

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

Criminal Case No. 16/647

PUBLIC PROSECUTOR

V

WATSON BOB KUAO

Hearing: *Thursday 26th and Friday 27th May 2016 at Isangel*

Date of Submissions: *Tuesday May 31st and June 3rd, 2016*

Date of Verdict: *Wednesday 8th June, 2016*

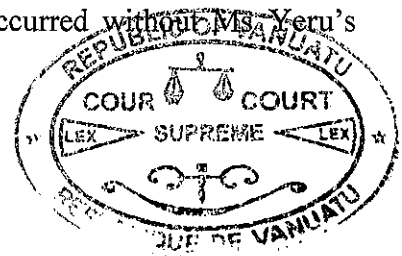
Before: *Justice JP Geoghegan*

Appearances: *Tristan Karae for the Public Prosecutor*

Christina Thyna for the Defendant

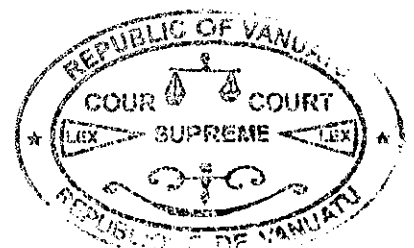
JUDGMENT

1. The defendant Watson Bob Kuaou is charged with 5 counts of unlawful sexual intercourse without consent, all counts involving the same complainant, Tina Yeru. It is alleged that all of these offences occurred between September and November 2015. Mr Kuaou does not dispute that the acts of intercourse took place. What is disputed by him, is that they occurred without Ms Yeru's



consent. Mr Kuao says that, notwithstanding the fact that he was Ms Yeru's "smol papa" or uncle and that he was living with the complainant's 'smol mama' or aunty at the time of the alleged offences, he and Ms Yeru had a relationship which involved consensual intercourse not only on the occasions referred to in the charges, but on additional occasions as well.

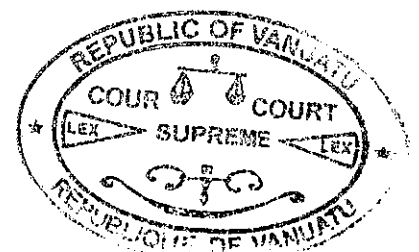
2. The Court heard oral evidence from the complainant and defendant only. A police statement taken from Mr Kuao on November 29th 2015 and a medical report signed by a senior mid wife, Enneth Ilaisa dated November 24th 2015 were produced by consent. Neither report have an impact on the outcome of this hearing for reasons which I shall refer to in this judgment.
3. Before considering the evidence it is appropriate to consider the elements of the charge and matters of self-direction.
4. As to the elements of the 5 charges it is for the prosecution to prove beyond reasonable doubt that sexual intercourse took place on one occasion on September 12th 2015 and on 4 occasions between September and November 2015, that Ms Yeru did not consent to such intercourse and that Mr Kuao did not reasonably believe that she did not consent.
5. As to issues of self-direction I refer to the following:
 - 5.1 It is for the prosecution to prove each and every element of the charges to the standard of beyond reasonable doubt. I am required to be sure of Mr Kuao's guilt before I can convict him.



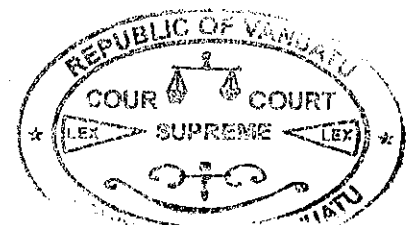
5.2 The fact that Mr Kuao gave evidence does not shift the burden or standard of proof in any way. He is presumed innocent unless and until found guilty and is not required to prove anything.

5.3 As per the Court of Appeal decision in Apia v. PP [2015] VUCA 30, there are 3 possibilities when a defendant gives evidence:

- a) The Court may accept the defendant's account and denials in which case he must be acquitted;
- b) The Court may be unsure as to whether or not the defendant's account is true or ought to be accepted. If so, he must be acquitted because by definition the Court must have a reasonable doubt as to his guilt.
- c) The Court may reject the defendant's explanation. Even then the Court must put aside the defendant's evidence and assess the prosecution evidence. The Court must then decide whether it is sure of the defendant's guilt having regard to the essential elements of the charge and the standard and burden of proof.
- d) This case rests exclusively on the uncorroborated evidence of the complainant. Accordingly I must be conscious of the danger of convicting a defendant based on that uncorroborated evidence, though I may nevertheless properly do so as long as that danger is borne in mind. See Walker v. PP [2007] VUCA 12."

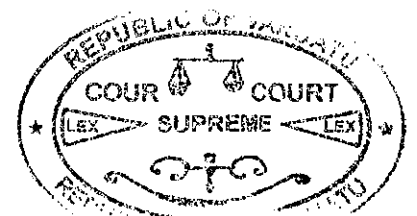


6. There is no dispute that in September 2015, Ms Yeru was living with Mr Kuao and his de facto wife at their home in Isangel. She had previously been living with her grand-parents in Louneai. Mr Kuao's de facto's partner was Ms Yeru's aunty. She and Miss Yeru's mother are sisters. Ms Yeru regarded her aunty as her "*smol mama*" and Mr Kuao was regarded as her "*smol papa*". Also living at the house in Isangel were Mr Kuao's young son and a house girl.
7. Ms Yeru gave evidence that in September 2015 she was attending Lenakel Presbyterian College and was aged 17. She said that at approximately 9 pm on September 12th, Mr Kuao came into her room and locked the door. She said that he came and grabbed her and had sex with her. She said that before that has occurred, Mr Kuao "*came into the sitting room and was caressing me and tried to kiss me*". She told him that he was her "*father*" but that did not seem to have an impact on him. She said that the house girl was present at the house at that time but that her aunty was in China. After caressing her, Mr Kuao told her to remove her clothes and although she did not want to he forced her to do so. She did not call out to the house girl for help because Mr Kuao was stopping her from doing so. When asked to elaborate on what she meant by Mr Kuao stopping her to call out for help and forcing her to remove her clothing she said that he was "*just talking to me*" and "*swearing at me*". She also said that he was holding her tight and telling her not to call out or shout. She said that Mr Kuao removed her clothes, put her on the bed and had sex with her. She told him that she felt pain but said that he did not seem to hear her. She said that during the act of intercourse she was afraid as she was feeling pain through her body and that after intercourse had ended there



was blood from her body on the bed. She went to the bathroom and had a shower and Mr Kuao went outside. Mr Kuao told her not to tell anyone about it.

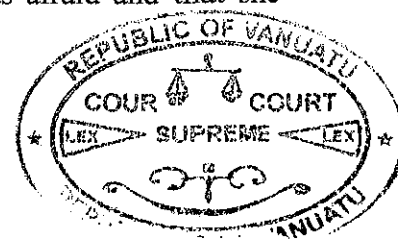
8. Despite the incident Ms Yeru stayed at the home. When asked why she chose to stay there she stated that Mr Kuao had told her not to tell anyone and if she did he would "*make a poison*". She continued to live at the home but to go to her grandparents on weekends.
9. Shortly after the first incident, it appears that there was an argument between Ms Yeru and Mr Kuao. The reason for the argument is not entirely clear from the evidence, however, Ms Yeru left the home and went to stay with the grandparents with whom she often spent weekends. Ms Yeru stated that Mr Kuao had been angry with her because she had not looked after his son to his satisfaction and he had sworn at her. Accordingly she left. A short time after that, however, he had called to her grandparent's home because his house girl was sick and he needed her to look after his son. At the time he called to her grandparent's home she was out on the reef and he located her there and asked her to come back. She told him that she did not wish to return but said that he had told her that if she stayed, "*something was going to happen to [her]*". When asked why she did not wish to go back she stated that it was because she was still angry with Mr Kuao because he had sworn at her. She stated that because of his threat she got her things and she returned to Isangel with him. When they got to Isangel Mr Kuao apologized to her and went to have kava, returning to the house at approximately 8 pm. When he returned to the house he told her to leave her "*little brother*" and sleep with him on



the bed. She said that she was reluctant to do so but that he took her hand "*pulled her to the sitting room and told her to take off her clothes*". She didn't wish to remove her clothes so he removed them himself and they then had intercourse. Ms Yeru's evidence was that she did not scream or shout and that she was told by Mr Kuao that she must not shout or tell anyone. After they had finished having sex she went to the bathroom and had a shower and then went to see her little brother and slept.

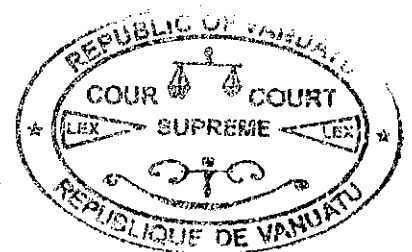
10. During the course of her evidence under cross examination Ms Yeru conceded that she had returned to Mr Kuao's home to retrieve some soccer shorts which she needed to play soccer. The actual timing of that event is unclear and the evidence around this issue was somewhat confusing, but what is clear from the evidence is that at that time she was staying with her grandparents and that she had chosen to return to Mr Kuao's home to retrieve her shorts. That was despite her evidence as to Mr Kuao's behaviour towards her.

11. Ms Yeru said that approximately a week after that incident she was raped again by Mr Kuao while she was in the garden looking for coconuts. She stated that to her surprise, while she was looking for coconuts she saw Mr Kuao cutting trees and coming towards her. He told her to have a rest and she replied that she did not want to. Mr Kuao then told her to have a rest and grabbed her and told her to go down to the bush, take off her clothes and wait for him. Ms Yeru told him that she did not wish to do that but that he swore at her and accordingly she went down to the bush and took her clothes off. Her evidence was that she told Mr Kuao that she was afraid and that she

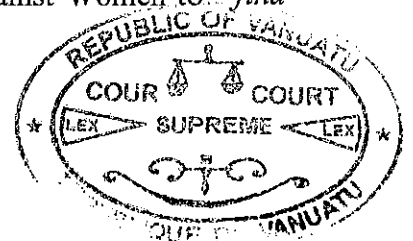


didn't want to have sex but that he replied "*it's only the two of us – don't be afraid*". When she was asked why she was afraid she stated that she was frightened because someone might see them and that someone might "*report*" on her. She said that they had sex and then the two of them went looking for coconuts that Mr Kuao then said he wanted to have sex again. She said that she told Mr Kuao that her body was hurting and that she did not want to but that he told her that that would be the last time. Mr Kuao removed the clothes off her body and had sex with her. Ms Yeru said that she was repeating the same things that she had said to him before namely that he was her father and that he was not to do this but that he "*wasn't listening*". After the second occasion of intercourse they collected coconuts and took them back home.

12. Ms Yeru stated that the next incident was approximately one week later and took place at her grandparent's home when she had gone there for a weekend. She stated that it was a Saturday morning and that her grandparents were outside but that Mr Kuao suggested that the two of them go inside for a sleep. He suggested that they sleep in the sitting room. She stated that when she entered her room in her grandparent's house Mr Kuao was already there. He told her to remove her clothes, get on her bed and wait for him. Her evidence was that she refused to do what he said so that he removed the clothes from her body. After he removed her clothes she lay down on the bed and he got on top of her and had intercourse. When asked why she did not scream or shout she stated that Mr Kuao told her not to tell anyone when they were having sex and that he would give her whatever she asked for. She again felt pain in her body and after intercourse, went outside.

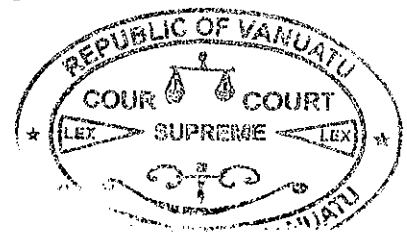


13. Ms Yeru gave evidence that on October 9th she told her grandmother about what had happened and as a result of that she went to the office of Violence Against Women and a complaint was made to the police on November 23rd.
14. Under cross examination, Ms Yeru agreed that she was born on April 26th 1997 which would have made her 18 years old and not 17 years old in September 2015. She also agreed when it was put to her, that she had sex with the defendant on more than the 5 occasions that she had referred to. This is not something which had been mentioned in her evidence in chief at all. She acknowledged under cross examination that in her statement to the police she had told them that the first time that she had had intercourse with Mr Kuao was on September 12th 2015. When it was put to her that she had had sex with Mr Kuao before September 12th and that her police statement was not correct she said that her statement to the police was true. It was put to her that in fact there were two incidents of sex between her and Mr Kuao before September 12th. In response to that proposition she then stated that she could not recall that far back and that she forgot. This issue was revisited by Ms Thyna later in her cross examination of Ms Yeru. She put again to Ms Yeru that she and Mr Kuao had had sex in August 2015. She replied that she could not recall. It was put to her that Mr Kuao would say that the first time they had had sex was on August 22nd 2015. In response to that Ms Yeru then said "*it might be but I cannot recall back*". When it was put to her that Mr Kuao would say that during the month of August his wife went to China and that was when they started sleeping together Ms Yeru stated that she had gone down to the organisation known as Violence Against Women to "*find*



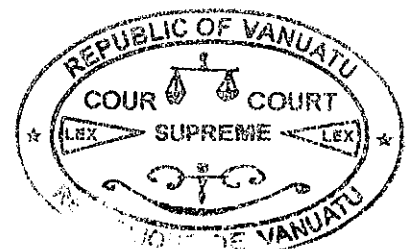
the dates” but could not find the dates “*so put down September 12th*”. She confirmed however that she had stayed with Mr Kuao when his wife was in China, that his wife was in China for one month and that that had been in August 2015. It was also put to Ms Yeru that Mr Watson would give evidence that she had agreed to have sex on the grass outside his home on August 22nd. Without referring specifically to the date in her reply, she responded that she did not want to have sex but that he had told her to come outside and they had had sex outside on the grass. What is clear from Ms Yeru’s evidence is that such an incident took place between the parties although she did not openly concede that it had occurred on August 22nd and she contended that it had been against her will.

15. It was put to Ms Yeru that Mr Kuao would give evidence of another occasion on September 4th when the parties had had consensual sex and that had taken place at Mr Kuao’s home. Although Ms Yeru appeared to be acknowledging that sex had occurred between them, her evidence in respect of this particular incident appeared somewhat confused.
16. It was also put to Ms Yeru that Mr Watson would give evidence that on Saturday October 24th 2015, Mr Kuao drove his truck to Ms Yeru’s village to pick up a parcel and take it to the airport and that Ms Yeru had asked to sit in the truck and accompany him. As the truck was heading to the airport, Mr Kuao, with the agreement of Ms Yeru stopped so that the couple could have intercourse in the bush. Ms Yeru stated that the parcel picked up by Mr Kuao was in fact her parcel and she wished to send it to Port Vila. Mr Kuao’s wife had asked him to pick her up and take her to the airport. She acknowledged

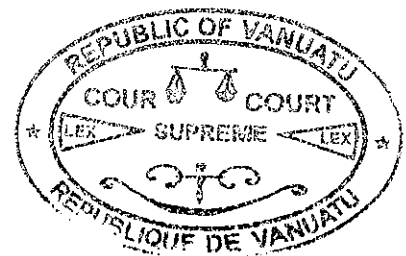


that she and Mr Kuao had had sex but stated that when she asked Mr Kuao what direction they were going in, he said "*up there*", indicating a different direction from the airport and that he had pulled her out of the truck and had sex with her.

17. When Ms Yeru was asked why she did not report these additional incidents to the police she replied that it was because at that time the police were asking her questions she was "*afraid*" and she was also with her father at that time.
18. While it appears that she accompanied her father to the police station to make her complaint on November 23rd 2015, the incidents first came to light when she spoke to her grandmother. She was afraid that she might have been pregnant. She decided to speak to her grandmother and told her grandmother that Mr Kuao was having an "*affair*" with her and that he was having sex with her against her will. She stated that her grandmother then told her "*little mother*" about the allegations and that her grandmother then smacked her with a broom on her back and legs resulting in her receiving a swollen body. If that is indeed the reaction of her grandmother then that is extremely regrettable.
19. When pressed as to why she would tell the police about 5 allegations of rape but not 8 she stated that she was afraid to disclose all of them because her family might say that she "*was going after boys*". I found the explanation unconvincing and troubling.

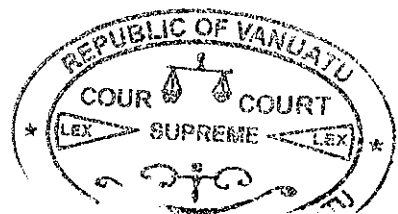


20. The police statement produced by consent was of no assistance in evidential terms. It simply records that Mr Kuao had attended the Tanna police station on November 29th, had been advised that he was not obliged to say anything and had declined to make any statement.
21. The medical evidence provided was of equally limited assistance. It simply recorded that the author of the report had examined Ms Yeru on November 24th 2015 and that the findings of the medical examination were that there were grazes on the walls of her vagina and lacerations on the lower vagina. There was no hymen located and a urine test confirmed that she was pregnant. The author of the report expressed the opinion that:-
- “The victim was raped and therefore, as a result she is going to have an unplanned, unwanted baby and an end to her education, she will face a lot of psychological problem and after explaining to her that she is pregnant she looks hurt and I know she is traumatized”.*
22. The opinion expressed by the senior midwife who conducted the examination is, in my assessment, a remarkable one given that it does not provide any reasons for the expression of that opinion. The report certainly supports the conclusion that Ms Yeru had engaged in intercourse but cannot, in the form in which it was tendered support any assertion that Ms Yeru was raped.
23. Mr Kuao gave evidence. Before doing so the requirements of section 88 of the Criminal Procedure Code were complied with.



24. Mr Kuao confirmed that Ms Yeru had moved in with he and his wife in July 2015. Mr Kuao stated that during lunch on August 22nd 2015, he and Ms Yeru had agreed to meet later that night and have sex. He had intended to go out in the evening and have kava and upon his return he would see Ms Yeru. Mr Kuao said that the conversation between them came about as a result of them living together and how she talked to and smiled at Mr Kuao. At that time Mr Kuao's de facto partner was in China. He stated that while Ms Yeru agreed to have sex with him, she was concerned about being seen by the house girl. Accordingly the parties anticipated having sex around midnight when the house girl was asleep. Mr Kuao stated that he had returned to the house at approximately 8:30 that night and had had a shower and dinner and then went to bed. He said that at approximately 1 or 2 am he was woken by Ms Yeru who sat on his bed but because the bed was shaking they were concerned that they might be discovered by the house girl if she got up and went to the toilet so they went outside. Mr Kuao's bed was located in the sitting room of the house and therefore in a central position in the house. They went outside and located a grassed area under the floor of the house. Ms Yeru placed her towel on the grass and removed her clothes and lay on the towel. There was brief sexual intercourse and then the parties returned to the inside of the home with Ms Yeru going to her bedroom and Mr Kuao going to his bed.

25. The next incident was on September 4th when Mr Kuao was working in North Tanna but discovered after calling his house girl that her son was sick which created a difficulty in terms of having his son cared for. He stated that he returned home, passed Ms Yeru's grandparent's place and when he asked



where Ms Yeru was, he was told that she was at the beach scrubbing pots. He approached her and asked her to come home with him which she refused to do. He turned to head back to his truck when Ms Yeru then said "*you had better ask grandfather on the reef*". Mr Kuao said she had refused to come initially because she was angry at him because he had sent her down to her grandparents to stay for a week and she had then told lies about needing to return to his house to get a uniform. That had been the week prior to the 4th.

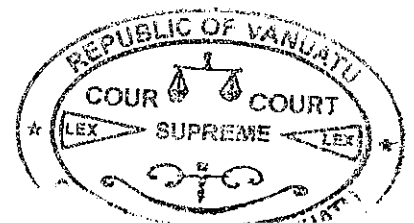
26. Mr Kuao spoke with her grandfather who agreed to Ms Yeru returning to Mr Kuao's home to look after his son. So Ms Yeru returned to the house in his truck. It was the evidence of Mr Kuao that she was happy to do so. When they returned to Mr Kuao's house he went to his workshop and then for kava and then returned home after which they had intercourse. Mr Kuao was very clear in his evidence, not simply in relation to this incident but to all alleged incidents that the sex between the parties was consensual and that at no point had he forced or coerced Ms Yeru to have sex with him.

27. As to the incident on October 3rd, Mr Kuao gave evidence that that Saturday he and his de facto wife were at the home of Mr Yeru's grandparents. On the morning of Saturday October 3rd his wife had bathed their son and Mr Kuao then took their son into the house for a sleep. Ms Yeru had made a bed for the child in her room. Mr Watson stated that when he came into the room to put their son to sleep Ms Yeru came into the room also. He said it was between 8 and 9 am. His wife and Ms Yeru's grandmother were in the kitchen, a distance from the room which Mr Kuao indicated to be "*20 something metres*". He said that Ms Yeru came into the room and gave him



a kiss and that she then went into the sitting room and came back and locked the door. Ms Yeru removed her clothes and they had sex on the floor.

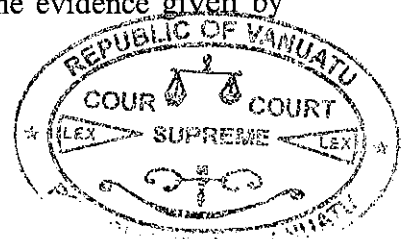
28. Mr Kuao gave evidence about the alleged incident on Saturday October 10th. Mr Kuao said that "we" (it not been clear who 'we' were) went to Ms Yeru's grandparent's house for the weekend. While there Ms Yeru said that she was going to get coconuts in the plantation. While Ms Yeru had given evidence that the plantation was some 700 metres from the home, Mr Kuao gave evidence that it was some 5 kms from the home. However, he then said that it would take approximately 10 minutes to walk to the plantation, something which supports Ms Yeru's evidence as to distance. In any event, his evidence was that when Ms Yeru said that she was going to get coconuts from the plantation he told Ms Yeru that she could go first and he would then follow after her. He followed her to the garden about ½ hour after she left and he and Ms Yeru spend approximately an hour there. He confirmed that he proposed that they had sex and that she agreed although suggested that they move to nearby bush which they did, following which she removed her clothes and they had sex. He confirmed Ms Yeru's evidence that they had sex on two occasions, although whereas she gave evidence that there had been two or three minutes between the alleged rapes, Mr Kuao gave evidence that after the first occasion they then went and collected coconuts after which they returned to the same location and had sex again. After they had finished they collected the coconuts they had gathered and walked together back home.
29. As to the incident on October 24th Mr Kuao gave evidence that he received a text from his wife to go and collect a parcel to take to the airport. He was at



Isangel at that time and stated that the parcel was at the home of Ms Yeru's grandparent's. He stated that he arrived at the grandparent's home in his hillux truck, picked up the parcel and placed it in the truck at which time Ms Yeru opened the door of the passenger side and told him that she was coming to the airport. He stated that he had not requested her to come with him but that he heard her grandmother and his de facto wife tell Ms Yeru to get into the truck. As they made their way to the airport, Mr Kuao suggested that they have sex, something which Ms Yeru agreed to and they had sex in the bush. He stated that when they went into the bush she removed her clothing and he took off his shirt and placed it down for her to lie on. After they had finished sex they got back into the truck and went to the airport to drop off the parcel.

DISCUSSION

30. The evidence given by Ms Yeru and Mr Kuao differs somewhat in terms of the sequence of the alleged events. For example, Ms Yeru alleges that the incident which occurred when she was picking up coconuts occurred prior to the incident which occurred at her grandparent's home while Mr Kuao's evidence is that the two incidents occurred in the reverse order suggested by Ms Yeru. There is no significance in that confusion however given that the two parties agree largely on what occurred with the only area of dispute being the issue of consent.
31. The evidence was also somewhat confused in respect of the events surrounding Ms Yeru leaving Mr Kuao's home because of an argument between them and then her subsequently returning. The evidence given by



Ms Yeru and Mr Kuao suggests that Ms Yeru left Mr Kuao's home at some point because of an argument which the two of them had had. That appeared to revolve around Mr Kuao's complaint regarding Ms Yeru's care of his son. Whatever the position Ms Yeru conceded in her evidence that she then returned to Mr Kuao's home to pick up some shorts for soccer. Quite why she would do this, given her complaints that Mr Kuao had threatened her and given that that would expose her to possible further danger is completely unclear.

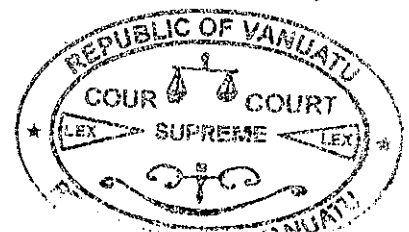
32. Putting to one side the differences in evidence between the parties the crucial issue is the issue of consent. On that issue Mr Karae referred the Court to two decisions of the Supreme Court where the issue of consent was discussed.

33. In PP v. Jack Polo [2013] VUSC 81 at paragraph 14, Spear J stated :

"It is essential to say something about consent. Consent in the context of the second and third elements of this offence meant a true consent. That is consent given voluntarily by someone who understands the nature and quality of the sexual act and was able to make a rational and free decision about it.

Consent can be conveyed orally or it can be indicated another ways or it can be a mixture of both. There are a variety of ways in which consent can be conveyed to the other party and that is of course true about most dealings between people.

What is clear, however, is that a true consent does not arise but submission to what is considered to be unavoidable or inevitable, say



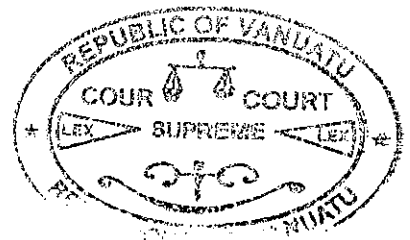
to avoid a beating. A true consent is not one given as a result of violence or the threat of violence. Silence by itself does not constitute a true consent although of course the conduct of the complainant or the other party may well convey that impression in a realistic way. What is required is a clear and unequivocal indication.....”

34. In PP v. Tor [2003] VUSC 101, Treston J stated:

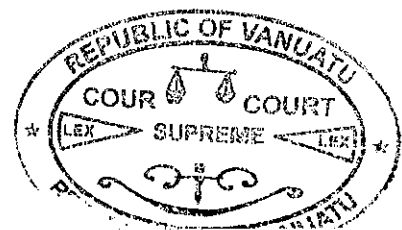
“When I refer to the issue of consent, consent means of course agreement given by a person who is able to understand the significance of what is about to happen and who is able to make an informed and a rational decision as to whether to consent or not.

Any consent must be freely given. It is important to distinguish between a consent that is freely given and submission to what the complainant may regard as unwanted but unavoidable. For example, submission by the complainant because she was frightened of what might happen to her if she did not give in, is not true consent. Equally, submission because the complainant might feel powerless or threatened or exhausted is not true consent and the fact that a person does not protest or physically resist or ceases to do so, is not of itself to be taken as consent.

Such consent may be conveyed by words, by conduct or by combination of both, but of course those elements are already somewhat described in the definition under section 90 to which I have already referred.”



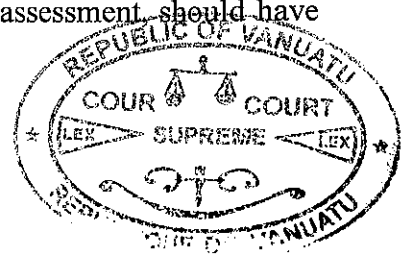
35. I agree with the statements of both Spear J and Treston J regarding the issue of consent.
36. Mr Karae submitted that Mr Kuao has given evidence that cannot be believed namely the evidence that a *“young girl would agree to have sex with aunt’s husband or the man she calls uncle (smol papa).”* While such a relationship may make it more unlikely that a relationship involving consensual sex would exist between the parties the Court must be careful as to whether, and what inferences it may draw from the existence of such a relationship. Inferences should not be guesses but rather logical, reasonable and fair deductions from the facts. The focus must always be primarily be on the evidence given by the parties in a case such as this where no corroborative evidence exists.
37. Mr Karae also referred in his submissions to what he asserts is Mr Kuao’s agreement under cross examination that he was dominant over the complainant, that he could have his way with the complainant when it came to having sex and that there was an agreement *“between a father and daughter”* to have sex. I do not consider that those are accurate references to the evidence given by Mr Kuao. My distinct impression of Mr Kuao’s evidence was that he was acknowledging, perfectly reasonably, that given their relationship and the age difference between them that Mr Kuao would be a position of dominance over Ms Yeru. I do not consider Mr Kuao’s evidence to have been that that was the actual position between them and his concessions in that regard did not detract from his consistent denials that the sex that occurred was without Ms Yeru’s consent. As to Mr Karae’s



assertions that the agreement was one between a "father and daughter" I simply refer to my earlier comments.

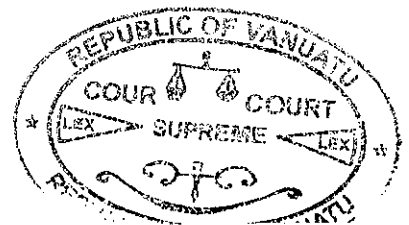
38. Both Ms Yeru and Mr Kuao gave their evidence in what struck me as a genuine manner. Ms Yeru exhibited distress at various times during her evidence. Mr Kuao on the other hand gave his evidence in a straight forward fashion and I did not regard him as an evasive witness. When considering the evidence overall however there are various aspects of Ms Yeru's evidence which give me cause for concern. In referring to those concerns I remind myself that Ms Yeru was giving evidence in difficult circumstances that recollection of events can often be difficult for victims of sexual violence and that some of the reactions of victims of sexual violence to offence which occur can appear counterintuitive to others. Notwithstanding that however, the concerns that I have are as follows:-

- a) Ms Yeru's evidence as to the alleged threats made to her by Mr Kuao appeared somewhat vague. There appeared to me to be a lack of authenticity in her evidence regarding that matter;
- b) That fact that Ms Yeru only admitted to additional instances of sexual intercourse with Mr Kuao during the course of cross examination is troubling, and is not, in my assessment, explained by the fact that her father was with her at the police station. It is also not adequately explained by her relative youth or the fact that victims of sexual violence often have difficulty recalling the details of the violence perpetrated on them. The additional instances of intercourse between the parties involve discrete events and, in the case of the first and last occasions, consisted of events which, in my assessment, should have



been readily recalled. I have considerable reservations around her explanations as to why she failed to report these incidents to the police when she was first spoken to by them.

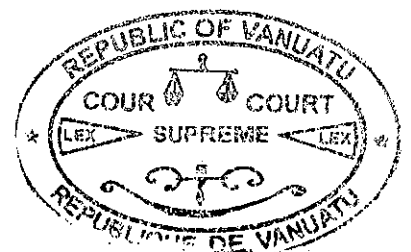
- c) The evidence of the alleged rape on the "*airport trip*" is simply not credible in my assessment. There was no threat to the complainant which would otherwise explain her getting into the vehicle with Mr Kuao and it appears clear from her evidence that she knew that Mr Kuao had been asked to pick up the parcel to be delivered to the airport. While it may be suggested by the prosecution that Mr Kuao had some kind of "*hold*" over Ms Yeru there is little, if any, credible evidence of that and the events which occurred are far more consistent with Mr Kuao's evidence than with Ms Yeru's. While this sexual encounter was not the subject of a charge, the effect of the evidence is to cast a long shadow over Ms Yeru's overall credibility.
- d) The account of the alleged rape that took place at the home of Ms Yeru's grandparents is, in my assessment, more consistent with Mr Kuao's version of events than Ms Yeru's. I consider it unlikely that, given the circumstances existing at that time, the events occurred as depicted by Ms Yeru. At best, I am left with considerable doubt as to what actually happened between the parties.
- e) The occasion when Ms Yeru returned to Mr Kuao's home to pick up some shorts, something which occurred after she had returned to live, albeit briefly, with her grandparents, also cast some doubt on the picture she portrays in terms of events between herself and Mr Kuao. There was no evidence that she was required to do such a thing, and, given her evidence about Mr Kuao's behaviour towards her and the



position she was placing herself in, the particular circumstances are, in my assessment, once again far more consistent with Mr Kuao's version of events.

- f) Ms Yeru's evidence that she had left Mr Kuao's home because of an argument between the two and that she did not wish to return because she was still angry with him because he had sworn at her (something denied by Mr Kuao) is at odds with Ms Yeru's evidence that Mr Kuao was threatening towards her and gave her no choice but to comply with his demands. She had left Mr Kuao's home because of an argument between them and her anger around that argument. She chose to return to the home despite, according to her, still being angry with him because he had told her that "something" was going to happen to her. Her evidence as to her anger with Mr Kuao and to her leaving his home of her own volition is at odds with her evidence as to Mr Kuao's threatening behaviour towards her.

39. What also needs to be said is that while Mr Kuao's actions, even by his version of events, are morally reprehensible, the Court is not here to judge him in respect of his morals. The Court's job is to determine whether or not the prosecution has discharged the significant burden on it to prove the elements of the offence to the required degree.
40. In that regard, my reservations regarding the evidence of Ms Yeru raise considerable doubt as to her assertions that the sexual contact between the two was non-consensual. As I have referred to, many aspects of her evidence




were consistent with Mr Kauo's account of the relationship between the parties.

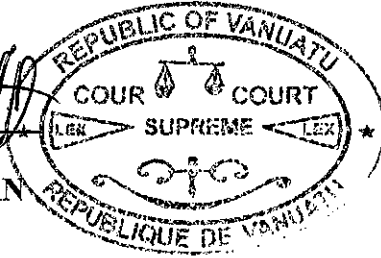
41. For these reasons I am not satisfied that the prosecution has discharged its obligation to the standard required and that Mr Kauo is guilty of the offences he is charged with. Accordingly, he is acquitted on all counts.

Dated at Port Vila this 8th day of June 2016

BY THE COURT



JP GEOGHEGAN



JUDGE