

PUBLIC PROSECUTOR

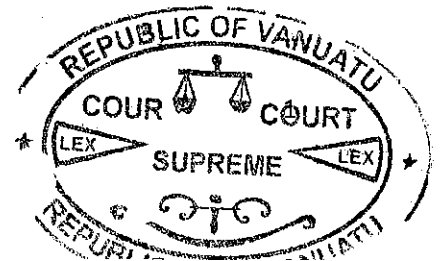
v

MARK WESLEY ROWYAMA

Date of Trial: 21 November 2022
Before: Justice V.M. Trief
In Attendance: Public Prosecutor – Mr S. Blessing
Defendant – Mr H. Rantes

VERDICT

1. The Defendant's surname was spelt as "Rausiama" up till today. In evidence-in-chief, he stated that his surname is correctly "Rowyama". I noted that this was closer to the spelling in his statement to the Police [**Exhibit P3**]. Accordingly, I have changed the entitling of the Defendant to "Mark Wesley Rowyama".
2. Mr Rowyama is charged with sexual intercourse without consent (Charge 1) and sexual intercourse with consent where the complainant's consent was obtained by fear of bodily harm (Charge 2).
3. Counsel handed up a document titled "Formal Admissions" containing agreed facts. It was accepted that Mr Rowyama and the complainant Marie Simon had sexual intercourse on two occasions, on 11 July 2019 and 23 July 2019. Accordingly, the issues were whether or not Ms Simon consented (Charge 1), whether her consent was obtained by fear of bodily harm (Charge 2) and whether or not Mr Rowyama believed on reasonable grounds that she consented (both charges). These were issues of the facts.
4. As in all criminal cases, the Prosecution had the onus of proof and was required to establish the allegations beyond a reasonable doubt before a finding of guilt could be made in respect of the charges. Mr Rowyama was not required to establish anything.
5. Having heard the evidence in this case, I am not satisfied that the Prosecution has proved the charges beyond a reasonable doubt for the following reasons:
 - a. Ms Simon's evidence was that on 11 July 2019, she told Mr Rowyama that she did not want to have sex as she was scared of getting pregnant – this was not put to Mr Rowyama in cross-examination;



- b. Ms Simon's evidence was that on 11 July 2019, Mr Rowyama held onto her hand tightly and pulled her into the house, and held onto both her hands during sex. Neither of these were put to Mr Rowyama in cross-examination;
 - c. Ms Simon agreed at the end of her cross-examination that it was only after her father found her with Mr Rowyama after the sex on 23 July 2019 that her parents made her report the matter to the Police – she said in re-examination that she made a report to the Police of her own thinking however doubt was raised in my mind as to the veracity of her evidence;
 - d. Mr Rowyama was challenged in cross-examination that the majority of his evidence today was not in his statement to the Police. He explained in re-examination that it was his first time to be arrested by the Police, he was detained at Cell No. 6, he was shaken and scared of the Police so he did not tell them everything, only part of what had happened. I accepted Mr Rowyama's explanation as a credible one for why he had given a less detailed account to the Police;
 - e. I also accept Mr Rowyama's explanation as credible that he was much younger, it was a distance that he had to walk alone and through the dark to meet up with Ms Simon on 23 July 2019 therefore he took his large bale knife with him whereas he left the knife and fled after both Ms Simon and he were assaulted by Ms Simon's father;
 - f. Mr Rowyama's account was consistent between his Police statement and evidence today in Court that at the time, he was in a boyfriend/girlfriend relationship with Ms Simon;
 - g. Mr Rowyama was challenged whether he would have sex with a family member without consent. He replied that no, she was his "tawi" (sister-in-law) and that he could only do so if she agreed to have sex with him. His account remained unchanged in examination-in-chief and cross-examination that he asked her and she agreed to have sex with him on both occasions; and
 - h. Accordingly, I was left with doubts as to whether or not Ms Simon consented, including out of fear of bodily harm, and consider that Mr Rowyama believed on reasonable grounds that she consented.
6. As I am left with those doubts, I find Mr Rowyama not guilty. He is deemed to be innocent of the charges and is acquitted.

**DATED at Isangel, Tanna this 21st day of November 2022
BY THE COURT**

VM Trief
Justice Viran Molisa Trief

