

**IN THE SUPREME COURT OF**  
**THE REPUBLIC OF VANUATU**  
**HELD AT LUGANVILLE/SANTO**  
**(Criminal Jurisdiction)**

**Criminal Case No. 01 of 1999**

**PUBLIC PROSECUTOR**

**-v-**

**JAPETH JAMES**

**Coram: Mr Justice Oliver A. Saksak**  
**Mr William Falau, Clerk of Court**

**Counsel: Mr Willie Daniel for Public Prosecutor**  
**Mr Hilliary Toa for the Defendant**

**SENTENCE**

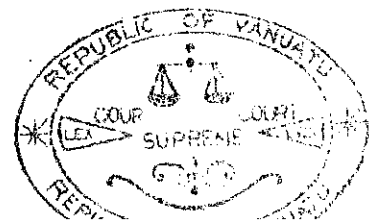
**Charge:** Indecent Assault contrary to section 98(2) Penal Code Act [CAP 135].

**Plea:** Guilty

**Facts:**

The indecent assault took place on 12<sup>th</sup> January 1999 at Turtle Bay, East Santo. The Complainant made a complaint that while she was on her way to her garden the Accused had ran after her, held her by her two hands, and carried her on his shoulders some distance into the bushes away from the roadside. The Accused then put the Complainant down and demanded to have her clothes removed so he could have sex. Having removed the Complainant's clothes the Accused then attempted to have sexual intercourse but he could not succeed as the Complainant was struggling so hard. The Accused then inserted his fingers into the Complainant's vagina a

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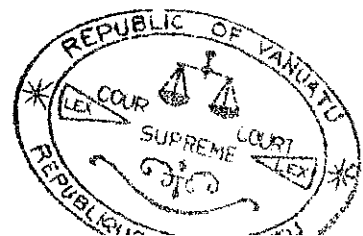
number of times. The Complainant felt painful and she shouted at the top of her voice. The Accused then retreated and the Complainant was then assisted by her sister who saw her limbing and crying and that she had blood on her skirt. Another woman assisted the Complainant by applying cold water on her. She assisted the Complainant to be brought to the Northern District Hospital in Luganville. She confirmed there was blood on her skirt. The Accused was interviewed by police on 14<sup>th</sup> January 1999 and he admitted that he had indecently assaulted the Complainant by inserting two of his fingers initially into the Complainant's vagina. Later he used the other three fingers of his right hand. The only reason he gave for his indecent actions was that his girlfriend was refusing his demands for sexual intercourse.

The Medical report made on 12<sup>th</sup> January 1999 reveals a superficial tear and no other abnormalities. The doctor's opinion was that she was assaulted.

In mitigation I am told that the Accused is a first-offender. That he made a full and frank admission to the police. That he pleaded guilty before the Court. That he was the victim of a broken relationship between his girlfriend. That he retreated after he realized that the Complainant was not consenting. That the Accused is deeply remorseful about his actions. Counsel urged the Court to impose a suspended sentence which in itself was not a lenient way of sentencing but which was a deterrent and a reminder to the Accused of the seriousness of the offence. This would also assist in the Accused to be more committed to his family and the Community.

Mr Daniel submitted that indecent assault on girls and women was becoming all too common in Vanuatu and Courts should continue to punish offenders in order that others would be deterred from doing the same. He referred to Criminal case No.26 of 1998: Public Prosecutor -v- Victor Tineran which the Court dealt with only yesterday and sentenced him to 8 months imprisonment. He submitted that the facts and circumstances of this case were more serious than those in Tineran's case for which the Accused deserved a slightly higher punishment.

Considering all submissions, I agree that the circumstances of this case reveal amore serious nature of assault than in the Tineran's Case. The maximum penalty for this offence is 7 years imprisonment. In the circumstances the most appropriate sentence the Court can impose is 10




months imprisonment effective from today's date unless appealed against within 14 days.

**DATED AT LUGANVILLE this 22<sup>nd</sup> DAY of APRIL, 1999**

**SEALED:** 4<sup>th</sup> May, 1999

**BY THE COURT**

  
.....  
**OLIVER A. SAKSAK**  
**Judge**

