

PUBLIC PROSECUTOR -V- ROBERT MARIE TELEIMB

Having heard the plea entered by the accused in the single charge of Indecent Assault and upon hearing the learned Prosecutor and subsequently the learned counsel for the defendant in this case and having satisfied that the victim Lordane Liliord who is 4 years old is subject to an act of Indecency and upon further having satisfying itself that the aforementioned accused who is 18 years being a student in Vanuatu Teachers College has in fact claimed Indecently Assaulting the above victim while in the victim's home at Anamburu area on the 22 June 1995 contrary to section 98 (1) of the Penal Code Act Cap 135 in the light of the prevailing circumstances the court makes the following observations that :

1. Accused resides with his uncle Jean Marc Rory when he is not staying in the College namely over the weekends or School Terms before the incident took place.
2. The victim Lordane Liliord was playing childrens game during day time with other friends or relatives including the accused at that time.
3. During that time, the grandmother of the victim called the defendant to cook some rice but while he was yet in the kitchen, Lordane Liliord appeared in front of the accused who sent her out from the house to the play ground.
4. But while during the process of a sexual excitement that the victim appeared from their games in front of accused who was masturbating by exposing his organ before the eyes of the victim.
5. It appears that there was no argument or kickings or crying at the time both accused and the victim entered her parents bedroom.
6. Even to the victim's surprise for being exposed to such unexpected circumstances perhaps to her advantage or disadvantage the prevailing situation cannot be said to be neither for or against the accused advantage as well.
7. Accused admitted he did not exert any force before both entered the bedroom and would have wish so for penetration but considering the age of the victim he resorted not to.
8. Not long after both were in the room that accused continued masturbating then ejaculated on the body of the victim while she laid on the bed.

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9. But it was after satisfying himself of his sexual excitement upon the victim that he went out leaving the victim alone when alarming from the sudden voice of the victim's grandmother.
10. It was while the grandmother appeared in the bedroom of the victim's parents that to her dismay approached the victim when she recognised the sperm on the victim's body and to her frustration called accused to hear what he had to say because he was the only one inside the house cooking the rice.
11. Accused tried to explain the situation but unsuccessfully to the grandmother's defence who would like to have the incident reported to the victim's parents upon their return from work.
12. Accused had also unsuccessfully tried to explain the incident to the victim's parents who felt disgusted about the whole event by reporting the matter straight away to the Police.
13. From the Medical examination (although no Medical Report has been submitted) it appears that the internal part of the victim has remained intact and no evidence justifies the penetration in this case.

With the above observations, it was adjudged that :

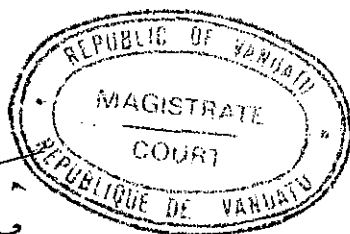
- (b) Accused was fantasising in his sexual excitement when the victim appeared in front of him and she got trapped psychologically to her dismay remain stationary in standing.
- (d) The court is satisfied that Accused admitted the single charge made against him.
- (c) The circumstances and the event from this allegation of literal action did not to disclose any element for substantiating the issue itself.
- (d) what is more important for the court to draw its attention were from the following :
 - 1) The conduct or behaviour of the accused at that time.
 - 2) Although there has never been a direct physical contact psychologically its
 - 3) effect has been apparent in this case where the victim of 4 years old who could not but remain intact that very moment and
 - 4) as a result of such body language as para-phrased the victim could not resist but submitting herself under such blindly conduct.

- e) No corroboration evidence from the grandmother's allegation as to what really is the complainant's attention at the beginning of the motional process until the stage where the victim has been discovered in their parents bedroom which no more than what she would in any event believe or claim to be true.
- f) What is now certain was that at the time of the act there were no one else around but accused and the victim themselves.
- g) What is also believe in the circumstances accused was that the version of the story related by a four year old girl may or may not be of her own advantage similarly
- h) What could also be said by the accused in defence at this stage may or may not disclose any evidence at all.

With these, the Court ordered that in view of the seriousness of the case itself make the following orders :

- (a) Accused is the first offender in this case and also from the fact that he was unsuccessfully trying to resolved the matter with parents of the victim. In this light I used my discretion to conditionally discharged him pursuant to Section 42 (1) Penal Code Act Cap 135 and to be called for sentence if he re-offends within 3 years.
- (b) Prosecution Costs of - 2000 Vatu to be settled on or before 30 September 1995.

Dated at Port Vila this 10th day of August 1995.



Bruce S. Kalotiti Kalotrip
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BRUCE S. KALOTITI KALOTRIP
Magistrate