

**PUBLIC PROSECUTOR VS- TINO RASA AND
BRENTON SANIBUL**

Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Damien Boe for Public Prosecutor
Jane T Aru for the Defendants*

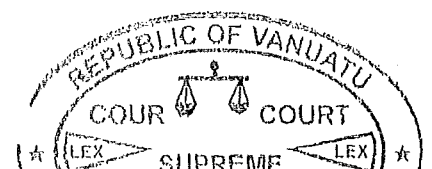
Date of Hearing: *25th and 26th March 2019*

Date of Verdict: *27th March 2019*

Issued: *2nd April 2019*

ORAL JUDGMENT AS TO VERDICT

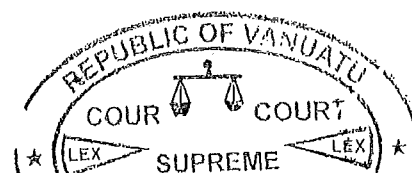
1. Tino Rasa and Brenton Sanibul were charged jointly with one charge of sexual intercourse without consent contrary to sections 90 and 91 of the Penal Code Act [CAP 135].
2. It was charged that on 29th January 2018 at Nasawa Village the defendants had sexual intercourse with Juline Toa against her will.
3. The defendants admit they had sex with the complainant but that sex was consensual. They denied using any force or threats of any kind to obtain her consent.
4. The Prosecution has the legal and evidential burden of proof on the balance beyond reasonable doubt.
5. The prosecution adduced the following evidence in chief from the witnesses namely-
6. Juline Toa- A married woman of 34 years. Her husband is Justine Toa. On 29th January 2018 she worked at the plantation with her husband. They returned home and she was tired. She asked to have some kava. Brenton brought a stem of Kava to



prepare so he could drink with Justine. She asked her husband to bring her some kava in a plastic container. Justine told her to go and take the kava herself. She went with her child. She drank the kava but was not satisfied and wanted some more. Justine had left to go and drink some more kava at a nakamal or kava bar. Juline went along the road. It was there she met the two accuseds. She asked them where her husband was. They told her he was at the last bar. She thought about the distance to the bar and the effect of kava upon her by this time, she decided to return to her house. On her way to the house she heard footsteps running and a call behind her. She stopped and saw it as Tino. He approached her and spoke with her. He asked her for sex twice. Each time she said "no". Then he got out some paper money, put it into her hand and started to pull her to the side of the road. He made her follow him to an old rotting house belonging to Remo. Brenton followed them. They entered the house and went into the living room. Tino took her to a room and forced her to remove her clothes and she did. He pulled his own trousers down, forced her to lie down and he had sex with her. Brenton waited by the door. Tino failed to ejaculate so he called up Brenton. Brenton had sex with her and left. Then Tino returned a second time and had sex with her again. After Tino had finished she reached for her clothes, wore them and ran out the door. She ran to the creek as fast as she could. Brenton followed her. She fell into a pool and was wet all over. She climbed over a stone. She cried as she ran. On the road she met her husband. He asked her what happened. She did not answer at first. The second time he asked she told him Tino and Brenton had forced her with money and had sex with her. Brenton came around at the time. Justine asked him but he did not answer but the second time he asked Brenton said Tino had put money in her hand and forced her to go with him. Then Justin assaulted Brenton. Later he assaulted her too. Tino had ran away to his house.

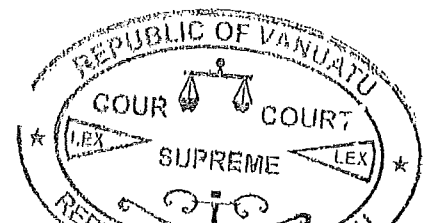
7. Justine Toa

The complainant's husband, a 32 year old man confirmed being with his wife at their plantation. They returned home and Juline wanted some kava as she was tired. He told her to take some in a plastic container and return to drink it at home. And she went with their child. He drank kava with Brenton and some others. Tino and Brenton left to go the paramount chief's bar. He stayed a while and followed. He asked for kava but it was all gone. He went to the last bar before going home. He reached the house and saw his father with the children who were crying. He asked for his wife. He told



him she had followed him to the bar. Then he went out to look for her. He went close to the river. He saw his wife running towards him and crying. She was all wet. He asked her what happened, she did not answer. He asked the second time, Juline told him that Tino had put money in her hand and took her for sex. Brenton came around at the same time. He asked Brenton but he denied. Then he assaulted Brenton and as a result he admitted Tino had put money in her hand and took her and had sex with her. Then he assaulted his wife as well.

8. The defendants gave evidence on oath. Tino Rasa said he started drinking kava at Henry Toa's bar. He drank 5 shells of VT 100 each. Then Brenton went along and they had another shell each at Andrew's bar where Brenton had drunk kava with Justine. It was about 9:00pm. Then they were going home. He stopped at Bani's house to collect his parcel of food. He held it together with a speaker. They saw Juline at Bani's gate. He recognised her. She asked for her husband. He told her he was at the last bar. She said she wanted to go and see him but as the road was long she decided to return to her house. They walked with her. He told Brenton to ask her for sex but he did not. They went beyond Tino's house then he asked Juline for sex. She said she was afraid of her husband. He asked again and she said her children were at home and not yet in bed. So Tino said he held her hand with money but removed it and put it in his pocket. He walked to her and held her hand again with money and heard her say they should hurry up. He denied pulling her hand. He said Juline took the lead to the old house, he was in the middle and Brenton at the back. He said Juline was not affected by Kava. At the old house Juline entered first, he second and Brenton by the door. At the sitting room Juline told them to hurry up. He put his parcel and speaker down. He reached out his hand to touch Juline and discovered she was already naked. Then he removed his trousers, held her hand and led her to the first room. He told her to suck on his penis and she did willingly, kneeling down. She was not afraid. Then he told her to lie down and open her legs. She did and he penetrated her. Then he went out and Brenton went in to have sex with Juline. When Brenton finished he went in again and had sex with her the second time . He said he had sex with her only once. He said the second time he asked her to sit on his penis and she did. After that she put her clothes and went out first. Brenton followed and he went last. Along the way he called her again, she stopped and they kissed again. Then they

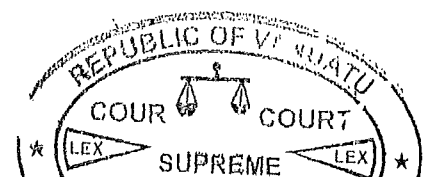


reached the road and she went to her house as he went to his. When he reached his house he just heard Justine calling out his name and swearing at him.

9. Brenton Sanibul gave evidence on oath in his defence. He took kava and prepared it for him and Justine to drink. Juline took her plastic to take some for herself. Then Tino came to see him and they left for another bar, the last bar, they had one shell each there then went home. On the way, they met Juline. She asked for her husband. They told her he was at Chief Henry's bar. She said it was too far so she turned around to go back home. They followed and Tino called her. She stood up and Tino spoke with her. He stood at 5 metres away and did not hear what they were saying. Then Tino went first, Juline in the middle, he was at the back. Tino opened the door, Juline followed, he went in last. Tino called to him and he went in to see Juline. She was down on the floor. She told him to hurry up. He removed his trousers and had sex with her. She was not afraid. He laid on top of her. She held his penis and put it into her vagina.

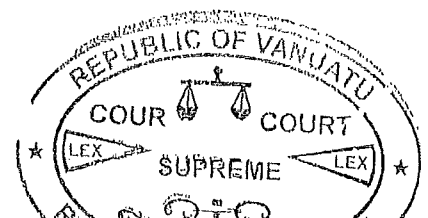
10. She laughed at him because his penis was small. He withdrew saying her private part was too big for him. He wore his clothes and went back to the door. Tino went in again the second time. When they had finished Juline came out first. She took the the lead, Tino followed and he took the rear. He heard Tino call Juline again and she stopped. He went on to the big road. Juline followed. He saw a figure coming. It was Justine. He turned and saw Juline trying to hide. Justine asked him who was hiding? He said it was Juline. Justine approached her and asked her what happened. Then he assaulted Juline. She cried. Then Justine assaulted him too. Juline told Justine that they had forced her with money to have sex. At this he assaulted his wife again and tore her clothes. Many people came around to watch. He returned to his house.

11. The Court is faced with three competing stories. But the Court believes the evidence of the complainant as the truth. She had drunk kava that night and was under its effect. She was going home after feeling the effect of kava and calling off her search for her husband as he was too far away. She had her children at home in her mind. It was dark, around 9:00pm. Tino took advantage of the fact Justine was drunk with kava and was at the last bar. He asked her for sex but got the answer "no" twice. He continued to press her by putting money into her hand and pulling her to the side road



and into the bush. She found herself walking helplessly in the middle of two young men. There could be no better reason for her to be afraid, so all she could do was give in to them. They had overpowered her freewill. Sexual intercourse with her on that night was therefore not consensual. They were performed against her freewill and consent. She had clearly shown her disagreement to sex by saying “ No” twice to Tino but that was ignored by the defendants.

12. There were a lot of inconsistencies in the evidence of the two accuseds. For instance-
- a) Tino said he did not call Brenton to go and have his turn of intercourse. But the complainant said he did and Brenton said Tino called him to go in.
 - b) Brenton said Juline was not drunk with Kava but in his Record of Interview he said she was.
 - c) Tino said in his ROI Juline was drunk with kava but in his oral evidence he denied it.
 - d) Tino said Juline led the way into the old house while Brenton said Tino led the way and Juline followed while he was at the rear.
 - e) Tino said he had sex with Juline only once then later said he returned after Brenton had finished for the second round.
 - f) Tino said upon reaching the road, Juline went to her house while he went to his. Brenton and Juline said the opposite.
 - g) The kissing disclosed by Tino in his oral evidence were not mentioned in the Record of Interview. These inconsistencies bring the credibility of the accuseds and their evidence into question and doubt that they were telling the truth.
13. On the other hand Justin’s recent complaint confirms his wife’s version that she ran off to the road after sex had occurred. She was wet all over and crying. These were enough to show that Juline Toa did not consent to the sexual intercourse that were done to her by both the accuseds.
14. Even if what the defendant alleged as “ Hurry up” was said by the complainant, it must be understood not in the context that she was enjoying sex and agreeing to it, rather it shows the hopeless situation the victim was in, that all she wanted was for



them to get it over and done with so she could go free to go back home and see her children or her husband.

15. The conclusion I reach is that I am satisfied the prosecution has proved there was no consent, beyond reasonable doubt. Further that the defendants had no reasonable belief the complainant had agreed to sex.
16. I therefore return the verdict of guilty on Tino Rasa and Brenton Sanibul and convict them accordingly of the charge of sexual intercourse without consent.
17. I adjourn the case for sentence to Friday 29th March 2019 at 9:00am. Bail is extended to the defendants pending sentence. They must return to Court without fail. The Probation Officer is required to lodge a Same Day Report to assist Counsel's submissions on sentence.

DATED at Betarara, North Maewo this 27th day of March 2019

BY THE COURT

OLIVER.A.SAKSAK

Judge

