

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

**Criminal
Case No. 21/3216
SC/CRML**

BETWEEN: Public Prosecutor

**AND: Fred John Tasaruru and Belinda John
Defendants**

Coram: Justice Aru

**Counsel: Ms. M. Taikie for the Public Prosecutor
Mr. J. Garae for the Defendants**

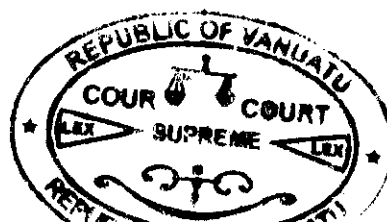
REASONS FOR VERDICT

Introduction

1. On 25 November 2021, I announced guilty verdicts on all the charges the defendants were charged with. Counsels were informed that written reasons were to be provided in due course. I now provide my reasons.
2. The defendants Fred John Tasaruru (Mr Tasaruru) and Belinda John (Belinda) are husband and wife. Belinda John calls the complainant her sister and calls the complainant's parents her father and mother as well. They are not blood related but they are very close to each other as a family. The complainant refers to Mr Tasaruru as her brother in law. On 3 to 4 August 2021 the defendants are alleged to have taken the complainant who is now 30 years old to Solomon Hill Guest house and had sex with her without her consent.
3. The complainant lodged a complaint with the police and the defendants were arrested and charged.

The Charges and elements

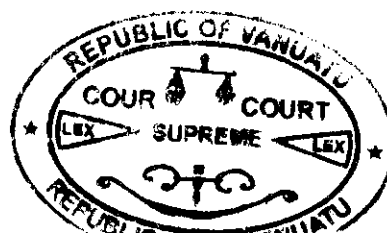
4. The charges filed by the Public Prosecutor are as follows:-
 - Count 1 – Sexual intercourse without consent (s90 a) of the Penal Code [CAP 135];



- Count 2 – Complicity (Aiding and abetting sexual intercourse without consent (s30 and 90 a) of the Penal Code;
 - Count 3 – Act of indecency without consent (s 98 a) of the Penal Code; and
 - Count 4 – Sexual Intercourse without consent (s 90 a) of the Penal Code
5. The defendants are jointly charged under count 3. Mr Tasaruru is charged with count 1 and Belinda John is charged with count 2 and 4.

Burden of Proof

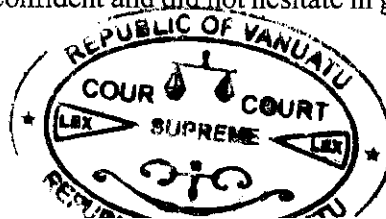
6. The burden of proof as required by s 8 of the Penal Code rests with the prosecution. It must prove the defendants' guilt beyond reasonable doubt. The defendants do not have to prove their innocence.
7. The elements of each offence requiring prove beyond reasonable doubt are as follows.
- Counts 1 and 4 (Sexual intercourse without consent)
 - a. The defendant had sexual intercourse with the complainant
 - b. The complainant did not consent
 - c. The defendant did not have a reasonable believe that the complainant consented.
 - Count 2 (Complicity , aiding and abetting sexual intercourse without consent)
 - a. Mr Tasaruru committed the offence of sexual intercourse without consent
 - b. Belinda aided and assisted Mr Tassaruru to commit the offence of sexual intercourse without consent.
 - c. And the offence committed by Mr Tasaruru was one that Belinda intended to be committed or was within the scope of what she foresaw that Mr Tasaruru would commit.
 - Count 3 (Act of indecency without consent)
 - a. Mr Tasaruru and Belinda committed an indecent act;
 - b. The indecent act was committed in the presence of the complainant;
 - c. The indecent act was committed without the consent of the complainant.



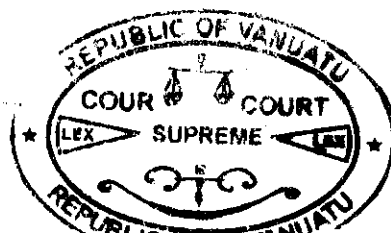
8. Before the trial began, the parties agreed and informed the Court that the only issue in this case is whether the complainant consented to the various acts allegedly committed by the defendants.
9. As such, the prosecution tendered a number of prosecution witness statements into evidence by consent. These witnesses were not called to give evidence and were not cross examined.
 - Peter Solway – Crime Scene Album [Exhibit PP3]
 - R Atkins – Medical Report [Exhibit PP4]
 - Rexley Moli [Exhibit PP5]
 - Nelly Jethro [Exhibit PP6]
 - Jethro Moli [Exhibit PP 7]
 - Nelly Andeng [Exhibit PP8]
10. Also tendered by consent were the records of interview of the defendants : Belinda [Exhibit PP1] and Mr Tasaruru [Exhibit PP2]
11. The prosecution called one witness, the complainant Ms Freeline Tari and she was cross examined.
12. For the defence, Mr Tasaruru elected to give evidence and was also cross examined. Belinda opted to remain silent.

Evaluation of the evidence

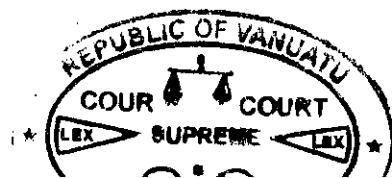
13. The defendants accepted that sexual intercourse and the act of indecency occurred as alleged but submit it was with the consent of the complainant. Consent in this case must be true consent and not one obtained through force, fear or use of alcohol or drugs. The consent must be freely given.
14. This is a criminal case, the defendants are not required to prove anything. The prosecution must prove that the complainant did not consent to the sexual activities. In relation to counts 1 and 4 the prosecution must also prove that the defendants did not have a reasonable believe that the complainant consented.
15. Defence Counsel submitted that the prosecution has not proved their case beyond reasonable doubt that the complainant did not consent to the sex .It was submitted that I should find the defendants not guilty.
16. This is a case which turns on the credibility of a witness. When I reach my decision as to whose evidence is more credible, I must reject the other. My decision must be reached solely based on the evidence placed before the Court and nothing else.
17. First is the complainant. She did not hesitate when recounting the facts especially details of the sexual acts involved. She was confident and did not hesitate in giving her evidence.



18. On 3 August 2021 around lunch time the defendants went to her house at Banban area and picked her up. They told her they will go to Beleru to clean their Kava gardens. As they headed into town in a taxi the defendants said they will get a "kale" to drink after kava then they will go to Beleru the next day. They bought a bottle of Hanappier then they went to Belinda's sister's house at Chapuis. Belinda then called her to help cut kava. Whilst cutting the kava, Belinda told the complainant that if her sister asked her (complainant) if she was Nelly's daughter she will say no. After cutting the kava, they took it for grinding then the defendants told her they will go to a quiet place with no noise to mix and drink the kava.
19. They then went to Solomon Hill Guest House. A lady opened the door for them. The room the defendants paid for was a single room with a married bed and a single bunk bed. Mr Tasaruru mixed the kava then they began drinking. She drank five times. As she was sitting down in the sitting room, Belinda came behind her and squeezed her breasts. She told Belinda that was the attitude of "pufas" and Belinda responded "yu spel". After they had their shower Belinda continued touching her breast and she told her she did not respect her as her sister. Later they both ate then they drank Hanappier mixed with splash.
20. They drank three rounds of hanappier from a 1.5 litre bottle and emptied it. After that she felt very dizzy and had an upset stomach "kat i tanem" and wanted to lie down. She lied down on the single bunk bed. Belinda went and touched her breasts and pushed her hands inside her (complainant's) trousers. She pushed Belinda out and sat on the bed. Mr Tassaruru entered the room and poured her more hanappier. She drank then laid down again as she had an upset stomach.
21. Belinda continued touching her breasts and pushing her hands inside her (complainant's) trousers and telling her to go and lie down on the big bed. She told Belinda the big bed is for Belinda and her husband. Belinda replied that Mr Tasaruru is their husband. Belinda told her that nobody will know if all three of them slept together.
22. The defendants switched off the light and both sat at each end of her bed. Mr Tasaruru was touching her breast and kissing her face. Belinda pushed her hands into her trousers and removed her trousers. She was crying and lying down. They removed her clothes then carried her to the married bed as she could not move. She was afraid they had smoked marijuana. It was her first time to witness such a thing and the defendants told her to be quite. Mr Tasaruru then took off his penis and pushed it into her mouth to suck it but she refused and Belinda also pushed her breast into her (complainant's) mouth to suck it but she was crying and closed her mouth. Mr Tasaruru then inserted his penis into her vagina and had sexual intercourse with her. When he removed his penis Belinda then sucked her (complainant's) vagina. All the time she was lying down crying and wanted to run but she did not know the area. The defendants told her to be quite as people could hear her.

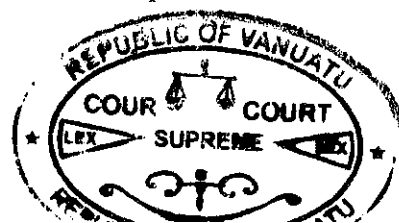


23. She begged them to leave her as she felt like dying. Mr Tasaruru told Belinda to bend over and he had sex with her. At the same time Belinda sucked her (complainant's) vagina. She tried to move but Belinda held her legs tightly and sucked her vagina. She was afraid they might hurt her and told them she wanted to go to the toilet. She went and hid in the toilet and tried calling her mother but it was late around 400am in the morning. She left the toilet and went and sat in the living room. The defendants called her to go back inside but she refused. Mr Tasaruru sent Belinda to get her but she refused. He then hit Belinda on the head. She told them she was hungry and they gave her left over food and watched her eat.
24. She then pretended to be talking on the phone and opened the door and went outside and called her mother and told her she was in a problem. Her mother told her to run away and find a taxi to get home. She ran out of the yard and onto the main road where she saw a taxi. She recognised it to be his father's brother, Rexley Moli's taxi. She called him by phone and he picked her up. On the way she told him what happened to her and told him to take her to her parent's house at Chapuis. On reaching her parents' house she told her mother what the defendants did to her and told her mother to tell Belinda to return her bag of clothes still in the guest house. When the defendants returned the clothes they had a meeting and her father Jethro Moli said as the defendants were their family, they will pay a fine of VT 10,000 and that will be the end of the matter. Mr Tasaruru gave her VT 5000 and both said sorry for what happened and that the other VT5000 will be paid later.
25. Later the defendants asked for the money to be returned but her father said the money will not be returned and the matter was reported to the Police. She maintained her evidence under cross examination.
26. It was obvious that the complainant was not comfortable being touched by another woman. A woman she regarded as her sister and her sister's husband. By then she was overcome by the mixture of kava, food hanappier liquor which caused her an upset stomach and immobilized her and causing her to lay down on the bunk bed. She clearly did not agree to what was happening to her and she was crying.
27. Sexual intercourse occurred after the defendants carried the complainant to the married bed. This was after the complainant had had five shells of kava mixed by Mr Tasaruru and three rounds of hanappier liquor.
28. The complainant's evidence that she did not consent to sex with the defendants is supported first by Nelly Jethro and Rexley Moli as witnesses of recent complaint. She tried calling her mother Nelly Jethro around 400 am but her phone was off. She was able to contact her mother the second time around 600am in the morning to tell her she was in problem. Nelly could tell the complainant was crying and her voice was shaking. She told the complainant to either find a way to escape and go to their house or she will go and get the complainant. The complainant told her mother she will find a way to run. After the complainant had spoken to her mother she called Rexley Moli to pick her up. Rexley Moli was driving his taxi in the early morning hours of 4 August around 7 am when he received a phone call from the complainant. She told him she was in a



problem and that he should pick her up. He picked up the complainant on the road near the cold room (mortuary) of the Northern Provincial Hospital and asked her about what happened. The complainant told him that the defendants took her to the guest house where they slept with her until the morning. He dropped the complainant at her parent's house at Chapuis.

29. The complainant reached their house and was crying and told her mother Nelly to call Belinda to return her clothes which were still at the guest house.
30. Nelly's evidence is that Belinda arrived with the complainant's bag of clothes around 900am and told her that "*mi save se hemi harem nogud long wanem we I happen last nait be bai mitufala I kam givim wan mani blo talem sori blo wanem I happen last nait*" She told Belinda she will inform the complainant and her father and get back to Belinda. She later called Belinda and told her they will have a family meeting to resolve the matter. The defendants arrived around lunch time and they had a meeting. It was agreed that they will pay a fine to the complainant. Mr Tassaruru gave VT 5000 to the complainant and they both said sorry to the complainant for what happened. The defendants said the remaining VT 5000 will be given later.
31. Later that night around 900pm Belinda called Nelly to tell her that Mr Tasaruru wanted the money refunded and the matter to be sorted out in Court. In the morning on 5 August Belinda arrived at her home to collect the refund but they refused and told her the matter will be dealt with by the Court.
32. I accept the evidence of the complainant as a credible witness. I reject the evidence given by Mr Tasaruru. His evidence of events leading up to the time before they drank kava more or less conforms with what the complainant said. He admits that sexual intercourse occurred but says it was the complainant who initiated it and agreed to have sex with them.
33. Having accepted the complainant's evidence I find that all along the defendants planned to have sex with the complainant when instead of going directly to Beleru they bought the Hanappier before going to Melinda's house. Although Mr Tasaruru said the space they slept in at Melinda's house was small and that they should go somewhere quite to enjoy the kava, that was a pretext to get the complainant to the guest house. The room the defendants paid for at the guesthouse was not two separate rooms one for the defendants as a married couple and another for the complainant, who is a 30 year old woman and is Mr Tasaruru's sister in law. The defendants paid for a small room for all three to sleep in with a married bed and a bunk bed as indicated in the crime scene album created by Sgt Peter Solwei.
34. The defendants plied the complainant with enough kava and hanappier which immobilised her and they took advantage of her. When the complainant sat up after Belinda had started touching her, Mr Tasaruru entered the room and poured more hannappier for her to drink. She felt more discomfort and layed down again. The defendants did not have a reasonable believe that the complainant consented to sexual



intercourse. The fact that they said sorry to the complainant and paid half of the fine is an admission of guilt that what they did to the complainant was wrong.

35. Nelly Andeng's evidence which was unchallenged showed that this was not the first time for the defendants to bring another woman to sleep with them at the guest house. They even invited her into their room but she refused for reasons that she was not a person who did such things.

Conclusion

36. For these reasons I found that the prosecution has proved the complainant's lack of consent beyond reasonable doubt. The complainant did not consent to sexual intercourse with Mr Tasaruru and Belinda and they did not have a reasonable belief that she consented (counts 1 and 4). Belinda aided and assisted Mr Tasaruru in having sexual intercourse with the complainant without the complainant's consent (count 2) and finally, Mr Tasaruru and Belinda committed an act of indecency by having sexual intercourse in the presence of the complainant without her consent (count 3).

Verdicts

37. I returned guilty verdicts as follows:-

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

DATED at Port Vila this 26th day of November, 2021

BY THE COURT

D. Aru
Judge

