

**IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU**
(Criminal Jurisdiction)

Criminal
Case No. 18/636 SC/CRML

PUBLIC PROSECUTOR

v

RUBEN BOKI

Date: 27 March 2020
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr S. Blessing
Defendant – Mr W. Kapalu, holding papers for Mr H. Rantes

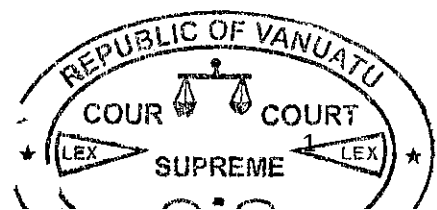
SENTENCE

A. Introduction

1. Mr Boki pleaded guilty and accepted the summary of facts relating to four charges of sexual intercourse with child under care or protection contrary to s. 96(1) of the *Penal Code* [CAP. 135]. The maximum sentence for this offence is 10 years imprisonment.

B. Facts

2. The complainant KC is the adopted daughter of Mr Boki and his wife. She lived with Mr Boki and his wife. She had lived with them since she was 3 years old. At the time of the offending in November 2016, KC was 15 years old; Mr Boki was 42 years old. She was in class six and the offending began just before the end-of-year exams.
3. Mr Boki had sexual intercourse with KC on four separate occasions.
4. On the first occasion, KC had finished school and was changing in her bedroom. Mr Boki opened the door quietly, grabbed her, tied calico around her mouth and threw her onto the bed. He told her not to call out or he would spear her with a knife. As he said those words, he took a big knife and placed it beside the bed. KC was afraid and wanted to shout but she couldn't as her mouth was tied with calico. Mr Boki removed KC's clothes and proceeded to have sexual intercourse with her.

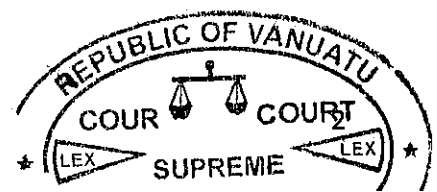


5. KC was not menstruating yet but at the time she saw a lot of blood on the bed and felt pain in her vagina. After Mr Boki had had sexual intercourse with her, he showed her the big knife and told her not to tell her mother or he would spear her with the knife. She was afraid so she didn't tell anyone.
6. The second and third occasions occurred at the garden. On both occasions, Mr Boki hid from KC. He was naked. He approached her quietly and overwhelmed her. He held her by her mouth and told her not to call out or else he will stab her to death with a knife.
7. On both these occasions, Mr Boki touched her vagina with an island cabbage branch and then had sexual intercourse with her. After he had sex with her he showed her the knife and told her not to tell anyone or he would kill her. KC wanted to tell people but she was too afraid of Mr Boki.
8. On the fourth occasion, Mr Boki's wife sent KC to the beach to collect sea water to cook with. Mr Boki went ahead of her and hid beside the road. When KC arrived, Mr Boki grabbed her by her mouth, pulled her into the bushes, removed her clothes and had sexual intercourse with her. He threatened to kill her and then had sexual intercourse with her. After he had sex with KC he told her not to tell anyone or he will kill her.
9. The offending came to light in December 2016 after Mr Boki badly assaulted KC in a fit of anger that she had gone to the shop. She then reported the offending to her uncle and they reported it to the Police.
10. In October 2017, Mr Boki made full admissions in his Police interview.

C. Aggravating Factors of the Offending

11. There are a number of aggravating factors to the offending:

- Firstly, there is a breach of trust aspect of the offending – KC is Mr Boki's adopted daughter. Offending within the family environment where children should be secure is particularly serious. Moreover, the offending began in their house where more than any other place she was entitled to be safe and secure.
- Secondly, the complainant was just 15 years old at the time of the offending. As a child, she was entitled to Mr Boki's care and protection which he did not respect.
- Thirdly, Mr Boki was 42 years old when he committed the offending. As a fully mature man, he is more culpable than an immature young person.
- Fourthly, the violence used over and above the force necessary to commit harm. Mr Boki on different occasions bound KC's mouth with calico and otherwise held her by the mouth. He hid himself, approached KC quietly and overwhelmed her by force before having sexual intercourse with her.



- Fifthly, the use of a weapon and threats made in order to frighten the victim. Mr Boki had a knife with him and threatened KC with it on three of the occasions. On every occasion, he threatened her not to tell anyone or he would kill her before he had sex with her.
- Sixthly, the sexual offending against KC was repeated, occurring on four separate occasions.
- Seventhly, the harm suffered by the victim. The first occasion of Mr Boki's offending left KC bleeding all over the bed and suffering pain. On every occasion that he had sexual intercourse with her, he threatened to 'kilim hem I ded' if she told anyone. The fear he caused her was such that she was too scared to report him until finally his assault of her in December 2016 made her tell her uncle. The offending involved unprotected sex which exposed KC to the risk of pregnancy or sexually transmitted infection.
- Eighthly, the sexual indignities and perversions the victim was subjected to. On the second and third occasions of Mr Boki's offending, he used an island cabbage branch to touch KC's vagina before he had sex with her.
- Lastly, the offending involved a degree of premeditation. On the first occasion, Mr Boki approached KC in her room when she was home alone, grabbed her, tied her mouth with calico, threatened her with a big knife and proceeded to have sexual intercourse with her. On the second and third occasions, Mr Boki hid from KC then approached her silently and overwhelmed her before having sexual intercourse with her. On the fourth occasion, Mr Boki went ahead of KC and hid by the side of the road. When KC arrived, he pulled her into the bushes and had sexual intercourse with her.

D. Mitigating Factors of the Offending

12. There are no mitigating factors relating to the offending.

E. Offending Starting Point

13. Looking at the offending in total, I set the global start point for Mr Boki's offending at 8 years imprisonment.

F. Factors Relevant to the Offender

14. Mr Boki is in a de facto relationship with his wife. They have no children besides their adopted daughter KC. Mr Boki's widowed elderly mother lives with him and his wife. He is the sole breadwinner of the family. Mr Boki has no previous convictions.

15. He has undertaken a custom reconciliation ceremony with KC and her birth mother, involving a pig, 10 mats, a bundle of calico and some local root crops.

16. Mr Boki has not committed another offence since he was released on bail on 3 April 2018.



17. For Mr Boki's personal factors I reduce the start point of his sentence by 3 months imprisonment.

G. Deduction for Guilty Plea

18. The guilty pleas were not entered at the first opportunity. On 3 April 2018, Mr Boki pleaded not guilty to the charges against him. He entered guilty pleas only at trial to charges he has faced since March 2018.

19. I consider also the strength of the Prosecution case and whether or not there is any remorse. The Prosecution case was strong given Mr Boki's admissions to the Police that he had had sexual intercourse with KC, the complainant's statement and statements from other witnesses about KC reporting the offending. Mr Boki told the Police that KC consented to their having sex. Consent is of course no defence pursuant to subs. 96(2) of the *Penal Code*. Given that Mr Boki admitted the offending to the Police in October 2017, his guilty pleas only at trial do not demonstrate true remorse on his part.

20. These factors warrant a 15% deduction.

H. End Sentence

21. Taking all of those matters into account, the end sentence that must be imposed is one of 6 years 17 days imprisonment. I impose that on the first charge. I impose end sentences of 5 years 6 months imprisonment on each of the remaining three charges.

22. All the sentences are to run concurrently, and the sentence is to commence from 2 November 2019 to take into account that Mr Boki has already been in custody from 10 November 2017 to 3 April 2018 and again from 26 March 2020.

I. Suspension

23. There is no question an immediate custodial sentence must be imposed. *Public Prosecutor v August* [2000] VUSC 73 and *Public Prosecutor v Gideon* [2002] VUCA 7 are authorities for that proposition.

J. Other

24. Mr Boki has 14 days to appeal this sentence if he disagrees with it.

25. The names and details leading to the identification of KC are permanently suppressed.

DATED at Ipota, Erromango this 27th day of March 2020
BY THE COURT


V.M. Trief
Judge

