

**IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU**

(Criminal Jurisdiction)

CLC 05-2002

Criminal Case No. 05 of 2002

PUBLIC PROSECUTOR

-v-

SILAS THOMPSON

Prosecution: Mr. Evans

Defence: Mr. Toa ✓

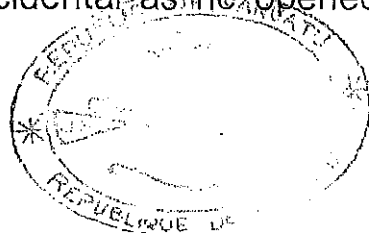
JUDGMENT

The defendant is charged with indecent assault, intentional assault and false imprisonment.

The prosecution case is that the complainant, Cindy, was at Smugglers night club. It was the early hours of 26 December 2001. The defendant asked her for a dance and a drink. She refused. A little later she went to the toilet. When she was in the cubicle the defendant knocked on the door. She thought it was another woman and opened the door. It was the defendant. He came in and closed and locked the door. He was drunk. He wanted sex. He tried to push her to the floor. She resisted. She refused sex. He rubbed the area of her vagina over her clothes. She was screaming and crying out. She wasn't heard because of the loud music. Eventually he left.

Cindy went out to the bar and complained to the barman. He saw her hair was dishevelled and she was upset. In interview the defendant admitted having drunk alcohol and going to the cubicle. He asked for sex, but denied any assault or false imprisonment.

The defendant denied the charges. He said he had some drink, but was not drunk. He asked her to dance and to have a drink. She refused. When she went to the toilet he went into the cubicle to ask for sex. She refused, so he left. He was only in there a few minutes. He did not stop her in any way from leaving. He did touch the area of her groin, but that was accidental as he opened the door to go in.



These are criminal charges. The prosecution must prove their case beyond reasonable doubt. Anything less than that and the defendant is entitled to be acquitted.

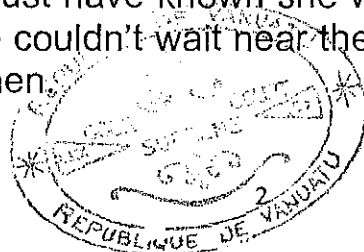
One charge is an allegation of a sexual nature although the whole incident involved sex. I remind myself to look for corroboration; it is open to me to convict on the complainant's uncorroborated evidence.

The barman was Grant Johnston. He did not know either Cindy or the defendant. I accept his evidence. It was clear and he did not try to go beyond the limit of his clear memory. He stated the defendant put himself forward as a USP student. He is not. "*He wasn't drunk, he wasn't sober. He wanted to talk to Cindy*". Later he saw the defendant and Cindy had gone. He thought they were dancing. Later he saw Cindy again at the bar. "*She was shaking, her hair was messed up*". She said she'd gone to the toilet, the defendant had followed her in, he had tried to assault her in the toilet and she'd pushed him out.

The state of Cindy, as described, is supportive of Cindy's account. What she said is recent complaint. It doesn't prove what was said happened, it is evidence of the consistency of Cindy.

I examine the evidence of Cindy carefully. I watched her carefully as she gave evidence. I accept her evidence. I found her account of events completely believable. There was no attempt to exaggerate. She did not attempt to give detail if she couldn't remember. She is 16 years old, and shewed embarrassment at the moments of more intimate detail. She said she screamed. No-one heard because of the loud music. Her timing of how long she was in the cubicle was inaccurate, in that she wasn't there for an hour, but a substantial time. Such events can feel as though they last longer than they really do.

I have considered the evidence of the defendant. On the vital matters I do not accept it. He was fairly drunk and his memory of events was impaired. I am satisfied he knew what he was doing. On his own admission he didn't know Cindy before. She refused a drink and a dance. He followed her right into the toilet cubicle to ask for sex. He must have known she would not consent. There is no reason why he couldn't wait near the toilet door for her to come out and ask her then.



I do not believe him when he says his hand accidentally touched her vagina area over her clothes. When he first demonstrated that on himself, it was with palm inwards. When asked to do it again by his counsel, it was palm outwards.

I do not believe him when he says he just walked into the cubicle and asked for sex, when she said no, he just walked out again.

I am satisfied that the charges are made out on the evidence of Cindy alone. The defendant was fairly drunk. He was attracted to Cindy. When she wouldn't have a drink or dance with him he followed her to the cubicle. He knocked. She thought it was another woman. He came in locked the door and said he wanted sex. When she refused he tried to push her down. She resisted and screamed. No one heard because of the loud music. He rubbed her vaginal area over her clothes. She wanted to leave and he wouldn't let her. After a while he realised she wouldn't do what he wanted and left.

The pushing her and trying to get her down and the touching over the vaginal area were both assaults.

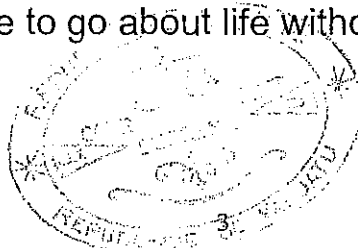
The latter was clearly indecent both in the place on her body she was assaulted and the circumstances. He would not let her leave. The door was locked. She was trapped. That was a false imprisonment. It was done for the purpose of having some kind of sexual relations with her. I find him guilty and convict of all three counts.

SENTENCE.

I give credit for plea guilty on count 2. Cannot give credit for plea of guilty on other counts. Give credit for fact you have no previous conviction. You are young, have your life ahead of you, want to study.

You have brought disgrace and shame on your parents, especially with your father and the job he held.

Women must be free to go about life without interference.



Twice you followed women into the toilet. They are not even free to do that.

You assaulted both. It was frightening for them. They will not forget that for a long time.

I accept you were drunk. People do things out of character when drunk. I am told you have not drunk alcohol since.

You do not have a job, but you might be able to get one.

I must look not only to what you did to those two women I must look also to men who think they can molest women: Women have to be respected the same as men.

Intentional Assault.....3 months
Indecent Assault6 months
Intentional Assault3 months
False Imprisonment6 months
All to run concurrently.....Total 6 months

I have to think whether to suspend the sentence or not.

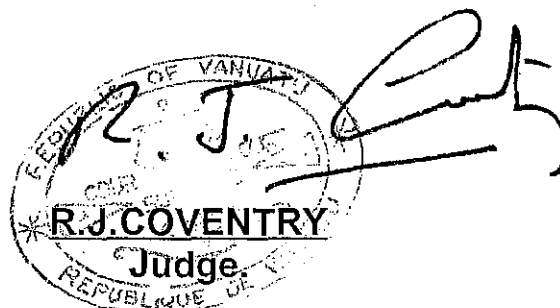
Other young men will act on what they hear Courts will do.
For the sake of your family I will suspend, and for you as you are young, and is one incident.

Suspended for 2 years.

Compensation VT 50,000 to Cindy Saurei by 30/11/02
You must find that money or borrow it and repay.

Informed of Right of Appeal.

Dated at Port Vila this 4th day of October 2002.



The image shows a handwritten signature in black ink over a circular official stamp. The stamp contains the text "REPUBLIC OF VANUATU" at the top and "REPUBLICUE DE VANUATU" at the bottom. In the center of the stamp, it reads "R.J. COVENTRY" and "Judge" below it. The signature is written in a cursive style and extends across the right side of the stamp.