



**PUBLIC PROSECUTOR**  
**-V-**  
**CHRISTOPHER MELTEN**

**Coram:** Justice H. Bulu

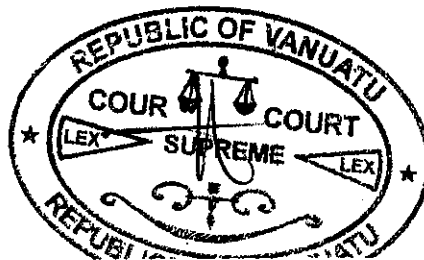
**Counsels:** Mr. Erick Molbaleh for the State  
Mr. Jacob Kausiama for the Defendant

**Date of Hearing:** 4 February 2008

**Date of Decision:** 6 February 2008

**RESERVED JUDGMENT**

1. The Defendant is charged with the offence of rape contrary to section 91 of the Penal Code Act [CAP. 135]. That section states "No person shall commit rape". The maximum penalty for this offence is life imprisonment.
2. The elements of rape that must be proved and proved beyond reasonable doubt by the Prosecution for the Defendant to be convicted on the charge laid against him are firstly that sexual intercourse with the victim did occur, secondly that sexual intercourse was without the consent of the victim and thirdly that there was penetration of the victim.
3. The trial began on the 4<sup>th</sup> of February 2008. Mr. Molbaleh for the Prosecution opened the Prosecutions case by saying that at 8.00 p.m. on the 10<sup>th</sup> of February 2006 the victim, who was then 15 years old and comes from Mangaliliu village, went to the nakamal to prepare food for the chiefs. On her way to the nakamal she met the Defendant who was then 17 years old. The Defendant called out to the victim to go and see him. They then went to the public road. The Prosecutions alleged the victim tried to leave but the Defendant held her tightly and took her to the beach where sexual intercourse took place. At the end of Prosecutions' case the Defendant elected to give evidence and took the stand.



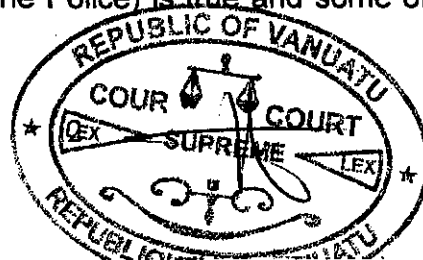
4. At the end of the Defendant's case the Court adjourned to allow for counsels to prepare to make submissions on the matter.

### **Prosecutions submission**

5. Mr. Molbaleh on behalf of the Prosecutions submitted that the main issue in this case is that of consent. Whether sexual intercourse took place without the consent of the victim.
6. Mr. Molbaleh went on to say that there is not much facts in this case that shows the victim's resistance over her disapproval to having sexual intercourse. He went on to submit that the victim experienced her first sexual intercourse in this case. The victim was frightened that if she made any noise or be seen with the Defendant she would be assaulted. And that is the reason why she kept quiet and she did not call out to anyone for help. The evidence of the Defendant shows that at the start of sexual intercourse she was undressed halfway before her clothing was completely removed. This goes to show, argued Mr. Molbaleh, that had the victim consented to sexual intercourse then she would have undressed fully from the start.

### **Defence submissions**

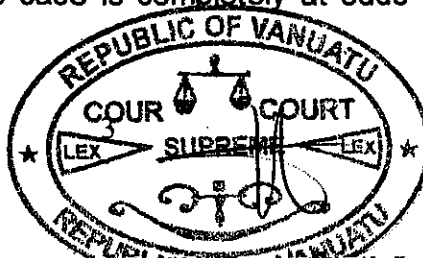
7. Mr. Kausiama on behalf of the Defendant agreed that the main issue in this case is whether sex was consensual.
8. Mr. Kausiama submitted that the Prosecution has the onus to prove all elements of the offence beyond reasonable doubt. He continued that the evidence that has been adduced before the Court today basically is conflicting. There are two witnesses in this whole matter, one for the Defendant one for the Prosecutions. Their evidence contradicts each other.
9. The judge is a judge of both fact and law and as such the judge will decide if the Public Prosecutor has proved all elements beyond the reasonable doubt test.
10. Mr. Kausiama submitted on behalf of the Defendant that the Prosecutions has failed to prove its case beyond reasonable doubt. The victim's evidence under cross-examination is that her mum and dad forced her to report the matter to the Police. If the victim had decided not to report the matter then she must have good reasons for not doing so. In this case, others forced her to go to the Police. Under oath she also said that part of her evidence (statement to the Police) is true and some of it is false. In a



criminal case if there is such contradictory evidence, then it creates doubt in the Prosecutions' case. Mr. Kausiama submitted that, in this case, there is doubt about force being used. When there is such doubt, the Defendant must have the benefit of such doubt and therefore it is the duty of the Court to acquit the Defendant.

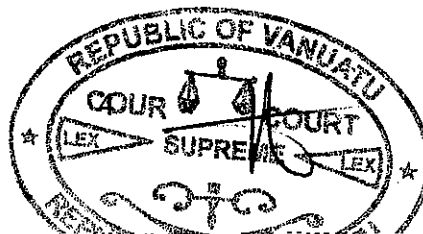
## Discussions

11. I remind myself of the judge's responsibility in a criminal trial.
12. I remind myself that it is the judge's responsibility to decide all questions of fact and to decide what evidence I will accept or reject or what weight I will give to any part of the evidence. I remind myself that I must come to my judgment solely upon the evidence, which is placed before me in this Court, and I must consider all of the evidence when considering my judgment. When I consider the oral evidence I must take into account not only what has been said but how it had been said because how I assess the demeanour of a witness can be a valuable aid in judging his or her reliability. I must be objective and reach my decision without being influenced by prejudice or sympathy. It is the judicial responsibility to be impartial and to apply common sense and knowledge of human nature.
13. I remind myself that under section 81 of the Criminal Procedure Code Act [CAP. 136] the accused is presumed to be innocent unless and until the prosecution had proved guilt beyond reasonable doubt. The onus is not on him and if at the end of the trial any reasonable doubt exists as to guilt the accused must be deemed to be innocent of the charges laid against him and acquitted.
14. Section 81 of the Penal Code was read out to the accused and translated into pidgin for the accused before the Prosecution case.
15. Section 8 (1) of the Penal Code provides that no person shall be convicted of any criminal offence unless the prosecution shall prove his guilt according to the law beyond reasonable doubt by means of evidence properly admitted; the determination of proof of guilt beyond reasonable doubt shall exclude consideration of any possibility which is merely fanciful or frivolous.
16. Proof beyond reasonable doubt simply means that the Court must be sure or satisfied of guilt before a judgment of guilty can be entered.
17. I have heard counsels today. I have gone through the evidence as adduced in this trial and I come to the following conclusions. The evidence given by the victim in this case is completely at odds with the evidence



given by the Defendant. Prosecutions, given the narrow issue raised in this case, had decided not to call other witnesses. As a consequence it is the victim's words against the Defendant's words. It comes down to a matter of whether in the opinion of the Court which of the two witnesses evidence is more credible than the other.

18. The victim gave evidence that she was forced to have sex with the Defendant. Force was actually applied while they were still on the road in the village. That the accused grabbed her and pulled her towards the beach. That she did not consent to having sex but that the accused forced her. That he bit her on the neck during the time of the sexual intercourse. The victim however did not give detailed account of how the force was applied at the time when it mattered. That is when they were at the beach. What happened exactly. Did the Defendant threaten her? Did the Defendant force her to remove her clothes? That did not come out in the evidence at all.
19. The Defendant on the other hand gave evidence that there was no force at all. That on the date in question he saw the victim on the road and asked her to come to him. When she did, they walked some distance and then he proposed to her that they would have sex. That the victim agreed to have sex with him but not where they were at that time. That she proposed they go down to the beach where it is a much nicer place. He continued to give evidence that on their way to the beach she told him that he did not know the way and so she led the way down to the beach. That when they got to the beach, sex was consensual. Asked about how or why he bit the victim on the neck I thought his answer was frank. He said that it was during the course of the intercourse, the height of intercourse, that he did bite the girl on the neck. He continued in his evidence that after the sexual intercourse they both walked back to the village together but after a while they took different approaches. When the victim got home she was assaulted because she had gone out with him.
20. Having heard and observed the two witnesses giving evidence today I prefer the evidence of the Defendant. He was frank and was at ease giving his evidence. On the other hand the victim was at times not comfortable at all and there were times when she was not frank about the answers given, in my view.
21. During cross-examination, the victim:-
  - (a) gave evidence that the statement made to the Police contains nothing but the truth;
  - (b) gave evidence that the Police did not read back her statement to her to confirm its content before signing it;



- (c) gave evidence that some of her evidence in the Police statement are correct and others are not;
  - (d) gave evidence that her mum and dad forced her to report the matter to the Police.
22. Her evidence before this Court is contradictory in itself. It raises doubt as to whether she is telling the truth. That in my view raises doubt in my mind and I cannot say that I am satisfied that the Defendant forced her to have sexual intercourse with him on the date in question. I prefer the evidence of the Defendant. In my view, he was honest with his answers.
23. It is my view that the Public Prosecutor has failed to prove the elements of the charge of rape to the standard required, that is beyond reasonable doubt, in this case. Therefore the Defendant is acquitted of the charge laid against him and is free to go.

**DATED at Port Vila, this 6<sup>th</sup> day of February, 2008.**

