

**IN THE SUPREME COURT  
REPUBLIC OF VANUATU**  
(Criminal Jurisdiction)

Criminal Case No. 199 of 2014

**PUBLIC PROSECUTOR**

-v-

**ALEX VUTI**

*Before Justice David Chetwynd  
Hearing 28<sup>th</sup> and 29<sup>th</sup> September 2016  
Mr Garae for the Public Prosecutor  
Mr Livo for the Defendant*

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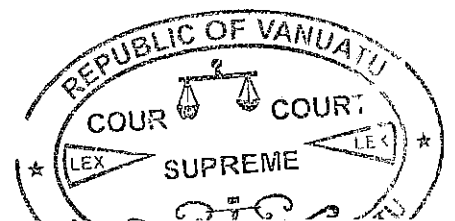
## Decision

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1. The Defendant Alex Vuti is charged with 2 counts of sexual intercourse without consent, 1 count of making threats to kill and 1 count of assault. He has pleaded not guilty to all charges.

2. It is for the prosecution to prove the elements of each offence charged and as the Defendant was reminded when section 81 of the Criminal Procedure Code [Cap 136] was read out to him, he is not required to prove anything. Not only is it for the prosecution to prove its case, the standard of proof is high and the prosecution must prove beyond reasonable doubt the existence of each element of the offences charged. So far as the rape allegations are concerned, the prosecution must prove that the Defendant had sexual intercourse with the complainant ("Ms KM") and that she did not consent. Alternatively the prosecution must show that the consent was obtained by force, threats, fear, false representations about the nature of the act, impersonation of a spouse, the use of drugs or alcohol or because the complainant was physically or mentally incapable of giving consent. The provisions of section 12 of the Penal Code [Cap 135] are also relevant in that the Defendant will not be guilty of rape if he genuinely and reasonably believed Ms KM was consenting to the act of sexual intercourse. So far as making threats to kill are concerned, it must be shown the Defendant either directly or indirectly made threats to kill Ms KM. As for assault, it has been said that the least incident of non consensual contact is sufficient to establish an assault. In this case the Defendant has been accused of striking Ms KM with his hands and with bicycle tools and causing her temporary injury.

3. As is the case in many rape trials there are no independent witnesses to the actually incidents of alleged rape. The only person who can give direct evidence about the lack of consent is the victim Ms KM. If she is a cogent and convincing witness I do



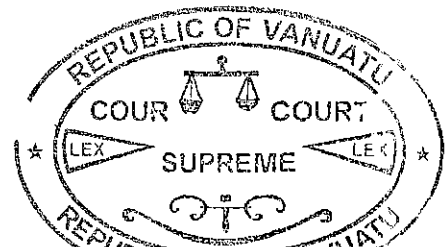
not need corroboration of her evidence. If she is not a cogent and convincing witness I may require corroboration. She is not to be treated any differently from any other witness in a criminal case. She is certainly not to be treated any differently in that regard because she is a woman and she is giving evidence about rape.

4. What is said in this case is that the Defendant and Ms KM were in a relationship. At first it was a "long distance" relationship with the Defendant living in Port Vila and Ms KM living on Malekula. They communicated by 'phone. Eventually she travelled to Port Vila. That was in 2013. The relationship did not blossom as planned it rather cooled and Ms KM decided to look for someone nearer her own age. The Defendant is almost 10 years older than her. There does not seem to be any real dispute that the relationship involved consensual sex to begin with. On 14<sup>th</sup> September 2014 Ms KM was walking with another younger man. She admitted in her evidence she was attracted to this young man and had been intimate with him. The Defendant saw them walking together and in his evidence he admits assaulting both of them. The younger man ran off. The Defendant struck Ms KM again and then dragged her by the hand to a house owned by him at the end of the airport. On the way to the house the Defendant admits he physically assaulted Ms KM. It was in the house at the end of the airport that the first rapes were said to have taken place. Other rapes occurred in other locations.

5. The Defendant does not deny that he had sexual intercourse with Ms KM. He says it was consensual. He says she did not struggle or cry out. He points to the fact that the two of them were staying in a small room (no more than 5 meters by 5 meters in size) and that another couple and their child were also sleeping in that room. The room was only divided up by sheets of hanging calico. The Defendant also says Ms KM stayed in that room of her own free will. He says she even went back to work straight away so she could not have been as frightened as she says she was. Ms KM's evidence is that as a result of the assaults on her she was frightened of the Defendant and she thought that if she refused to have sex with him he would cause her more harm. She did not want to have sexual intercourse and told the Defendant so. However, she did not resist further or struggle when he insisted on having sex. She was badly bruised about the face and neck and did not want to leave the house because of those injuries. She was frightened by the Defendants threats of further violence and his threats to kill her and her family if she ran away or did not obey him. She did go back to work but because of his threats to kill her and her family was terrified of what would happen if she did not to go back to the Defendant.

6. At one stage the police were involved following a report made, apparently, by Ms KM's father. The Defendant told her that she must tell the Police that she wanted to live with him and if she did not then he would kill her. However after further rapes and threats, she eventually went to make a report to the police on 12<sup>th</sup> October.

7. The Defendant has pleaded not guilty to assault but in his evidence he has admitted assaulting Ms KM. The accepted medical evidence dated 13<sup>th</sup> October 2014 shows that nearly a month after the assaults Ms KM's face (around her right eye) was still bruised. Photographs taken by the police also on 13<sup>th</sup> October show the bruising



around her right eye and extensive bruising and scratch marks around her neck. That those injuries were still so obvious a month later shows the ferocity and the nature of the assaults by the Defendant. If corroboration of Ms KM's evidence was required those photographs and the medical report would be ample corroboration. They clearly show that Ms KM has been very badly beaten. The claim by the Defendant that Ms KM went back to work soon after 14<sup>th</sup> September is not borne out by his evidence because he agrees he obtained two sick notes for her both of which were for two days, in other words she was, as she says, away from work for nearly a week.

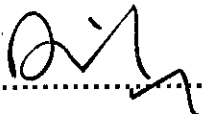
8. I accept Ms KM's evidence over that of the Defendant. I accept she was badly and viscously beaten by the Defendant and that she was in fear of her own safety and that of her family. I do not accept that he merely slapped her a few times. I accept that she did not want to have sexual intercourse with the Defendant but because of her fears of further violence she did not resist or struggle. Her silence and her lack of resistance was not consent. I do not accept that the Defendant could have had a genuine and reasonable belief that it was consent. He deliberately beat her into submission with the intention of making her have sexual intercourse with him and otherwise doing as he told her. His attitude towards Ms KM was that she was his woman because he had spent a lot of money on her. He also said in evidence that he was cross with Ms KM and one of the reasons he beat her on 14<sup>th</sup> September was because she had given an umbrella that he had given her, to her "boyfriend". Because he was so angry he assaulted her with it. Her well being was obviously worth less to him than the price of an umbrella.

9. I find the Defendant guilty of having sexual intercourse with the Complainant Ms KM without her consent. He is (by his own admissions) guilty of intentional assault on Ms KM. As for the threats to kill, they form part of the offences of rape. Although I have no doubt that the Defendant made such threats I consider it duplicitous to convict him separately of threatening to kill. I will acquit him of that count.

10. I will adjourn for sentence to 31<sup>st</sup> October 2016 at 9 am. I will ask the Probation Officer to prepare a pre-sentence report. In the meantime the Defendant is remanded in custody.

**Dated at Port Vila this 29<sup>th</sup> day of September 2016**

**BY THE COURT**

  
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**D. CHETWYND**  
Judge

