

PUBLIC PROSECUTOR -v- REMY BOB

CRC 44-2002

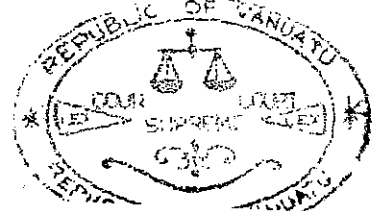
Mr. Collin Leo for the Public Prosecutor
Mr. Hilary Toa for the Defence

SENTENCE

This is the sentence of the defendant, Remy Bob. The defendant pleaded guilty to the offence of Indecent Assault, contrary to Section 98 (1) of the Penal code Act [CAP. 135].

The offence of indecent assault was committed by the defendant on the victim/girl (VB) on 30th September 2002 at George Pompidou. VB was a child/girl of 9 years of age. She is a student. She lives with her parents at George Pompidou area, Port Vila. She is from the Island of Tanna. The defendant is a young man of 21 years of age. He is also from Tanna island. He has no job. He finished his school at class 6 level on Tanna Island. He moved and came to Vila, Efate, and resides with some of his relatives who live at George Pompidou. They live as close neighbours with the victim and her parents.

On 30th September 2002 VB stayed at home with her sister Nathalie who was sick. Her mother went to work. At a point of time she came outside her house and wanted to go to the toilet. The defendant called on and asked her to go and see him. VB told the defendant she wanted to go to the toilet. The defendant called her again and asked her to go and see him. She then went to see him in the house where the defendant lives. The defendant opened the door of the house where he lives. He got the victim inside the house and locked the door. He told VB to lay down close to and in front of the toilet's door. VB refused. She ran and tried to open the door. The defendant blocked the door and hold VB's belly. He then put VB on the floor close to the toilet. VB lay down on her belly. The defendant removed VB's skirt and underwear. The defendant pushed his penis into VB's anus.



The defence counsel put a different version of fact in relation to where on the body of VB the defendant introduced his penis. The defence says the defendant introduced his penis between the two buttocks of the victim girl.

I reject the defence version of fact on that point. The reason being that on 6th November 2002, before the defendant entered his guilty plea, counsel for the defendant applied for the word "*private part*" which is contained in the charge to be substituted to the word "*anus*". That amendment has been granted with the consent of the prosecution. The defendant then pleaded guilty on the basis that he pushed his penis into the anus of the victim girl.

The girl cried and shouted. The defendant put the music and turn the volume to the maximum so the girl's cries for help cannot be heard.

The victim says in her statement to police that the defendant spate into her anus when he pushed his penis into her anus. When the defendant pulled out his penis, the girl/victim said her anus was wet. The girl wept out and cleaned herself with her skirt, put on her skirt and underwear, opened the door and went outside. She then went and told a person called Antoine of what the defendant did to her.

On the facts presented before this Court, the aggravating factors in this case are:-

- (a) The victim of the offence is a very young girl of 9 years;
- (b) The victim is a student;
- (c) The defendant is older than the victim;
- (d) The degree of indecent assault on the young girl was serious and substantial penetration violations.
- (e) The admitted factual circumstances are so serious and intrusive that they would have supported a charge of at least attempted and/or unlawful sexual intercourse and not just indecent assault.

It is accepted that there were no injuries to the girl. There was no actual physical violence involved beyond the commission of the offence itself and although the

prosecution says the defendant closed the door and told the girl to lay down in front of the door of the toilet. The defendant now disputes that.

The mitigating factors are that the defendant is remorseful. He says sorry to the girl, her parents and the Court. The defendant and his parents attempted to perform custom ceremonies to clear their faces in custom reconciliation process. The girl's parents refused. The defendant says he is still willing to do so. The defendant is a young man and has plans in future for his life and he is willing to help his parents. The defendant is a first time offender. He made admissions to the police and most importantly, in pleading guilty at the first available opportunity he has spared the girl of 9 years, the humiliation of having to recount her ordeals in the witness box. The defendant is given all credit for that.

This case is a very serious case of indecent assault committed on a young girl of 9 years. This case warrants an imprisonment sentence. The appropriate starting point for this particular offending would properly be in the range of 7 to 8 years in line with the decision of the Court of Appeal in *Public Prosecutor –v- Dick Boita, Criminal Appeal Case No. 9 of 2002*.

Allowing for the mitigating factors and in particular the guilty plea of the defendant, the appropriate penalty should be reduced to 3 years as a single incident compared to the factual circumstances of *PP v. Dick Boita*.

The defendant, Remy Bob is sentenced to 3 years imprisonment and within immediate effect.

Dated at Port Vila, this 22nd day of November 2002.

BY THE COURT

Vincent LUNABEK

Chief Justice.

