IN THE COURT OF APPEAL OF

THE REPUBLIC OF VANUATU

APPEAL CASE NO. 1 OF 1986

BETWEEN: PETER NAPUAT, JOHN JAMES, JOSEPH WILSON, SAM NARI

AND : PUBLIC PROSECUTOR

JUDGMENT

The four Appellants were on 11th March 1986 convicted of raping Janet Williams and were sentenced to 8 years imprisonment.

During their trial they defended on the ground that they genuinely believed that the complainant had consented following the provisions of section 12 of the Penal Code.

There can be little point in re-iterating the facts which were set out in the summing up of the learned Chief Justice.

Her evidence was that she did not fight or struggle once her initial resistance had been overcome because she was afraid of incurring serious injury as the result of any struggle. There were four men; it was after 4.00 a.m. and she had been forcibly taken off the path through the bush. The assessors appear to have taken the view that it would have been futile to resist and that her succumbing had not been associated with any consent on her part.

The defence was that unreasonable as it may seem the accused genuinely related her lack of resistance and co-operation as a sign of consent and believed she was consenting.

Once that defence is put forward it is upon the prosecution to satisfy the court that the accused did not, even unreasonably, have a genuine belief that she had consented.

The account she put forward which was that she was raped at least 6 times is substantially consistent in that respect with the evidence of the accused. It is hardly consistent with natural sexual behaviour that a respectable young female would willingly co-operate in such over indulgence having regard also to the time, the surroundings and to the fact that the accused were strangers to her.

The assessors were entitled to take those factors into account when considering the aspect of what the accused believed.

The assessors had to consider not whether one man believed she was consenting to his having intercourse with her but whether she minded their queueing up for turns as if they were boarding a bus. It is not surprising that the assessors were satisfied to the contrary.

Apart from the circumstances there was the evidence of the accused who in our view were not likely to have impressed the assessors. Thus Accused 1 referred to the complainant kissing him which was during his

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second session of intercourse with her and putting her arms around him in spite of the fact that it was at least the fourth or fifth time for her. By their finding they indicated that they disbelieved such obvious displays of enjoyment and passion on the part of the complainant at that stage in the proceedings.

During evidence in chief the Accused 1 said that he grabbed her and took her into the bush and Accused 2 who says he was a stranger to both of them followed them. But they both said that she screamed at the beginning.

The Accused 3 said he did not know what was happening. He just walked into the bush following the direction of Accused 2 and found himself an accepted invitee to a sex party given by a female on what appeared to be an open invitation to anyone who passed by. Accused 4's evidence was much the same.

There was evidence from prosecution witnesses, apart from the complainant, that points to a lack of consent and to knowledge of its absence by the Accused 1. Prosecution witness 2 heard a loud frightened cry from the complainant. It was not repeated. There can be little doubt that prosecution witness 2 realised the danger her friend was in because she got a lift to the police station and took the police back to the area to search for her. Such conduct is indicative of prosecution witness 2's extreme anxiety for her friend's safety. Prosecution witness 2 did not think that the complainant had gone with some males willingly and co-operatively for an orgy of sex.

Prosecution witness 4, the motorist, stopped by prosecution witness 1, had seen the beginning of the incident namely Accused 1 gripping the complainant and another man close by whilst others followed into the bush. He identified Accused 1 and 4 as persons he knew by name and said he saw the incident in the headlights.

There was, in our opinion, abundant evidence of a reliable and lucid nature demonstrating lack of consent and the knowledge of the accused of its absence. It was evidence which the assessors accepted notwithstanding evidence to the contrary from the accused.

We have no hesitation in dismissing the appeals of all four accused against their convictions.

There is an appeal by each accused that the sentence of 8 years imposed upon them is manifestly excessive.

When young men behave worse than beasts in the gang rape of a young woman the court has to avoid being swayed too strongly by its own feelings of revulsion. The approach to the onerous task of imposing sentence varies from one decade to another for a variety of reasons and the legislators frequently respond by endeavouring to provide some guidance to the courts.

We have not detected a lessening in society's desire to protect its womenfolk from the uncontrolled lusts of the physically stronger males. In fact there appears to be an increasing awareness for the need to firmly maintain that protection. Gang rape calls for appropriate punishment and eight years although severe is not manifestly excessive.

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There is nothing to chose between them which would, on the record at any rate, justify differentiating in the matter of sentence.

The appeals against sentence are dismissed.

Dated at Vila this 1st day of October, 1986.

Mr Justice Amet

Mr Justice Williams