, however the submission by Mr Boe is firmly rejected as being excessive.
4. Mrs Vire has not made any submissions – despite my having put off sentencing to enable her to do so.

D. Principles/Purposes of Sentencing

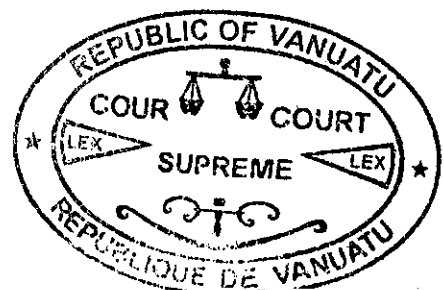
5. The main purposes and principles of sentencing for this type of offending are to:
 - hold the offender accountable for his conduct and the harm done
 - promote a sense of responsibility for the harm done
 - denounce the conduct
 - deter the offender and the public at large from this type of behaviour



- protect the community
- assist in rehabilitation and re-integration
- take into account the gravity of the offending
- take into account the seriousness of the offending in comparison with other offending
- consider consistency of sentencing and parity of sentences, and
- impose the least restriction possible.

E. Aggravating Factors of the Offending

6. The leading authority in Vanuatu for this type of offending is *PP v. Scott* [2002] VUCA 29. The Court there set out that rape without any aggravating factors warrants a start point of 5 years imprisonment. The Court went on to specify aggravating and mitigating factors relevant to the offending, many of which are applicable to Mr Vahirua's case.
7. In particular, I identify as relevant aggravating factors the following aspects which are present in this case:
- (i) a bread knife was used to threaten MS telling her that she would be killed dead and not see her mother again if she refused to co-operate with Mr Vahirua's advances. She was also frequently told to keep quiet so as to not alert others to what was occurring.
 - (ii) the offending was repeated on several occasions in the bedroom, toilet and lounge; and took place over a 15 month period.
 - (iii) further sexual indignities or perversions were inflicted on MS in the form of digital penetration, oral sex by him on her and by her on him – to the point of ejaculation.
 - (iv) MS was but 7 years of age – Mr Vahirua was 39 years of age. The differential is enormous, and aggravating as MS was insufficiently mature to resist.
 - (v) breach of trust – MS is his step-daughter. The offending occurred while MS was at her home – a place she could reasonably expect to be a safe and secure haven.
 - (vi) the lack of protection used – thereby exposing the victim to sexually transmitted diseases.
 - (vii) a degree of planning was involved in that Mr Vahirua ensured there was no one present when he offended.
 - (viii) The effect on MS – her mother has advised the PSR report writer of the ongoing physical and psychological effects of the offending.



F. Mitigating Factors of the Offending

8. There are no mitigating factors relating to the offending.

G. Start Point

9. The start point for this offending, as required to be identified by *PP v Andy* [2011] 14, is set at 16 years imprisonment, on a totality basis taking all the offending into account.

H. Personal Factors

10. Although the defendant has no previous similar conviction, that is of but limited relevance when considering the appropriate sentence. I note he has previously been sentenced to a short term of imprisonment for civil contempt.

11. Mr Vahirua is 39 years of age and has several children of his own, as well as children with MS's mother. The family will be deprived of him and his earning capacity for some time.

12. There is no available discount for prompt pleas. In fact, Mr Vahirua has foolishly and against his best interests, spurned a very favourable offer by the prosecution to plead to reduced charges – which would have had the hugely beneficial effect of not requiring the 7 year old victim to re-live the trauma she endured at the defendant's hands.

13. I noted that the PSR indicates no acceptance of the verdicts – Mr Vahirua maintains the allegations are fabrications. There is accordingly no discount available for remorse. There has also been no custom reconciliation, or even an offer of the same.

14. The only mitigation I can find is the fact that Mr Vahirua has been remanded in custody since the day of his arrest, namely 21 March 2018. I will accordingly reduce the end sentence by six months to allow for that factor.

I. End Sentence

15. The end sentence that must be imposed will be concurrent on all the charges of which the defendant was convicted. On all charges concurrently, the Defendant will serve a term of imprisonment of 15 ½ years.

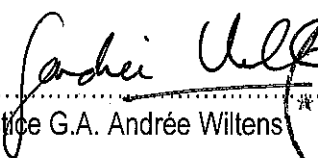
J. Suspension

16. Suspending Mr Vahirua's sentence cannot possibly be countenanced: *PP v Ali August* [2000] VUCA 29; and *PP v Gideon* [2002] VUCA 7.

17. Mr Vahirua has 14 days to appeal this sentence if he disagrees with it.

Dated at Port Vila this 6th day of August 2018

BY THE COURT


Justice G.A. Andrée Wiltens

