

PUBLIC PROSECUTOR VS WILSON LUKAI

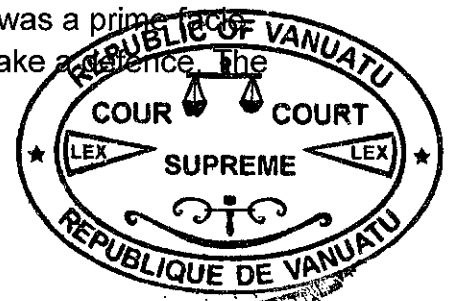
Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Mrs. Losana Matariki for the State*
Mr. Henzler Vira for the Defendant

Date: *20TH May 2014*

ORAL VERDICT

1. The Charges in Count 1 and Count 3 are related in that they were committed in May 2013. The Charge in Count 1 is Sexual Intercourse without Consent contrary to sections 90 and 91 PCA Cap 135. Elements of this Offence are-
 - a) Sexual Intercourse with Complainant
 - b) Without Consent
 - c) If Consent, it must have been obtained by
 - I. Force, or
 - II. Means of threats of intimidation of any kind, or
 - III. Fear of bodily harm.For the Charge in Count 2 these same elements must be proved.
2. The Charge in Count 3 is Act of Indecency without Consent- Sect.98 PCA
The elements to be proved are-
 - a) An act of indecency must be committed on the Complainant
 - b) Without Consent
 - c) With Consent if it was obtained by
 - I. Force, or
 - II. Means of threats of intimidation of any kind, or
 - III. Fear of bodily harm.
3. The general burden of proof lies with the Prosecution under section 8(1) of PCA cap.135
4. The standard of proof required is proof beyond reasonable doubt.
5. The Defendant accepts he had sexual intercourse and committed acts of indecency on the Complainant but he denies there was force used.
6. At the end of the Prosecution case the Court found there was a ~~prime facts~~ ^{prima facie} case made out against the Defendant to require him to make a defence. The Court adjourned at the request of Defence Counsel.



7. When the Court resumed at or about 2:30pm, Defence Counsel informed the Court that the Defendant had elected to remain silent and gave no evidence.
8. The facts are that in May 2013 the Defendant allegedly had sexual intercourse with the Complainant, a 16 year old school girl, without consent. Additionally it is alleged that the Defendant committed acts of indecency on the complainant prior to having sexual intercourse.
9. The evidence of the Complainant in is that:
 She is 17 years old and lives at Abbatoir area. She attends school at the Port Vila Community School. She is in Court for a rape case.
 " In May 2013, I can't remember the exact date. We were at home, Mum and Dad went to a marriage Party at Blacksands. I was with Abu (Grandpa) at home. Big Grandpa went to sleep. I stayed with Abu Wilson to tell stories in the Kitchen. At 10 O'clock pm the candle went out. I wanted to go and get another one but Abu Wilson stopped me. I felt sore on my knee. Abu Wilson told me to go and get oil so he could massage my knee. I got the oil from the big house and returned. He started to massage my leg, up to my thigh, then he went for my private part and started to lick it. I was afraid but he removed my panty and had sexual intercourse with me. I was afraid of him so I did not say anything or tell anyone. I was really afraid of him because he knows many leaves, so I did not tell anyone. I thought he might spoil me with black magic. I know he has black magic. I did not tell my Mum and Dad because I was afraid of all he said to me".

10. In cross-examination this is her account:-

Q: You had S/I with Defendant many times?

A: Yes

Q: And you were afraid to tell because you know he used leaves?

A: Yes

Q: Why didn't you run away and make a complaint to the Police?

A: Because mum and dad never let me to go out.

Q: You agree you had sex with Wilson?

A: Yes

Q: You agreed with sex in your mind?

A: No, if I did not agree with him he would do something to me

Q: In May you told Wilson to hold your legs?

A: Yes

Q: He held your legs up to your thighs and then when he came to your private part you remained quiet?

A: Yes

Q: When he did, you opened your legs?

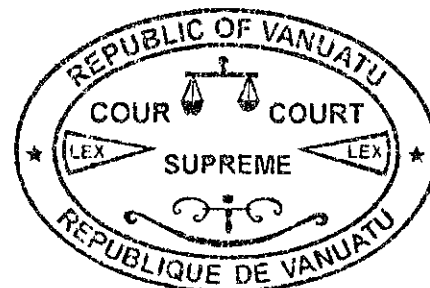
A: No

Q: When he wanted to lick your private part, you told him to wait until you removed your panty?

A: No

Q: You agreed to him licking your private part?

A: No, he forced me



Q: You were making eye contacts?

A: Yes

Q: You would tell him where to meet you?

A: No

11. In re-examination the complainant said:-

“

Q: Why did you agree to have sex with Wilson?

A: Because he told me something would happen to me.

Q: what did he do when candle went out?

A: I told him I would go and get another one but he stopped me. My legs were sore so he told me to get oil so he could massage it. It was dark so I remained quiet”.

12. Martha Robson gave evidence but her evidence was in relation to the charge against the Defendant in respect to Act of Indecency without consent in Count 4 to which the Defendant pleaded guilty on his re-arrangement. Her evidence was therefore irrelevant.

13. Corporal Lily Joel gave evidence that she was present during the interview during which the Record of Interview was taken by Police Officer Sandrina Bila. She said the statement was taken after the Defendant had been cautioned and informed about his rights. She said the statements were given voluntarily and on his own free will. She said the Defendant had admitted the allegations made against him.

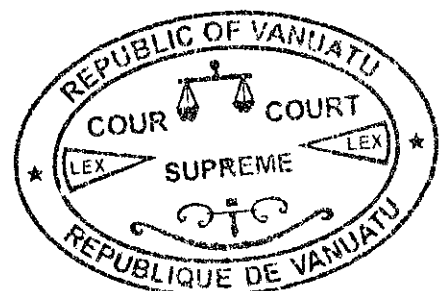
14. Police Woman Officer Sandrina Bila gave evidence as the Investigator of the Complaint. She said she had cautioned the Defendant and informed him about his rights. He signed the statement form to indicate his willingness to be interviewed after he had admitted the allegations made against him. She said he had admitted the allegations made against him. She said he had admitted having sex with the complainant seven times when he was administering leaves (or local herbal medicine). She said everything the Defendant said are recorded in the Record of Interview.

15. Mr. Vira cross-examined the Police Officer in relation to Q.26 which reads:

“Yu stap kam long police station ia from case blong wan girl we name blong (Sic) Jerrina hemi putum agensem se you stap gat sex wetem hem we long oltaem ia ino long thinkthink blong hem mo yu stap forcem hem?”

Ans: “Mi no Forcem hem long ol taem ia mi askem hem mo hemi letem hem nomo mo hemi satisfy nomo long ol taem blong sex ia.”

16. When asked which is the correct version of facts the Police Officer said the statement on the Record of Interview was the correct version.



17. From the evidence presented by the complainant, and two Police Officers the Court asks:-

a) Was there sexual intercourse between the Defendant and the Complainant and the Defendant in May 2013?

The answer to this issue is in the affirmative on the basis of the evidence and the admission of the Defendant.

b) Was there force used by the Defendant in May 2013 to obtain consent to sex or to act of indecency? **The answer is in the negative.**

c) Was there threats of intimidation of any kind used by the Defendant to obtain consent in May 2013?

The answer is in the affirmative.

d) Was there fear of bodily harm in the mind of the Complainant?

The answer is in the affirmative.

18. The Court is satisfied the prosecution has discharged its duty of proof beyond reasonable doubt to show that in May 2013 the Defendant had sexual intercourse with the Complainant without consent because the consent was obtained by threats of intimidation and by fear of bodily harm. Further the Court is satisfied beyond reasonable doubt that the Defendant committed acts of indecency with the complainant without consent as the consent was obtained also by threats of intimidation and by fear of bodily harm.

The Court therefore returns verdicts of guilty against the Defendant in relation to the charge of sexual intercourse without consent in Count 1 and to Acts of Indecency in Count 3. Convictions are entered accordingly.

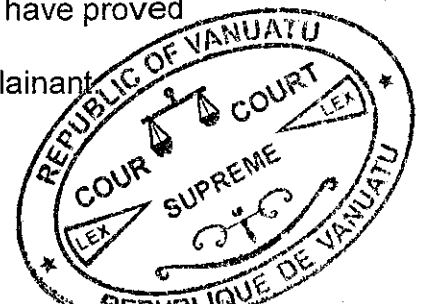
19. In relation to a further charge of sexual intercourse without consent in Count 2 the evidence by the Complainant was:-

“ On 16 November 2013, a Sunday Mum and small brother went to church. Dad went to work. The Defendant told me he would have sex with me again but I did not want to. He forced me to go with him. I went into the house and locked the door and the window. I was crying inside. He banged on the window hard and spoke to me from the outside saying: “yu no mekem mi go long prison from yu” meaning “ Do not make me go to prison because of you”. At this point a brother-in-law came around. I wanted to tell him but the Defendant was standing too close by him. When he left the Defendant took mi in by force and had sex with me again.”

20. Defence Counsel did not cross-examine the Complainant specifically on this charge. The Complainant's evidence was therefore unchallenged and un rebutted by the Defendant. She was a credible witness. She was unmoved in cross-examination by Defence Counsel.

21. Based on that evidence the Court is satisfied the Prosecutions have proved beyond reasonable doubt that-

a) There was sexual intercourse by the Defendant with the Complainant



- b) There was no consent on her part.
- c) Even if there was consent, it was obtained by:-
 - I. Threats of intimidation, and
 - II. Fear of bodily harm.

22. The Court returns a verdict of guilty on the Defendant in relation to the charge of sexual intercourse without consent in Count 2. Conviction is entered accordingly.

23. Prior to the Court delivering its judgements orally as to verdict, the Court heard Oral submissions from prosecuting Counsel and defence Counsel. Except for the element of force which the Court rejected, all the submissions relating to all the other essential elements were accepted.

Counsel for the Defendant submitted some factual questions which raised doubts about the Defendant's guilts. These were:-

- a) Why did the complainant allow the Defendant to massage her leg in the night and not wait for the next day?
- b) Why did she not call out to her other grandfather who was sleeping?
- c) Why did she not tell the policeman who lives nearby about all that the Defendant did to her since May 2013?

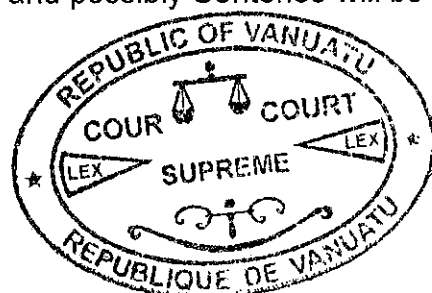
24. The Court rejected these questions as raising any doubt about the Defendant's guilt for the following reasons-

- a) By electing to remain silent and not give evidence in his defence the evidence or testimony of the complainant was unchallenged and un rebutted.
- b) There was little sense in remaining silent to presume his innocence when he had made clear and voluntary statements to the police during his interview which clearly admitted the allegations and offendings made against him.
- c) He did not challenge the admissibility of the statement of police officers Sandrina Bila and Lilly Joel.

25. That is the Verdict of the Court.


26. The Defendant having had convictions entered against him on all four charges will be remanded in custody to await sentence.

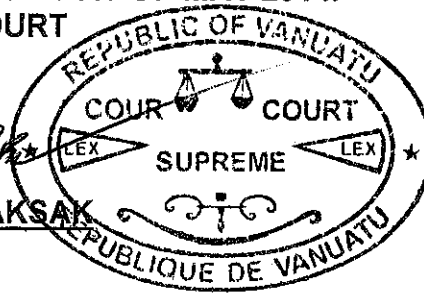
27. This case is adjourned to Wednesday 11th June 2014 at 9 O'clock am when the Court will hear submissions as to sentence and possibly Sentence will be imposed and handed down.



28. The Prosecutor is required to file and serve written submissions as to sentence within 14 days. The defence Counsel is required to file and serve submissions in response within 3 days thereafter.

DATED AT PORT VILA THIS 20TH DAY OF MAY 2014.
BY THE COURT


OLIVER A. SAKSAK
Judge



The seal of the Supreme Court of Vanuatu is circular. The outer ring contains the text "REPUBLIC OF VANUATU" at the top and "REPUBLIQUE DE VANUATU" at the bottom. Inside the ring, the words "COUR" and "COURT" are positioned on either side of a central scale of justice. Below the scales, the word "SUPREME" is written. Two small triangles containing the word "LEX" are located on the left and right sides of the seal. A decorative flourish is at the bottom center of the seal.