

KELEB TAUSI -v- THE PUBLIC PROSECUTOR  
ISAAC ANDREW  
IASUL TAKIFU

JUDGMENT

These appellants all seek to appeal against the sentences passed on them for unlawful sexual intercourse with a girl under the age of 13 years, contrary to section 97 of the Penal Code Act, 1981.

All pleaded guilty, Keleb Tausi to three separate offences committed in 1986, Iasul Takifu to two committed in March and July 1987 and Isaac Andrew to one in August 1987. The first two were each sentenced to a total of four years imprisonment and the other to two years.

The exact date of birth of the girl was uncertain but the year was established to be 1976 and so, at the oldest, she was 11 years in 1986 and 12 years in 1987. Despite her tender age, it is clear she was sexually experienced and was a willing, even enthusiastic, participant in the sexual act. As counsel for the appellants stated, these men were taking advantage not just of an under age girl but a willing and available girl.

That fact must always be a matter for the Court to bear in mind when passing sentence but the fact remains that the principal purpose of section 97 is to protect young girls - if necessary, from themselves. Although some young girls may develop their sexuality earlier than others, the law recognises the fact that they do not necessarily develop discretion to match it. Thus the law expects older men not to take advantage of such a girl even if she encourages them.

Parliament has decreed the maximum penalty for this offence should be fourteen years imprisonment. It is clearly a serious offence.

We feel, in all the circumstances of this case, a sentence of two years imprisonment is neither wrong in principle nor

manifestly excessive. The appeal of Isaac Andrew is dismissed.

The other two appellants committed further offences on the girl and received double the sentence passed on Isaac Andrew for one offence.

The learned Chief Justice was right to impose an additional penalty but we feel he was wrong to increase the total sentence so much. We cannot accept that the subsequent offences involving the same girl added very much to the incident as a whole. In the circumstance of this case, we feel an appropriate sentence for each of the remaining appellants is two and a half years imprisonment.

Their appeals are allowed and the sentences varied as follows:

Keleb Tausi	-	Count 1	-	2 years imprisonment
	-	Count 2	-	2½ years imprisonment
	-	Count 3	-	2½ years imprisonment all concurrent.
Iasul Takifu	-	Count 1	-	2 years imprisonment
	-	Count 2	-	2½ years imprisonment concurrent.

Dated at Port Vila, this 24<sup>th</sup> day of October, 1990.

*Gordon Ward*

MR JUSTICE G. WARD  
COURT OF APPEAL JUDGE

*E. P. Goldsbraugh*

MR JUSTICE E. GOLDSBROUGH  
COURT OF APPEAL JUDGE

