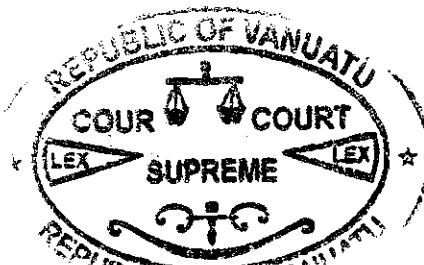


PUBLIC PROSECUTOR
v
NOEL JAMES BEGLEY

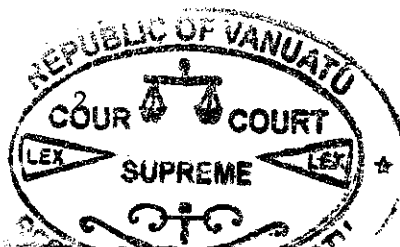
Date of Trial: 25 June 2024
Coram: Hon. Chief Justice V. Lunabek
Counsel: Mr. K Massing for the State
Mr. W Kapalu for the Defendant
Date of Verdict: 25 June 2024

JUDGMENT

1. The accused, Mr. Noel James Begley, is charged with four (4) counts of acts of indecency with a young person, contrary to Section 98A of the Penal Code Act [CAP. 135].
2. Mr. Begley denied the offences. A trial is listed for 2 days on 25-26 June 2024 at 9:00 am o'clock in the morning.
3. Before the prosecution case began, Section 81 of the Criminal Procedure Code Act (C.P.C.) [CAP. 136] was read and explained to the accused. The accused informed the court that he has understood his right of presumption of innocence as set out in Section 81.
4. It is the prosecution's case that the alleged offending occurred sometimes between the month of June 2021 and September 2022. It is said that in June 2021, the accused removed the complainant's pants and touched his penis. It is said that on the month of February 2022, the accused followed the complainant in the toilet and touched his penis inside the toilet. It is said that still in February 2022 at the residence of the accused, the accused touched the complainant's penis again. Finally, it is said that on 30 September 2022, the accused removed the complainant's trousers and touched his penis.
5. The prosecution says the accused is the adopted father of the complainant; and all the offending occurred whilst the complainant was living with the accused.
6. The prosecution has the burden to prove this case on the standard of proof beyond a reasonable doubt.



7. Before the accused be found guilty of the charges laid against him, the prosecution has the duty to prove each and all essential elements of the offences of acts of indecency against a young person, contrary to Section 98A of the Penal Code.
8. The prosecution has to prove on the criminal standard the following two (2) elements: -
 - (i) Whether or not the accused had committed the acts of indecency on or in the presence of the complainant; and
 - (ii) At the time of the offending, the complainant was under the age of 15 years old.
9. Here, the age of the complainant is not an issue. The only issue is in relation to element 1 of the offending – whether or not the accused had committed the acts of indecency on the complainant on the different dates as alleged.
10. The prosecution called the complainant, Levi Begley, as the only witness for the prosecution.
11. Levi Begley gave evidence to the effect that he is 14 years old. He attends school at Freshwater School. He is in Class 5. The name of this daddy is James Begley. He did not know how long he lived with the accused, James Begley. He did not know when he started living with him.
12. In June 2021, he said he was in the Island of Tanna with his Apu. In January 2021, he was staying with his mother, Lei, in Port Vila. The accused stayed at Bladinières.
13. He remembered he made a statement to the police in the year 2022. At the time he was in Port Vila.
14. He was asked he said he did not remember an incident that happened to him in June 2021. He was taken through his statement made to the police, he said he cannot read Bislama. The statement was read to him. He understood what was read in the statement. He said he did not recall or remember of that incident.
15. He was asked he accepted that what he told the police that his dad did to him was not true.
16. In 2022, he was with his mother at Bladinières. His father (accused) was with them at Bladinières. He was asked about an incident he said happened to him at Bladinières, he said he did not remember.
17. He was asked, he said he did not recall an incident he said happened to him at the house at Prima area.
18. He was asked, he said he did not recall an incident he said happened to him on 30 September 2022.
19. The content of his statement was read to him. He said he did not know.
20. He was asked, he said what he told the police of an incident happening to him in February 2022 was not true. He was also asked and he said the incident he told the police happening to him on 30 September 2022 was not true. He added, he said it was not true because the accused did not do that to him at that time.



21. His mother Lizbeth took him to the police. He was asked, he denied he was told by anyone to say what he's telling the court now. He also denied that any member of his family told him not to tell the truth to the court.
22. He was asked, he said he did not have anything to say about putting the complaint to the police in the first place.
23. He was not cross-examined.
24. That is the end of the prosecution's evidence and case.
25. I perused the provisions of Section 164 of the C.P.C. [CAP. 136] dealing with "Procedure after close of prosecution" which says:
- (1) *If, when the case of 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 there upon 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. Here, I apply Section 164(1) of the C.P.C. and rule as a matter of law that there is no evidence on which the accused person could be convicted. I thereupon pronounce a verdict of not guilty on each of the four (4) counts (Counts 1, 2, 3 and 4) of acts of indecency with a young person, contrary to Section 98A charged against the accused in this case.

DATED at Port Vila, this 25th day of June, 2024.

BY THE COURT

Hon. Chief Justice Vincent LUNABEK

