

**PUBLIC PROSECUTOR v JIM SESE**

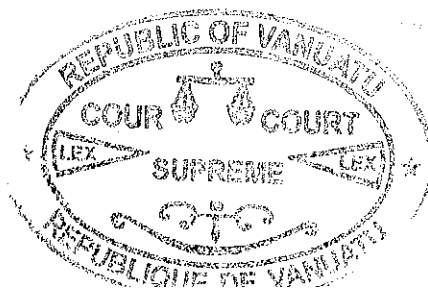
**Date of Trial:** 25 April 2023  
**Date of Oral Verdict:** 25 April 2023  
**Date of Reasons:** 26 April 2023  
**Before:** Chief Justice V. Lunabek  
**Appearances:** Mr D Boe for the State  
Mr RT Willie for the Defendant

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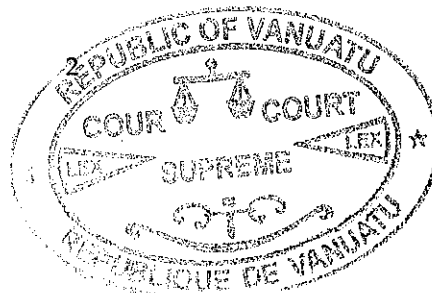
**REASONS FOR VERDICT**

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1. Defendant Jim Sese is charged with sexual intercourse without consent, contrary to Sections 90 and 91 of the Penal Code.
2. Mr Jim pleaded not guilty to that offence. A trial is scheduled on 24 April 2023 but could not proceed as planned. The trial starts on 25 April 2023 in the morning at 10am o'clock.
3. In this trial, the prosecution has to prove each and all essential elements of the offence on the standard of beyond reasonable doubt. If there is a reasonable doubt that exists at the end of the trial, I will interpret it in favour of the defendant and will acquit him on the charge.
4. The only issue here is that of consent.
5. The prosecution informs the Court it has 3 witnesses. The complainant, her father and mother.
6. The complainant woman gives evidence to this effect. She lives with her parents at Palon area, East Santo. One morning she went to her garden. On her way to the garden, she met the defendant Mr Jim Sese on his way back home. Mr Jim saluted her saying "good morning" to her and told her he will go back to take his tobacco.

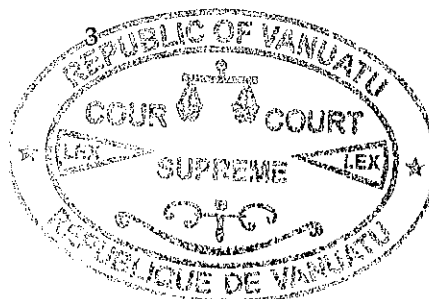


- The complainant went to her garden. She said she was surprised Mr Jim was back in her garden and held on her hand. She said Jim held her hand strongly and pulled her into a bush near her garden. There, Jim removed his clothes and put them on the ground. Then Jim removed her trousers and they had sexual intercourse. After sex, Jim sent her back to her garden and he went back to his garden.
8. The complainant said when Jim held her hand and pulled her she did not shout because she was afraid of him as he had a bush knife.
  9. After the sexual intercourse, she did not tell her parents instantly because Jim told her not to tell her parents of the sexual intercourse because Jim told her that if she told her parents he (Jim) will end up in custody.
  10. She did not tell her parents of what happened to her. She told them after some time. Her parents helped her to lodge a complaint to the police.
  11. She said when Jim pulled her, he held her hand with one hand and held the bush knife with the other hand. She felt pain during sexual intercourse. There was no one present in the garden when sex occurred. Jim told her that she will be her girlfriend but it was not her idea. She did not agree to have sexual intercourse with Jim.
  12. The complainant was cross-examined. She knew defendant Jim Sese before the sexual intercourse occurred between them in the garden.
  13. She was asked she denied she had sexual intercourse with Jim before the incident in the garden. She accepted that after that incident in the garden she admitted Jim and her continued to have sexual intercourse together. She accepted they had sex on one occasion during lunch time. She accepted they had sex on another occasion in the garden.
  14. She was asked she said the first time sex occurred in the garden she did not agree. She was asked she accepted she filed a report (complaint) to the police.
  15. A report dated 6 May 2022 was showed to her. She identified and recognized the report to be the report she filed to the police. She was asked she said the report she made to the police was not true.
  16. The report showed that on the 3<sup>rd</sup> time that the complainant and Jim had sexual intercourse, she had just told her parents of what happened. She denied saying no. She was asked she denied she agreed to have sex with Jim on the first occasion.
  17. She agreed that every time she went to the garden, she had a bush knife. She accepted people held bush knife to go to the bush or garden. She was asked she accepted on the first time of sexual



intercourse between her and Jim, Jim held her hand in the garden and he also had a bush knife too. She accepted Jim never told her to follow him otherwise he will cut her with the bush knife. She accepted she saw the knife and she was afraid. She accepted that because she was afraid of the knife she had sex with Jim. She accepted that at that time Jim had never told her to have sex with him otherwise he will cut her with the bush knife.

18. She accepted Jim told her not to tell her parents about the sexual intercourse because he may end up in prison. She returned home. She did not tell her parents of what happened to her for the first time in the garden. She said she felt sorry for Jim. She was asked she admitted the only reasons she did not tell her parents at that time was that she agreed to have sexual intercourse with Jim at her garden. She admitted also when asked that they both continued to have sexual intercourse after the first incident of intercourse in the garden.
  19. At a point in time, her parents found out that she had sexual intercourse with Jim, she accepted and admitted that the story changed and Jim will be accused of forcing her for sexual intercourse.
  20. She admitted that it was because of her father and mother that she complained to the police.
  21. She said the report was not true.
  22. The complainant was re-examined she said the report she made to the police was true. That is the end of the evidence of the complainant.
  23. The trial was adjourned in the afternoon. In the afternoon, when the Court resumed, the prosecution decided not to call any other witness. That is the end of the prosecution case.
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24. Mr Boe on behalf of the Prosecution applies for a *nolle prosequi* pursuant to Section 29 of the Criminal Procedure Code (CPC).
  25. I refuse to consider this application and I reject it as it is wrong. I inform both counsel that the relevant section to consider is Section 164(1) of the CPC.
  26. I sense the unusual and extraordinary application from the Prosecution as an indication of the prosecutor's concession that, in the present case, the evidence adduced in support of the prosecution case had been so discredited as a result of cross-examination, or so contradictory that no reasonable tribunal or jury might be safely convict upon it.
  27. The circumstances of this case are unusual and extreme that I contemplate to stop the trial as it would be unjust for the trial to continue.
  28. Mr R Willie seems to agree on the status of the prosecution's evidence described above.



29. I peruse Section 164(1) of the Criminal Procedure Code. It provides:

*"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" (emphasized).*

30. Section 164(1) relates to a determination of "no case to answer". The case of Public Prosecutor v Suaki [2018] VUCA 23; Criminal Appeal Case 391 of 2018 (27 April 2018) is the local case authority on the point which confirms and applies R v Galbraith (1981) 73 G App R 124; [1981] 2 All ER 1060.

31. In the present case, I rule as a matter of law that the evidence of the complainant which is the only evidence adduced in support of the prosecution's case has been so discredited as a result of her cross-examination, or so contradictory coupled with her admission that what she said in her report to the police was not true that no reasonable tribunal might safely convict upon it. I decide and I stop the trial there and then pursuant to Section 164(1) of the CPC [CAP. 136].

**Verdict**

32. I dismiss the charge in the information.

33. I pronounce defendant Jim Sese not guilty of the offence of sexual intercourse without consent, contrary to Section 91 of the Penal Code charged against him in this case.

**DATED at Luganville, Santo, this 26<sup>th</sup> day of April 2023**

**BY THE COURT**

**Hon. Chief Justice V. Lunabek**

