

PUBLIC PROSECUTOR

Vs.

DAVID AYOTUNDE OWOSENI

Coram: Judge Aru

Counsels: Mr. K. Massing for the Public Prosecutor
Mrs. M. G. Nari for the Defendant

REASONS FOR VERDICT

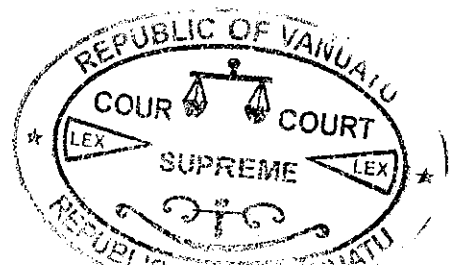
Introduction

1. The defendant David Ayotunde Owoseni is a Missionary Pastor for the Redeemed Christian Church of God (RCCG). He is from Nigeria and since 6 October 2015 he was the Missionary Pastor for the RCCG based at the Red Corner in Luganville, Santo. He was charged with 9 counts. He pleaded not guilty to all 9 counts on 16 October 2017. Before the trial begun, the Prosecutor entered a nolle prosequi under s 29 of the Criminal Procedure Code [CAP136] in respect of count 6. The defendant was therefore discharged in relation to that charge. Counts 1,4,5,7, and 8 relate to offences charged under s 98 b) iv) of the Penal Code [CAP 135] which provides:-

"Act of indecency without consent

98. A person must not commit an act of indecency on, or in the presence of another person:

.....



b) with that person's consent if the consent is obtained :

.....

iv) by means of false representations as to the nature of the act; or

....

Penalty: Imprisonment for 7 years"

2. Under count 1, the defendant is charged with indecently touching one Frida Samuel's breast without her consent in November 2016 at Red Corner area in Luganville. Under count 4, the defendant is charged with touching the breast of one Russeline Lowane at Red Corner in Luganville sometime in 2017 without her consent. Under count 5, the defendant is charged with telling Russeline Lowane to be naked in front of him sometime in 2017 at Red Corner in Luganville without her consent. Under count 7, the defendant is charged with touching the breast of one Amilyn Tari sometime in April 2017 at Red Corner in Luganville without her consent. Under count 8, the defendant is charged with touching the breast of one Joyline Rah sometime between March and April 2017 at Matevulu College in Luganville without her consent.
3. Counts 2 and 3 relate to offences charged under s98 a) of the Penal Code which provides –

"Act of indecency without her consent

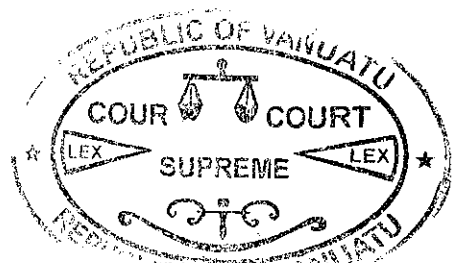
"98. A person must not commit an act of indecency on, or in the presence of another person:

a) without that person's consent .

.....

Penalty: Imprisonment for 7 years "

4. Under count 2 the defendant is charged with asking Frida Samuel to masturbate his penis until he ejaculated in June 2017 at Red Corner in Luganville without her consent. Under count 3, the defendant is charged with asking Katina Barry to touch his penis sometime in 2017 at red Corner in Luganville without her consent.



5. Count 9 relates to an offence charged under s 98A of the Penal Code which provides:-

"Act of indecency with a young person

98A. A person must not commit an act indecency upon, or in the presence another person under the age of 15.

Penalty: Imprisonment for 10 years"

6. Under count 9 the defendant is charged with touching the breast of one Sonia Douglas sometime in 2016 at Red Corner in Luganville when she was under the age of 15 years.

7. The burden of proof rests with the prosecution to prove guilt beyond reasonable doubt otherwise I must acquit the defendant. Section 8 (1) and (3) of the Penal Code sets out the general rule as to proof in criminal cases and provides:-

"General rule as to burden of proof

8. (1) 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.

.....

(3) If the prosecution has not so proved the guilt of the accused, he shall be deemed to be innocent of the charge and shall be acquitted forthwith."

8. The elements of the offences charged under s98 a) of the Penal Code, which must be proved by the prosecution are:-

- 1). the defendant committed an act of indecency on the complainant;
- 2). the act was committed without the consent of the complainant; and



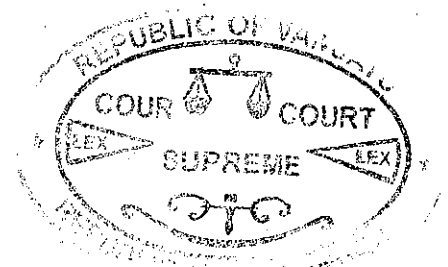
- 3). the defendant knew that the complainant did not consent.
9. Under s98 b) iv) of the Penal Code, the prosecution must prove the following elements:-
- 1). the defendant committed an act of indecency on the complainant;
 - 2). consent was obtained by means of false representation as to the nature of the act; and
 - 3). the defendant knew that the complainant would not consent
10. Under s98A of the Penal Code, the prosecution must prove the following elements:-
- 1). the defendant committed an act of indecency on the complainant; and
 - 2). the complainant was under the age of 15 years at that time of the offending.

Prosecution case

11. Before the prosecution opened its case s81 of the Criminal Procedure Code was read out and explained to the defendant. The prosecution case is that the defendant used his spiritual powers to enhance his sexual gratification by sexually abusing the complainants. The prosecution called 9 witnesses.

Katina Barry

Her evidence is that she did not recall the exact date but recalls that it was a Saturday in 2017 when her friend Leila took her to the RCCG church at Red Corner in Luganville. The next day she went back for choir practice for couples night. After practising a boy named Ricky who was having an affair with her assaulted her. She then ran to hide inside the counselling room. The defendant was inside with some other people. The defendant then sent everyone outside including Leila and just the two of them were inside the room. She asked the defendant to help her with issues at her home but he asked for sex. The defendant told her to lift her shirt and he signed



the cross on her breasts then he forced her to touch his penis. She was cross examined.

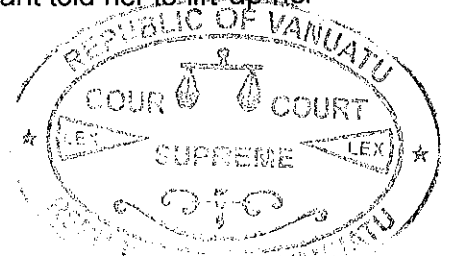
Frida Samuel

Her evidence is that in November 2017 she went with her sister to see the defendant. They both went inside the room then the defendant prayed with her sister then her sister left the room. She was the only person in the room with the defendant. The defendant told her that she needed a double deliverance. He told her to remove her singlet and bra and to lift up her hand. He put oil on his hands and held her breasts and rubbed them. Then he made her bend over and acted having sex with her.

She left the RCCG in June 2017. The reason being that after cleaning the defendant's house, she went to clean the church but the defendant called to look for his clothes. She came back and looked for the clothes then the defendant asked her to remove his clothes before he had his shower. She helped removed his clothes reluctantly then the defendant told her to run his bath. Whilst in the process he blocked the door by standing in the door and asked her to wash him as well. She refused and managed to escape and went back to the church to complete the cleaning. After showering the defendant went back to his office and called her inside and told her to massage his leg before he slept. The defendant wanted her to lie on top of his body and massage him but she refused. He then told her to massage his penis and she did so until he ejaculated. The defendant wanted to have sex with her but she was having her period. She cleaned him up then left. She said the defendant forced her to masturbate him. She told Rocha's wife about it and also signed the letter of complaint that was sent to Nigeria [Exhibit 'P1']. She did not say she masturbated the defendant in the letter as there were many people at the meeting at the time the letter was signed. She was cross examined.

Russelline Lowane

Her evidence is that sometime in 2017, she went to see the defendant to pray for her as she had a problem with her husband at home. The defendant told her to lift up her



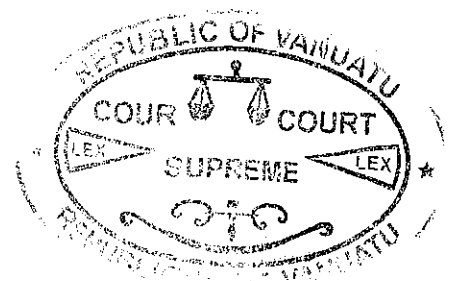
singlet and bra then he anointed her breasts with oil. The defendant then told her to lift up her skirt and to remove her panty then he told her to bend over and he anointed her legs up to her buttocks. This happened when just the two of them were in the room. After that she continued going to church as she wanted to hear the word of God. She later told Frida who advised her to go and see Rocha. They then signed a letter of complaint to Nigeria [Exhibit 'P1']. Following the letter there was a meeting but she was not part of it. She was cross examined.

Amilyn Tari

Her evidence is that she was told to bring a bottle of water for the defendant to pray over. After praying over the water the defendant told her to return two days later and she did. On her return the defendant prayed over her water and over her then he told her to lift up her tshirt. He took oil and signed the cross on her breasts and under her belly button. The defendant also told her to lift up her skirt and he put oil on her thighs, knees and feet. She then never went back. She recalled that the incident occurred in April.

Sonia Douglas

Her evidence is that she went to see the defendant with her mother and sister for prayers over them and for her school. Her mother and sister then went outside and left her alone with the defendant. Just the two of them were present. After the defendant prayed for her he told her to lift her shirt and bra. He then signed the cross on her breasts and also close to her private part. Then the defendant told her to go back at 3.30 pm she did not return. She told her mother what the defendant did to her and why she did not want to go back. She recalled the year was 2016 but not the exact date. She did not report the matter but the Police came looking for her at her house and she was shocked. She then made her statement. She was cross examined.



Matahu Zacaharia

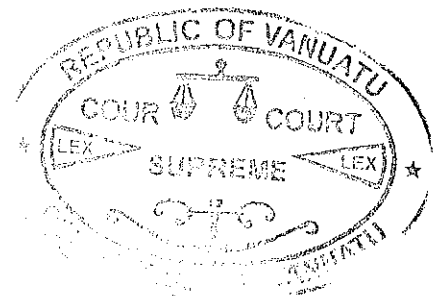
His evidence is that he is the SANMA Civil Registry Officer. He said in Sonia's case her birth was never registered. When the Crime Prevention Unit requested her birth certificate, he gave them a form and Noeline Stevens of the Crime Prevention unit provided the information and completed Sonia's birth registration form. He was cross examined.

Peter Solwe

His evidence is that he is a Police officer with the Crime Scene Unit of the Police Force. He said he attended the crime scene at Red corner with the case officer Noeline Stevens and created a crime scene album [see Exhibit 'P2']. He was cross examined.

Joyline Rah

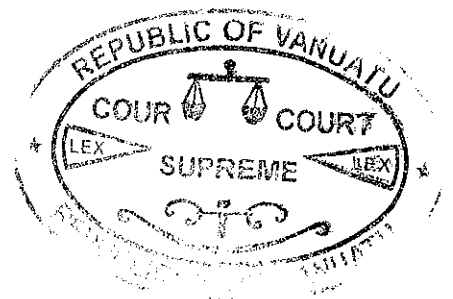
Around March and April 2017 she was a student at Matevulu College. At the time of the incident she was in class when she was informed to go and see the defendant by a prefect. She ran to the dormitory but Ms Jill went and got her. She then went to see the defendant and both herself and her boyfriend entered the principal's office for counselling. The defendant then told her boyfriend to go outside and she was alone with the defendant in the room. The defendant then told her to remove the top button of her uniform then he prayed over her and put holy oil on her forehead and her chest between her breasts and on her hands. Then he told her to get a bottle of water for him to pray over for her to drink every morning. He also told her to get mama joy oil for him to pray over and that she must put the oil on her private part every time. She did not report the matter but someone gave her name to the Police and the Police went looking for her to make a statement. She spoke to Police Jimmy after they took her to the Police station. He wrote her statement then took her home. She was cross examined.



Rogatien Andre

His evidence is that he started with the RCCG church since 2014 and he is the assistant to the pastor. His job is to look after the church when the pastor is out or overseas and carries out duties delegated to him by the pastor. The defendant is the pastor and missionary. The defendant's job was to train Ni Vanuatu like him as the RCCG was newly established and secondly to tell the people about the vision of the RCCG. He said that with counselling the pastor's wife or a Minister must always be present with the pastor when he does counselling. The pastor must avoid physical contact with females seeking help. He said anointing is done on the head of the sick person and if a part of the body needs healing then anointing is done on the patient's hand and they can then touch their own body where the sickness is located .He said he knew Frida Samuel, Russeline Lowane and Katina Barry because they were members of the RCCG and what the defendant did to them was wrong. He said Frida Samuel went to their house on Friday morning on 14 July 2017 around 830am and told his wife of what the defendant did to her. He said he informed the defendant of the rules on such matters before preparing the letter of complaint to the provincial pastor in charge in Nigeria [see Exhibit 'P1']. He said those who signed the letter were all present when he prepared the letter. Following the letter, the coordinator for Vanuatu went to Santo on 28 July 2017 to settle the matter between the RCCG leaders and the complainants but the matter was not resolved. Two church leaders from the church in the Solomon Islands and Australia came to investigate the matter and they wanted him to call all the complainants but he advised the two leaders that the matter was already with the Police. He said he did not like the character and attitude of the defendant. He was cross examined.

12. At the close of the prosecution case I ruled that there was a prima facie case made out and pursuant to s 164 of the Criminal Procedure Code called on the defendant to make his defence.



Defence case

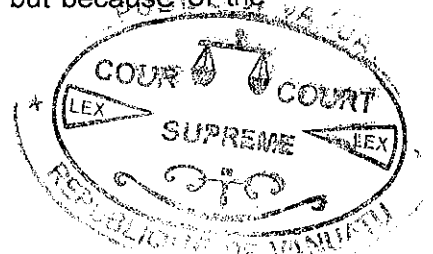
13. Before the defence opened its case, s88 of the Criminal Procedure Code was read out and explained to the defendant. The defence case is that the allegations were malicious and unfounded. The defence called 7 witnesses including the defendant who elected to give evidence himself.

Jivi Mele

His evidence is that he was told about the letter of complaint to Nigeria by a Marcel Jokely and pastor Rocha. The two men went to his house on children's day and told him about the letter [Exhibit 'P1']. They told him to sign the letter but he refused to sign and they left. The defendant later showed him a copy of the letter that showed his signature. He denied signing the letter and said the signature on the letter was not his as he never signed it. He was at the RCCG church when the defendant was arrested. He and the defendant's wife and two men then went to see Katina Barry. She told them that she did not file a case against the defendant. The next day they went to Frida Samuel but she told them to see pastor Rocha. When they went to see pastor Rocha he told them that the case is already with the Police. He said he also spoke to the lady from Ambae who worked at the market food stall, Amilyn Tari to find out what the defendant did to her. Amilyn told him that when she saw the defendant they spoke about anointing then had a discussion. The defendant's wife was there with Lei and Catherine and other church members. He said those were the complainants he spoke to. He said previously, every night after each service pastor Rocha and himself would drop off members but he never heard anything bad said about the defendant. Everyone was always happy about the anointing received. He was cross examined.

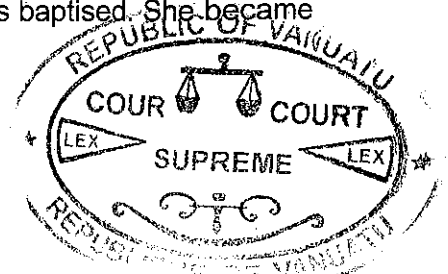
David Ayotunde Owoseni (defendant)

He is the defendant. In his evidence he said he is the Missionary pastor for the RCCG church in Vanuatu since 6 October 2015. He returned to Nigeria in July 2016 and stayed for almost 4 months. His holiday was three months but because of the



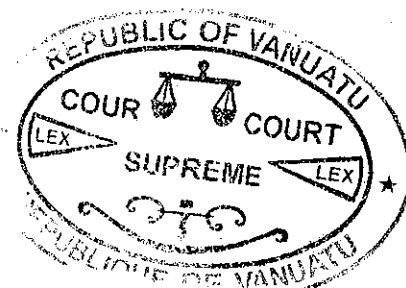
issues raised against him they asked him to remain for another month. Issues raised against him were that he was not a good leader and had too many debts all over the place. Whilst still in Nigeria he received copy of the letter [Exhibit 'D1'] signed by pastor Rocha, the youth President, the choir leader and women's leader requesting the pastor in charge to allow him to return to Vanuatu. The second letter he received was [Exhibit 'D2'] signed by pastor Rocha, ministers, workers and youth and members stating that the allegations against him were not true and wanted his return to Santo. He said Rocha was his witness and wrote the two letters asking for his return. The authorities of the church in Nigeria wanted someone to investigate the allegations and daddy elder came to Santo and the members told him that they wanted the defendant to return to Santo. So he returned to Santo in October 2016. He said when he first came to Santo in 2015, they had to build the church and because there were many people needing prayers everyday they set aside different time for services. Special prayers were held around 7.30 pm after each service. Special prayers and counselling sessions were held in the church office and his wife, Esther Owoseni will be present with him during counselling and special prayer sessions. The workers will bring in those who needed prayers one by one and the special prayers finish at around 10pm.

In November 2016 he was not at the RCCG church in Santo for the full month as he attended a church convention in Australia. He left for Australia on 22 November 2017. He returned to Santo on a Sunday at the end of the month. He said he knows Frida Samuel as she came to see them before he left for Australia. She wanted him to pray for her husband and child. She did not say that she was sick and needed healing. He told Frida to bring her husband and child and he offered a general prayer for her husband to find a job. He said his wife Esther was with him during that time. After he came back from Australia his wife gave birth to their son in December 2016. Sometime in January 2017 whilst on their way to the hospital for his wife's appointment, they met Frida Samuel and she gave them VT200 for their bus fare. After that he saw them in church when Frida brought her family and children to church. Frida only became a worker in February after she was baptised. She became



an usher towards the end of February to March 2017. In July Frida stopped coming to church. Before that in June Frida wanted to go and see her step father on Malekula who was sick. He saw Frida in early June but not the second week. He saw Frida again on 19 June on Malekula and she welcomed him and they went to the church on Malekula which is headed by Pastor Godwin. Frida's brother came and got him to go and pray at his house. Frida was there as well as her brother and his wife. After that he returned to Santo on a Tuesday. Frida also returned from Malekula on Tuesday and gave his wife some fish. Frida came back to Santo to join the other members in welcoming Daddy Haastrub, the regional evangelist for Australia and the Pacific who was arriving on Saturday 24 June. The following day Sunday Frida attended church. In early July Frida brought her husband and they came and apologised in the evening after choir practise. Frida said sorry to him for saying he was a pastor for women 'womaniser' and that he liked fair skinned women. He accepted her apology Her discipline was to continue cleaning the church. After July 2017, Frida went back to church and attended services and apologised to some of the women she accused. Frida stopped attending church in July. That same month he was with his wife when they saw Frida at the hospital. This was after they had signed the letter to Nigeria and his wife asked her why she signed the letter and she stopped attending church from then on.

He asked Leila about the letter [Exhibit 'P1']. Leila denied that she signed the letter as it was not her signature. Jivi Mele told him the same thing that he did not sign the letter. As for Katina Barry, in March 2017 after choir practice he was in the office when Leila, Estelle and Katina ran inside the office. They informed him that Katina's boyfriend Ricky assaulted Katina. He then left them and went outside and called Ricky to the alter in the church and called Rocha and told him to get Katina from the office to come and see him. At the alter both Katina and Ricky knelt down before him and he counselled them. He told them that they were committing adultery. Rocha brought him oil and he anointed Ricky and Katina and prayed for them not to see each other again and he told Rocha to drop Katina and her daughter home and they

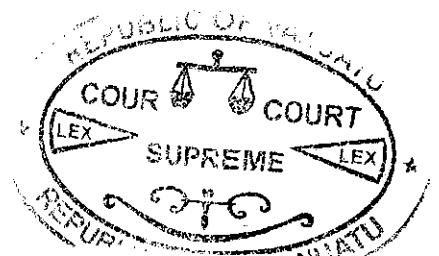


left. After that he saw Katina again in church and prayed for her child. After March 2017, Katina never came back to church.

He said Russeline Lowane came to church with her child during the 40 days fasting prayer period which is held every January. When he prayed for Russeline those present with him were his wife and Russeline and her son. Russeline joined the baptismal class in January. After that she returned to Malekula. He only saw her again on 19 June on Malekula when he went to Malekula. Russeline came with her sister Frida and their brother who drove the truck. He saw Russeline again on children's day. His wife told him that Russeline wanted to see him but he was engaged to go to Matevulu college. He saw Russeline again after he received the letter of complaint sent to Nigeria.

After receiving the letter he told his wife that they should go and see each complainant and find out the reasons for them signing such a letter. They approached Russeline at her house but she said she did not sign the letter. She denied that he did anything to her. Russeline said her sister Frida told her to go and see Rocha but she did not go. Sometime after that in July 2017 Pastor Joshua from Vila came to investigate the matters raised in the letter sent to Nigeria .A meeting was called with all the signatories. Pastor Joshua called each signatory to sign their signatures to authenticate their signatures on the letter but none did so as Rocha stopped them. Russeline did not say anything at the meeting. After the meeting Russeline approached him and said sorry.

He said Amilyn Tari was invited to church by the choir leader. Amylin attended church with Julie Toa for prayers. during the fasting period. When he prayed for Amilyn his wife was with him and other workers were outside. He anointed her head then prayed for her water in a bottle then she left. She never came back to church .In December 2017 he saw Amylin again at Catherine store and she was happy to see him.

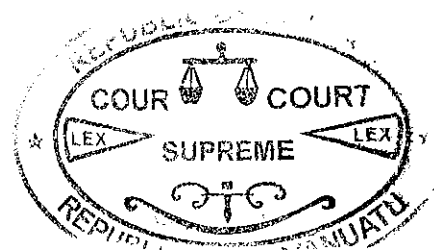


As for Joyline Rah he met her at Matevulu College in March 2017. He goes to the college every Tuesdays to do counselling as he was asked to be the school chaplain. When he was there a student by the name of Albert approached him in the principal's office before lunch and wanted to see him. Albert told him that he did something wrong to a girl in year 11 her name was Joyline Rah. Albert said he had sex with Joyline. He then told Albert to bring Joyline Rah to see him. Joyline refused but Ms Jill went and got her. Both Albert and Joyline then went in to see him. Ms Jill was also present with them in the principal's office when he spoke to them and prayed for them. Joyline wanted him to prayer on some drinking water and she went and got a bottle of water and he prayed over it. After that he never saw Joyline Rah again. He saw Ms Jill later after a Sunday service at Matevulu and she approached him and said sorry for what Rocha did in sending the letter to Nigeria. After his arrest he was taken to Vila. Ms Jill called him in Vila to say that she was present when he spoke to Joyline Rah. That was in September 2017.

As for Sonia Douglas he does not know her and never saw her at the RCCG church. He was arrested on 7 September 2017 and brought to the Police station in Santo about 3pm. He said his lawyer arranged for an agent to see him but the Police did not allow him to see the lawyer. Whilst in the cell, when the female police officer brought his food in the morning, four men followed her and shouted abuse at him before leaving. He said after the case begun, Rocha sent him a text telling him not to be offended as he said everything will be alright. He was cross examined.

Catherine Poporo

Her evidence is that she joined the RCCG church in September 2015 and knows the defendant .She is the choir leader .She took Amylin Tari to church in February 2017 for prayers at 5.00 pm. Amylin went for special prayers at 800pm whilst she waited for Amylin outside. A lot of people were around as well. When Amylin came out she did not tell her anything. They did not discuss anything about the RCCG church and she did not hear Amylin complain about anything after February 2017. A municipal



warden told her that the defendant was arrested by the Police. She was cross examined.

Joyce Terry

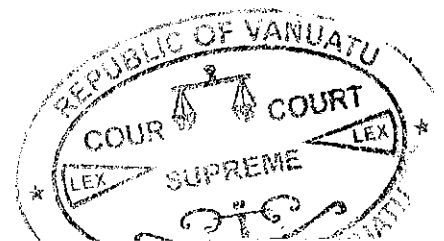
She gave evidence that she lives at South Santo and she is a member of the RCCG church. Her evidence is that the police officer Peter Dini told her that the defendant was arrested. Peter Dini was the driver of a truck when he and others went to see her at her home at Berol. She said the Police told her that someone sent them to come and get her statement about the defendant. She saw them the same week that the defendant was arrested. She told the police that she did not know anything the defendant did that was wrong. Mr Dini asked her whether she knew anybody who knows about something the defendant did but she said no so they left her home. She was cross examined.

Hendry Wass

He is the principal of Matevulu College. His evidence is that he took the defendant to be chaplain of the college on a voluntary basis. As chaplain the defendant conducts services on Sunday at the college and conducts counselling sessions every Tuesdays. He was not aware of the complaint by the student Joyline Rah against the defendant until the time of his arrest. The Police came to the college without his knowledge or authorisation as principal. Joyline Rah also did not report anything to him as college principal or to his deputy or Secretary. If there was anything wrong, as college principal he expected that the matter would have been reported to him first. He was cross examined.

Leila Rapulpul

Her evidence is that she joined the RCCG church since September 2015. She knows Frida Samuel as Frida is a member of the RCCG. As a worker Frida is an usher in the church. In June 2017, Leila says that she was living within the church compound. The defendant's wife needed some help at that time as her helper, Friday, had gone to Malekula. Frida went to Malekula on 14 June. The defendant went to Malekula on



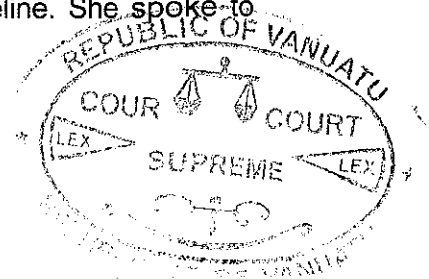
19 June. At the end of June she saw Frida again when Frida returned to join others to welcome a visitor from Australia .Frida Samuel left the RCCG in early July.

As for Katina Barry, Katina is her friend as they both worked at the Moyan Resort. Katina came to church in in March 2017. After choir practise for couples night on Saturday her boyfriend assaulted her. She then took Katina and all three with Estelle, Rocha's daughter entered the defendant's office. The defendant then went to look for Ricky Katina's boyfriend to speak to him Pastor Rocha called Katina outside for the defendant to pray for them in the church. After that she saw Katina again in March when she came to church with her children.

Russeline is Frida's sister. Russeline came to church during prayer and fasting period with her son. She was baptised in February then she went back to Malekula. On 23 July when they had activities for childrens day she saw Russeline again. Russeline was there the whole day. She carried the defndant's baby. Leila recalls that she also signed the letter to Nigeria as she was forced to sign. She is an orphan and lived with Pastor Rocha. She left his house after taking a court order [Exhibit 'D3'] against Pastor Rocha as he stopped her from going to church until everything was resolved. She was cross examined.

Esther Owoseni

She is the defendant's wife. And she was born in Nigeria and came to Vanuatu with her husband to do mission work. She knows Frida as Frida came to seek prayers for her husband to find a job and also prayers for her children who were sick in November 2016. When the defendant prayed with Frida she was present with them. She knew Katina as Katina was Leila's friend and she saw Katina during choir practise. At the time Katina was assaulted by her boyfriend, the defendant prayed for them. After that she saw Katina again in church with her children. She knows Russeline as Frida's sister. She met her in January during the fasting and prayers. Russeline wanted special prayers for her husband. Esther was present with the defendant and Russeline when the defendant prayed for Russeline. She spoke to



Russeline again on childrens day and carried her baby and Esther took a picture of them [Exhibit 'D4']. When she approached Russeline about why she signed the letter to Nigeria, Russeline denied signing the letter and said she did not know about the letter. Esther met Amylin during the fasting prayers in February. She needed a prayer as her shoulder was aching. The defendant anointed her head. She was present with the defendant and Amylin. After that she never saw Amylin again. She did not know Joyline or Sonia. She was cross examined.

14. At the end of the defence case Mr Massing applied to call new evidence to rebut the evidence given by Joyce Terry and the defendant pursuant to s 169 of the Criminal Procedure Code which states:-

"169. Rebutting evidence

If the evidence for the defence introduces new matter which the prosecution could not, with reasonable diligence, have foreseen the court may allow the prosecution to adduce evidence in reply to rebut such matter. A witness called in rebuttal may be a previous witness recalled or a new witness."

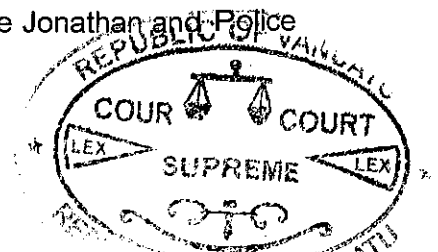
15. Having heard defence counsel who opposed the application, the prosecution was allowed to call two new witnesses in rebuttal.

Florence Jacob

She is a Police officer with the rank of Sergeant .Her task is to look after people held in side cell N 6. On 8 September 2017 she was on duty and fed the defendant in his cell. She was by herself. The defendant was also the only person in cell No 6. She was cross examined.

Peter Dini

He is also a Police officer with the rank of constable and he works in Police Information Management System. He and others went to speak to Joyce at Berol. He was the driver and the others in the vehicle were Peter Solwe, crime scene officer, Police constable Noeline, investigating officer, Police constable Jonathan and Police



contable Seraline who also work in the morality section. When they went Joyce was not at home. They were advised by an old man that Joyce was down by the sea. They then drove down to the sea and saw Joyce. He told Joyce that they were following up on what an informant told them about the defendant. Joyce told him that the defendant did not do anything to her. They then left. At that time he was the only one in uniform, the others were in civilian clothes. He was cross examined.

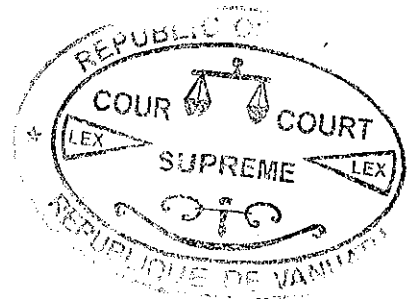
Discussions

16. When the court heard submissions from counsels, defence counsel provided a synopsis of their submissions whilst the prosecution opted to make oral submissions.
17. The prosecution alleges that the defendant being a pastor abused women who went to see him for prayers and healing. In order to secure a conviction the prosecution must prove its case beyond reasonable doubt to the satisfaction of the Court. As to what is an indecent act, the prosecution relies on what Fatiaki J said in **Public Prosecutor v. Jean Pascal** Criminal Case No.82 of 2011:-

"As to what is an indecent act is measured against what community standards of decency as considered by right thinking members of the community."

18. The defendant is the missionary pastor for the RCCG at Red Corner Luganville since October 2015. He returned to Nigeria in July 2016. Before the current allegations were made against him the defendant was still in Nigeria when on 31 August 2016 a letter of request [Exhibit 'D1'] was sent to the pastor in charge in Nigeria requesting the defendant's return to Santo. The letter was signed by pastor Rocha, the youth president, the choir leader and women's leader. The letter in part reads:-

"This letter is to request your high office to take immediate steps towards addressing the need of every member of the RCCG Miracle Chapel in Luganville Santo, Vanuatu to reinstate our pastor and loving Daddy Owoseni Ayotunde David back to Luganville."



.....

The reason why people admire pastor David so much is because he knows how to speak our pidgin bislama language very well and when he preach, live like Santo people open and very kind to them and he is very wise to win souls here in Santo resulting to the number of 160 members. We have some members far away to our church that pastor David is really committed to bring them and make sure they attend church service. The gift God is given to pastor David is what makes people in Luganville Santo to trust the God of RCCG for real.

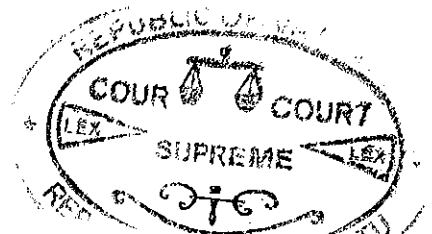
.....

On behalf of me brother Roka as caretaker of church in place of pastor David in Luganville, Santo the youth group, the women's group and all the members of RCCG miracle chapel in Luganville Santo, we want our beloved pastor David back to enrich the work of church growth in his 3 years term here in Santo and we are looking forward to see him by next week immediately but not anyone else to replace him at the moment."

19. A further letter was sent dated 21 September 2016 [Exhibit 'D2'] signed by pastor Rocha and 5 ministers, 21 workers and youths and 6 members stating:-

"We the members of RCCG miracle parish of Santo hereby declare that the allegations against pastor David Owoseni is malicious and untrue. Please allow pastor Owoseni to come back..."

20. Exhibit 'D1' and Exhibit 'D2' letters were prepared by pastor Rocha and signed by him and others. The two letters insisted that pastor David was a good man and must be allowed to return to Santo immediately. Ten months later after the letter of 21 September 2016 was sent a further letter [Exhibit 'P1'] dated 24 July 2017 was again sent to the provincial pastor in charge in Nigeria but this time with a complete change of tone requesting the removal of the defendant and replacement with someone else

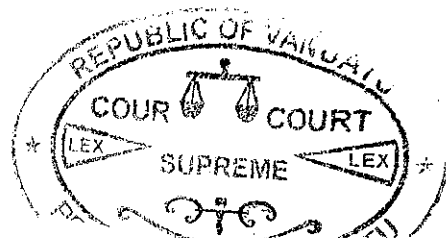


as it said the defendant was "exploiting his position as prophet for his personal gains and even threatened many workers."

21. This letter was also prepared by pastor Rocha and signed by others including Frida Samuel, Katina Barry and Russeline Lowane who are the complainants who allegedly related their allegations against the defendant to pastor Rocha. Katina Barry said in the letter that the defendant anointed her stomach then told her to have sex with him to drive out the sickness. There was no mention of touching the penis which is the charge and what she told the Court. Frida Samuel in the letter said the defendant asked her for sex three times but she refused and escaped. In Court she said the defendant held her breast and she masturbated his penis.
22. The evidence regarding Exhibit 'P1' is that this letter was prepared by pastor Rocha. When Pastor Joshua met with Pastor Rocha and the signatories of the letter, he asked them to verify their signatures by signing their signatures for comparison but no one did. Jivi Mele in evidence denied signing the letter and said the signature was not his. Leila told the Court the signature was not hers as she did not sign the letter. Russeline Lowane told the defendant and his wife that she did not sign the letter.
23. The only person who filed a complaint against the defendant was pastor Rocha. In his Police statement he says:-

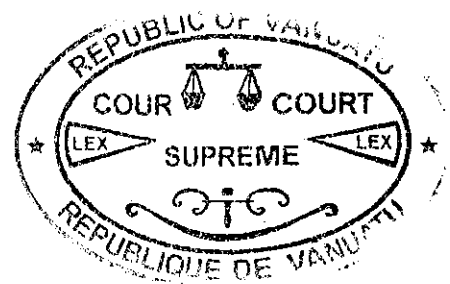
"Pastor David Owoseni Ayotunde hemi pastor in charge long RCCG long Luganville Santo. Hemi come startem work blong hem long church wetem wife blong hem Esther Ayotunde, long manis September 2015, long Luganville Santo. About 2 years we pastor David I stap long Luganville Santo. Mi buildim church ia RCCG long Red Corner area mo mi mo pastor Godwin nao I stap long 2014 finis. Mi olsem builder mo pasto Godwin hemi olsem pastor long RCCG church long time ia.

Since pastor David hemi come in blong lukaot long church long ples ia ol attitude mo character blong hem ino follem character blong wan leader inside long church we I humble. Pastor David hemi kat wan attitude blong raorao mo fight from wrong mo

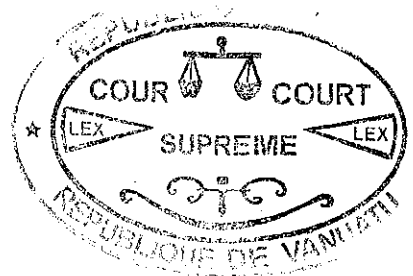


even defendem wrong mo beggar mo I save fos from samting or fosem man blong mekem samting long own way blong hem mo ino gat forgiveness."

24. He went further to state that he was not fighting for a position in the church but he was it doing to help the members.
25. He said he left the church on Sunday 9 July 2017 after an argument with pastor David. In his police statement he says that Frida Samuel went to see him on 14 July 2017. Katina Barry went to see him on 17 July 2017. Russeline Lowane went to see him on 12 July 2017.
26. Pastor Rocha's police statement was made on 4 September 2017 almost a year after his last letter of 21 September 2016 pleading for pastor David to be allowed to return to Santo. All the complainant's police statements were made after pastor Rocha filed his complaint.
27. This then leaves the evidence given by the complainants. Apart from Sonia Douglas, all the complainants were called as the only prosecution witnesses in respect of their complaint. The totality of the evidence heard is that in relation to count 1 Frida Samuel could not recall the exact date of the incident in November 2017. Evidence from the defendant and his wife is that the defendant was not in Santo for the full month of November as he attended a church convention in Australia and left on the 22 November and returned at the end of the month. Before he left, Frida approached him seeking prayers for her child and husband. The defendant's wife was with him when he offered a general prayer for Frida's husband and child.
28. After the defendant returned from Australia, in December the defendant's wife gave birth to their son. Sometime in January whilst on their way to the hospital the defendant and his wife met Frida and she gave them VT200 as bus fare. She later brought her family to church and were baptized and she became a worker in February 2017.



29. As to count 2 Frida Samuel could not recall the exact date in June 2017 when she alleged the incident occurred. The evidence of the defendant, his wife and Leila is that the defendant went to Malekula on 19 June 2017. He saw Frida Samuel and Russeline Lowane on Malekula as they are sisters and they welcomed the defendant and their brother took the defendant to his home for prayers with his family and Frida and Russeline were both there. After that the defendant returned to Santo. Frida also returned to Santo to join the other members of the RCCG to welcome the regional evangelist who was to arrive in Santo on the 24th June 2017. Frida continued to attend church after that until she left in July.
30. As to count 3 Katina Barry could not recall the exact date or month of the alleged incident only the year as 2017 when she was assaulted by her boyfriend Ricky and brought into the defendant's office to hide by Leila and Esther. The defendant who was inside with some people enquired and was told of the matter then went outside to find Ricky and called him to the altar in the church. Katina was also called from the office to the altar and the defendant prayed for them. After that time Katina brought her child to church and was prayed for. This is confirmed by the defendant, Leila and Esther.
31. As to count 4 and 5 Russeline Lowane could not recall the date or month of the incident except that it was 2017 when she attended the RCCG church in February 2017 and sometime during that time the incident occurred. The defence evidence from the defendant, Leila and Esther the defendant's wife is that Russeline attended the church for prayers in January during the fasting prayers with her son. The defendant prayed for them. Esther was also present. Russeline joined the baptismal class after that then returned to Malekula. The defendant saw her on Malekula in June. Russeline and Frida her sister joined their brother in taking the defendant to their brother's house for prayers with his family. On children's day she was at the RCCG at the Red Corner in Luganville the whole day and carried the defendant's baby and they took a picture together [Exhibit 'D4'].

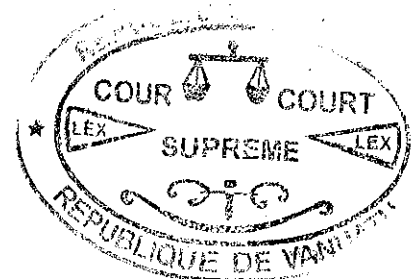


32. In relation to count 7 Amilyn Tari could not recall the exact date or month except that it was in April when she attended the RCCG church and the alleged incident occurred. Defence evidence is that both the defendant and his wife Esther were present when the defendant prayed for her. Catherine Poporo a member of the RCCG church took Amilyn for prayers and it was not in April but February. Catherine waited outside for Amilyn. There were a lot of people around. When Amilyn came out she did not complain about how she was treated. Amilyn told Jivi Mele when he went to see her that she saw the defendant and they spoke about anointing and the defendant's wife was present with them.

33. In relation to count 8 Joyline Rah could not recall the date of the alleged incident except that it occurred about March or April. Defence evidence is that the defendant prayed for Joyline and her boyfriend Albert together in the presence of Ms Jill in the principal's office. Joyline did not report the matter to the principal as head of the college or his deputy or Mrs Jill. She told her guardian. She did not report the matter to the police but the police came and asked her to make a statement. The principal gave evidence that he was not aware of the matter until the defendant was arrested.

34. As to count 9, Sonia Douglas could not recall the exact date of the incident except that it was in 2017. She did not report the matter but the Police went to look for her to get her statement. Evidence of Zacharia Matahu is that Sonia's age was unknown as she was not registered. The investigating officer Noelline Steven's requested the birth registration form then she completed the form and signed it before returning it to Mr Matahu. The form was objected to on the basis that it was inadmissible as Sonia's mother did not sign the form as a witness to verify the information was correct. The prosecution conceded the point and withdrew the birth certificate. There was therefore no evidence as to Sonia's age.

35. Finally none of the Police investigators who investigated the case and interviewed and took the defendant's cautioned statement were called by the prosecution which



is perplexing despite what the Court of Appeal said in *Yerket v. Public Prosecutor* [2015] VUCA 19:-

"After the allegation of rape was made the Appellant was interviewed by the police. We understand he gave a detailed statement. That statement was not produced at trial in Court by the prosecution. This was a serious failure by the prosecution.

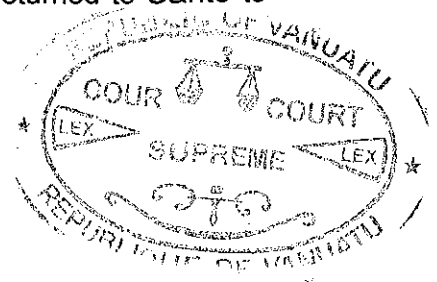
"When an accused person is asked by the police to make a statement to the police and does so, that statement must be tendered in evidence by the prosecution irrespective of its content. It is for a judge to determine what if any part of that statement is inadmissible. A statement is made by an accused at the police request. It does not matter if the statement is an admission or a denial of the crime alleged. If there is a trial the statement must be produced in evidence. It will be for the Judge to assess its importance as evidence at the trial."

(emphasis added)

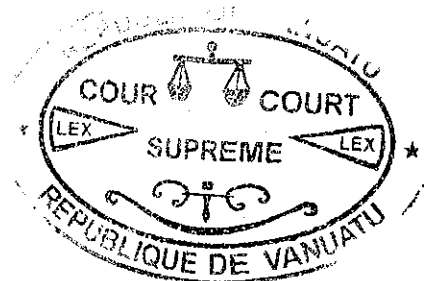
36. The defendant gave a detailed statement to the police on 8 September 2017. A record of interview under caution was also done on 19 September 2017. Both these documents were not produced at trial by the prosecution.

Findings

37. The findings which I make are first, Frida Samuel was not sick. She wanted the defendant to pray for her husband and child. After the first alleged incident in November 2016 she saw the defendant and his wife later and gave them bus fare to hospital and spoke to them. She then brought her whole family to church and was baptized and became a worker in the church. Her actions are contrary to a woman who was sexually harassed. As for the June incident the evidence is that she was on Malekula. Even then she continued to attend church and she returned to Santo to join others to welcome the regional evangelist.



38. Her actions clearly does not reflect the attitude of someone who says was forced to masturbate the defendant. I prefer the defence evidence to hers.
39. Katina Barry was not in the defendant's office because she went in for prayers. She was assaulted by her boyfriend and ran into the office to hide. Thereafter she continued to attend church after her alleged incident and brought her child for the defendant to pray over. Again her evidence does not reflect someone who was forced to touch the defendant's penis. She said the defendant also touched her breast but that was not the charge. I prefer the defence evidence to Katina's.
40. Russelline Lowane attended the church with her son. She was prayed for in the presence of the defendant's wife. She later attended baptismal classes and was baptized. She returned to Malekula. The defendant met her there in June and then all went to her brother's house for the defendant to pray for the family. She returned to church and attended children's day program. She spent the whole day and also carried the defendant's baby. The evidence does not support someone who was sexually harassed. She continued to attend the church after alleging what the defendant did to her. I prefer the defence evidence to hers.
41. Amilyn Tari could not recall the exact date of the incident. Catherine Poporo took her for prayers but Amilyn never told her or anyone about what happened. Amilyn told Jivi Mele that she discussed anointing with the defendant and the defendant's wife was present when she was with the defendant.
42. As a student of Matevulu College Joyline Rah did not report the incident to the principal or his deputy. She told her guardian and that was it. Someone told the police to go and see her. The Prosecution did not call her boyfriend who was also present in the principal's office with Ms. Jill when the defendant prayed for her. The principal confirmed that he was not aware of the incident until the defendant was arrested. I prefer the evidence given by the defence.
43. As for Sonia Douglas there is no evidence as to her age.



44. I am firmly of the view that this case was masterminded by pastor Rocha over leadership of the church. After he left the church then complaints or allegations of indecency were made against the defendant. A protection order was taken against him by his sister Leila for harassing her and stopping her not to attend the church [Exhibits 'D3'].

45. With the above findings, I am not satisfied that the Public Prosecutor has proved his case beyond reasonable doubt.

46. I therefore reach the following verdict:-

Count 1 – Not guilty

Count 2- Not guilty

Count 3- Not guilty

Count 4- Not guilty

Count 5 - Not guilty

Count 7 - Not guilty

Count 8 – Not guilty

Count 9 – Not guilty

47. The defendant is therefore acquitted accordingly.

DATED at Port Vila this 28 day of February, 2018.

BY THE COURT



D. ARU
Judge

