

**IN THE SUPREME COURT**

**OF THE REPUBLIC OF VANUATU**

*(Criminal Jurisdiction)*

Criminal Case No. 06 of 2004

**PUBLIC PROSECUTOR**

**-v-**

**MINTO AVOCK**

**TAURE AVOCK**

**EDDIE KALO**

**Coram:** Justice Treston

Ms. Wodak for Public Prosecutor

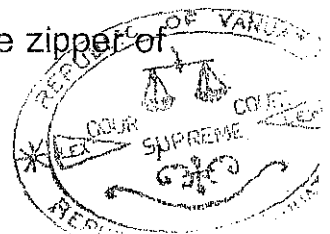
Mr. Tavoia for Defendants

**Date of Sentence:** 4<sup>th</sup> May 2003

**SENTENCE**

Each of you is charged with indecent assault under the Penal Code where the maximum potential sentence is 7 years imprisonment.

The incident occurred on 24 December 2003 when you took advantage of the sleeping victim. She had been drinking on Christmas eve. She felt intoxicated and passed out on a mat in the sitting room of a teacher at Pango village. Mr. Minto Avock you went into the sitting room and saw the victim and noticed that the zipper of



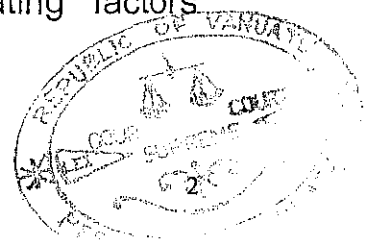
her trousers was open and you put your hand inside her trousers and touched her vagina. Mr. Taure Avock you noticed the same thing and also walked up to the victim and put your hand inside her trousers and touched her vagina. Mr. Eddie Kalo you watched what Mr. Taure Avock had done and you put your hand inside her trousers and touched her backside. The victim did not feel any of you touch her but was awoken at 3a.m. by a close relative.

The Prosecutor addressed the Court with a number of cases for similar offences which involved actual penetration of the vagina of victims, which made those cases somewhat more serious.

The Prosecutor submitted that as the Defendants were aged 17 when the offences were committed they should not be imprisoned particularly in view of the Convention on the Rights of the Child (Ratification) Act No. 26 of 1992 which provides that every child below the age of 18 years is not to be deprived of his or her liberty unlawfully or arbitrarily and that such detention should be used only as a measure of last resort and for the shortest appropriate period of time. However, the Court indicated that the appropriate time for considering that Act was at the time of sentence and each of these accused is now aged 18 years or more at this stage.

Thereafter the Prosecutor also referred to cases where the age of defendants was an important mitigating factor and sentences were either suspended or defendants were ordered to come up for sentence within a certain time.

On your behalf your counsel has advanced mitigating factors including your pleas of guilty.



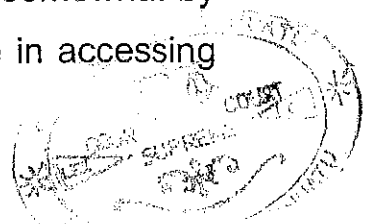
Mr. Minto Avock you are 18 years of age and are a student at a secondary school, living with your parents at Pango Village. You are a first time offender and pleaded guilty at the first available opportunity. Custom reconciliation was organized and performed between your family and the family of the victim. You are said to be remorseful and ambitious to become a pilot and have a family.

Mr. Taure Avock, you are 18 years old and are a carpenter in employment in a construction company. You also live with your parents at Pango Village, Efate and are a first time offender. You also pleaded guilty at the first available opportunity and took part in a customary reconciliation with the relatives of the victim, and were fined and penalized. You are remorseful. Your future ambition is to have your own construction company and to have a good family.

Mr. Eddie Kalo you are 19 years of age and you are at the University, you are also living with your parents and are a first offender. You pleaded guilty at an early stage also and there was a custom reconciliation ceremony for you as well.

All three of you are remorseful and all three of you are committed Christians. Your lawyer has also referred to various authorities, which I have considered carefully. Various sentencing options were placed before me and I taken those options into account as well.

In sentencing all of you I must take into account your responsibility for harm not only to the victim but also to the community at large. The victim's interest have already been taken into account somewhat by the ceremonies which have taken place and, of course in accessing

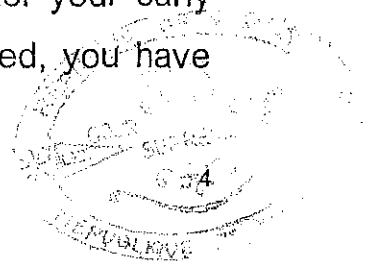


the quantum of penalty to impose, under Section 119 of the Criminal Procedure Code, I take into account that compensation made under custom.

I must of course denounce your conduct and deter you from offending again. I must protect the community and endeavor to rehabilitate you as well. Of course the sentence I am imposing will be the least restrictive one that I can logically impose.

These are not offences, which are near the maximum by way of seriousness as far as the law is concerned however, they did have significant effect on the victim which she has outlined in her statement. She not unexpectedly felt extremely violated but fortunately there was no penetration of her vagina by either you Mr. Minto Avock or Mr. Taure Avock. That would have made the indecent assault much more serious if that had occurred nevertheless there was skin to skin contact and the victim was particularly vulnerable because sleeping or comatose she was unaware of what was happening. On the aggravating side, of course, there was the indecency itself and I have already referred to the vulnerability of the victim. There did not seem to be particular premeditative aspects of the offending and you really took advantage in my view of the opportunity, which presented itself to you. The offending was somewhat opportunistic. I do not accept the submission of your counsel that these were mischievous or simply naughty or playful acts. It went far beyond that description, in my view.

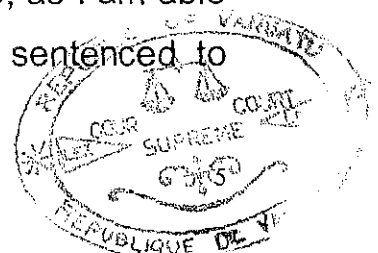
By way of mitigation of course I take into account your relatively young age. I take into account and I give you credit for your early pleas of guilty. By those pleas, as it has been submitted, you have



not put the victim through the agony and distress of having to give evidence at a defended trial. Each of you has also expressed remorse because of what happened. Each of you has previous good character. In addition it was a one-off incident on behalf of each of you and of course, as I have said more than once, custom reconciliation ceremonies have taken place and they involved significant amounts of value of goods etc.

The Court of Appeal in the case of Public Prosecutor v Gideon Criminal Appeal Case 03 of 2001 said that it would be only in a most extreme of cases that suspension of any sentence of imprisonment could ever be contemplated in a case of sexual abuse. Although your case does not fall within the definition of an extreme example, it is my view that the mitigating factors in each of your cases is sufficient to allow me to deal with you by leaving you in the community. Nevertheless, the Court has a responsibility to indicate to the general public that matters of indecency such as this will not be accepted by the Courts bearing in mind the maximum potential sentence that I have referred to and the facts of this case. While it is my view that a sentence of imprisonment for each of you is inevitable, because of the mitigation factors that I have referred to, I consider that I am able to suspend the appropriate sentences of imprisonment. I also am of the view that I must differentiate between your actions Mr. Minto Avock and Mr. Taure Avock and that of Mr. Eddie Kalo. The first two of you had touched the complainant on her vagina. That was more serious than touching her on her backside.

Mr. Minto Avock and Mr. Taure Avock, each of you is sentenced to imprisonment for 9 months but I suspend that sentence, as I am able for a period of two years. Mr. Eddie Kalo, you are sentenced to



imprisonment for 6 months, your sentence is also suspended for two years. That really means this, providing that you don't come back to Court on any imprisonable matter, be it similar or not, within the next two years, each of you will not be called upon to serve those sentences of imprisonment. But if you do come back, you will be sent to jail for these sentences together with anything for any fresh matter. Each of you is entitled to appeal against the sentence within 14 days if you are unsatisfied with it.

Dated AT PORT VILA, this 04<sup>th</sup> day of May 2004

BY THE COURT



**P. I. TRESTON**

Judge

