

**PUBLIC PROSECUTOR v LEONARD EDWARD WILLIE**

**Coram:** Hon. Chief Justice V. Lunabek  
**Counsel:** Ms G. Kanegai for the State  
Mr H. Vira for the Defendant  
**Date of Trial:** 3 August 2022  
**Oral decision:** 3 August 2022  
**Date of Reasons:** 5 August 2022

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**REASONS FOR "NOT GUILTY" VERDICT**

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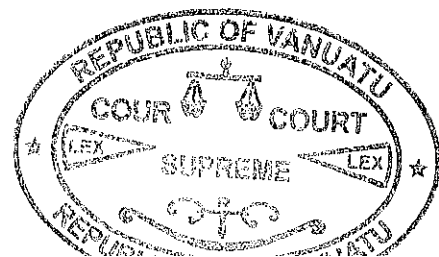
**A. Introduction**

1. Defendant Leonard Edward was charged with one count of Sexual Intercourse Without Consent, contrary to Section 91 and 90(a) of Penal Code.
2. It is particularised that sometimes in the early hours of 3<sup>rd</sup> of July 2021 at Manples Area, he did intentionally have sexual intercourse with the complainant (AB) by penetrating her vagina with his penis without her consent.
3. I have read and explained the accused's right of the presumption of innocence under Section 81 of the Criminal Procedure Code Act to him. That section reads:

*"In every criminal trial in which a plea of not guilty has been entered, the judicial officer presiding shall, before the prosecution case is opened, read aloud to the accused the following statement of the presumption of innocence –*

*"In this trial you will be presumed to be innocent unless and until the prosecution has proved your guilt beyond reasonable doubt. It is not your task to prove your innocence. If at the end of the trial, any reasonable doubt exists as to your guilt, you will be deemed to be innocent of the charge and will be acquitted"*

*and shall record such step in the proceedings."*



The accused understood it.

4. The prosecution has the duty to prove each and all essential elements of this offence beyond reasonable doubt before the accused could be convicted.

**B. Issue**

5. Consent is the only issue in this trial.

**C. Elements of the offence**

6. The prosecution has to prove each and all of the following essential elements of the offence:
  - (a) That the defendant had sexual intercourse with the complainant in the night of 3 July 2021 at Manples area;
  - (b) That the complainant did not consent to have sexual intercourse with the defendant;
  - (c) That the defendant did not have a reasonable belief that the complainant consented to have sexual intercourse with him.

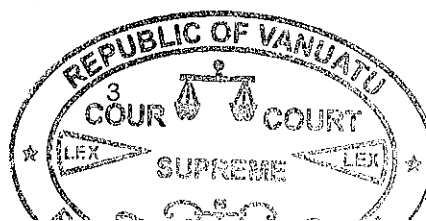
**D. Prosecution evidence**

7. The complainant is AB. She is the only prosecution witness. She gave evidence to the following effect. She is now 18 years of age. She was 17 years old at the time of offending on 3<sup>rd</sup> July 2021. The accused was 19 years old.
8. On the night of Friday 2 July 2021, she consumed alcohol with 5 other girls and 4 boys. She was drunk. She said she wanted to go back home.
9. She was too drunk; she did not know how Leonard took her to the point "Cocorico". He had sexual intercourse with her by penetrating her vagina with his penis. When he moved in and out into her body, her head was clear for a short period of time. She saw Leonard having sex with her. She pushed him off and run away. In her running away, she did not wear her panties and trousers. But she pulled down part of her dark red cold shirt to cover up her body to go home. When she reached her house, she wore trousers and she slept.
10. Leonard is her neighbour. Leonard was not with her and her friends when they consumed alcohol. She said she returned at 9 – 10pm o'clock. She repeated that answer when the question



was repeatedly asked of her. She said she was too drunk; she did not know how she met Leonard. She did not know how she went to the Cocorico point that night.

11. The next morning, one Germain Saurei told her that they found a red panty, blue jeans trousers and blue tight at the point Cocorico. She said those were her clothing. She asked Germain Saurei and her junior sister to accompany her to the point to collect the clothing.
12. They went and collected her clothing. She was afraid of returning to her house as there were plenty people who knew of what happened. She sent Germain Saurei to her house. She and her small sister went to Malapoa to leave her collected clothing at her auntie's house where her cousin sister Rebecca was living. She went and stayed with her big sister Rose at Tebakor. She stayed with Rose at Tebakor until Sunday 4 July 2021 when she decided to tell her mother about what happened to her. She said her mother said this was rape. Her mother accompanied her to the police in Port Vila to lodge a complaint.
13. In cross-examination, she was asked that after she had consumed alcohol with her friends (5 girls and 4 boys), she went to see Leonard, Mansen and Rodney who drunk alcohol liquor at the time at Manples area. She said she was too drunk at the time; she did not know. She came and removed the bottle of alcohol liquor of Leonard and the two others. She did not know. She was close to Leonard and held him. She did not know. When she finished drinking alcohol with Leonard and the two other boys, she followed Leonard to the point Cocorico. She did not know.
14. At the point Cocorico, Leonard and her kissed. She did not know. When they were kissing, she removed her trousers and panty and she laid on the ground and she had sexual intercourse with Leonard. She did not know.
15. After the sexual intercourse, Leonard wore his cloths again. Leonard asked her to wear her cloths. She did not know. Instead of wearing back her cloths, she hanged on Leonard. She did not know. Leonard asked her twice to wear back her cloths. She did not know. Leonard saw her walking in the circumstance she described to her house. She did not know.
16. She accepted she consumed alcohol drink liquor with Regina Pakoa, Yasmine and Rachel. She accepted that while drinking alcohol liquor with her friends, they walked on the road at the place they were staying.
17. It was during that time that she and her friends went to join Leonard and his two friends (Mansen and Rodney) who were drinking alcohol liquor also at that time. She did not know.
18. She was asked if Leonard grabbed her and pulled her to the point. She said she did not know; she was too drunk. She was also asked if she and Leonard were kissing, she did not know. She answered she did not know; she was too drunk. She did not know they were kissing but she knew she was at the point when Germain Saurei told her the next morning that they found a red panty, blue jeans trousers and blue tight at the point Cocorico as she remembered Leonard made trouble to her at that place.



19. She was asked that because she was too drunk if Leonard asked her for sex she would not know. She accepted saying yes. It was suggested to her that if she accepted to have sexual intercourse with Leonard at that time, she would not know as she was too drunk. She accepted that suggestion saying yes as she was too drunk.
20. She accepted the suggestion that she told her mother and the police of what happened to her on Friday/Saturday night (2 – 3 July 2021) because they found her clothing at the point Cocorico.
21. She accepted she made the complaint to the police to protect herself of the shame.
22. She was re-examined but her re-examination did not take her evidence further.
23. That is the end of the prosecution evidence and the end of the prosecution case.
24. The defence counsel did not make a no-case submission, despite of the fact that I refer him to Section 164 of the Criminal Procedure Code Act [CAP. 136].

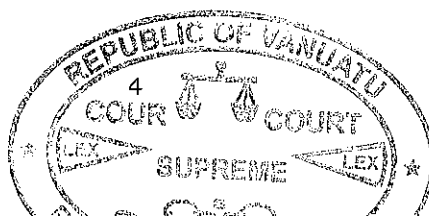
**E. Assessment of prosecution evidence and application of Section 164(1) of the Criminal Procedure Code Act**

25. Section 164 reads:

*“(1) If, when the case for the prosecution has been concluded, the judge rules, as a matter of law that there is no evidence on which the accused person could be convicted, he shall thereupon pronounce a verdict of not guilty.*

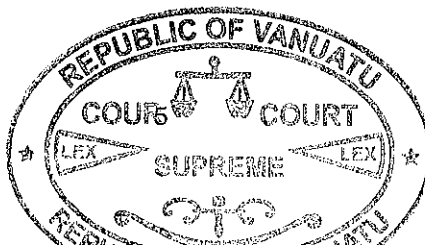
*(2) In any other case, the court shall call upon the accused person for his defence and shall comply with the requirements of section 88.”*

26. As there was no submission relating to a no-case submission or no-case to answer, I remind myself that I sit alone on the evidence thus far presented. I bear in mind of the following cases:
  - R v Gailbraith applied in PP v Verlili [2017] VUSC 166;
  - PP v Samson Kilman and others [1997] VUSC 21;
  - PP v Natuman [2017] VUSC 210; and
  - PP v Suaki [2018] VUCA 23; Criminal Appeal Case No. 391 of 2018 (27 April 2018) which reviewed and summarised the legal position in such situation.
27. The court adopted the judgment of Lord Cane CJ in Reg v Gailbraith (CA) (1981) 1 WLR 1039 where the court said:



- "(1) *If there is no evidence that the crime alleged has been committed by the defendant there is no difficulty the judge should stop the case;*
- (2) *the difficulty arises where there is some evidence but it is of tenuous character, for example, because of weakness or vagueness or because it is inconsistent with other evidence:*
- (a) *Where the judge concludes that the prosecution case taken at its highest is such that a jury properly directed could not properly convict on it, it is his duty on a submission being made to stop the case;*
- (b) *Where, however, the prosecution is such that its strength or weakness depends on the view to be taken of a witness' reliability or other matters which are generally speaking within the province of the jury and were on one possible view of the facts there is evidence on which the jury could properly come to a conclusion that the defendant is guilty then the judge should allow the matter to be tried."*

28. I therefore refer to the evidence adduced by the prosecution more particularly, the evidence relating to the elements of the crime the defendant has been charged with.
29. Defendant Leonard Edward was charged with one count of Sexual Intercourse Without Consent, in that, it is said that sometimes in the early night of 3 July 2021, at Manples area, Port Vila, he did intentionally have sexual intercourse with the complainant (AB) by penetrating her vagina with his penis without the complainant's consent.
30. In the present case, at the end of the prosecution case, there is material evidence, and it is not disputed, that the defendant had sexual intercourse with the complainant in the night of 3 July 2021 at Manples area. That first element was proved beyond reasonable doubt. The next element is whether or not the complainant consented to have sexual intercourse with the defendant at that time and at that place. There was no evidence adduced by the prosecution as to what happened before the sexual intercourse occurring as the complainant was too drunk, she did not know what happened. She did not know how she was at the point Cocorico that night. There was evidence that during the sexual activity between the defendant and the complainant that night of 3 July 2021, and because of the movement in and out of the defendant's penis inside the complainant's vagina, the complainant was awoken by that movement in her body, she saw the defendant making sex to her, she pushed him off and run-away home half naked (as testified). In respect to that second element of the offence under s.91 and 90(a), there is some evidence during the act of sexual intercourse but not before the sexual activity. There is no further evidence of any intimidation or force by the defendant. To that point, I accept that there is some evidence.



31. In relation to the third element that the defendant did not have a reasonable belief that the complainant consented to have sexual intercourse with the defendant at that night of 3 July 2021 at that place, there is no evidence by the prosecution. There is no question nor evidence elucidating the defendant's belief by the prosecution through the evidence of the complainant.
32. The evidence of the complainant under cross-examination was to the contrary effect that she told her mother about what happened to her on Friday/Saturday night of (2 – 3 July 2021) because she was embarrassed that her cloths were found at Cocorico point the next morning and people knew that those were her clothing. And she accepted that she went with her mother to the police and lodged a complaint to protect herself of the shame and embarrassment.
33. In the present case, I apply Section 164(1) of the Criminal Procedure Code Act and I stop the case there and then.
34. I consider not only whether there is evidence but whether the quality of that evidence is so manifestly discounted or unreliable that I can conclude that there is no evidence on which the accused person could be convicted. Here I take the step of dismissing the charge as the evidence is "*so manifestly discredited or unreliable that it would be unjust for a trial to continue* (see PP v Suaki [2018] VUCA 23).
35. The prosecution fails to prove the necessary elements of the offence of sexual intercourse without consent, against defendant Leonard Edward as charged, and in particular the third element.
36. I dismiss the charge of sexual intercourse without consent laid against defendant Leonard Edward. I acquit him of the said charge accordingly.
37. Those are the reasons for my verdict of not guilty in the present case.

**DATED at Port Vila, this 3<sup>rd</sup> day of August 2022**

**BY THE COURT**

**Vincent LUNABEK**  
**Chief Justice**

