

IN THE SUPREME COURT
REPUBLIC OF VANUATU
(Criminal Jurisdiction)

Criminal Case No. 914 of 2016

PUBLIC PROSECUTOR

-v-

WOLSTEN BULE

Before: Chetwynd J

Hearing: At Ena, Central Pentecost 14th, 15th, and 16th June 2016

Mr Blessing for the Public Prosecutor

Mr Molbaleh for the Defendant

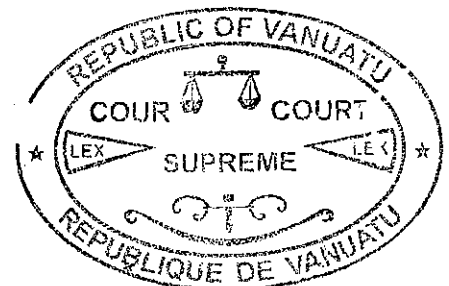
Verdict

1. The Defendant Wolsten Bule is charged with 2 counts of unlawful sexual intercourse. The victim is a young girl aged 15 at the time of the first offence and who is related to the defendant. In an attempt to prevent her identity becoming widely known I will refer to her as Ms EM. The trial took place at Ena in Central Pentecost. I must express my gratitude to those who made the trial possible at that location. Unfortunately the trial process could not be completed at Ena because I was required to return to Port Vila to sit with my brother Judges on an urgent Court of Appeal matter. I was able to hear all the evidence and to receive submissions from counsel but was unable to hand down this decision before having to leave. It has taken some time to deal with the judgment on the verdict in this case because of logistical difficulties in returning to Ena. In the end I have had to arrange for the verdict to be handed down in Port Vila. I am grateful to counsel once again.

2. As was pointed out by the prosecution, each and every element of the offences charged has to be proved by them. The standard of proof is very high, they must show beyond reasonable doubt that the defendant had sexual intercourse with Ms EM and that she did not consent to it. The defendant does not have to prove he is innocent. If there is any doubt about his guilt he must be acquitted.

3. The prosecution case in relation to the first count is during the school holidays in May 2015 Ms EM went to the plantation to collect cabbage. She was followed by the defendant. He called out her name and took hold of her hand and arm. He pulled her into the bush, removed her clothes and forced her to have sexual intercourse. The defendant had a large bush knife with him and she was too frightened to call out. He told her if she said anything he would kill her. Some weeks later Ms EM told two of her school friends about the incident.

4. The defendant denies that he had sexual intercourse as alleged. He says he wasn't even at home during the school holidays because he was working in South Pentecost at the time on the road building project there.



5. The prosecution say that the second offence took place in November 2015. It happened when the defendant went to pick up Ms EM at a time when school was breaking up. She had been attending Bwatnapni school but they were on their way back home and stopped at Vanmala primary school for the night. This was the school where the defendant's wife taught. She was not there at the time because she was at a workshop elsewhere on the island. The defendant and Ms EM stayed at the staff house with the defendant's two small children. They arrived there from Bwatnapni after dark. She put the defendant's small son to bed in the room where the defendant was sleeping and she went to sleep in another room with the defendant's young daughter. The defendant came and kicked her leg and told her to get up. She stood up and he started pulling her to another room. She tried to hold on to the walling but wasn't able to. The defendant dragged her to his bedroom and forced her to take off all her clothes. He then forced her to have sexual intercourse. She did not want to but was frightened of him. Not long afterwards the Principal of Vanmala school, Ms Gwendoline, came and knocked on the door and called out. She had earlier put her mobile 'phone on charge and wanted to collect it. Ms EM said she would give Ms Gwendoline the 'phone but the defendant told her not to get up and he took the 'phone out to her. When he returned he told Ms EM to go back to the other room and sleep. As will be seen later this is all denied by the defendant.

6. As is quite often apparent in such situations, there is little direct evidence to support the prosecution case. The only person giving direct evidence to substantiate the prosecution case is Ms EM. It used to be said that the law required the evidence of victims or complainants in sexual cases to be corroborated. The position now is different and it is as set out in Privy Council case of *R v Gilbert*¹:

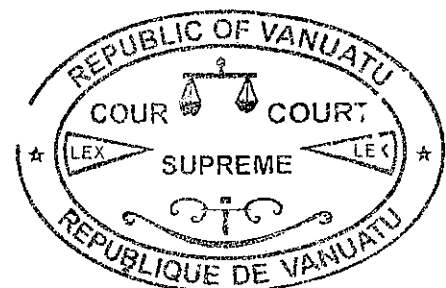
"To summarise.

(2) It is a matter for the judge's discretion what, if any warning, he considers appropriate in respect of such a witness as indeed in respect of any other witness in whatever type of case. Whether he chooses to give a warning and in what terms will depend on the circumstances of the case, the issues raised and the content and quality of the witness's evidence.

(3) In some cases, it may be appropriate for the judge to warn the jury to exercise caution before acting upon the unsupported evidence of a witness. This will not be so simply because the witness is a complainant of a sexual offence nor will it necessarily be so because a witness is alleged to be an accomplice. There will need to be an evidential basis for suggesting that the evidence of the witness may be unreliable. An evidential basis does not include mere suggestion by cross-examining counsel.

(4) If any question arises as to whether the judge should give a special warning in respect of a witness, it is desirable that the question be resolved by discussion with counsel in the absence of the jury before final speeches.

¹ *R v. Gilbert* (Grenada) [2002] UKPC 17 (21 March 2002)



(5) Where the judge does decide to give some warning in respect of a witness, it will be appropriate to do so as part of the judge's review of the evidence and his comments as to how the jury should evaluate it rather than as a set-piece legal direction.

(6) Where some warning is required, it will be for the judge to decide the strength and terms of the warning. It does not have to be invested with the whole florid regime of the old corroboration rules."

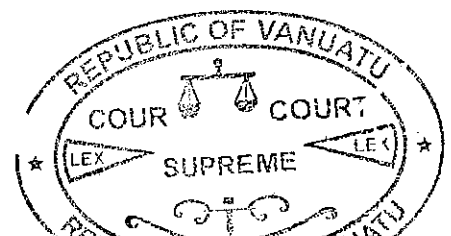
7. In this case I must bear in mind that where Ms EM's evidence is challenged I may, because of the nature and content of the challenge, require corroboration. Bearing that in mind, if I am satisfied about the reliability and quality of the evidence she gives, I have no need to look for corroboration.

8. I heard from Ms EM in court. To begin with she was a timid witness who was close to tears. I do not find that to be surprising given her young age and that fact she was having to articulate her evidence in public. As time went on she became much more confident and gave her evidence clearly and concisely. She stood up to strenuous cross examination by the defendant's counsel and did not deviate from her evidence in chief. She confirmed the prosecution case as set out previously and did not add any unnecessary embellishments. I found her to be a truthful and reliable witness. The only uncertainties with her evidence were about the exact dates she was asked to provide. I do not accept because she did not know exactly what dates were covered by the last two weeks of May 2015 her evidence was any less truthful and reliable.

9. A school friend (Ms MM) was called to give evidence for the prosecution. Ms MM told of the day they were going back to school. This was sometime after the May 2015 school break. She and another friend were walking to school with Ms EM. Ms EM looked miserable and was crying. Ms MM and her friend were asking what was wrong. At first Ms EM did not say anything in reply but eventually said there was a problem with a man. When she was asked who she would not say and simply said, "Guess who". After Ms MM mentioned the names of the boys in the village she then mentioned the defendant's name. Ms EM confirmed the defendant had forced her to have sex with him. Ms MM and her friend started crying with Ms EM. Ms MM was cross examined very closely but did not vary her story. It was put to her that it was a joke and that everyone was laughing. She denied this and said she, Ms EM and her other friend were all very upset and were all crying.

10. This witness also confirmed another piece of evidence given by Ms EM. Ms EM had said in her evidence she borrowed a 'phone from the school nurse and had telephoned her adoptive mother (Mrs AB) to say what had happened. This was after they got to school on the same day that Ms EM had told her about the May incident. Ms MM confirmed her friend had borrowed a 'phone from the nurse and had spoken to her mother. When the mother gave evidence for the defendant she denied that she had received any such call. I prefer the evidence of Ms EM and Ms MM.

11. Ms EM's biological father was also called by the prosecution. Mr BB explained that Ms EM had been adopted following the death of her biological mother. He

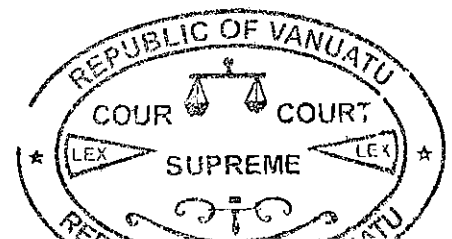


became aware of the allegations involving the defendant and went to discuss the matter with Mrs AB, the defendant and Ms EM. When all of them were together Ms EM was very reticent about the allegations. He decided to take her to a classroom and speak to her on her own. She told him everything. He asked her specifically if she was lying and told her if she was he wanted and needed to know because he would have to clear things up with the defendant. Mr BB said he asked her 3 times if she was telling the truth and each time he asked she told him that it was all true. He was aware that in 2012, his daughter was said to have made up stories about him but when he spoke to her in 2015 he was sure she was not lying to him. The next day he went to see the Chief to arrange a family meeting.

12. The defendant gave sworn evidence. With regard to the charge concerning the May 2015 incident, he said he had evidence of an alibi. He introduced an exercise book (exhibit 7) into evidence in which was written details of the hours he and others had worked on the road building project in South Pentecost. The reliability of that evidence was very much called into question when it became apparent that entries relating to the defendant, and only the defendant, had been altered. For example the page for Tuesday 12th May 2015 in exhibit 7 originally read "No work" against the name of the defendant. A thin piece of paper had been glued over that entry purporting to show that the defendant had worked 7 hours. There were other entries against the defendant's name which had been similarly altered. It was also clear that some pages had been cut from the exercise book and then sellotaped back in. The defendant could offer no explanation for the alterations. He said the book was originally with Joseph Tabi the owner of the construction company. He added that it was possible Mr Tabi had cut the pages out when the defendant asked for a photocopy. This was because it was easier to photo copy the pages if they were removed. The defendant was given the photocopies he asked for (exhibit 6) but later obtained the original book and handed it to his lawyer. The defendant was insistent that the log book was correct as altered and that he had not been home at the time of the incident in May 2015. I did not believe the defendant on that question. There was no credible reason put forward for the alterations which supposedly confirmed his evidence. I was even more dubious about the log book because the "alterations" only became apparent on examination of the original exercise book. The alterations were not apparent when looking at the photocopies.

13. The defendant denies Ms EM's version of events In November. He says the rape simply did not happen. He believes that Ms EM concocted the story about the rapes because she was caught out in a lie. She had been forbidden to have a mobile 'phone whilst at school but had somehow acquired one. When he picked her up in November he saw the 'phone and asked her about it. She initially lied and then admitted she had bought the 'phone. He took it off her and put it in his suitcase when they arrived at Vanmala school. Later on he discovered the 'phone was missing and he believed Ms EM had taken it from the suitcase without his knowledge or permission. He painted a picture of Ms EM as a deceitful child who would not listen to him and do as she was told.

14. When cross examined he agreed he had been told by the school committee at Vanmala to leave the school and to pay a fine. It was not entirely clear when this was



but the by his account it was very soon after the November incident. He also agreed he had met with two Chiefs and paid compensation. He said he did not want to pay, did not agree that he had to pay but was told at the time to be humble and pay up anyway and so he did.

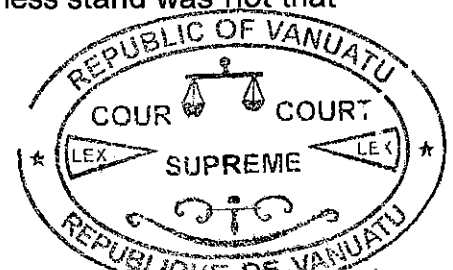
15. The defendant did not accept any of the allegations made by Ms EM were true. He was adamant they were the stories made up, basically out of spite. He portrayed Ms EM as an ungrateful, deceitful child who had betrayed him and his wife. Whilst the defendant had an answer to the allegations and a reason why they had been made against him I was unable to treat his evidence as reliable. His alibi evidence was clearly concocted and both his answers to the allegations and his reasons were totally unconvincing.

16. Mrs AB the defendant's wife gave evidence. She said basically she did not trust Ms EM. This all stemmed back to the "lies" Ms EM was said to have told back in 2012. She gave evidence she did not have a workshop in May 2015. She said because of cyclone Pam she was required to work an extra week so, in what was supposed to be the school break, she was at home for one week and at the school for the other. She denied that Ms EM had 'phoned her after the alleged May incident but before the November one. There had been, according to Mrs AB, no such call. She seemed to say the first she knew of Ms EM's allegations was in November.

17. In cross examination it was put to Mrs AB that she was compelled to support her husband. She, quite reasonably, agreed that she was supporting her husband. I would not disregard her evidence solely on that basis. However, when tested against other evidence what she said was less than convincing. For example, the fact that there was no workshop in May 2015 did not mean she was at home all the time. Her evidence was she had to return to school because of cyclone Pam. She was unable to explain the School Committee decision to ban and fine her husband in November. She "*was not aware of any problems*". At the end of the day one was left with the very distinct impression her evidence could not be relied on to any degree.

18. The final witness was another of the defendant's close relatives. His evidence was he saw the complainant when she arrived at the village in November. She was with her small brother and sister. She looked happy and was talking and laughing with the two youngsters. He agreed she only stayed the one night before leaving to stay with another relative. He was unable to add anything useful to the evidence before the court.

19. As I have indicated earlier, I am unable to accept the defendant's evidence. It is not the case that I have some doubts about it, if that were so the defendant should be acquitted, I am unable to accept that any of his evidence on the salient facts is true. However, I do accept the complainant was telling the truth. The suggestion that her whole story had been made up out of spite because she was not allowed a mobile 'phone just does not ring true at all. Her demeanour on the witness stand was not that



of a vindictive and deceitful teenager. There was no equivocation in what she told the court and absolutely no signs of hysteria or histrionics.

20. I am convinced beyond any reasonable doubt the defendant Wolsten Bule had sexual intercourse with the complainant Ms EM on two occasions. Once in May 2015 and once in November 2015. Ms EM did not consent to having sexual intercourse on either of those occasions and I find the defendant guilty on both counts.

Dated Wednesday 23rd November 2016 at Port Vila.

