

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

Criminal
Case No. 21/2018 SC/CRML

PUBLIC PROSECUTOR

V

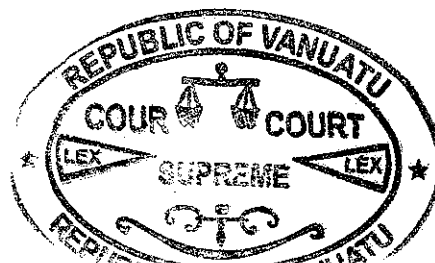
ALBAN KAMMY DINGLEY

Coram: Hon. Chief Justice V. Lunabek
Counsel: M Taiki for the State
L Tevi for the Defendant
Date of Trial: 16 July 2022
Date of Oral Verdict: 16 July 2022
Date of Reasons of Verdict: 20 June 2023

**REASONS FOR ORAL VERDICT OF ACQUITTAL OF
16 JULY 2022**

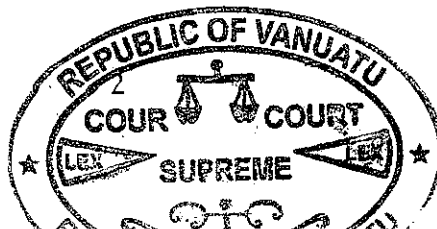
A. Introduction

1. Defendant Alban Kammy Dingley was charged and tried for sexual intercourse without consent on Saturday 16 July 2022 at Luganville, Santo.
2. On 16 July 2022, after the Court heard oral submissions from the Prosecution and defence counsels, the Court acquitted the Defendant on the basis that there was a reasonable doubt which existed in respect to the only issue at trial of consent.
3. What follow are the reasons of the verdict of acquittal of 16 July 2022.



B. The Onus and Proof – Elements of offence

4. The complainant is a 19 years old student at the Baldwin Memorial College, Sola, Vanua Lava, Banks. She was a Year 12 student in the year 2020.
5. The defendant, Alban Kammy Dingley, is a police officer of 26 years old, stationed at Sola Police station in 2020.
6. The allegation made against the defendant was that between 1 September 2020 and 30 September 2020, the defendant had sexual intercourse with the complainant at Sola Police Station, Vanua Lava without the complainant's consent.
7. The defendant denied and, he said the sexual intercourse was consensual sex.
8. A one-day trial took place at Luganville, Santo on Saturday 16 July 2022.
9. The only issue for the trial is that the sexual intercourse between the defendant and the complainant inside Sola Police station occurred as alleged but the complainant did not consent to that sexual intercourse.
10. The prosecution case is that the complainant did not consent to have sexual intercourse with the defendant in September 2020 at Sola Police station.
11. The prosecution has the onus and burden to prove the following essential elements of this offence beyond a reasonable doubt:
 - (i) That Defendant Kammy Dingley had sexual intercourse with the complainant inside the Sola Police station, Banks, between 1 September – 30 September 2020.
 - (ii) That the complainant did not consent to have sexual intercourse with the defendant inside Sola Police station, Banks, between 1 September – 30 September 2020.
 - (iii) That the defendant Kammy Dingley did not have a reasonable belief that the complainant consented to have sexual intercourse with him inside Sola Police station, Banks, between 1 September 2020 – 30 September 2020.
12. The first element is not disputed. It is admitted. The prosecution has to prove beyond reasonable doubt the second element (not consensual sex) beyond a reasonable doubt and

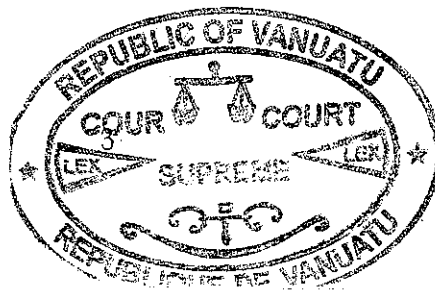


the third element that the defendant on the evidence did not have a reasonable belief that the complainant consented to sex on September 2020.

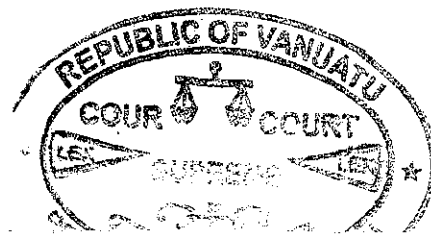
13. If there is a reasonable doubt as to the non-consensual sex as alleged, I must acquit the defendant.

C. The Prosecution Evidence

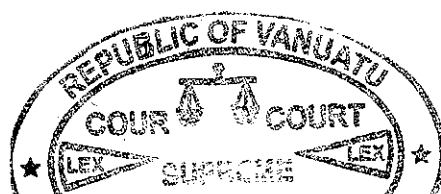
14. The prosecution called three witnesses. The complainant and the two police officers (Paula Jebedy) who cautioned and interviewed the defendant on 19 April 2021 and police officer (Kalmatak) was called to produce photographs he took of the crime scene.
15. The complainant's evidence is to this effect. She is 19 years old. She is a Year 12 student at Baldwin Memorial College, Sola, Banks. She made a complaint against police officer Alban Kammy Dingley because he had sexual intercourse with her in September 2020 at the Sola Police station, Vanualava, without her consent. At that time, she lived with her uncle Pastor Edward Hillary at the end of the airfield. Defendant used to visit her uncle and, he started to know her. This was in August 2020. The Defendant asked for her phone number. She gave her phone number to him. The defendant started ringing her and sending her text messages thereafter.
16. The Defendant told her that he will leave his defacto wife and take her as his wife. She accepted it if that was what the defendant wanted.
17. They began their relationship. They had sexual intercourse on two occasions. The first one happened at the end of the airfield at night. The second occurred inside her uncle's house at night when her uncle was not at home. They both planned to have sex on the two occasions.
18. Defendant ceased to call her for about 3 – 4 weeks. Defendant returned to his defacto partner and family. He had just forgotten her. She thought he lied to her when he told her previously that he will leave her defacto wife and stay with her. She said at that time, she did not want to have sexual intercourse with him anymore.
19. In September 2020, Defendant called her in the afternoon. She was at school. The defendant called her and told her to meet him at the Sola Police station. She left the school, she went to the police station to meet the defendant.



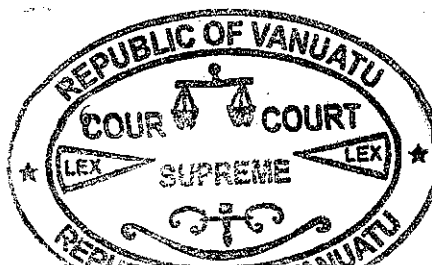
20. She went to the police station to meet the defendant there because she wanted to tell him that she did not like him anymore and, she did not want to have sexual intercourse with him anymore.
21. She arrived at the Police station, the defendant was there. He called her to go inside the police station. She followed the defendant inside his office. He was wearing the police uniform trousers and the hat and, a t-shirt with label "police recruit" on it. She was wearing her school uniforms – white shirt and greens skirt.
22. Inside the office, the defendant closed the door and locked it. Before they went inside the office, she noticed the louvers of the window were closed. The defendant held her on her hips and put her on a table. She said he forced by removing her skirt and panty, and started to have sexual intercourse with her.
23. Before the sex took place, the defendant said nothing to her. She did not say anything to him. They both did not talk. She said she tried to move out when he lifted her up onto the table. The body of the policeman was bigger than her body. During the sex, the defendant said nothing to her. She said she told the defendant during sex that their relationship will end. She did not understand the reason for the defendant to have sex with her. The Defendant did not say anything. He continued having sex with her.
24. She felt sad during the sexual intercourse. She cried.
25. When she was on the table, the defendant quickly removed her clothes. She said she did not get the chance to make anything. The defendant released his substance (sperm) inside her vagina. After the sex, she wore back her clothes, she left the police station and, she returned back home. She said the defendant wanted to accompany her back to the house, she just got out and walked home.
26. During sex, there were no one there in the office. The office is not big. It is just a small office.
27. She did not tell the defendant the reasons why she went to see him at the police station. She said she did not get a chance. He was too fast in removing her clothes.
28. At home, she did not tell her uncle or anyone of what happened to her. In the evening, she went with her uncle at the birthday part of the Island Court Clerk's son. She was not happy, she returned at the house. Her uncle and auntie followed her at the house. They asked her what was wrong. She told them she had a headache. Her uncle and auntie said a pray for her. She did not want to tell them as she did not want to disturb their feeling. She mentioned again that the defendant and her had friendship relations but the defendant did that kind of behavior of having sex with her without her consent.



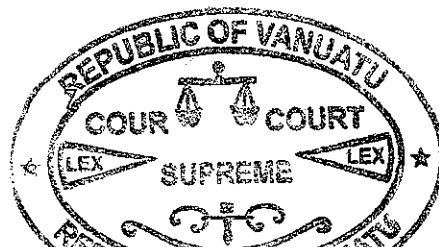
29. She did not talk to the defendant after the sex. In the month of October 2020, she did not see her monthly period anymore.
30. She said she told her stepmother that she was impregnated by the defendant police officer. She said she was not comfortable to tell her that the defendant police officer had sexual with her without her consent.
31. She told the Women Centre Counselor of what happened to her. The counsellor advised her to put a complaint to the police as the defendant was forcing her for sexual intercourse.
32. The complainant said, the defendant police Kammy forced her to have sexual intercourse with her. She was pregnant after the sexual intercourse causing her not to be able to attend school.
33. The complainant was cross-examined. She told the women counsellor of the incident in 2021, she could not recall of the date. The date of 21 April 2021 on the report was not correct.
34. Sola Police is surrounded by other provincial departments. When she walked to the Sola Police station, people in those surrounding offices could see her and, people working in those offices saw her walking to Sola Police station.
35. She confirmed she had a relationship with the defendant. They both met and had sexual intercourse consensually.
36. Before the defendant had sex with her at the police station, she did not have communication anymore with the defendant until the month of September 2020 when he called her when she was at school.
37. She confirmed her evidence that she wanted her relationship with the defendant to end and she did not want to have sex with the defendant anymore.
38. She was referred to her statement to the police dated 27 April 2021 at page 12 paragraph 24 – she mentioned about a phone call from the defendant when she stated: *"Mi bin cross tumas mekem se me nomo answerem good hem after me hangup. Kammy hemi bin spoilem mi from bell blo me stap bigwan – mo mi stap shame blong go lo school"*. She admitted at that point in time she switched off her phone just after the defendant called her.
39. She was referred to the time when the defendant called her in September 2020 when she was at school. She was referred to her evidence that she did not want to have anymore relationship with the defendant, and that she did not want to have sexual intercourse with



- the defendant, and so she was asked as to why she did not switch off her phone when the defendant called her in September 2020 when she was at school? She answered that she answered the defendant's phone call at that time (September 2020) because she thought the defendant will explain his lies to her.
40. She was specifically asked: why nao you wantem harem ol kiaman blong hem? She answered "*me tink se bae hemi changem fashion blong hem*".
 41. She was again specifically asked: "*wanem fashion you talem se bae hemi changem?*" she answered: "*Fashion blong hem we hem istap kiaman long me fastaem*".
 42. She was again asked: "*Taem you refer long kot se hemi kiaman. You refer long relationship blong hem (defendant) wetem woman blong hem, hemi true?*" she answered: "*ol kiaman blong hem long relationship bitwin mitufala*".
 43. She was asked she did not switch off her phone when the defendant called her on September 2020 because she went to the police station to tell the defendant that she did not love him. Baldwin Memorial College is far away from Sola Police station. It will take about 1 or more hours to get there from the school.
 44. She accepted the suggestion that in her right thinking as a girl if she did not love the defendant and did not want to have sex with him anymore, she would not go and meet him at Sola Police station. She was asked and she denied that the reason for her to go to Sola Police station was because she was still in relationship with defendant Kammy. She said no. But then she accepted that if she did no longer want to have relationship with defendant Kammy, as a reasonable girl she should stop halfway on her way to the Police station.
 45. She went to the police station with the strong thoughts of telling defendant Kammy that she did not love him anymore and that she did not want to have anything else with him.
 46. To the suggestion as to why she did not tell him on the phone, she said she wanted both defendant and her to discuss as boy/girl relationship.
 47. When she arrived at Sola Police station, she saw defendant policeman Kammy from 15 meters standing at the entrance of the police station. She walked towards him. He called her to get inside. She went inside in order for both of them to talk about what she called "*fashion ia*". She was asked why they cannot talk about it outside, she said he told her to go inside the office.



48. She was asked, she accepted that she did no longer tell him that their relationship ended. He did not pull her inside the office. He was just calling her. He did not force her to go through police office steps. She accepted she went inside the police office freely.
49. It was during the day. There was no force exerted. He was just asking her to go inside the office. Defendant entered the office first and as she was just about one meter behind him, she followed him inside the office.
50. She was asked as to why she did not stop and tell the defendant Kammy of what she wanted to tell him. She just said he walked in the office, she did not get the chance to talk to him, she had just followed him inside. She was asked she accepted defendant Kammy did not force her to go inside the office. She accepted too that Defendant Kammy walked inside the office, she walked behind him and, she could still talk to him. She was asked and she said she had time to talk to him but the defendant asked her to go inside. She followed him inside to tell him of what she wanted to tell him about.
51. She was asked, she said before she went inside the office, she noticed the windows were closed, the place inside the office was dark, she was not afraid to go inside. It was repeated to her, she said she was not frightened that the windows were closed, the place inside were dark and, she was willingly got inside the office.
52. She accepted at that time, everything went so quickly. He closed and locked the door of the office. They were both close to each other. He was in front and she was standing at his backside.
53. It was suggested to her that as a girl who wanted to end her relationship with the defendant and not to have sexual intercourse with him anymore, she said the actions of the defendant did not indicate anything to her. She was asked and she said she was not afraid at that time. The defendant did not block her mouth. She did not call out for help. The defendant held her hips, put her on the table she accepted she did not struggle to move out. She did not scratch him.
54. She did not agree but said nothing when he put her on the table. Her legs were free at the time, she did not kick him at that time. She did not struggle to come out from him. He put her on the table and she was facing him. He removed her skirt. He did not apply pressure on her down to remove her skirt on the table. He removed her skirt with one (1) hand and his other hand was on her bell when she removed her panty with that other hand. He did not apply pressure on her body to lay down on the table. When he removed her skirt she laid down on the table. She did not open wide her legs when he removed her panty. She did not cross her legs to resist him.



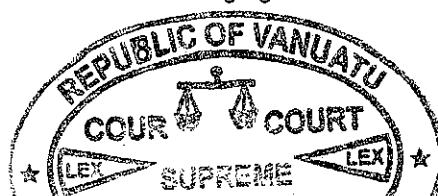
55. After he removed her panty, she laid there on the table while he undressed himself. She did not get up and run to the door. After he undressed himself, he spread her legs and, had sexual intercourse with her. At the time of sexual intercourse, she did not kick him. She did not attempt to shout or call out. She said she put her hands on his chest but his body was bigger.
56. She denied the sexual intercourse was consensual.
57. She was re-examined. She could not get up and run towards the door while she was laying on the table because a police officer was in front of her.
58. That is the end of the complainant's evidence.
59. CID Police officer, Paula Zebedy gave evidence that she had cautioned the defendant and, the defendant maintained that the sexual intercourse occurring between him and the complainant at Sola Police station on September 2020, was a consensual sexual intercourse between both of them. That is the end of her evidence.
60. The photographs of the crime scene taken by Police Officer Kalmatak were tendered by consent.
61. This is the end of the prosecution's evidence and case.
62. At the end of the prosecution case, there was a prima facie case made out against the defendant. He was required to put forward his defence. The defendant's rights under Section 188 of the Criminal Procedure Code was read and explained to the defendant. He has understood them.

D. The Defence case and evidence

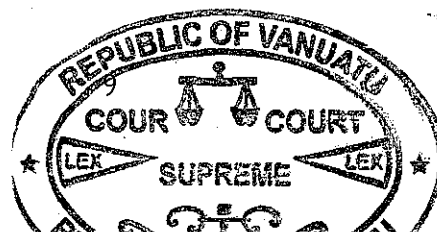
63. The defendant exercised his rights to remain silent and not to give evidence on his own behalf nor call a witness to give evidence on his behalf.
64. That is the end of the trial.

E. Discussion on evidence

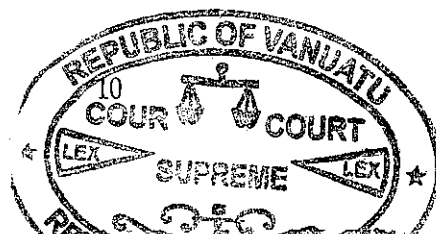
65. The following are the basic facts after the complainant gave the defendant her mobile telephone number, the defendant started ringing her and sending her text messages.



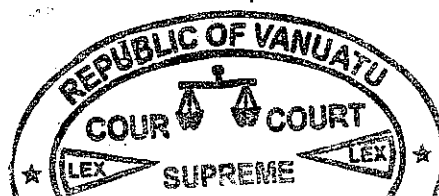
66. The defendant told the complainant that he will leave his defacto wife and take her as his wife. The complainant accepted as it was what the defendant wanted.
67. The defendant and the complainant were in a boy-girl friendship relation. This was in August 2020. They had sexual intercourse twice at the end of the airfield and in the house of the complainant's uncle when he was not there.
68. For 3 – 4 weeks, the defendant did not communicate with the complainant. He ceased to call her by telephone. The defendant returned with his defacto partner and family. The complainant felt he had just forgotten her. She thought the defendant lied to her as he returned to his defacto partner. At that time, the complainant was angry and disappointed. She wanted to end her relationship with the defendant. She did not want to have sexual intercourse anymore with the defendant.
69. In September 2020, the defendant called the complainant. The complainant was at her school at that time (Baldwin Memorial College, Sola, Vanualava, Banks). She attended Year 12. The defendant told the complainant to come and meet him at the Sola Police station.
70. The complainant left her school and went to meet the defendant at the Sola Police station. She was walking. It took her one hour or more to reach the police station.
71. The complainant went to meet the defendant at the Sola Police station in order to tell him that their relationship ends and that she did not want to have sexual intercourse with him anymore.
72. It is part of the basic facts that the defendant was waiting for the complainant at the entrance of the Sola Police station. The complainant saw him there at about 15 meters. The defendant called her to get inside his office. The complainant did not say anything to the defendant.
73. The complainant arrived at the entrance of the police station. The complainant noted the louvers of the window of the office were closed. It was dark in the office. The defendant entered first. The complainant followed him in the office. The defendant closed and locked the door. The complainant did not tell the defendant of what she wanted to tell him about.
74. The defendant and complainant were very closed to each other inside the office. The complainant had time to tell the defendant what she had to tell him about their relationship. The complainant did not tell him anything. The complainant did not tell the complainant that she did not want to have sexual intercourse with him at the time.



75. As they were very close, the defendant held the complainant on her hips and put her onto a table. The complainant did not say anything to the defendant. She did not struggle. She did not tell him she did not want to have sex with him anymore or she did not consent for the defendant to have sex with her at that time. The defendant removed the complainant's skirt with a hand and, the panty with the other hand. The complainant was laying on the table there, naked or half-naked. She did not resist any move or action of the defendant. She did not tell the defendant that she did not want to have sexual intercourse with him.
76. The defendant, then, left the complainant laying naked or half-naked on the table while he undressed himself by removing his clothes (trousers). The complainant did not move or attempt to run towards the door. The defendant, then, spread open the complainant's legs and had sexual intercourse with her.
77. During the sex, the defendant did not talk to the complainant or say anything. The complainant said that she questioned the defendant that their relationship will end and she did not understand the reason for the defendant to have sexual intercourse with her. As the defendant did not say anything and, he continued to have sex with her, she felt sad and cried.
78. It is rational to infer that the complainant felt sad and cried as the defendant said nothing about their relationship and, that she felt he lied to her when he told her previously that he will leave his defacto partner and live with the complainant as his wife. She did not get an explanation from the defendant. The complainant expected an explanation from the defendant and that she expected the defendant could change.
79. This piece of evidence was supported by the fact that the complainant entered the office of the defendant willingly. She had just followed him in the office. There was no force put or exercised on her by the defendant. She noticed the louvers of the office window were closed, it was dark inside. She was not afraid to go inside. He did not block her mouth. She did not call out for help. She did not struggle to move out. She did not kick him when she was put on the table. She did not resist him. She did not try to run towards the door while the defendant left her naked or half-naked laying on the table while he removed his trousers before the sexual intercourse between both of them occurred in September 2020.
80. After the sex, the defendant wanted to accompany the complainant back to her house. She did not answer him. She wore back her clothes and walked home.
81. In the evening, she went to a birthday party with her uncle and aunt. She did not tell them of what happened when they asked her. She gave them an explanation that she had headache. She did not tell anyone.



82. After she got pregnant, she just mentioned to her step-mother not that the defendant had sexual intercourse with her without her consent, but she told her step-mother that the defendant Kammy Dingley impregnated her (or was the father of her child).
83. She made a report to the police on 27 April 2021, that is six months after the event. It is rational to infer that the reason for this late complaint to the police was caused by her disappointment and sadness as she said in her statement (page 12 – paragraph 24) “... *Kammy hemi bin spoilem mi from bell blong mi stap bigwan – mo mi stap shame blong go long school*”. It was also rational to infer on the facts that the complainant was angry and sad because Defendant Kammy Dingley lied to her that he will leave his defacto partner and take the complainant as his wife.
84. This piece of factual evidence is corroborated by the evidence of the complainant that, despite the fact that she noticed the louvers of the window of the defendant’s office were closed, it was dark in the office, she went inside the office with the defendant, she was not afraid. She went inside the office willingly. It was a fact that sexual intercourse occurred between the defendant and the complainant. During the sex, the complainant said she told the defendant that their relationship ended and, she did not understand the reason the defendant had sexual intercourse with her. She said the defendant did not respond to her. He did not say anything. He continued with the sexual intercourse with her. The complainant said she was sad, disappointed and she cried.
85. It was a fact that the complainant expected an explanation from the defendant with the hope that he could change. The defendant said nothing. This explained her evidence that she was sad, disappointed and she cried. After the sex, she did not take note of the offer of the defendant to accompany her back to her house as she said she wore her clothes and walked back home.
86. It is further rational to infer that the complainant said no to her thinking of sexual intercourse with the defendant. It is a fact that she did not tell the defendant that she refused to have sexual intercourse with him or that she did not consent to have sexual intercourse with him at that time. However, the conduct of the complainant showed that she was a willing participant to sexual intercourse with the defendant at the Sola Police station on September 2020.
87. It is finally rational to infer on the facts that on September 2020, inside the Sola Police station, the defendant conducted himself or acts on the basis of a reasonable belief that the complainant consented for sexual intercourse between him and the complainant.
88. I was satisfied of the existence of a reasonable doubt about the complainant not consenting for sexual intercourse with the defendant on September 2020 at Sola Police station.



89. The prosecution failed to prove on beyond reasonable doubt that the complainant did not consent for sexual intercourse with the defendant on September 2020 at Sola Police station.
90. Equally, the prosecution failed to prove on beyond reasonable doubt that the defendant did not have a reasonable belief that the complainant consented to have sexual intercourse with the defendant on September 2020 at the Sola Police station.

F. **Verdict**

91. Defendant Alban Kammy Dingley was found not guilty of the offence of sexual intercourse without consent as charged against him on the information dated 10th August 2021.
92. He was acquitted of that charge accordingly on 16 July 2022. The reasons of the oral verdict are hereby provided.

DATED at Luganville, Santo, this 20th day of June 2023.

BY THE COURT



Hon. Chief Justice Vincent LUNABEK

