

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

**Criminal
Case No. 20/2294 SC/CRML**

BETWEEN: The Public Prosecutor
Prosecutor

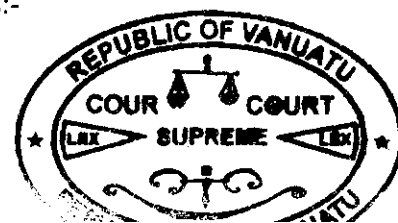
AND: Ashley Garae
Defendant

Coram: Justice Aru

Counsel: Mr. D. Boe for the Public Prosecution
Mr. R. Willie for the Defendant

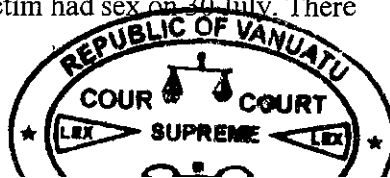
RULING
(No Case submission)

1. The defendant is charged with one count of sexual intercourse without consent and one count of unlawful sexual intercourse (with a child under 15 years but over 13 years of age). He entered not guilty pleas to both charges which then required a trial to be had.
2. The prosecution bears the onus of prove and must prove all elements of the offences charged beyond reasonable doubt. For sexual intercourse without consent the elements are:-
 - The defendant had sexual intercourse with the victim;
 - The victim did not consent.
 - The defendant did not have a reasonable believe that the victim consented
3. For unlawful sexual intercourse the elements are:-
 - The defendant had sexual intercourse with the victim
 - The victim was under the age of 15 but over 13 years of age
4. At the close of the prosecution I was required to rule whether there was evidence which the accused could be convicted pursuant to s 164 of the Criminal Procedure Code [CAP 136]. The defendant made oral submissions on a no case to answer. If there was no case to answer then I would have to pronounce a not guilty verdict and acquit the accused. If the submission fails the defendant would then be required to make his defence. The test as applied by the Chief Justice in *PP v Verlili* [2017] VUSC 166 is:-



"the test is not proof beyond reasonable doubt but rather as a matter of law whether the accused person could be convicted on the evidence presented thus far. The test is whether a finding of guilt could be made by a reasonable judicial officer sitting alone on the evidence thus far presented."

5. The prosecution called 4 witnesses. The victim/complainant, Ms Rehab, Mrs Brenda (victim's mother) and Dr Thomas Sala of the Northern Provincial Hospital.
6. The victim gave her evidence first. Her evidence is that on 30 July 2020 at night after the fireworks display at Unity Park they were heading back home to Pepsi. She was with Rehab and her two sisters. Whilst walking they had some colour lights on their head. As they approached the Sarakata dark corner, they met the defendant on a bicycle. He asked for one of the lights then grabbed the collar of her shirt. At that instant a car approached them and the defendant let her go and rode away ahead of them. They then proceeded to follow the same road as the defendant. As they came to a shop, the defendant was waiting for them. He then grabbed her shirt collar again and told the others to go ahead. She said he dragged her into a yard and into the SDA school area. She said she tried to scream but the defendant said he will break her neck. She said he broke the button of her trousers then made her lie down on the grass and had sex with her. After that he said sorry to her and left. She then ran to her bothers who were looking for her and they took her home. She reported the matter to her mother who told her they will go to the Police the next day being 31 July. The next day they went to the Police to report the incident then went to the hospital for a medical check-up. She took the medical report to the Police.
7. Rehab was with the complainant on the night of the incident. She did not see the defendant having sex with the complainant. She said she was with the complainant when the defendant dragged her away. She then went looking for assistance to look for the complainant. She found someone who came and assisted her look for the complainant and called out without any response from the complainant. She then went home and told the complainant's mother. Rehab remained at home whilst others looked for the complainant.
8. Brenda the complainant's mother said she joined the search but returned home as she had a baby who was at home by herself. Later her sons took the complainant home and the next day she took her to the Police station and to the hospital for medical check-up.
9. Dr Sala said he examined the complainant on 31 July, the day after the incident. He said her genitalia was normal but she was not a virgin as there was no hymen. He said the victim had previously had sex but he could not confirm if it was on the 30 of July. There were no other injuries observed on her body.
10. The only evidence that sex occurred was from the victim herself. In Court she said the trousers she wore when the defendant broke the button was in her bag but was not produced by the prosecution in Court. The evidence of Dr Sala who examined the victim the very next day said her genitalia was normal and there was no evidence of any trauma. He said he could not confirm whether the victim had sex on 30 July. There



were no other injuries on her body although the victim said she was dragged into a yard before the sex occurred.

11. For these reasons I ruled that there was no case to answer and found the defendant not guilty and acquitted him on both charges.

DATED at Port Vila this 20th day of January, 2021

BY THE COURT

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D. Aru
Judge

