

**IN THE SUPREME COURT**  
**OF THE REPUBLIC OF VANUATU**

*(Criminal Jurisdiction)*

Criminal Case No. 26 of 2003

**PUBLIC PROSECUTOR**  
**-v-**  
**PAKOA CHARLIE MASSING**

**SENTENCE**

I am sentencing today the defendant on a charge of indecent assault. That charge was defended and, after a defended hearing, Mr. Massing was found guilty.

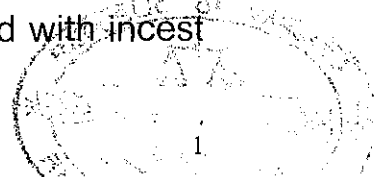
A difficulty exists for me because Counsel for the defendant is standing in for Counsel who appeared at the original hearing and he has no instructions to plead on behalf of his client. However Counsel does not object to my proceeding to sentence and, indeed I must do so since I leave this country very soon. I will do the best I can in those limiting circumstances.

The leading decision on the sentencing of these offences is contained in the Court of Appeal decision in Public Prosecutor-v-Dick Boita. That case involved 6 offences committed by a school teacher on primary school children ages 8 to 11. Some of the children were related to him. He pleaded guilty thereby preventing the children from the distress of giving evidence against him.

The assaults in that case were repeated, serious and substantial including digital and oral violations - to the degree that the Court indicated some of the charges would have supported charges of, at least, attempted rape. The Court indicated that an appropriate starting point for this offending would be in a range of 7 or 8 years.

In the circumstances and particularly because of the guilty plea the penalty was reduced to 4 1/2 years.

The Court of Appeal referred to two prior decisions in Abedingo and Kamisak where a sentence of 5 years was imposed in each. In the first of these cases a 74 year old man was charged with incest



and indecent assault on his 12 year old grand daughter. In the other the defendant was charged with four counts of indecent assault on three young girls of 6, 4, 8 years respectively in similar circumstances to the defendant in the case of Boita

It will be seen that this case is of a different degree although the same features are to be seen.

The defendant is a mature, strongly built man. An aggravating feature is of course the fact that he is the uncle of the complainant and there is a clear breach of trust involved here. The incident occurred when no other adults were in the area and he took advantage of his seniority and position.

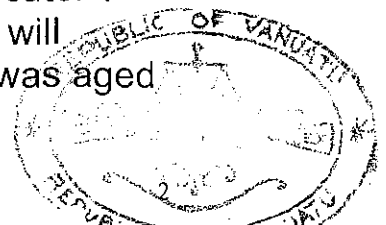
Yet another aggravating feature is the fact that he pleaded not guilty to this charge and has undergone a trial at which obviously the child complainant has been put to the distress of giving evidence in a case which must have been difficult for her. There is no question therefore of any reduction for remorse.

Mitigating factors are of course the fact that there was in this case one child on one occasion and the child herself, now aged ten years, seems not to have been badly affected by the outcome, as best one can see, although there must be a certain destruction of innocence and trust which is obviously incalculable. She has been surrounded by a loving family and seems to be in good order both physically and emotionally after the incident. It is also a mitigating fact that he did not detain the child when she became distressed nor prolonged the assault. In a sense it is an assault towards the lower end of the scale, although repugnant for obvious reasons.

I have not been told of any similar prior offending by the defendant and I sentence on this basis.

There is a principle here of both personal and general deterrence which must be upper most in the Court's mind and a clear message must be given to the community and to this defendant that such behavior is intolerable.

Having regard to the decision of the Court of Appeal in the Boita case, which has been applied in the case of Public Prosecutor v Bob, I have to consider what a level of sentence is which will balance all these factors. In the Bob case the defendant was aged



21 years and the assault was of a significantly more distressing nature. It is not necessary for me to go into the detail of that. It is enough to say that in that case the Courts held that the degree of indecent assault on that young girl was a serious and substantial violation.

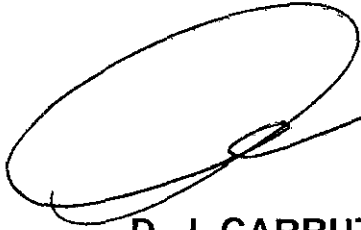
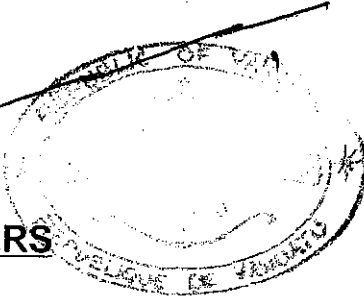
In that case, after weighing the factors and considering the imprisonment ranges indicated by the Court of Appeal in Boita, the Chief Justice, allowing a substantial discount for a guilty plea, reduced the penalty to three years. It would have been in his mind that this was a single incident compared with the facts and circumstances of Boita; and the age of the defendant would have been significant as well.

In my view a starting point for offending at this level must be in the vicinity of one and three years. I take that as a level which is established by the Court of Appeal and Boita, having regard to the much graver incidents there.

Weighing the aggravating and mitigating factors in this case, and particularly considering the difficulties of representation which I have mentioned I come to the view that a sentence of one year and six months imprisonment would be appropriate and I sentence Mr. Massing accordingly. This is to take immediate effect. Defendant is advised of his right of appeal.

**Dated AT PORT VILA, this 06<sup>th</sup> day of August 2003**

**BY THE COURT**

**D. J. CARRUTHERS**  
**Judge**