

PUBLIC PROSECUTOR

-v-

IATA TANGAITOM

Public Prosecutor for the State
Public Solicitor for the Defendant.

SENTENCE

The Defendant was found guilty of four count of indecent assault , Section 98 (2) of the Penal Code Act. The offence carries a maximum penalty of 7 years.

Both the victim and the Defendant in those acts were in the courses of having sexual intercourse and the Defendant did not ejaculate into her vagina. However, the Defendant admitted that on the 2nd of May he did have actual sexual intercourse with the victim by penetration. However, the victim in her statement denied this. So I accept that " the accused was only in the course of having sexual intercourse with her with no penetration".

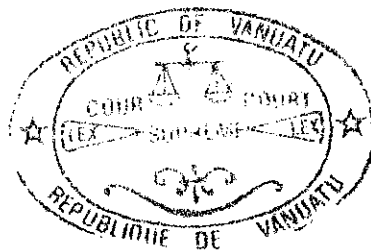
The 2nd of May incident was the recent incident as the other 3 incidents were before the 2nd of May 1998 which she could have reported the matter.

However, on that day I accept that she was threatened by the Defendant to have sex with her. Naomi in her statement stated that on that day the victim came crying to her and she informed her of what Iata did to her.

The statement of the victim was taken on the 4th May 1998, two days after the incident and the Defendant's statement was taken on the 5th May 1998, three days after the incident.

There were variations as to the age of the victim, that is 10 years in one statement and 13 years in another statement, I accept 13 years.

In mitigation, the counsel submitted that in custom, this is recognized and accepted and further, age is irrelevant. In my view if there is a conflict between custom and public law, that is criminal law, then the law must prevail and that is provided for under section 11 of the Penal Code Act where it expresses that ignorance is no defense. Further more if there is anything in custom that to be considered by the Court, then evidence be adduced in mitigation if not then



customs is not, from the mouth of the lawyer, sufficient at all for any consideration.

For these reason I consider that the appropriate penalty to impose on the Defendant is a custodial sentence as a form of deterrence to others in taking advantage of such belief in custom to commit such crime, mainly on females of the age of 13 years and therefore impose the following sentence:


Count 2: That on the 2nd day of may 1998 the Defendant indecently assaulted Anna Selina, the Defendant is convicted and sentenced to a period of 10 months imprisonment. Period of custody be deducted from such sentence and the defendant will now serve seven months imprison.

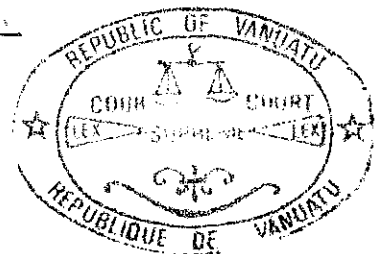
Count 3: That sometime in 1997 he indecently assaulted Anna Selina, the Defendant is convicted and sentenced to 6 months imprisonment to be served concurrently. Period in custody be deducted and the defendant will now serve a period of three months.

Count 4: That the Defendant sometime in beginning of 1998 indecently assaulted Anna Selina, the Defendant is convicted and sentenced to 6 months imprisonment. Such sentence be served concurrently. Period in custody be deducted and the defendant will now serve a period of three months.

Count 5: That sometime in March 1998 the Defendant indecently assaulted Anna Selina, the Defendant is convicted and sentenced to 6 months imprisonment to be served concurrently. Period in custody be deducted and the defendant will now serve a period of three months.

DATED AT PORT VILA this 3rd day of August 1998


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R. MARUM MBE
Judge



Mr. Willie DANIEL for the Public Prosecutor.
Mr. Reynolds LIU for the Public Solicitor.