

PUBLIC PROSECUTOR - v - ANDRE NABIT

Coram: Chief Justice Vincent Lunabek

Counsel: Mr Eric Molbaleh for the Public Prosecutor
Mr Jerry Boe for the Defendant

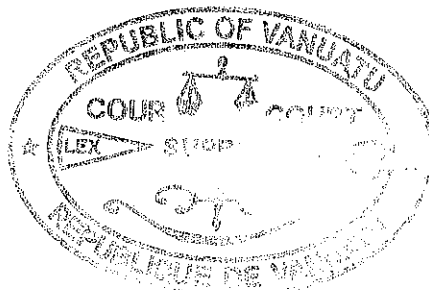
ORAL SENTENCE

This is the sentence of the Defendant Andre Nabit. He pleaded guilty to the offence of indecent assault, contrary to Section 98A of the Penal Code Act [CAP.135]. The facts are not in dispute. Briefly they are as follows:

The victim was 8 years old girl when the 42 years old Defendant Mr Andre Nabit commit the offence of Act of indecency on her. The victim was born on the 29th of March 2000. The Defendant was born in February 1966. The Defendant and the victim were living in the same compound at Seaside Paama area in Port-Vila. On the 23rd of December 2008 Mr Nabit called the victim into his room. He asked the victim to lie down in a bed. Mr Nabit then kissed her private part. Some people have seen the victim went inside the house of the Defendant. She was there for sometime. She still has not come out. Roselyn Dick the 21 years older sister of the victim then called out for the victim. She was calling her for sometime. The victim did not reply.

The victim then came out of the house of the Defendant Mr Nabit. The victim's sister then asked her what the Defendant did to her in his room. The victim then answered that the Defendant took her in his room and kissed her private part.

Section 98A of the Penal Code Act is the prohibiting section. It imposes a maximum penalty of 10 years imprisonment. The seriousness of this offence is reflected



through the maximum penalty imposed by Parliament. It is a serious offence for an adult person to abuse a child.

"There is an overwhelming need for the Court on behalf of the community to condemn in the strongest terms any who abuse young people in our community. Children must be protected.

...

Men who take advantage sexually of young people forfeit the right to remain in the community." [Court of Appeal Judgment: **PP v. Gideon**, Criminal Appeal Case No.03 of 2001].

The Judgment of the Court of Appeal in Gideon case is the authoritative judgment in sexual offences type of case. I apply the principle in this case. This case warrants a custodial sentence.

The appropriate sentence is 3 years imprisonment.

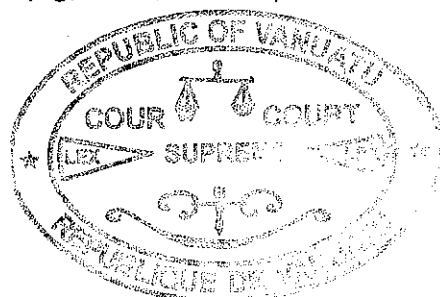
The girl victim is 8 years. She was born on 29 March 2000. The Defendant was 42 years at that time of offending (23 December 2008). There is a difference of 34 years between the Defendant and the girl victim.

The following is the aggravating factors:

1. The girl is very young (8 years old)
2. The Defendant is older than the girl (age difference 34 years).

The sentence is increased to 12 months to reflect the aggravation.

In mitigation, the Defendant cooperate with the police. He is a first time offender. He pleaded guilty at the first opportunity given to him. He made through his family custom ceremony to the victim girl and her family and paid compensation of VT87,630 in cash money and various items (from 1 pig, mats, to food.)



In balancing the mitigating factors to the aggravating ones, I sentence the Defendant, Andre Nabit to 2 years imprisonment. The Defendant has spent 2 weeks in custody from 23 December 2008 to 10 January 2009. This will be deducted. The Defendant is ordered 1 year and 11 months and 2 weeks imprisonment.

The next question is whether the sentence be suspended.

I am informed the Defendant is remorseful. He cried when he was interviewed by Probation Officer as he realized what he did was wrong. He said he will not re-offend. He has a young family. He wishes to re-habilitate.

I consider whether I should suspend the sentence to give a chance to the Defendant to rehabilitate himself in the community, I consider the circumstance of this case warranting for a suspension of the sentence of 1 year and 11 months and 2 weeks for a period of 3 years. I make for such a suspension.

I inform and warn the Defendant that during the suspension period of 3 years he should not re-offend. If he re-offends his sentence of 1 year 11 months and 2 weeks imprisonment shall be re-activated in addition to being dealt with in relation for his new offending.

In addition to the suspension of 1 year and 11 months and 2 weeks imprisonment I order the Defendant, Andre Nabit to 400 hours of community work under s.58G of the Penal Code Act [CAP.135].

14 days to appeal.

DATED at Port-Vila this 10th day of March 2009

BY THE COURT

**Vincent LUNABEK
Chief Justice**

