

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

GREGORY SONGI

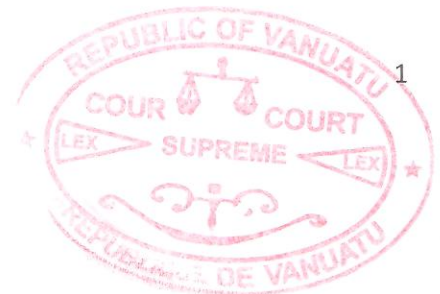
Mr Justice Oliver A. Saksak

**Mr P. Wirrick for Public Prosecutor
Miss J. Tari for Defendant**

**Date of Hearing of Submissions: 24th September 2012
Date of Sentence: 28th September 2012**

SENTENCE

1. Gregory Songi, you were charged with one count of Incest as a representative charge Contrary to Section 95 (1) (a), and also with one representative charge of Sexual Intercourse Without Consent Contrary to Section 91 of the Penal Code Act Cap 135 (the Act). However the second charge was withdrawn by the State.
2. The representative charge of incest included commissions of the offence on three separate occasions. The first being sometimes in early 2009, the second being sometimes in July 2010 and the third being in July 2012.
3. During your arraignment on 4th September 2012, you pleaded guilty to that one representative charge. That admission meant that you committed the offences of incest on all three occasions.
4. The offence of incest under Section 95 (1) (a) and (2) carries a maximum penalty of 10 years imprisonment.



5. Your victim was your own biological daughter of 22 years of age born on 7 June 1986. You are a mature family man of 56 years old, born on 12th August 1956. Further facts as provided by the State are that -
- (a) Sometimes in July 2009 you started having sexual intercourse with your daughter when she was 22 years old. As a result of that offending she became pregnant and gave birth to triplets at the Northern District Hospital here in Luganville. One of the three babies died.
 - (b) Sometimes in June 2010 your daughter returned to the family home at Abwatuntora Village, North Pentecost. And in the following month of July you resumed having sex with her.
 - (c) On 11th July 2012 a witness by name of Cathryn Frank saw you and your daughter both naked and having sexual intercourse. She then reported the matter and a meeting was held at the village Nakamal on 10th August 2012 with the chiefs and community leaders and the people. Cathryn Frank, the complainant and yourself were also present at the meeting.
 - (d) During the meeting you were asked about the allegation and you initially denied it. However it was only after the complainant later disclosed the truth that you then admitted the offendings.
6. Your Pre-Sentence Report indicate that after you made admissions you were fined by the chiefs which involved giving mats and pigs to the value of VT40.000. These were made to the victim and her brothers. The Report indicate also that your daughter willingly accepted the fine.
7. In considering and assessing your appropriate punishment the Court is assisted by the case of Public Prosecutor v. Bae [2003] VUCA 14. Both the Public Prosecutor and the defence Counsel referred this case to the Court as the only guideline authority. This was a case where the defendant was charged with one count of incest with his biological daughter who was only 12 years old. The defendant started a series of indecent acts which eventually developed over a



period of time. The defendant was convicted and sentenced to 2 years imprisonment but suspended for 2 years. On appeal, the Court of Appeal allowed the appeal, quashed the suspended sentence and upheld the 2 years imprisonment term.

8. In Bae's case the Court of Appeal said this :-

“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”.

9. From that passage, it is clear that the only appropriate sentence for you is to be a custodial sentence. The remaining question is for how long?

10. In Bae's case the Court of Appeal also said that “a sentence of 3 to 5 years imprisonment would have withstood appeal”. The Court of Appeal further noted that the sentence of 2 years was “very merciful”.

11. In view of all that the Court of Appeal said, the starting point for you will be 5 years imprisonment. There will be an uplift by 3 years for the following aggravating features :-

- (a) The victim being your own biological daughter of 22 years old on the first occasion.
- (b) Being a mature man of 56 years old.
- (c) Serious breach of trust by a father who should protect, support and care for his daughter, instead of abusing her for his sexual gratification.
- (d) The repetitions of offendings over time and period of three years; and
- (e) The resulting effect on the victim: being pregnant and giving birth to triplets.

12. Gregory Songi the Court now sentences you to imprisonment for a total of 8 years imprisonment.



13. In mitigation I take into account the following factors :-

- (a) That you are a first time offender;
- (b) Your guilty plea at earliest given opportunity;
- (c) The customary reconciliation ceremony showing remorse, and
- (d) The late complaint by the victim since the first incident in July 2009 until only on 20th August 2012 when the complaint was lodged with the Police at Saratamata.

14. For the above 4 factors, there will be a reduction of 2 years from your 8 years sentence leaving the balance of 6 years imprisonment. This term of imprisonment commenced from 23rd August 2012 when you were first remanded in custody.

15. That is the sentence of the Court. You have a right of appeal within 14 days, if you so choose.

DATED at Luganville, this 28th day of September 2012

BY THE COURT


OLIVER A. SAKSAK

Judge.

