

IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU

(Criminal Jurisdiction)

Criminal Case No. 26 of 2003

PUBLIC PROSECUTOR

-v-

PAKOA CHARLIE MASSING ←

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Mr. Shaw for the Prosecution

Mr. Toa for the Defendant

JUDGMENT

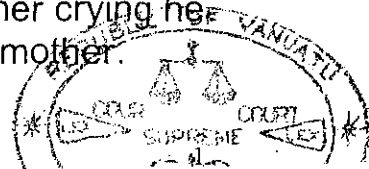
The defendant is charge with Indecent assault on Merelyne Sam then aged 9 years. The charge is laid under Section 98 (1) of the Penal Code. I agree with Mr. Shaw for the Public Prosecutor that the elements are the performance of an act of indecency and that the subject person was under the age of 13 years.

This last fact is established by consent and by the production of a birth certificate. The issue in this case is whether the defendant is proved beyond reasonable doubt to have indecently assaulted her.

The first witness for the prosecution was Merelyne herself. She is a shy little girl, she attends school and lives with her parents. The defendant is her uncle who lives with them.

She said on the 8th of May of this year she was at home with her little brother and sister. She was cooking some meat. She said her uncle called her to his room on the basis of a promise that he would give her some chewing gum. He told her that the chewing gum was in a carton. She said when she went to go for the chewing gum he got up from the bed where he was lying, held her hands with one hand and put his other hand inside her pant and scratched her vagina, painfully.

She said he then told her to go and lie down on the bed so he could suck her. She said she cried and when he saw her crying he let he go and she told him she would report this to her mother.



- She found her Auntie on the road and told her and then she told her mother. The mother went to the Police station and then she,
- Marilynne had to give a statement to Sgt. George. The next day she was taken to the Hospital and saw a Doctor there.

In cross-examination she agreed that her Uncle the defendant had given her little brother and sister some chewing gum and she went and asked for some herself and was told he only had 2 packets and he had given out those.

She insisted that she be given some. She was asked if she had not decided to report her Uncle to her mother because she didn't get the chewing gum and she adamantly denied this.

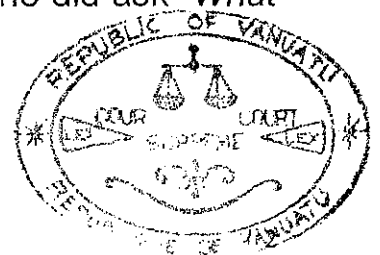
She told the Court in cross-examination that she told her Auntie what her Uncle had done. She denied that her Auntie had given this idea to her. She was asked *"I say to you that it was Auntie Winnie who suggested to you that Daddy Pakoa touched you? It wasn't your idea?"*- and she said *"She did not say anything to me - I told her this"*.

When this was put to her again that she had made it up and then had been caught in her lie she said *"Daddy Pakoa is lying"*.

Asked about the Doctor she said *"Something scratched me but everything is OK"*.

The Doctor's evidence is relevant and helpful. He examined the child the next day. He found a small laceration on the posterior forchette and redness on the libia minor, which he described as *"consistent with attempted vaginal entry"*.

Her Aunt Winnie was closely questioned. She described Merelyne crying on the road. The fact that she was on the road was significant. That place is forbidden to her. She said the child told her what had happened in terms I have described. She was asked *"Did you not ask her repeatedly" "What did he do to you"*. She said it was Merelyne who kept repeating the story over and over. She denied that she had suggested this story to her. She did ask *"What did he do to you"* but denied anything further.



- Merelyne's mother also gave evidence. She was told by Merelyne what had happened - after her Auntie Winnie took her to the house. Her mother said she became very angry and went to see the defendant with a knife. He denied it - and she went to the Police station. She took her daughter to the Doctor the next day.

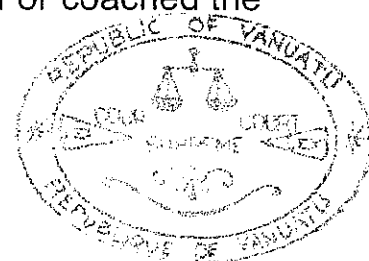
The other evidence - tendered by consent is that of the Police Sgt. - who took a statement of the defendant in which he denied the alleged assault and said that Merelyne started to cry when she could not get any chewing gum and told him she would report him to her parents.

- The defendant gave evidence himself and repeated this denial. He retold the story of the chewing gum and when he did not give any to her he said *"she started crying and running away saying 'I'll report you to Mummy that you did not buy me any chewing gum'"*. He denied point blank that he had indecently assaulted Merelyne. He said *"we are under the same roof - living together - I see the children as my children I do not know why she puts this complaint against me"*.

I am grateful to counsel for the helpful cases on the law of recent complaint and corroboration that have been handed to me. The case of the Public Prosecutor v Mereka I found to be particularly helpful. And of course I am aware of the need to exercise caution before relying upon the uncorroborated evidence of a witness particularly that of a young child.

- But here I am satisfied as to the truth of the prosecution case. Merelyne herself was an excellent witness. She wasn't in the slightest shaken by questions asked of her. Her evidence was consistent with that of her Auntie and her mother. She told the same story at home and to the Police sergeant. She impressed me as a witness of truth. The Doctor's evidence supports her evidence of a "painful" scratching and the fact of her running onto the forbidden road speaks also of her immediate distress.

The Aunt and her mother also impressed me. I am satisfied that they were telling the truth and in no way influenced or coached the young child.

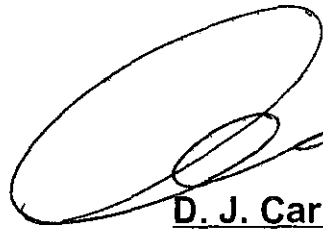


It follows that I reject the denials of the defendant. The explanation given by him relating to the chewing gum disappointment strikes me as fanciful and disproportionate. But in the final analysis it was the demeanor and consistency of the evidence from the complainant which convinces me of the veracity of her evidence supported as it is by the evidence of consistent recent complaint and the Doctor's evidence.

Convicted accordingly.

Dated AT PORT VILA, this 31st day of July 2003

BY THE COURT


D. J. Carruthers
Judge

