

IN THE COURT OF APPEAL
THE REPUBLIC OF VANUATU

(Criminal Appellate Jurisdiction)

Criminal Appeal Case No. 17 of 2008

SAM KOILO

-V-

PUBLIC PROSECUTOR

Coram: *Hon. Chief Justice V. Lunabek*
Hon. Justice O. Saksak
Hon. Justice J. Von Doussa
Hon. Justice R. Young

Counsel: *Mr. C. Bennett for the Appellant*
Mr. B. Standish for Respondent

Date of Hearing: *20th April 2009*

Date of Decision: *30th April 2009*

DECISION

Introduction

1. In the early hours of 5th April 2008 the complainant, together with a male and female friend, were in Fresh Wota Park. A group of 10 men came upon the complainant and her friends. The young man was threatened and assaulted by these 10 men. The state case at trial was that the complainant was then abducted by the appellant and raped by him on 4 occasions. The trial Judge convicted the appellant on four counts of Sexual Intercourse Without Consent and one of Abduction.
2. The appeal against conviction and sentence were filed 1 day late. Without opposition from the respondent leave to extend time for filing the appeal is granted.

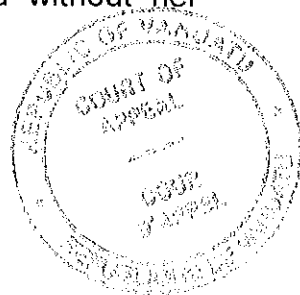


Appeal against Conviction

3. As to the appeal against conviction the appellant submits:
 - a. In the absence of any corroborative evidence the Judge failed to warn himself of the dangers of convicting the appellant on the uncorroborated evidence of the complainant and thus a miscarriage of justice has occurred.
 - b. The verdict was "*unsafe and unsatisfactory*" given the complaint's lies.

Corroboration

4. We approach this ground of appeal on the basis that the law of Vanuatu for the moment remains that an appropriate warning should be given where there is no independent evidence which confirms or supports in a material particular the complainant's evidence that the accused has committed the crime alleged. (see the remarks of this Court in Ishmael v. Public Prosecutor 2005 1 VUCA 1).
5. In this case the Judge was not required to give himself a corroboration warning because there was corroboration. The sole issue at trial was consent. The complainant described how she, and her male and female friend were sitting in Fresh Wota Park when the group of 10 men approached them. Her evidence was that the accused grabbed her and held her, while others attacked the male from her group and still others held the other young woman. She said she and her female friend were threatened with a knife and told not to "*singaot*" or they would be stabbed.
6. The appellant's female friend gave evidence at trial. She essentially supported the complainant's evidence as to what happened in Fresh Wota Park immediately before the rapes. The complainant's friend told how she saw the complainant being held against her will and how their male friend had been attacked and beaten by the group of men. This was all evidence independent of the complainant which confirmed, immediately before the rape, that the complainant was being intimidated and held without her consent.

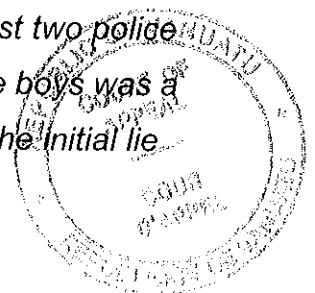


7. We are therefore satisfied there was corroborative evidence supporting the complainant's version of events, relevant to the question of consent, and therefore the Judge did not need to remind himself of the corroboration warning.

Verdict against evidence

8. This submission by the appellant is based on the proposition that, given the complainant admitted lying about the circumstances of the rapes to the police, and a Doctor shortly afterwards, her evidence could not support a conviction. Further, counsel submitted, the Judge had failed to take into account that a Police Officer had influenced the appellant to change her story to better match the "facts" as the Police Officer saw them.
9. Some further factual background is necessary to understand these submissions. During and after the rapes the complainant said the appellant threatened her and her family's life. After the rapes the complainant went home to her mother's house. It seems that she told her mother what had happened to her. The Police were contacted and in both her first two statements to the Police the complainant said three men had raped her. When she was examined by a Doctor she repeated the story.
10. In the meantime the police investigated the complaint of rape. They interviewed the appellant on 23rd April. He admitted sexual intercourse with the complainant but said it was consensual. The next day (24th April, 2008) the Police Officer re-interviewed the complainant. The (female) Constable told the complainant she believed only one man was involved in the incident. She did not mention the appellant's name to the complainant. The complainant then admitted she had previously lied to the Police and that the appellant alone had raped her.
11. The Judge dealt with these issues in his judgment in detail in this way.

"18. The complainant freely acknowledged that her first two police statement to the police and to the doctor about the three boys was a lie. Her explanation for not calling out for help, and for the initial lie

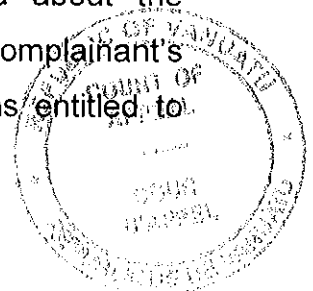


about the three boys are the same. She says she was scared of the accused. She said that he had threatened her on a number of occasions that if she told anyone that he had raped her, he would kill her and her family in the ("kilim ded" meaning that not the mere "kilim" as an assault). She said that the accused threatened that if necessary he would sent his friends around to do it.

19. At first sight the initial lie is a serious concern. However, taken in the context of an alleged 6 ½ hours abduction, many threats of violence, having a knife held to her neck and allegedly being raped 4 times, it would be understandable that she would be sufficiently concerned about her and her family's safety that might lead her to initially tell a lie, rather than name Sam Koilo. When she first told the lie she would have been tired, very scared, confused, and concerned about her mother's reaction to her being out so late. Her decision making may not have been good for all of those reasons. Her predominant emotion according to her evidence was her extreme fear of Sam Koilo and what he might still do to her and her family. Having first told the lie, about the three boys only, she was then stuck with it until further police questioning based on other information lead her to tell the truth.

20. I find that the Prosecution's witnesses, including the complainant, were credible and reliable. The failure of the complainant and her female friend to call out for help is not in the least surprising given the violent and threatening circumstances in which they found themselves. The complainant's initial lie is also explicable due to her extreme fear of the accused and to wish to protect herself from further harm and her family from imminent harm."

12. The Judge was entitled to reach the conclusions he did about the complainant's evidence. He specifically addressed the complainant's credibility given the admitted lies. Despite those lies he was entitled to conclude she was a truthful witness.



13. The claim that the Police Officer inappropriately influenced the complainant to change her story when she gave a further statement on 24th April was never put to either the complainant or the Police Officer at the trial. The Police Officer's action in re-interviewing the complainant after the appellant's statement was understandable and appropriate. In the absence of any evidence that the Police Officer inappropriately influenced the complainant's 24 April statement the Judge was entitled to reach the conclusions he did.

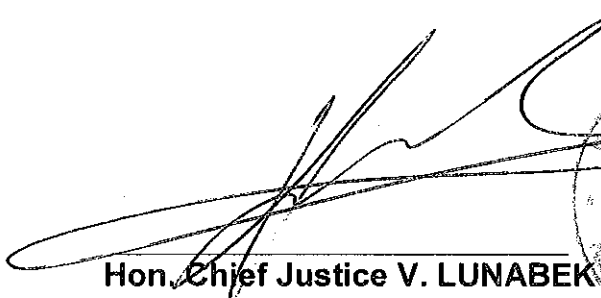
14. For the reasons given therefore the appeal against conviction is dismissed.

Appeal against Sentence

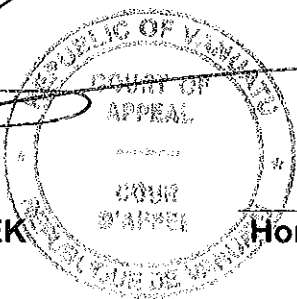
15. The sentence appeal will be the subject of a separate judgment.

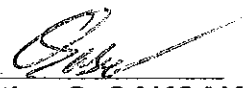
Dated at Port Vila, this 30th day of April, 2009

BY THE COURT

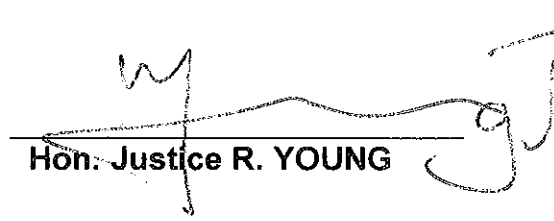


Hon. Chief Justice V. LUNABEK

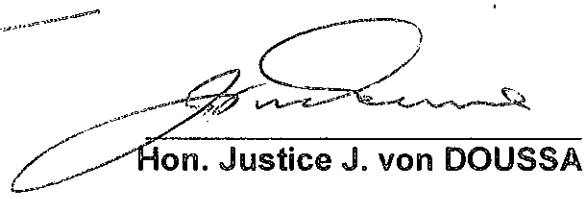

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Hon. Justice O. SAKSAK



Hon. Justice R. YOUNG



Hon. Justice J. von DOUSSA