

PUBLIC PROSECUTOR VS- EDWARD TIMBOLO

Coram: *Mr. Justice Oliver A. Saksak*

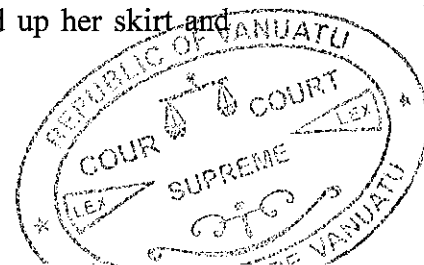
Counsel: *Losana Matariki for the State
Andrew Bal for the Defendant*

Date of Pleas: *3rd March 2015 and 22nd April 2015*

Date of Sentence: *10th June 2015*

SENTENCE

1. Edward Timbolo, you are for Sentence today for having pleaded guilty to one charge of incest contrary to section 95(1)(a) of the Penal Code Act Cap.135 on 3rd March 2015. You pleaded not-guilty to two counts of sexual intercourse without consent and these were adjourned for trial on 22nd April 2015. On this date your lawyer sought leave for you to be rearraigned in respect to the two counts. Leave was granted and the charges were replead to you. You then pleaded guilty to the two counts of sexual intercourse without consent contrary to sections 90 and 91 of the Act.
2. It bears to remind you that you have committed very serious sexual offences. Under section 95 of the Act the maximum penalty is 10 years imprisonment. And the maximum penalty for an offence under sections 90 and 91 is life imprisonment.
3. The complainant and victim is your very own daughter Maina Timbolo. She is now 23 years old. At the time of this second round of your offendings against her she would have been 20 years old. She complained that in or about May 2013 you resumed having sexual intercourse with your daughter against her will. The first time it happened was when your daughter arrived in Port Vila on a ship (MV Brooklyn) from Epi. On arrival at the wharf you were waiting for her. You picked her up and were heading home to Teouma. Just before going into the house you stopped her and demanded sex outside the house. It was dark and raining at the time. The complainant refused your demand but you forceably removed her pantie, lifted up her skirt and



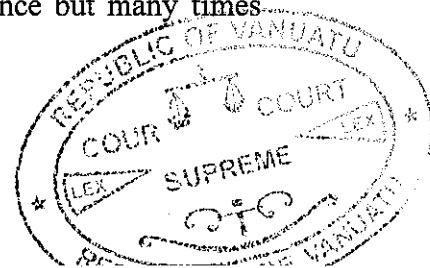
had sexual intercourse with her. She struggled but you forced her down and succeeded in penetrating her. After having had sex with her you both then went into the house. Your daughter was crying and her mother knew from the obvious that something had gone wrong as her daughter was wet and dirty. And she reported everything that had happened to her mother.

4. The complainant complained that after this first night, sexual intercourse occurred many times thereafter during days and nights and without the use of condoms. She complained that you had said some nasty things to her such as:-
 - a) That you would get her pregnant to compensate for your time in jail or as a revenge or payback for your being imprisoned for your first offending against her.
 - b) That she should not have left your house so that other boys or men would have sex with her.
 - c) That only you were to have sex with her apart from her mother and no other men should do so.

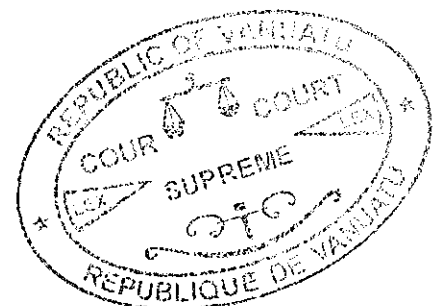
5. This is the second time around that you have offended sexually against your daughter against her will. In or about 2009 you were sentenced to 7 years for committing incest, unlawful sexual intercourse and sexual intercourse without consent. You applied for parole on compassionate grounds of illness. The Parole Board released you on Parole on 30th April 2012 on compassionate grounds due to Hepatitis B. You however reoffended and was recalled by the Parole Board to serve the remainder of your first sentence to end on 9th September 2016. You are therefore currently a serving detainee with an outstanding term of about 1 year and 3 months. You need to understand that the Sentence imposed on you today will be added to the 1 year and 3 months you have left of your first sentence and will be served consecutively.

6. It now appears obvious that you used sickness as an excuse to be allowed on parole so that you could continue to abuse your daughter when the chance arose. You abused that privilege that was accorded to you by the Parole Board.

7. Further you abused the trust vested in you as a father to take advantage sexually of your very own daughter a second time around, and not only once but many times over a period of about a month in May 2013.



8. Further being diagnosed with Hepatitis B you had unprotected sex with your daughter without the use of condoms and subjected her to a high risk of being infected with the disease as well.
9. These are the aggravating features that add seriousness to your offendings.
10. You have brought disgrace upon yourself as a father and head of your family and household. The law is not in doubt about how you are to be sentenced. The offence of rape is always a serious crime and other than in wholly exceptional circumstances, this offence calls for an immediate custodial sentence: see **PP .v. Ali August [200] VUCA 73.**
11. Moreover you took advantage sexually of your own daughter who is very much younger than yourself. As a weaker and a vulnerable girl she deserved your protection instead of the abuses you applied to her. The Court of Appeal said it so clearly that men who take advantage sexually of young people forfeit the right to remain in the community: See **PP .v. Keven Gideon [2002] VUCA 7.**
12. In sentencing you today it is necessary to impose a sentence that serves the following purposes-
 - a) It marks the seriousness of your offendings.
 - b) It marks the Courts and public condemnation of your undesirable actions.
 - c) It acts as a deterrence both to you and others.
 - d) It acts as protection for the young, the weak and the vulnerable.
 - e) It acts as an adequate punishment for you for the offences committed.



13. In sentencing you today I have considered also the case of PP.v. Kal Andy [2011] VUCA 14 by taking into account the totality of the circumstances of your case.

14. I will therefore sentence you only for the more serious charges of sexual intercourse without consent and treat the incest charge only as one of the aggravating features of your offendings.

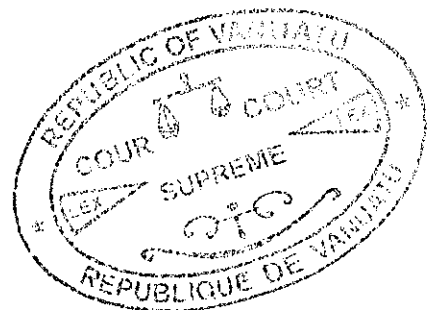
There are two separate charges of sexual intercourse without consent (Counts 1 and 2). These really should have been one count (as a representative charge).

15. For the offence of sexual intercourse without consent, I sentence you to imprisonment. The starting point for this is 5 years imprisonment increasing by 4 years for all the aggravating features such as-

- a) Serious breach of trust, not out of ignorance but as deliberate actions.
- b) Disparity of age
- c) Risk of infection of illness through unprotected sex
- d) Repetitions of offences over a long period
- e) No remorse or contribution
- f) Force and violence used
- g) Abuse of parole privilege

16. Your sentence is effectively increased to 9 years imprisonment.


17. In mitigation I accept the only mitigating factor relevant for you is your guilty pleas for which you are entitled to 1/3 reduction. Accordingly I deduct 3 years from your total sentence of 9 years leaving the balance of 6 years imprisonment.

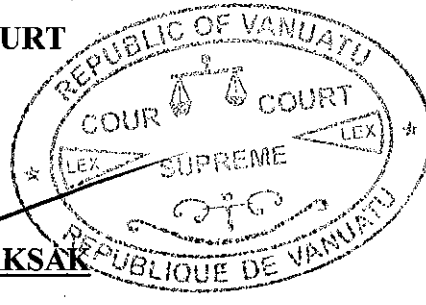


18. Edward Timbolo, I therefore sentence you to an end sentence of 6 years imprisonment. This sentence shall be added to your current sentence and will be served consecutively with the remainder of your earlier sentence.
19. There is a right of appeal against this sentence within 14 days if you do not agree with it.

DATED at Port Vila this 10th day of June 2015

BY THE COURT


OLIVER.A.SAKSAK


REPUBLIC OF VANUATU
COURT COURT
LEX SUPREME LEX
REPUBLICQUE DE VANUATU

Judge