

PUBLIC PROSECUTOR

- V -

WILSON RAYMOND

The accused pleaded guilty to 3 charges of incest under section 95 of the Penal Code Act CAP 135. The maximum sentence provided is imprisonment for 10 years.

The case is a most distressing one. They were committed against the natural daughter of the defendant, who was living at home with her mother and father when the offences took place. The charges are in fact representative of a course of conduct engaged in by the defendant with his daughter between December 1994 and February 1995.

The offences took place in a coconut plantation, a garden and at the beach. The defendant claimed that he committed the offences because his wife had refused to have sex with him. Whether this is true or not is absolutely no justification for a man committing incest with his daughter, who was entitled to expect protection, guidance support and appropriate advice and consideration from her father. I believe that girls prevailed upon their fathers as this girl was, are helpless victims who are unable to resist such advances. I think that there are cultural factors which make girls here less able to resist such advances than women in other countries. In any place, girls are vulnerable to this kind of conduct simply by virtue of the fact of parental authority and the fact that generally the girls are young and unable to give free and informed consent to such activity. The position does seem to be greater here however than in some other countries.

I have commented in other judgments that offences of this nature appear to be so prevalent as to indicate an attitude towards women where they are to some extent regarded as the property of men and not having the same rights as men enjoy in the community. It is the community that must address the problem. I suspect that the courts are only seeing a very small percentage of the actual number of cases which occur. There is an understandable reluctance for girls to report cases of this nature and it also appears that often when cases of this kind become known in the local community, that custom settlements are carried out, rather than the matters being brought to the attention of the police.

This case only came to be reported because sadly, the girl became pregnant to her father. After she discovered that she was pregnant, she left her family home and went to live elsewhere with a relative. She was fortunate that she had somewhere to go. The relative with whom she sought refuge had previously cared for her and they apparently have a good relationship. The result of the offence is however, that she has now lost the family situation which she could have expected had her father not treated her as he did.

The defendant when interviewed by the police fully and freely admitted his offences. I do not think that this demonstrates remorse or sympathy for his daughter in any way. I rather think that it demonstrates that he did not think that what he had done was particularly wrong. He described the acts of intercourse in detail, including the fact that on each of the occasions he had sex with her, he ejaculated inside her. I think that this demonstrates a callous disregard for the welfare of his daughter. He was only interested in satisfying himself. His and his daughter's account indicate that he chose to have sex with her whenever and wherever the urge came upon him.

It is difficult to imagine a case of repeated acts of incest where the result will not be the immediate imprisonment of the defendant. The indifference of the accused here, towards his daughter makes it impossible for him to avoid a lengthy term of imprisonment. I think that his repeated abuse of his daughter with a total lack of regard for her rights, feelings, immediate wellbeing and future places this case in the upper range of cases of this kind for sentencing purposes.

The consequences of the offences are grave not only for the immediate victim but for the entire family. The defendant was the sole provider for the family. His victim was the eldest of 4 daughters. They range in age from 15 to 20 years. Their 17 year old daughter was adopted by the mother's sister and so the defendant was charged with the responsibility of bringing up 3 daughters. The youngest is still attending school.

A most disturbing feature of this case has been the attitude of the victim's mother towards her. Rather than demonstrating love and affection for her daughter, her mother has accused her of ruining the family. She has suggested that by reporting the matter the family situation is the fault of the daughter and that the daughter should seek work so as to provide the school fees for her youngest sister. I do not think that the mother has the slightest understanding for the feelings of her daughter. In her statement to the police, the mother said that if her husband is to go to court, the family will face a hard time because the defendant is the only one who works and pays for food and water for them. This is undoubtedly true, but is no way the fault of the daughter. She continued saying that she is concerned about the school fees for the youngest daughter should the defendant go to prison. She says that her husband admitted the offences to her after they were reported. Nowhere in her statement does she express any sympathy and concern for her daughter, the victim of these crimes. The statement is effectively a plea on behalf of her husband to avoid him going to gaol.

The case represents the domination of men over women in this community. It is of course not universal, but it is common. It must be changed. There must first be a community awareness of the situation and then every effort must be made to change the attitudes which abound in the community and allow offences of this nature to continue.

The defendant is 55 years old. He has no previous convictions. He is in employment and apart from these offences is an ordinary working member of the community. 11

an elder of the Assemblies of God Church. I think that the churches have a great responsibility to advance the rights of women in the community. Men and women must work together in this regard. I think that the women have great difficulty in asserting and establishing their rights but this must come sooner rather than later. The leaders of the community should not avoid the issue, which the cases before me during this sittings of the court expose as an endemic problem. The solution will not be found simply by sending the few individuals who are prosecuted to prison for lengthy terms. The problem must be attacked at its source. Community awareness, education and a concern to ensure that all people are treated equally and fairly is essential and it is not enough to leave the matter for the courts to solve.

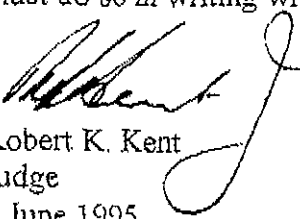
In sentencing I must have regard to the fact that the defendant has pleaded guilty and thus spared his daughter the trauma of giving evidence of these events. I do not think that he did so out of regard for her however, as I do not believe that he truly recognises the seriousness of what he has done. His actions are to some extent the result of the overall lack of concern for women which seems to prevail.

He is a first offender and has reached maturity without offending before. I take these matters into account but they cannot lead to a lenient sentence in a case of this kind.

The factors of mitigation to which I refer justify me in reducing the sentence I would otherwise impose but only minimally in this case. I consider that the appropriate sentence for each charge is a term of 8 years imprisonment. The offences form part of a continuing series of offences and I think that therefore I should assess the overall gravity of the crimes in determining the total effective sentence which I should impose. A sentence of 8 years imprisonment for a man of 55 years of age with no prior convictions is indeed a heavy punishment. Accordingly I think that I should direct that all sentences should be served concurrently with each other, making an effective total sentence of 8 years imprisonment.

The sentence of the court is that the defendant is sentenced to 8 years imprisonment on each count, to be served concurrently with each other. Total sentence, 8 years imprisonment. The sentence is to date from 31 May 1995, the date upon which I remanded the defendant in custody for sentence.

The defendant has the right to appeal against this sentence. If he wishes to do so, he must do so in writing within 14 days of this date.


Robert K. Kent
Judge
2 June 1995