

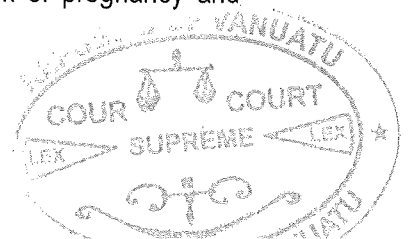
BETWEEN: Public Prosecutor

**AND: Francois Tabi
Defendant**

Date of Plea: 10th December 2019
Date of Sentence: 13th December 2019
Court: Justice Oliver A. Saksak
Counsel: Mr Damien Boe for the Public Prosecutor
Mr John W Taiva for the Defendant

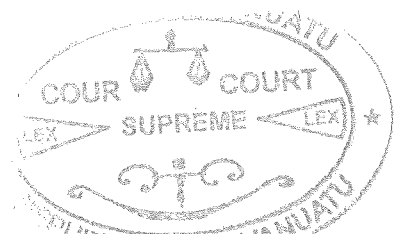
SENTENCE

1. Francois Tabi, you are for sentence today after having pleaded guilty on 10th December to one charge of incest contrary to section 95 (1) (c) of the Penal Code Act [Cap. 135]. The maximum penalty for this offence is 15 years imprisonment.
2. Your victim was your granddaughter of 17 years old. You are now 79 years old. Sometimes this year 2019 you had sex with this girl in your house. Her mother sent her to go into your house to charge a mobile phone. She approached you and you told her to go into the house to plug the phone. You then followed her there. You held her hand and pushed her onto the bed. You then removed her clothes and had sex with her. After sex had taken place the girl returned to her mother and reported you to her. When the police investigated and interviewed you about the offending, you admitted having sexual intercourse with the girl who you accept as your granddaughter.
3. The aggravating features of your offending are (a) the serious breach of trust, (b) the great age disparity between your age and hers by 62 years difference, (c) there was a degree of planning, (d) the offending occurred within the confines of your family home where she was supposed to feel safe, (e) the unprotected sex putting the victim to risk of pregnancy and venereal disease.



4. What you did is a disgrace as a fully aged and mature man of standing in the community as a chief and community advisor, and former catechist of the Catholic church.
5. The Court of Appeal laid down a clear sentencing principles for sentencing in incest cases in the case of PP v. Bae [2003] VUCA 14 where the Court said:-


“The principles are simple. 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. This Court would anticipate that it will only be in the most truly exceptional circumstances, which are clearly and unequivocally demonstrated to exist, that this will not apply...”
6. Applying that principle the only appropriate sentence the Court will impose on you is to be a sentence of imprisonment. This is to act as a deterrence, disapproval and condemnation of your action and marking its severity, and affording continued protection to young women and girls, the weaker and vulnerable members of our society.
7. Taking all the aggravating features together with the seriousness of the offence you committed, I consider the starting sentence appropriate is to be 7 years imprisonment.
8. I now consider reducing your sentence in light of your personal circumstances stated in your Same Day Report. You are 79 years old, weak and frail. You admitted the offending to the police during interview and have performed a substantial custom reconciliation ceremony with a total value of Vt 50,000, custom fine in terms of pigs to the total value of Vt 290,000 plus a further fine in terms of pigs to the value of Vt 238,000. Altogether you have paid the sum of Vt 578,000 in custom fine. In addition you have been punished by the Chiefs to house detention for a period of 4 months.
9. You have in your many years contributed well to the community. You have good clean past with no previous criminal record. Your performance of custom ceremony has shown remorse and your acceptance of responsibility for your actions. I consider these to be the mitigating factors of your case. And I allow a reduction of 2 years for these. Your start sentence is reduced to 5 years imprisonment.
10. I reduce it further by 1/3 for guilty pleas leaving the balance of your sentence to be 3 years and 4 months imprisonment.
11. In view of your old age and general health and the substantial fines you have made to the chiefs and the custom detention of 4 months imposed on you by the custom chiefs, I consider these as exceptional circumstances enunciated in the Bae Case warranting your end sentence to be fully suspended under Section 57 of the Penal Code Act.



12. Accordingly I convict and sentence you for one count of incest to an end sentence of 3 years and 4 months imprisonment. However for reasons given, I order that your sentence of imprisonment be wholly suspended for a period of 2 years from today's date. This means you will not have to go to prison today. You will remain in the community but on strict condition that you do not commit this offence again or any other offences for which you would be charged and convicted. If you do, you will go to prison immediately to serve your term of imprisonment of 3 years and 4 months.
13. That is the sentence of the Court. You have the right to appeal this sentence in 14 days if you do not agree with it.

Dated at Luganville this 13th day of December 2019

BY THE COURT


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Oliver A. Saksak

Judge

