

PUBLIC PROSECUTOR

V

FRANÇOIS KASSO

Coram: Justice O. Saksak

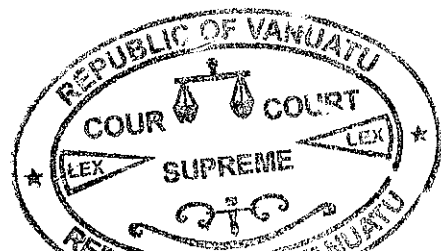
Counsel: Mr T. Karae for the State
Mrs K. Bakeo for the Defendant

Date of Plea: 2nd October 2020

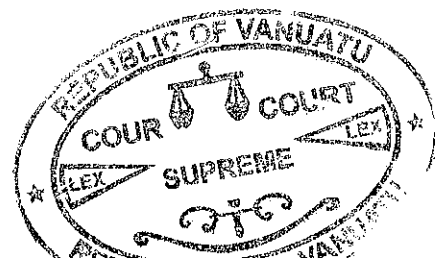
Date of Sentence: 5th February 2021

SENTENCE

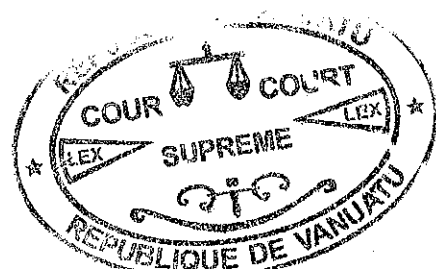
1. François Kasso is to be sentenced today for having pleaded guilty to amended charges on 2 October 2020 as follows:
 - (a) Count 2 – Unlawful Sexual Intercourse – Section 97(1) PCA;
 - (b) Count 3 – Threats to Kill – Section 115 PCA;
 - (c) Count 4 – Intentional Assault Causing Temporary Injury – Section 107(b) PCA; and
 - (d) Count 5 – Incest – Section 95(1) (a) PCA [CAP. 135].
2. He denied the charge of unlawful sexual intercourse in Count 1 and was acquitted after the Prosecution applied for nolle prosequi pursuant to Section 29 of the Criminal Procedure Code Act [CAP. 136].
3. The facts are as follows. In April 2015 the defendant used his finger and penis to penetrate the complainant's vagina who was only 13 years old. She is the step daughter of the defendant.
4. Sometimes in 2017 the defendant had uttered direct oral threats to the complainant that he would cut off her neck if she told anyone what he was doing to her. These threats caused her fears of bodily harm.



5. Sometimes in 2018 at Ohlen area the defendant assaulted the complainant with a gas hose causing her temporary injuries on her body.
6. Then on 23 February 2020 at Ohlen area still, the defendant had digital and penile penetration again of the complainant's vagina.
7. The defendant has accepted these facts.
8. The defendant committed four (4) serious offences. Unlawful sexual intercourse with a child under the age of 15 years but of or over the age of 13 years carries the maximum penalty of 15 years imprisonment.
9. Threats to kill carries the maximum penalty of 15 years imprisonment.
10. Intentional assault under Section 107(b) carries the maximum penalty of 5 years imprisonment.
11. Incest under Section 95(1)(a) carries the maximum penalty of 15 years imprisonment.
12. These serious offences were committed on separate times and dates, the first was in April 2015, the second in 2017, the third in 2018 and the last in February 2020.
13. These occurred within the confines of the family house at Ohlen area. The defendant is the step father of the complainant. She was 13 years old in 2015, 15 in 2017, 16 in 2018 and 21 in 2020. The offendings were different but they were repetitive. Some plannings were involved. The digital and penile penetration in 2015 caused pain to the complainant but because of the threats made directly and verbally by the defendant, the complainant had to live with it for a period of about 5 years until February 2020 when the last act of incest was committed. The offending in 2020 was unprotected putting the complainant to risks of pregnancy and sexually transmitted diseases. The defendant displayed a low attitude towards the complainant by believing he had the right to demand cooperation from her. But he took advantage sexually of her young age and sexually abused her. There was a serious breach of trust. There was also an age disparity between them. These are the aggravating features the Court takes into account.
14. There were no mitigating circumstances on the part of the defendant for committing these offences.
15. Taking the seriousness of the four offences committed, together with the aggravating features of the offendings, and considering all submissions made by the Prosecution and defence counsel, these offences warrant the imposition of custodial sentences on the defendant in relation to all four offences.



16. I set the starting sentences as follows:-
- (a) For Unlawful Sexual Intercourse – Count 2 – 7 years imprisonment;
 - (b) For Incest – Counts 5 – 6 years imprisonment for the unlawful sexual intercourse offence in Count 2.
17. For threats to Kill – Count 3 I sentence the defendant to imprisonment for 1 year or 12 months. This will be consecutive to the 7 years concurrent sentences for the offences in Counts 2 and 5.
18. And finally for Intentional Assault Causing Temporary Injuries – I sentence the defendant to 6 months imprisonment. This too is consecutive to the sentences for Counts 2, 3 and 5.
19. Effectively for all four offences, the defendant is sentenced to 8 years and 6 months imprisonment.
20. This sentence is to mark the seriousness of the defendant's offendings, the Court's disapproval and condemnation of his actions, the deterrence of the defendant and other like-minded persons, protection of the young and vulnerable members of the society, and the adequate punishment of the defendant.
21. In mitigation I consider the defendant's personal factors. He is 42 years old married man with three biological children and two adopted children. He is a man of very low education but has made himself into a bus operator, a retail shop owner and a landlord renting out a house. He has achieved these through a bank loan which he has to repay. He sustains his family and pays his children's school fees through these small businesses. He contributes well to his Ohlen community and is well spoken of by his elders. He has high blood pressure and is asthmatic but with no specific medical reports. I deduct 6 months from his sentence for these personal factors.
22. His pre-sentence report also indicate he has clean past record. He has performed custom reconciliation ceremony consisting of a pig, mats, kava and local island food. The complainant has confirmed acceptance and that she has forgiven the defendant.
23. I consider there has been delays since 2015 until a formal complaint was made to the Police by the complainant on 25 February 2020 after the incest incident.
24. For the custom reconciliation ceremony, remorse and the delay, I reduce the balance of his sentence by another 2 years down to 6 years imprisonment.
25. Finally, I consider the submissions about his guilty pleas on 2 October 2020 and whether or not he is entitled to a one third reduction.



26. Defence counsel submitted the defendant is entitled to a one third because by pleading guilty to late amended charges, he saved the Court's time and the complainant having to go through with the story before the public in open court.
27. Prosecution however submitted the defendant is not entitled to any reduction.
28. The defendant pleaded not guilty in July 2020 to the five charges which were charges of Unlawful Sexual Intercourse (Counts 1 and 2), threats to kill (Count 3), Intentional Assault (Count 4) and Sexual Intercourse Without Consent (Count 5).
29. When the charges were amended on 2 October 2020 only Count 5 was changed to be "Incest" instead of Sexual Intercourse Without Consent.
30. The defendant could have pleaded guilty to the charges in Counts 2, 3 and 4 and not guilty to the charges in Counts 1 and 5 on 2 October 2020 but he did not.
31. I accept Prosecution's submissions therefore that the defendant is not entitled to any reduction for his guilty pleas.
32. The defendant's end sentence for all four offendings shall be 6 years imprisonment. There will be no suspension of sentence. There are no exceptional circumstances warranting it.
33. I note from defence submissions that the defendant had spent 4 months 3 weeks and 4 days in custody on remand prior to his release on bail on 2 October 2020. I order that this period be deducted accordingly from his 6 years imprisonment.
34. The defendant's bail is revoked and his sentence is effective as of today.
35. The defendant may wish to appeal against his sentence if he is unhappy with it. He has 14 days to do so, but he must start serving his sentence today.

DATED at Port Vila, this 5th February , 2021

BY THE COURT


Oliver A. Saksak
Judge

