

IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU

(Criminal Jurisdiction)

Criminal Case No. 41 of 2006

PUBLIC PROSECUTOR

V

LIONEL DAMASING

Coram: Justice C. N. Tuohy

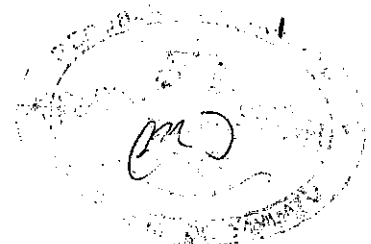
Mrs. Tavoia for Public Prosecutor

Mr. Loughman for Defendant

Dates of Sentence: 22 September 2006

SENTENCE

1. Lionel Damasing, you have pleaded guilty to one charge of indecent assault. That is an offence under section 98 (1) of the Penal Code, the maximum penalty for the offence of indecent assault under the law of Vanuatu is 10 years imprisonment.
2. The summary of facts simply says that you touched her vagina after you had taken her pants and trousers down and it says that there was no penetration.

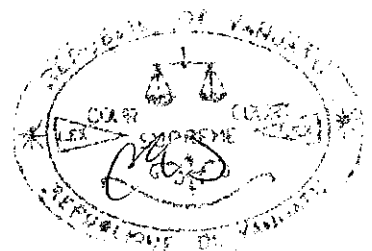


3. I had previously read the statement made by the victim to the police and the medical report and those things in fact indicate that there may have been penetration by your finger in her vagina. However, I queried that with Mrs. Tavoia when she was making submissions for the prosecution and she made it clear to the Court that the prosecution case is not that you penetrated her vagina but rather that you touched her vagina without penetration and I will sentence you on that basis.
4. You admitted what you had done to the police but denied using force and said that it did not last for long. You are aged 20, you had a job, you had no previous convictions and you pleaded guilty immediately. All those are things in your favour.
5. I requested a victim impact statement but there has been none and the Court unfortunately has to sentence you without any information as to the effects of this offending on the victim other than the medical report.
6. That shows that she suffered no physical injuries but it also shows that she had not reached puberty at the time this happened.
7. The aggravating features are the age of the victim and that being a family member you were in some position of trust to her.
8. The offence of indecent assault on a girl of this age carries a maximum penalty of 10 years imprisonment. However, the



offence of indecent assault covers a very wide range of different types of offending from very minor to very serious.

9. Counsel on both sides have referred me to a number of cases where the Court has imposed sentences for indecent assault. Those cases really illustrate the fact that indecent assault covers a wide range of different types of offending and the Court must look at the particular circumstances of the case before deciding on the right sentence.
10. I appreciate the submissions made on both sides. Surprisingly Mr. Loughman suggested a starting point higher than that suggested by the prosecutor because the prosecutor was suggesting that a sentence which could be suspended be imposed.
11. The first thing is that women and even more so young girls are entitled to be protected from sexual abuse and that means that in other than the rarest cases there must be a sentence of imprisonment for sexual offending particularly against young girls.
12. Considering all matters my view is that a starting point is 3 years imprisonment but that should be reduced by one-third to take into account the facts that are in your favour that I have already referred to and also the fact that you are remorseful as shown by your willingness to undergo a custom ceremony although whether that takes place or not is still to be seen.



13. The plea of guilty is the main reason why there will be a reduction of 1 year from the 3 years starting point. Plea of guilty is always given credit by the Court particularly in cases like this where it saves the young girl from having to give evidence in Court.
14. As well as that the law requires that I take into account the time you have spent already in custody which is 17 days and so therefore the sentence of the Court will be that you are to serve a term of imprisonment for 1 year, 11 months and 13 days.
15. I do not propose to suspend the sentence. I do not think that it would be right to do so. I think that in a case of sexual offending of this seriousness against a young girl there should be immediate imprisonment. If you wish to appeal against this sentence, you have 14 days to do so.

Dated AT PORT VILA on 22 September 2006

BY THE COURT


C. N. TUOHY

Judge

