

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Criminal Jurisdiction)

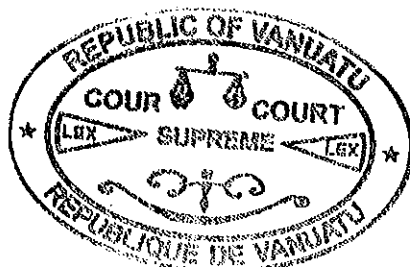
Criminal Case No.11 of 2011

PUBLIC PROSECUTOR
-V-
TIMOTHY VEYO DEIDEI

Coram: Justice D. V. Fatiaki
Counsels: Mr. T. Karae for the State
Mr. B. Livo for the defendant
Date of Ruling: 12 April 2013

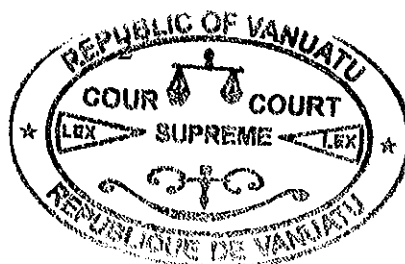
VERDICT

1. This is a case of an alleged rape occurring within marriage. Such a case might have been unimaginable many years ago but with changing attitudes and the advancement of human and women's right it is now accepted that such an offence is capable of being committed by a man on his lawfully wedded wife. No longer must a woman submit to her husband whenever he demands or asks for sex.
2. Having said that, this case is not a matrimonial cause where a divorce or dissolution of marriage is being sought. Nor is this Court called upon to pronounce on the state of the party's marriage or on their marital relationship. This Court is also not called upon to decide whether the defendant is a "good" or "bad" husband or whether he is overly sexually demanding or overbearing in his relationship with his wife the complainant.
3. This Court is solely concerned in this case with a single charge of Sexual Intercourse Without Consent where the defendant **Timothy Veyo Deidei** alleged to have had sexual intercourse with **Jeanne Nereana Sanmarie** without her consent in the year 2010 at **Anelcauhat Village**.
4. The defendant has denied the charge and this being a criminal charge the prosecution which brings the charge bears the burden of proving it beyond a reasonable doubt. To do that the prosecution must produce and call



evidence which leaves the Court satisfied and feeling sure that the defendant committed the offence.

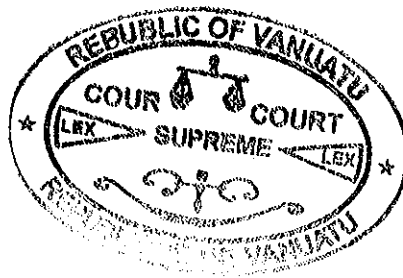
5. In a criminal case the accused is not obliged or required to prove his innocence or indeed anything at all. Nor need he call evidence or testify in his defence. In this case however, the accused elected to give sworn evidence and exposed himself to cross examination by prosecuting counsel and his evidence must be carefully scrutinized by the Court before reaching its verdict.
6. The prosecution on a charge of Sexual Intercourse Without Consent must establish three (3) elements or ingredients of the offence beyond a reasonable doubt. These are:
 - (1) The accused had sexual intercourse with the complainant;
 - (2) The complainant did not agree or consent to sexual intercourse with the accused ; and
 - (3) The accused knew that the complainant did not consent to having sexual intercourse with him.
7. It is somewhat unfortunate that the prosecution could not be more precise about the date when the offence is alleged to have occurred beyond stating a year "2010". More so where the offence occurred in the context of a husband and his wife where it could be expected that sexual relations between the spouses occurred on a regular basis and remembering a particular incident may not be easy.
8. Be that as it may, to prove its case the prosecution called a single witness namely the complainant, **Nereana Sanmarie** who testified that she and the defendant had been married for over 20 years and have 4 children of their marriage.
9. She describes a generally unhappy married life where the defendant has mistreated her before and after marriage especially in regards to their sexual relations. He was demanding and uncaring towards her feelings and would insist on having his way in their sexual relations. In brief, the complainant said the defendant treated her "*as a sex object*". Whenever he wanted sex and she refused, he would threaten and swear at her which caused her to live in fear.



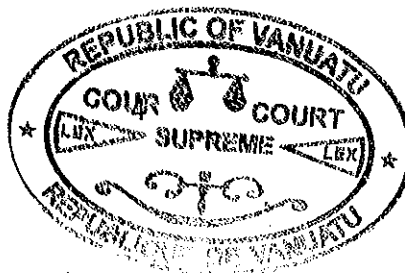
10. The complainant's evidence of the particular incident, the subject matter of the charge, she described as follows:

"I recall an incident in 2010 I can't recall the date or time. Can't recall whether it was day or night. I remember an incident involving my "kilot" (panty). The defendant asked for sex but my body was very weak and I refused so he put his hand into my dress and tore my kilot and had forcible sex with me." I was sick and tired after returning from the garden and he still asked for sex. I was not happy with that but I just submitted. I was frightened as he had assaulted me many times and even made me unconscious".

11. Although there was a police post in **Anelcauhat** at the time, she did not lodge a complaint or make a report about the incident. She remained firm however in cross-examination that the defendant did tear her kilot (panty) and forcibly had sex with her in 2010 during the incident complained about.
12. In re-examination she confirmed that the defendant had only torn her kilot (panty) once during their marriage although he had forcibly removed them on many occasions.
13. She agreed to knowing that the defendant had a child with another woman before they began their relationship and she frankly admitted that factor had affected their married life adversely. When asked how she felt about it she said: *"I was cross with him."*
14. The defendant in his evidence confirmed having a child with another woman before settling down with the complainant. Before marriage they had no problems but their problems arose because he had a child from another woman and the complainant *"was always cross about it."*
15. He denied tearing the complainant's (kilot) panty in 2010 nor does he recall ever assaulting or threatening the complainant after they got married. He admitted, however, assaulting the complainant in **November 2011** because she had grabbed his private part (genitals) and it hurt him and he had punched her in the mouth to get her to release his genitals. He denied ever assaulting his wife for sex. He agreed that he owns a musket but denies ever pointing it at her. He agreed playfully rubbing a ripe mango seed on his wife's vagina when they first started going out some 20 odd years ago.



16. In cross examination he denied ever having an extra-marital affair and he believes that couples should forget each others past relationships. He said his wife is a woman who "*bears grudges for a longtime*".
17. He admitted having consensual sex with his wife once when they had gone to dig for manioc and he agreed that he told the police he had assaulted his wife over sex but that that was a longtime ago. He denied he was a jealous person nor was it true that he always had to be in control or have his way when it came to sex.
18. So much then for the evidence in the case which comes down to the complainant's word against the defendant's word.
19. The complainant presented herself as the battered and abused wife of a controlling and sexually demanding husband who has to have his way and who would threaten and assault her to have sex. He wouldn't take no for an answer to his sexual advances.
20. The defendant for his part, denied assaulting his wife for sex and attributes their marital and sexual problems to the complainant who holds a long standing grudge against him because he had had a child with another woman before their relationship started. She was unwilling to forget it and that was constant reason for their marital difficulties.
21. If I may say so the evidence is very finely balanced in this case and both parties were convincing in their own right with little to separate them. Much of the evidence was undisputed except for the "*kilot*" tearing.
22. Be that as it may this being a charge of a sexual offence I am required to warn myself that it is dangerous to convict on the uncorroborated evidence of the complainant. State counsel frankly concedes that there is no corroboration in this case of the complainant's testimony and therefore the case turns entirely on credibility.
23. In this instance I am mindful that the case only came to light when the complainant lodged a complaint of assault against the defendant and the incident of sexual intercourse without consent was revealed as part of the complainant's out-pourings about the unhappy state of her marriage to the defendant.



24. In other words although there was a police post in existence at the relevant time no complaint or report was laid against the defendant about the "*kilot-tearing*" incident until a year after it had occurred and, even then, there was a distinct lack of details about the incident.
25. I do not doubt for a moment, that the complainant considers herself a victim in an abusive relationship which allegedly began before they were married. I also accept that the complainant continues to harbor anger and animosity towards the defendant for an indiscretion that occurred before their marriage and which was well known to the complainant before she married the defendant. That I find, has been a constant source of conflict and frustration in their married life more so in their sexual relations.
26. In the final analysis, I am reluctantly driven to determine this case on the burden and standard of proof which the prosecution alone is required to meet and discharge in a criminal trial.
27. I find that the prosecution have failed to discharge its exclusive burden of establishing the elements of the offence beyond all reasonable doubt and accordingly, I find the defendant not guilty of the offence of Sexual Intercourse Without Consent as charged.

DATED at Anelcauhat, Aneityum, this 12th day of April, 2013.

BY THE COURT

