

(Criminal Jurisdiction)

**PUBLIC PROSECUTOR**

**VS.**

**RENAU THOMA**

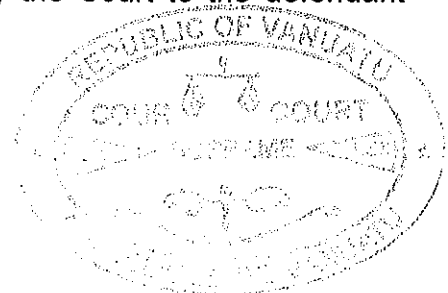
**Mr Justice Oliver A. Saksak**  
**Mrs Anita Vinabit – Clerk**

**Mr G. Takau for Public Prosecutor**  
**Mr C. Bennet and Mr K. Nathan for the Defendant**

**Date of Trial and Verdict: 8<sup>th</sup> June 2009**  
**Date of Judgment Published: 10<sup>th</sup> June 2009**

## **JUDGMENT**

1. This judgment provides the reasons for the verdict handed down orally by the Court on 8<sup>th</sup> June.
2. The defendant pleaded “Not-Guilty” to one count of sexual intercourse without consent contrary to section 91 of the Penal Code Act as amended [CAP. 135].
3. A trial hearing was held on 8<sup>th</sup> June whereby the Prosecution called 4 witnesses to give evidence in order to prove the charge against the defendant. These were the victim herself, her father, a doctor and the Police Interviewing Officer.
4. The Prosecutions had the burden of proof and pursuant to Section 8(1) of the Penal Code Act, the standard required is proof beyond reasonable doubt. This was explained by the Court to the defendant



after his statement of presumption of innocence under Section 81 of the Criminal Procedure Code Act [CAP. 136] was read to him.

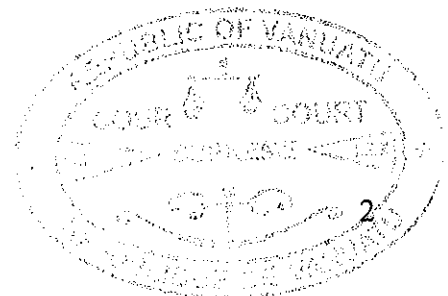
5. The elements required to be proven by the Prosecutions to secure a conviction for a Section 91 offence in this case were –

- (a) Whether sexual intercourse took place
- (b) Whether it was done with or without consent
- (c) Whether there was penetration.

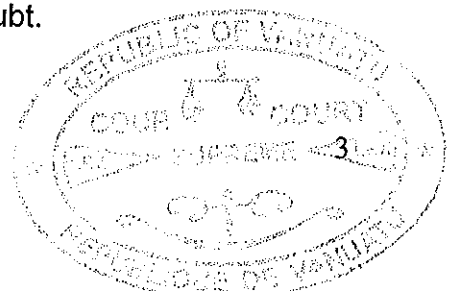
6. The evidence from the victim was that the defendant followed her to a coconut plantation on Sunday morning of 8<sup>th</sup> March 2009. She said the defendant grabbed her and pushed her to the ground. He put one hand over her mouth while the other hand was removing her panty and her trousers. Thereafter, he removed his own trousers and pushed his penis into her vagina. She said the defendant's penis went in half way but he withdrew and ran away to his house and she went back to hers. She then noticed blood on her panty.

7. The medical report produced by the examining Doctor confirmed there was evidence of vaginal penetration but could not show under what circumstances sexual intercourse took place. The evidence from the father of the victim did not assist the victim's case but rather to some extent, it assisted the defendant's position that it was the victim who had started the affair. Towards the end of his evidence in chief, this witness said when he met the defendant –

*"Taem mi talem long hem se hemi kiaman, hemi mentionem kot long mi. Sentaem hemi talem se "no, gel ia nomo I startem."*



8. The Interviewing Police Officer's evidence was that the defendant admitted he had sex with the victim. He admitted there was penetration but denied there was lack of consent.
9. The defendant's evidence was that the victim had contacted him through a mobile phone and asked him to go and meet her. He had asked her on a previous occasion for sex but she told him she was sick and promised to meet him the following Sunday. That was 8<sup>th</sup> March. When therefore she rang, the defendant went to where the victim told him he would find her. He said she removed her own clothes and told him to hurry as she was afraid of being found out. He said he did as he was told. When he penetrated her the victim said "Enaf" and he respected her, withdrew from her and returned to her his house.
10. From the demeanor of both the defendant and the victim in the witness box it appeared to the Court that the victim was not a credible witness. The way she described how the defendant held her to the ground, while one of his hands was blocking her mouth, the other was removing her panty and trousers when she said she was struggling with him, was an impossible thing to do in those circumstances. There was no evidence of a struggle. Her father did not describe her appearance after the event whether her clothes were dirty. Whether she had scratches on her face or body or torn clothes. These were not available in the medical report. This is a case of the victim's story against the defendant's. But the Court prefers the defendant's version as credible.
11. Under those circumstances, there are doubts in my mind about the element of lack of consent. The prosecutions have not proved to the required standard that there was no consent. Accordingly the defendant must be given the benefit of the doubt.



12. The Court returns a verdict of "Not-Guilty". The defendant is discharged and acquitted accordingly. He is to be released forthwith.

DATED at Luganville this 8<sup>th</sup> day of June 2009.

BY THE COURT



OLIVER A. SAKSAK

Judge

