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## IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

VERSUS

JEMMY MADELEINE

ACCUSED

Criminal Side No 56 of 2003

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Miss H. Carolus for the Republic

Mr. F. Bonte for the Accused

### JUDGMENT

Perera J

The Accused stands charged with the offence of sexual assault, contrary to Section 130(l) of the Penal Code, read with Section 130(2) (d) thereof. The virtual complainant was born on 16<sup>th</sup> June 1988. As the offence is alleged to have been committed "on a date unknown during the month of April 2002" she would have been nearly 14 years of age at that time.

The complainant, testified on oath that she was friendly with the Accused for some time before the incident when both of them were practicing Judo. In April 2002, both of them had sexual intercourse in an old building near her house. She stated that at first they kissed, and then the Accused inserted his penis in her vagina. Thereafter on another occasion, they had sexual intercourse on the beach. On being cross examined, she stated that she had sexual intercourse with several other people on various occasions. She further stated that presently she is having sex with a named person on a regular basis. The Complainant however stated that she had sex with the Accused as she loved him and that she still loved him.

Detective Inspector Neige Raoul, who investigated the case, produced a statement made by the Accused on 21<sup>st</sup> June 2002. Learned Counsel for the Accused did not object to its production, and hence it was marked in evidence as exhibit P2. In that statement, the Accused had stated thus-

"I know L.A. since the year 2001 when she was training judo in the Administration Office at Grand Anse and I also was doing the training. We have been in good terms till we became lover. When we met on the road we talk. In the year 2002 which I do not recall the month but it was either 20<sup>th</sup> or 21<sup>st</sup> there was an activity at Anse Boileau, I was going down on the road on a bicycle, L. asked someone to call me. I came in the lane opposite where she lives at Grand Anse, I talked to her, she told me that his brother asked me to lend him the bicycle to go to Anse Boileau. I told him that the bicycle is not good but I gave his brother to have a look for himself. Her brother left and I stood and talked to her. I told L. that I am going and she prevented me of going, she brought me further to the lane at her place, we went in a shed where they put the linen drying. I asked her what is her intention that she brings me there, I told her that I am going I do not wish to have problem with her parent, her brother might tell and put me in trouble. I told her that I am going, she prevented me of going and started to hold me and kissed me and it just happened that we had sexual intercourse. She agreed and we did without protection. I then went, I then had sexual intercourse with L. on three occasions. Later I went to Barbarons to see if Selwyn is not at her aunts' place, I met L., we talked and had sexual relation, then L. left me went to her place and whilst I was going I met his father, he showed me a knife telling me if I did not stop with her daughter he will push that knife in my belly. I was aware that L. is 14 years old and is still attending school. I want to say that L. escaped from home at night and come to my place to go to the disco at night."

The Prosecution also produced a medical report (P3) from Dr. Dilip Hajarnis who examined the complainant. In his report it is stated that "on examination I found that her hymen was not intact and she is used to having sexual intercourse".

After the close of the Prosecution case, Mr. Bonte, Learned Counsel for the Accused sought to call the Complainant as a defence witness, but that application was refused by a Ruling dated 27<sup>th</sup> January 2005 on the ground that it was contrary to the Rules of Criminal Procedure and the law of evidence. Thereafter, the Accused elected to remain silent, and not to call any witnesses or make a statement from the dock. No adverse inference is drawn against the Accused from the exercise of his rights.

The Complainant's evidence and the statement made by the Accused show that the child victim had consented to the initial Act of sexual intercourse with the Accused. However Section 130(3) (b) provides that –

- “(3) A person does not consent to an Act which if done without consent constitutes an assault under this Section if –
  - (a) .....
  - (b) The person is below the age of fifteen years”.

In the statement to the Police, the Accused had stated “I was aware that L. is 14 years old and is still attending school”. Hence the Complainant's consent is not a valid defence. The evidence also established that after the initial act of sexual intercourse with the Accused, the Complainant is now leading a promiscuous life at such an early age. This is indeed a tragedy.

On the basis of the totality of the evidence in the case, I find the Accused guilty as charged, and accordingly convict him.

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A.R. PERERA  
JUDGE  
Dated this 8<sup>th</sup> day of July 2005