

BETWEEN: Public Prosecutor

AND: Gregoire Titen

Defendant

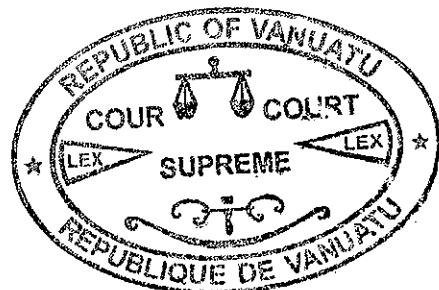
Coram: Vincent Lunabek – CJ

Counsel: Mr Simcha Blessing for Public Prosecutor

Mrs Mary G Nari for Defendant

REASONS FOR VERDICT

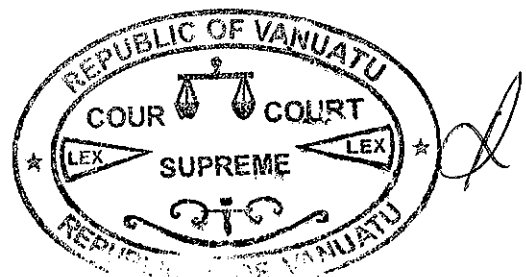
1. Defendant Gregoire Titen is charged with two counts of Sexual Intercourse without consent, contrary to s.91 of the Penal Code Act (“the Act”).
2. On 26 August 2016, Gregoire Titen entered not guilty pleas to the two counts of sexual intercourse without consent. A 2 days trial was conducted on 30 August and 2 September 2016 at Lakatoro, Malekula.
3. In count 1, it is alleged that Defendant Gregoire Titen in or about November 2011 on Malekula, had sexual intercourse with the complainant (AB) without her consent. It is said he approached the complainant, held her tight, undressed her and inserted his penis inside her vagina without her consent.
4. In count 2, it is alleged that in or about 7 December 2011, on Malekula Island, Defendant Gregoire had sexual intercourse with the complainant without her consent. It is said Defendant Gregoire approached her, forced her and undressed her. He inserted his penis inside her vagina without her consent.



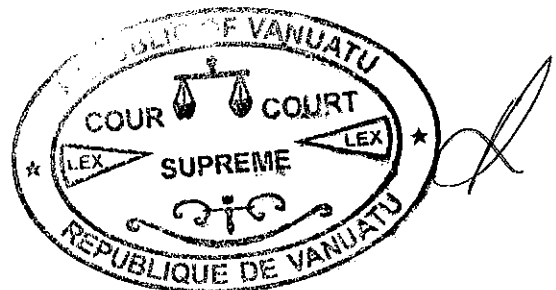
5. The law is the prosecution who laid the charges against Gregoire to prove them and each of their essential elements to a very standard of proof, that of beyond reasonable doubt. That means that I was required to be sure of Gregoire's guilt before I could convict him. I record that I have complied with the requirements of ss. 81 and 88 of the Criminal Procedure Code Act [Cap 136]. The burden of standard of proof is on the prosecution from the start to end. It never shifts.
6. I carefully assess the prosecution evidence, or part of it which I accept. I determine whether or not that evidence leaves me sure of guild on beyond reasonable doubt on the essential elements of the charge.
7. I consider the two counts laid against the Defendant separately and I consider the evidence against each separately.
8. If at the end of the trial I am left with a doubt which is a reasonable one, I must acquit Defendant Gregoire. A conclusion of guilt on one count may be taken into account in assessing the other.
9. This is a trial over allegations of sexual offences. I must as I now do consider the danger, ~~of convicting a Defendant based on the uncorroborated evidence of the complainant,~~ though I may nevertheless properly do so as long as that danger is borne in mind. I kept this in mind accordingly in the present case.

Summary of evidence and reasons for verdict

10. This case involved allegations of sexual offending where the complainant's evidence is not corroborated by independent evidence. The prosecution case stands or falls on the credibility and reliability of the complainant. This means that unless I could be sure that the complainant was telling the essential truth, about the critical matters relating to each of two incidents, I could not possibly have found Gregoire guilty.
11. The complainant is from Rano, Malekula. She was 19 years at the time of offending. She was born on 19 March 1997. She says she did not know about anything about the report or complaint in this case because the report she made was not true.



12. On the allegations and assertions by the complainant on November 2011 and December 2011, she said "I no gat man I approachem me. I no gat one something ihappen long me."
13. She agreed that on 20 December 2011, she came at Lakatoro Police station. She recalled she came and made statement to the police. She could not recall the name of the police officer. She recalled she signed a statement. She confirmed her name and signatures are on the statement dated 27 November 2011. She confirmed the statement is hers but she says that the content is not true.
14. She was declared hostile witness upon application being made. She was cross-examined by Mr Simcha Blessing. She confirmed that on 27 November 2011, she came to Lakatoro Police Station and made a complaint against the Defendant. She confirmed that what was in her statement was what she told the police officer on 27 November 2011 and the police officer reduced it into writing. She was asked and she read and confirmed each paragraph of the statement she admitted was hers. She said she came from Rano to the Police station at Lakatoro on 27 November 2011 and made that statement to the police.
- ~~15. She said that what happened is not true. But she confirmed she came from Rano, made the statement and the police officer wrote it down. She made the statement when she was 15 years. Now she is 19 years of age. She admitted that in 2011 she came to police station at Lakatoro on her own and made the statement. She says what she tells the Court today is true. She says Defendant Gregoire had sex with her but he did not force her. She explained that her parents talked a lot causing her to make the statement to the police which was not true. She says in 2011, she came to the police because her parents told her to do so. But today she says she comes in court on her own free will.~~
16. In her cross-examination by the Defence, she says nobody talked to her to change her evidence in court. She confirmed the statement referred to in her statement. What she says in court today is her own evidence and it is true.



Findings

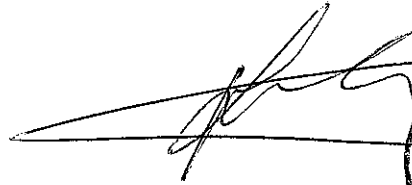
17. At the end of the prosecution case, I apply section 164 (1) of the Criminal Procedure Code Act [Cap 136] and stop the trial there and then. I find the Defendant not guilty of the offences of Sexual Intercourse without consent, contrary s.91 of Penal Code Act. The Prosecution fails to prove the case and essential elements of the offences beyond reasonable doubt against Defendant Gregoire.

Conclusion:

Count 1 - Not Guilty

Count 2 - Not Guilty

**DATED at Lakatoro, this 2nd day of September, 2016
BY THE COURT**


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V. LUNABEK
Chief Justice

