

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

**Criminal
Case No. 20/1842 SC/CRML**

BETWEEN: The Public Prosecutor

**AND: Silas Rovu
Defendant**

Coram: Justice Aru

**Counsel: Mr. L. Young for the Public Prosecution
Mr. R. Willie for the Defendant**

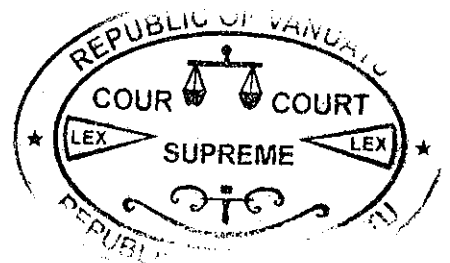
**JUDGMENT
(ORAL VERDICT)**

Introduction

1. The defendant and the three complainants are all from Port Olry, Santo. They are neighbours living in the same area where the offences are alleged to have occurred in 2018 and 2019.

Charges and elements

2. The defendant is charged with four (4) counts. Count 1 is an act of indecency without consent contrary to s 98 (a) of the Penal Code [CAP 135]. The essential elements of this offence are:-
 - a) A person
 - b) Committed an act of indecency
 - c) In the presence of another person
 - d) Without that persons, consent and he knew that the person did not consent
3. Count 2 is a charge of unlawful entry of a dwelling house contrary to s 143 (1) of the Penal Code. Elements of this offence are:-
 - a) A person
 - b) Entered a house with intent to commit an offence; and
 - c) The house was used for human habitation



4. Count 3 is an act of indecency with a young person contrary to s 98A of the Penal Code. The elements of the offence are:-
 - a) A person
 - b) Committed an act of indecency
 - c) In the presence of another person who is under 15 years
5. Finally count 4 is a charge of an act of indecency without consent contrary to s 98 (a). It is a similar charge to count 1 and the elements are the same.

Burden of Proof

6. This is a criminal case and the burden of prove rests with the prosecution. Section 8 of the Penal Code requires the prosecution to prove a person's guilt according to law beyond reasonable doubt.

Undisputed facts

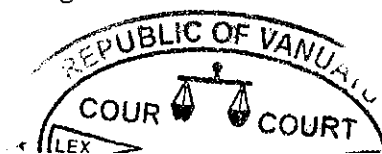
7. The three complainants and the defendant live at Port Olry, Santo. They are neighbours living in sector 1 of the village of Port Olry. Mrs Marie Christine Narguet the complainant in count 1 and 2 is married to Richard Narguet and they have four children. Two girls and two boys. The eldest a girl was 19 years old and the youngest a boy was 6 years old. At the time of the offending the complainant was sleeping with them in their room. The complainant in Count 3 whom I shall refer to as Ms LN due to her young age was at the relevant time 9 years old.

Evaluation of the evidence

8. The prosecution called 4 witnesses namely Marie Christine Narguet, Mr Richard Narguet, Ms LN and Mrs Christella Narguet. For the defence, the defendant gave evidence himself. His only other witness was his mother, Ms Estelle Rovu.
9. The defendant was informed of his rights both before the prosecution opened its case and before he made his defence.

Counts 1 and 2

10. As to counts 1 and 2, Mrs Marie Christine Narguet said they are close neighbours with the defendant. The entrance to their houses face each other. Her evidence is that between 21 April 2019 until the early hours of 22 April 2019 she went dancing at a

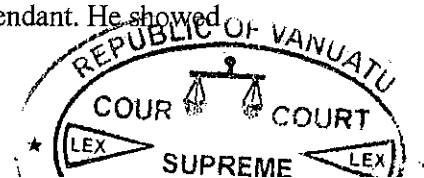


party in sector 1 and returned home around 3.00 am in the morning and went to sleep in her children's room with the children. She had a toothache. As she was going to sleep she heard a sound near her ear. She took her mobile phone from under her pillow and shone its light on a man's face and saw that it was the defendant. He had pulled his shirt over his back and his trousers were down to his knees. And he was masturbating his penis near her. With the light in his face the defendant grabbed the mobile phone and ran outside. She followed him and called out his name after him. He dropped the mobile phone near the door and ran outside. Her husband Richard gave evidence that he heard his wife. He was sleeping by himself in another room. He ran outside to his wife but the defendant had gone. It was moonlight and they saw someone standing in an unfinished house close to their house and when he shone his torch at the person he recognised him to be the defendant and when he called him the defendant ran away across the road into sector 2.

11. The next day he went to see the chief, who is the defendant's uncle to report what the defendant did. Later on that day Richard saw the defendant drinking with a few of his friends and approached him with a hammer to hit him but the defendant ran away. The defendant's mother stopped him saying that they were looking for money to pay for the fine. Richard said this was not the first time the defendant did such a thing to them.
12. The complainant and her husband Richard were both cross examined. Both maintained their evidence. In her evidence in chief the complainant described what she saw the defendant doing that he held his penis and was moving his hand on it.
13. The defendant denied that he entered the complainant's house. He said he was at a traditional men's shaving celebration and had a few drinks. His mother was with him. He said his mother left around 4.00 am and went home. When he returned home she was still in the kitchen and he spoke to her before going to bed. In the morning he said that the chief came to see him about the complaint but denied it saying he regarded Richard as his father '*olfala man*' and could not do such a thing as his children come to his house all the time.
14. He said later, Richard tried to attack him with a hammer but he ran. Estelle Rovu the defendant's mother said her son returned home after her and went straight to bed whilst she was still in the kitchen.
15. I prefer the evidence of the complainant and her husband. The complainant saw the defendant's face and her husband Richard heard the complainant calling the defendant's name from inside the house as he ran outside.

Count 3

16. Ms LN's evidence is that sometime in March 2018 she was playing with her sisters after school outside their house near their gate when she saw the defendant. He showed

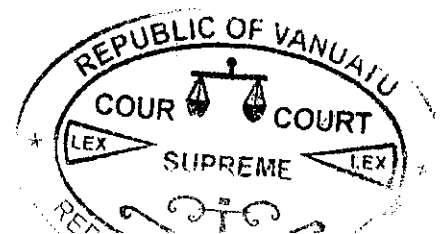


his penis to her through the window of his house. That he pushed his penis through the window then he pissed. When she saw him he stopped and his eyes were red. Under cross examination she maintained her version of events that the defendant showed his penis to her and when she saw him he stopped. She did not tell her sisters as she wanted to tell their mother first as what the defendant did to her was not good.

17. The defendant generally denied that he could not do such a thing to Ms LN as she was his niece. He said the matter was not reported to any chief as no chief went to see him about the complaint. Ms LN said she referred to defendant as her uncle and identified him in Court. The Prosecution requested a closed Court when she gave her evidence and her mother sat with her. There was no reason for her to make such a statement against her uncle unless it is true. She maintained her evidence under cross examination and was composed throughout.

Count 4

18. Mrs Christella Narguet said sometime in March 2018 she was sweeping outside her house in the morning. Her husband had gone to the garden and she was alone at home with their 3 year old son. Her house was about 5 meters from the defendant's house. Whilst sweeping she heard someone whistling. When she looked towards the main road there was no one. She heard the whistling again coming from the direction of the defendant's house. And when she looked she saw the defendant standing in the window of his house masturbating his penis towards her. She did not agree to what he was doing and she called out that the defendant was masturbating. At that instant he stopped. She demonstrated in court with her hands what she saw the defendant doing. She identified him as her neighbour and knows him because she sees him every day. Under cross examination she maintained her evidence.
19. The defendant denied that he masturbated to the complainant. He said that morning he was rushing to go to work as their truck was waiting for him. He was looking for his working clothes and his mother said they were hanging outside the house. His mother told him to push his hands through the window and to take his clothes. That's what he did then wore the clothes and went to work. After returning from work in the afternoon the complainant had reported the matter to one of his uncles who went to see him about it. He denied masturbating to Mrs Christella Narguet and told his uncle accordingly. Having seen and heard Mrs Christella Narguet giving evidence I prefer her evidence to the defendant. There was no reason for her to be making up the story against her neighbour and clearly demonstrated with her hands what she saw him doing.
20. The defendant's defence is that in relation to counts 1 and 2 there was a mistaken identity. And in relation to counts 3 and 4 he did not engage in any act of indecency or if he did he was not aware that it was indecent.



21. As to counts 1 and 2 the evidence of Mrs Marie Christine Narguet and her husband Mr Richard Narguet identify the defendant as the person who entered their house and masturbated near Mrs Marie Christine Narguet. They know him; he is their neighbour; they both saw him that night and Mrs Narguet called out his name when he was masturbating near her and he ran outside. Her husband heard him call the defendant's name. Mrs Narguet did not consent to his masturbation and he knew it as he snatched the mobile phone shining his face and ran outside.
22. The defendant entered the house with intention to commit an offence and the house was a dwelling house as Mr and Mrs Narguet were asleep inside with their children. In relation to counts 3 and 4 ignorance of the law is not a defence to any criminal charge. That is clearly stipulated in s 11 of the Penal Code. As to count 3, the defendant committed an act of indecency by showing his penis to the complainant. At that time Ms LN was under 15 years of age. As to count 4, the defendant committed an act of indecency by masturbating to Mrs Christella Narguet without her consent. He knew she did not consent as when she shouted at him he stopped masturbating.

Conclusion

23. The prosecution has proved all the elements of all four (4) counts beyond reasonable doubt.

Verdict

24. I return the verdict as follows:-

- Count 1 – guilty
- Count 2 – guilty
- Count 3 – guilty
- Count 4 – guilty

25. Bail is revoked and the defendant will be remanded in custody pending sentence.

DATED at Luganville, this 18 day of September, 2020

BY THE COURT

D. ARU ★
Judge

