

IN THE MAGISTRATE'S COURT OF
THE REPUBLIC OF VANATU
HELD AT LUGANVILLE, SANTO

Criminal Case No. 37 of 2008

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

**MAKI HINGE
RODOLPH RABI**

JUDGMENT

The defendants are jointly charged with unlawful sexual intercourse in contravention of Section 97(2) of the Penal Code Act, Cap.135 which provides that :

“No person shall have sexual intercourse with any girl under the age of 15 years but of or over the age of 13 years.

Penalty : Imprisonment for 5 years”.

Subsection (3) states that it is not a defense to a charge that the girl consented or the defendant mistakenly believed the girl was over the age in question.

They entered a plea of guilty to the charge.

The facts are that the victim is a young girl of about 13 years, 11months and 4 days, her date of birth being 24th October, 1993. The defendants, Maki Hinge is about 20 years old and Rodolphe Rabi is about 26 years old.

On 27 September the victim in the company of her father were returning to their home from the CMC church at Papan area. On their

way they met a girl, Cecilia who suggested to the victim that they go and have a game of volleyball. The victim said Cecilia must ask for her father's permission which she did and the victim's father consented to the girls to have a game of volleyball. This was about midday.

After they played for sometime they decided to eat pawpaw. The victim went into the bushes (garden) by the roadside to fetch them pawpaw when Maki Hinge set upon and had intercourse with her. This defendant's companion was in the vicinity. After Maki Hinge had intercourse with her he took away all her clothes and brought them to Rodolph Rabi who took them to her and also had intercourse with the victim. This defendant also took her clothes and gave them to one, Samba of Malekula. Samba took the victim's clothes to her and told her to dress and go home which she did.

Mr. Rexton Langon for the Prosecution submitted that men taking advantage of young age is a serious offence and cited the leading case of PP -v- Kevin Gedion, Criminal Case No.03 of 2003, Court of Appeal and another of PP -v- Lemaya Taun, Criminal Case No21 of 2005, Supreme Court. That custodial of 3 years imprisonment would be the appropriate sentence.

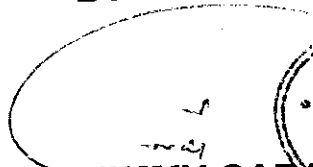
Mr. Tavoia for the defendants made a submission in which he visited the case authorities which included PP -v-Kevin Gideon. I have considered the submission the defense counsel has laboured on which he must be commended but one aggravating feature of the offence which does not satisfy the 'extreme' case where a suspended

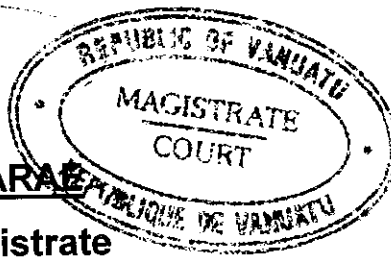
sentence should not be contemplated as held in PP –v- Kevin Gideon is that after each had intercourse with her they took her clothes away. These placed her in difficult circumstance. This particular factor makes the offence more serious and a custodial sentence would be the appropriate sentence.

Mitigation on behalf of the defendants has been taken into consideration to arrive at the appropriate sentence. The defendants are convicted and each is sentence to a term of imprisonment of 14 months.

DATED at Luganville this 05th day of June 2008

BY THE COURT


JIMMY GARAE
Senior Magistrate



REPUBLIC OF VANUATU
MAGISTRATE
COURT
REPUBLIQUE DE VANUATU