

PUBLIC PROSECUTOR

v

GEORGE RANGONMAL

Date of Trial: 16 November 2022
Before: Justice V.M. Trief
In Attendance: Public Prosecutor – Mrs B. Tamau
Defendant – Mr H. Vira
Date of Decision: 18 November 2022

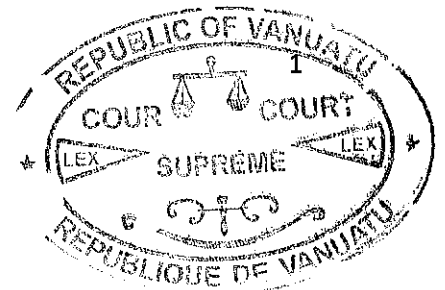
VERDICT

A. Introduction

1. The accused George Rangonmal was charged with act of indecency where the consent was obtained by fear of bodily harm contrary to section 98(b)(iii) of the *Penal Code* [CAP. 135].

B. Law

2. The charge of act of indecency where the consent was obtained by fear of bodily harm has 3 legal ingredients which must be proved in order for a conviction to be entered, namely that on the occasion alleged:
 - Mr Rangonmal committed an act of indecency upon, or in the presence of, the complainant DK (name suppressed); **and**
 - The act was with DK's consent where the consent was obtained by fear of bodily harm; **and**
 - Mr Ragonmal did **not** believe on reasonable grounds that DK consented.
3. Counsel filed a Memorandum of Agreed Matters. It was accepted that Mr Rangonmal had committed an act of indecency upon DK therefore the sole issues were whether or not DK's



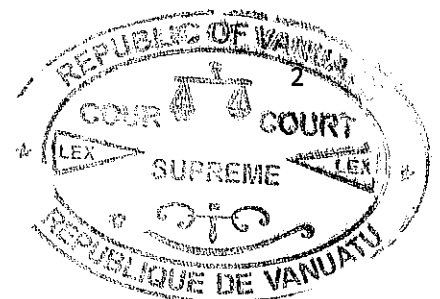
consent was obtained by fear of bodily harm and whether or not Mr Rangonmal believed on reasonable grounds that DK consented. These were issues of the facts.

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 charge. Mr Rangonmal was not required to establish anything.
5. I remind myself that if I were to draw inferences, they could not be guesses or speculation but had to be logical conclusions drawn from other properly established facts. Further, if more than one inference was available, the inference most favourable to the defence must be drawn.
6. I assessed the credibility and accuracy of a witness' evidence not only by how the witness appeared in Court but also by the consistency of accounts. I looked firstly for consistency within a witness' account. Secondly, I looked for consistency when comparing that account with the accounts of other witnesses. I also had regard to the inherent likelihoods of the various situations then prevailing.
7. These factors all impacted on my findings of facts.

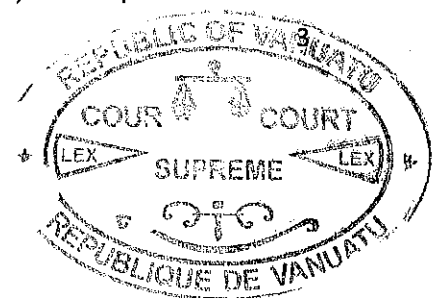
C. The Evidence

8. The **agreed matters memorandum** set out a number of matters as follows:

- At the time of the offending, DK was 20 years old and a student at INTV;
- DK was living under the care and protection of her mother and Mr Rangonmal who is the mother's *de facto* partner hence Mr Rangonmal is DK's step-father;
- Prior to the offending, DK's mother and Mr Rangonmal were unhappy with DK as they found out that she was having a relationship with a young man residing at Fresh Wota 5 area;
- On 30 March 2019, Mr Rangonmal told DK to follow him away from their house at Ifira Point, Efate along a footpath leading to the main road where they would catch a bus to town;
- As they were walking along, Mr Rangonmal asked DK repeatedly if she liked her boyfriend. She said yes. He also asked her whether she had had sex with her boyfriend. She said yes;
- Mr Rangonmal told DK to follow him into the bush. She did;
- Mr Rangonmal sat behind a rock and again asked DK if she loved her boyfriend. She said yes;
- He asked her again if she had had sex with her boyfriend. She said yes;
- Mr Rangonmal told DK to remove her pants and sit on the ground facing him;
- When she sat down, he touched her vagina with his hands;



- Mr Rangonmal then told DK to put her pants back on and they walked back to the road; and
 - Mr Rangonmal admitted the offending to the Police. He stated that DK agreed for him to touch her. He also told the Police that he knew what he did was wrong.
9. The **agreed exhibit** was Mr Rangonmal's statement to the Police [**Exhibit P1**].
 10. I **heard** evidence from **Molifei Motoutorua**. She is married to DK's uncle (a brother of DK's mother). In 2019, DK lived at Ifira Point with her mother and Mr Rangonmal. DK's house was close by to Mrs Motoutorua's house at Ifira Point.
 11. On 30 March 2019, in the morning, Mrs Motoutorua was washing clothes when she heard a scream up at the main road. She asked her elder daughter to check where her younger sisters were. Suddenly DK ran towards them and hugged Mrs Motoutorua. DK was barefoot and was shaking and crying, as if she was very frightened. She was crying and asked to see her uncle, Mrs Motoutorua's husband. They went indoors to her uncle and DK continued to shake and cry. She told them that Mr Rangonmal had told her that they would go to town, but then led her to a rock and there, touched her private part. She was speaking brokenly, as if she was scared. As soon as DK's uncle heard this, they went looking for Mr Rangonmal but he had left. Straight after that Mrs Motoutorua called the Police at DK's request.
 12. There was no cross-examination of Mrs Motoutorua.
 13. I accepted Mrs Motoutorua as a truthful and accurate witness and accept her evidence. Her evidence was consistent with DK's account.
 14. The second and final Prosecution witness I **heard** from was **DK**. Before DK gave evidence, I granted leave for a screen to be set up in the Court room so that DK could not see Mr Rangonmal and vice versa as she was not comfortable otherwise to freely give her evidence in his presence. This was unopposed by Mr Vira.
 15. In the morning of 30 March 2019, DK, her mother and Mr Rangonmal were at home. Mr Rangonmal had heard that DK was in a relationship with a boy and asked her if she really liked the boy? She said yes. Then Mr Rangonmal told her to go and change then they would leave. He said to her, "*Yu jenis olbaot nomo*" ('Just dress casually'). They left and her mum went inside to sleep.
 16. They walked along a footpath in the bush that is a shortcut to the main road. There are no houses near that shortcut.
 17. As they were walking along, Mr Rangonmal asked her repeatedly, "*Yu rili laekem boy ia?*" ('Do you really like that boy?'). Mr Rangonmal led them to sit near a big tree where he asked her again if she really liked that boy. DK said yes. He said he would go put her at the boy's house. DK responded that was fine as she really liked the boy. Mr Rangonmal then led them behind a rock and he sat on the rock. She was standing facing him and he told her to remove her pants. DK started crying as she knew he would do something to her.
 18. She wanted to tell Mr Rangonmal that she did not want to do what he said but she was too scared for her own safety ("*Feeling blong mi se I risk tumas lo mi*") so she pulled down her

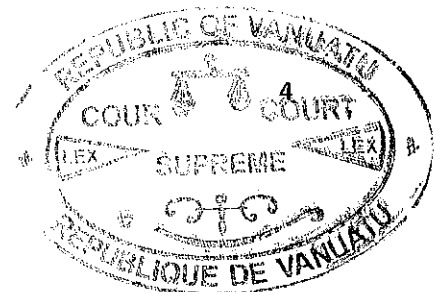


pants. Nothing like that had ever happened to her before. She did not run away as she was too panicked so she did what Mr Rangonmal told her to do.

19. She then sat down on the ground and he touched her 'private part'. She was crying and Mr Rangonmal could see that she was crying. She did not call out as she knew that if she cried out for help, that he could harm her.
20. Then Mr Rangonmal told her to pull up her pants and they walked on. At the main road, a white box bus passed them. DK expected Mr Rangonmal to stop that bus but he did not. She could see Mr Rangonmal's eyes looking left and right and he said they would follow the road uphill. They were walking on opposite sides of the road. When she saw that she was far enough away from him not to catch her, she had the thought to run away. She left her sandals behind so as not to weigh her down and ran.
21. DK ran to her uncle's house. Mr Rangonmal tried to chase after her but could not catch her.
22. She did not agree to Mr Rangonmal touching her vagina.
23. In cross-examination, DK agreed that Mr Rangonmal told her to pull down her pants, sit on the ground facing him and open her legs. She agreed he touched her vagina. She agreed that she did what he told her to. She disagreed that she was not frightened. She said, "*Si mi fraet*" ('Yes, I was frightened'). She said that she did what Mr Rangonmal told her to do as she was so panicked. She denied asking Mr Rangonmal, "*Bae yumitu go mekem samting ia wea?*" ('Where will we do that thing?')
24. DK stated in re-examination that she did what Mr Rangonmal told her to do as she was really panicked and felt so unsafe ("*From lo time ia mi rili panic – I risk tumas lo mi*").
25. I accepted DK as a truthful and accurate witness and accept her evidence. Her evidence was detailed. She was undeterred in cross-examination and did not deviate from her original account. She explained clearly that she did what Mr Rangonmal told her to do because she was so panicked and frightened of what he might do to her. DK's evidence had the ring of truth to it.
26. **Mr Rangonmal** elected to remain silent. His choosing to do so could not lead to an inference of guilt against him.

D. Discussion

27. DK's evidence was that she did not agree to Mr Rangonmal touching her vagina. This is what she told her aunty Mrs Motoutorua and uncle immediately afterwards. DK and Mrs Motoutorua's accounts were consistent with each other.
28. DK stated that she wanted to tell Mr Rangonmal that she did not agree but did not do so as she was too scared of what he might do to her. In her panic and fear, she stayed silent and did what Mr Rangonmal told her to. She was crying and Mr Rangonmal saw that she was crying. The inherent likelihood of a girl in that position crying is that she was frightened for her own safety and did not agree with Mr Rangonmal's actions.



29. As soon as DK had the opportunity to flee from Mr Rangonmal, she did. When they reached the main road, and were walking along on opposite sides of the road, she sprinted away the moment she judged that she could do so and he would not be able to catch her. She left her sandals so as not to weigh her down and ran to her aunty and uncle.
30. In the circumstances, I am satisfied that Mr Rangonmal's act was with DK's consent where the consent was obtained by fear of bodily harm.
31. I also had to consider whether or not Mr Rangonmal believed on reasonable grounds that DK consented. By the time DK had pulled down her pants and sat down on the ground facing Mr Rangonmal with her legs open, she was crying and Mr Rangonmal could see that she was crying. With his step-daughter suffering the indignity of showing Mr Rangonmal her genitals and crying, Mr Ragonmal could not have believed by any stretch of the imagination that DK consented to his actions.
32. Accordingly, I am also satisfied that Mr Ragonmal did **not** believe on reasonable grounds that DK consented.
33. The charge has been established beyond reasonable doubt.

E. Result

34. Mr Rangonmal is convicted as charged.

**DATED at Port Vila this 18th day of November 2022
BY THE COURT**

VM Trief
Justice Viran Molisa Trief

