

PUBLIC PROSECUTOR

- v -

KATIPA KEIMIT

Coram: *V. LunabeK CJ*

Counsel: *Mr Tristan Karae for Public Prosecutor
Ms Pauline Kaiwatman for the Defendant*

JUDGMENT ON VERDICT

Introduction

Katipa Keimit, this is the judgment on your verdict. You were charged with one count of sexual intercourse without consent, contrary to Sections 90 and 91 of the Penal Code Act. On 6 February 2017, you pleaded not guilty to the charge. A trial was required. Before the commencement of the prosecution case, your right of presumption of innocence was read and explained to you by the Court. You have confirmed to the Court that you understood it (section 81 - Criminal Procedure Code). The prosecution case then began.

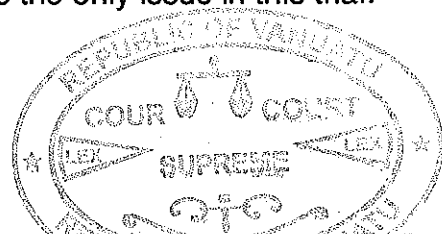
For obvious reasons, the names of the complainant girl will be omitted. She will be referred to by the initials (R.M.).

Prosecution case

The crux of the prosecution case is that on 11 April 2016, Katipa Keimit, you had sexual intercourse with the complainant (R.M.) near Itaita Pre-School area, Middle Bush, Tanna, and at the time of the intercourse she did not consent to have sex with you but you obtained her consent by force.

Contended Issue

Your defence lawyer informed the Court that on 11 April 2016 near Itaita Pre-School area, Middle Bush, Tanna, you had sexual intercourse with the complainant (R.M.) but it was a consensual sex. The consent is therefore the only issue in this trial.



Criminal Standard of Proof

In this trial, the law is that the prosecution must prove each and all essential elements of the offence charged against you on the criminal standard of proof of beyond a reasonable doubt. The standard of beyond reasonable doubt does not mean certainty. If I am not sure about your guilt, I must acquit you of the offence; if I have a doubt on your guilt and that doubt is a reasonable one, I must acquit you. If at the end of the trial, after I have considered and assessed the whole of the evidence and submissions of the prosecution and your defence lawyer and if I am not sure of your guilt, I must acquit you. But if I have considered and assessed the whole of the evidence and submissions of the prosecution and submissions of your lawyer and I am sure of your guilt in my conscience as a trial judge of fact, I must convict you of the offence charged against you.

Essential elements of offence

Before you could be convicted for the offence of sexual intercourse without consent, the prosecution must prove the following elements on beyond reasonable doubt:

1. You had sexual intercourse with the complainant (R.M.) on 11 April 2016.
2. The sex took place near Itaita Pre-School, area, Middle Bush, Tanna, when you penetrated the vagina of the complainant with your penis.
3. The complainant (R.M.) did not consent to have sexual intercourse with you on 11 April 2016 near Itaita Pre-School area, Middle Bush, Tanna at 7.00PM o'clock.
4. You had a reasonable belief that the complainant had consented to have sex with you on 11 April 2016 near Itaita Pre-School area, Middle Bush, Tanna.

The first two elements (1 and 2 above) are admitted by you. They are satisfied on the criminal standard of proof. The prosecution must only prove elements 3 and 4 on the required standard of proof of beyond reasonable doubt.

Summary of Prosecution evidence

The prosecution called four (4) witnesses. (R.M.) is the first prosecution witness (PW1). She is the complainant in this case. She gave evidence to the following effect. She says she is 18 years old. She is from Lounakel village. She is a year 10 school leaver. She attended RTC School for 1 year. In 2016, she attended PSA

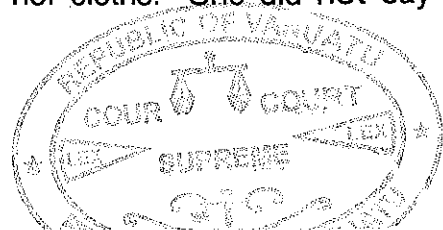


school at Lounawila village. She knows of Defendant Katipa Keimit as they live in the same village.

She gave evidence of the incident of 11 April 2016 and events before 11 April 2016, she met Katipa on the road after school. Katipa called and asked her to talk. Sometimes Katipa asked her for sex. Katipa asked her for sex on the road plenty of times. She said she refused and Katipa accepted. She said at one time she met Katipa after school. He asked her for sex and they had sex in the garden of a chief. Before the sex took place he gave her an amount of Vatu 1000. She did not say anything. He gave her the money and they had sex. She said she agreed to have sex with him. She said she had sex with Katipa 2 times before 11 April 2016.

On 11 April 2016, it was a Monday, she came back from a village (Loukantung) to charge a phone. She was alone. It was 7.00PM at night. She met Katipa on the road. Katipa came back from the nakamal. On the road, Katipa said the following to her: *"mi singaotem you you no wantem be bae you save mi naoia."*

She walked on the road to go home. Katipa blocked her on her way to go home. She wanted to go home but Katipa blocked her on the road. She demonstrated how Katipa blocked her on the road. She wanted to go on the right side of the road, Katipa blocked her, when she moved to the left side of the road, Katipa blocked her. The road she followed was a road used by vehicles. At that time there was no one else on the road apart from herself and Katipa. She said she was afraid. She explained she was afraid because Katipa was holding a knife and a piece of wood. She said she was afraid Katipa will cut her with the knife. Katipa blocked her way on the road for about 10 minutes. Katipa pulled her and pushed her head toward Itaita school. She demonstrated how Katipa pushed her head with the piece of wood and Katipa was behind her when he used the piece of wood to push her head with. She said Katipa also pulled her T-Shirt on the right side. She described that when Katipa pulled her T-Shirt, she was standing on her right side and pushed her on the side of the road in a bush beside Itaita school. She was afraid when they left the road to the bush. She said Katipa asked her for sex. She refused and told him *"Bae mi reportem you."* Katipa told her: *"Istret nomo you go reportem mi."* She explained that the reason for reporting Katipa was because he was forcing her at that time to have sex. Once at the bush, Katipa asked her to remove her cloths. She did not say



anything. Katipa wanted to remove her clothes. She told Katipa that she will remove her cloths. She explained that she did not want Katipa to remove her cloths. She told Katipa that she will remove her cloth herself. She explained that she did not want Katipa to remove her cloths. Katipa removed his trousers. He pushed her on the ground and had sexual intercourse with her. She said when Katipa had sex with her, she felt pain. She did not do anything. She said Katipa had sex with her two (2) times on 11 April 2016. He had sex with her first and stopped for short while and had sex with her again on the second time. She felt painful and she had just slept. After the second sex, she went home. After the second time sex, she told Katipa that if she returned home and they will ask where she was, Katipa told her that she would tell them that she was with him. Once home, she slept. It was late in the night.

The next morning, she reported the incident to the chief of the village, Chief Georges Iarapia. On 12 April 2016, in the morning, Chief Iarapia called a meeting. She told the Chief that she met Katipa on the road last night at 7.00 o'clock PM and Katipa forced her to have sex with him. She also said that she told one Sophie about the same incident in the morning. She slept with the said Sophie.

She remembered she filed a complaint to the police 2 days after. She recalled also she went to the hospital for examination. She mentioned Nurse Evelyne examined her and gave her a stick.

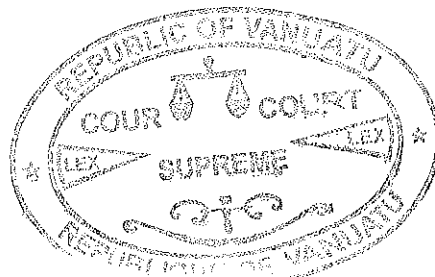
She was under intense cross-examination by the defence counsel. She confirmed before the incident of 11 April 2016, she had sex with Katipa 2 times only but not 6 times as suggested by the defence. It was pointed out to her that she made a statement to the police on 13 April 2016 and she said she never had sex with Katipa before 11 April 2016. It was put to her and she agreed that part of her statement was incorrect. She had sex with Katipa 2 times before 11 April 2016. She confirmed she was living with a member of her family to attend school. She knew Katipa before 11 April 2016. She was asked she denied they both met a lot of times. She denied she had a boy-girl friend relationships with Katipa. She accepted that before 11 April 2016, she and Katipa talked. She was asked she agreed that in the month of March 2016, she had sex with Katipa in the garden at night. She denied having sex the second time in the month of March at Katipa's House. She denied she had sex with Katipa in his house at day time. She denied she had sex with Katipa in all other



places and times except that she had sex with Katipa the second time before 11 April 2016 at Lolakuel close to a water tang. She confirmed Katipa gave her money of Vatu 1000. She said Katipa gave her 1000 Vatu on 2 separate occasions. She was questioned about her age, she accepted on 11 April 2016 she was over 18 years of age. She voted in January 2016.

On 11 April 2016, she met Katipa on the road. She saw Katipa on the road. He was returning from the Nakamal. He had a knife and a piece of wood (stick). There was no plan to meet. She was asked she denied that katipa wanted to talk to her about something. She denied Katipa wanted to talk to her about Samson Katipa, his junior brother. She denied Katipa wanted to talk to her about the story of affairs Katipa heard she had with Samson Katipa. She denied Katipa wanted to talk about that. She denied she went with Katipa freely at Itaita School area. She confirmed Katipa pulled her T-shirt and pushed her. She denied she walked free. She was afraid at the time. She accepted Itaita bush as was near the road (10 meters away). She denied there was a wood laying there. She said the area was planted with coffee. She confirmed on 11 April 2016 when she met Katipa on the road, it was about 7.00pm o'clock in the night. She denied Katipa asked her about the rumour or story of her having an affair with Samson Katipa. She denied Katipa asked her of the affair with Samson. She denied she admitted she had an affair with Samson. She denied she had a relationship with Samson Katipa.

She accepted Katipa was not going to vila but he just went to Tanna Coffee and he was coming back from Tanna Coffee. She denied Katipa felt bad when he heard about the rumours of her affairs with Samson Katipa. She denied Katipa asked her to stop their relationship. She denied she was sad. She denied she cried. She denied they sat close to each other. She responded she was just standing up. She denied they were talking when standing. She said Katipa asked her to have sex with her. She denied she cried and Katipa forgave her for what she did. She answered no. She denied they agreed to start a fresh relationship. She said it was not true. She denied the suggestion that Katipa met her and she willingly went to Itaita school to talk to Katipa. She said: "No hemi forcem mi lo time ia." It was suggested they had talked about the issue with Samson. She denied that. She denied she asked Katipa to forgive her.



She accepted that when they were at Itaita Katipa put his knife and the piece of wood (stick) on the ground. She accepted Katipa kissed her. She denied she kissed him too. She said Katipa only kissed her. Katipa asked her for sex. She said she refused. She said Katipa forced her to remove her cloths. She said Katipa forced her for sex. On the road he pulled her and pushed her to go to the push. It was suggested to her Katipa did not break her bra. She replied yes Katipa broke her red bra. It was put to her that she did not mentioned her bra in her examination in chief. She said Katipa pulled her on the road and as a result he broke her bra. She accepted she removed only her panty but she said Katipa removed her skirt.

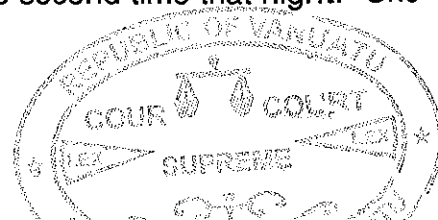
It was suggested they moved from the wood they were sitting on and moved toward the grass.

She denied. She said they were in the grass. It was suggested she laid on the grass. She said: *"No. Hemi pushum mi igo daon lo grass"*. She accepted Katipa left his knife and piece of wood he was holding. It was suggested Katipa slept on top of her for sex and kissed her. She said yes but she did not kiss him. She said he penetrated her vagina with his penis.

It was suggested to her that at the time of sexual intercourse, she did not cry out or shout. She replied: *"Mi no cry mi fraet from knife blo hem stap close up nomo lo hem"* she repeated: *"Mi no cry from se mi fraet lo knife we istap close up lo hem"*.

She accepted after the first incident of sexual intercourse, Katipa had a short break and started again to have sex with her the second time. She confirmed that on 15 April 2016, four days after 11 April 2016, she was accompanied by her father and Chief Iarapia to the police station and lodged her complaint to the police. She was asked and she said she mentioned in her report that Katipa had sexual intercourse with her twice on 11 April 2016. She was asked whether she was "dead sleep" as stated in her statement to the police. She explained that she meant she was awoken, she just closed her eyes when Katipa had sex with her.

She denied they told stories. She said she told Katipa of what she will tell those with whom she was staying as to her whereabouts. She said Katipa told her to tell them that she was with him. Katipa had sex with her again the second time that night. She

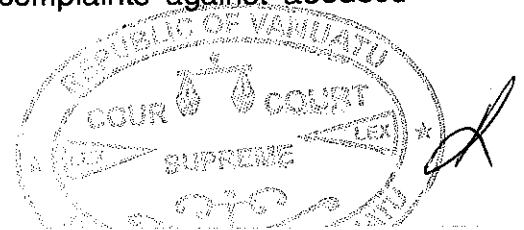


accepted she did not cry or called out. After the sex she went back home. Katipa walked behind her.

She was asked if Katipa knew that their encounter was a problem until the chief called the meeting the next morning. She answered by saying "si". She accepted she was worried of what the family she was staying with will say. She was asked she said she reported the matter to the chief the next morning. she could not do it in the night because it was late. She said Katipa attended the meeting called by the Chief

Chief Georges Iarapia was the second witness (PW2). He is the Chief of Louniwala village. He was asked if he knew of the complainant girl. He said "*mi no save hem*". But he said yes he knew Katipa. Katipa is from his village. He denied he knew the girl complainant. But he accepted he saw her. Sometime she came to his village but her village is far away. He said he did not remember the complainant complained to him of what Katipa did to her on 11 April 2016. He accepted he came to the police station at Isangel, Tanna and made a report to the police. But he explained that the report he made was about a problem in which Katipa was involved but the girl complainant was a different girl. It was about the complaint of Maki. He remembered he came to lodge the complaint to police officer John Roy. John Roy took his statement. He said he lodged a complaint against Katipa based on alleged incident he had with a small girl (Maki). He said he did not make any other statement. He confirmed that he had lodged a complaint against Katipa on the incident involving Maki. He did not make a statement about the current complainant when cross-examined.

Police Corporal Napuati John Roy is the third probation witness (PW3). He serves as a police officer serving in criminal investigation department (CID) for almost 20 years. He is a corporal. He gave evidence of his experience in dealing with serious type offences such as sexual offences, violence and sexual abuses – Handling more than 20 cases. He investigated the complaint made by the complainant in this case. She said her complaint was that Defendant Katipa wiped her with a stick – had a knife with him and forced her to have sexual intercourse with him. He confirmed he interviewed Chief Iarapia. Chief Iarapia took the complainant of this case to him at the police station and lodged the complaint against Katipa about the complainant in this case. He said Chief Iarapia come and made 2 complaints against accused



Katipa. One of such complaints of Chief Iarapia involved the complainant in this case. The other was the incident involving Accused Katipa and a different girl. He conducted interview with Chief Iarapia in respect to the other complaint too. He interviewed Accused Katipa about that other complaint too.

In cross-examination, he confirmed he took the statement of two complainant (RM). He confirmed he took the statement of chief Iarapia. He took the statements of two different complainants against Accused Katipa. He confirmed he took the statement of Katipa cautioned him of his rights. Katipa admitted he had sex with complainant (RM). He did not see any bruises. He said the complainant (RM) told him that Accused Katipa tore her bra but he did not see the broken bra.

Evelyne Naru is the last prosecution witness (PW4). She gave evidence to the following effect. She works at Lenakel Hospital as a senior mid-wife. She works for almost 20 years. She described her qualifications and experiences. She examined the complainant (RM) few days after the incident. She provided a medical report. There was nothing to assist her. She got information from the history of the events.

She was cross-examined. She examined the complainant (RM) on 18 April 2016. She said she examined only the complainant's private part. There was no sign of injury. She was questioned she said she mentioned the complainant was under age based on the information he got from the complainant's relatives that the complainant was born in 1998. She did not see any swelling on the body. There was no bruises.

That is the prosecution evidence and the end of prosecution case.

Court ruling pursuant to section 164 Criminal Procedure Code Act [Cap136].

At the end of the prosecution case, the Court ruled that a case was made out against Defendant Katipa. The Defendant is required to put forward his evidence. Section 88 of the Criminal Procedure Code Act was read and explained to him. His right to remain silence and the consequence of it were also explained to him. In the event that the Defendant calls witnesses or gives evidence himself on his own behalf, the Defendant and his witnesses shall be cross-examined by the prosecution and the court shall assess his evidence and evidence of his witnesses on the same footing as



evidence of any prosecution witness. The Defendant understood his right thereunder.

Defence case

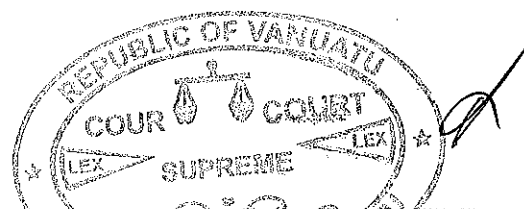
The defence case is this:-

The Defendant is charged with sexual intercourse without consent, contrary to sections 90 and 91 of the Penal Code Act. The defence said that there was consent between Defendant Katipa and the Complainant (RM) in the night of 11 April 2016 at Itaita Pre-School area before sexual intercourse occurred between the Defendant and the Complainant. The Defence said the Defendant did not force the complainant for sex. Sexual intercourse was consensual between them on 11 April 2016. Defendant Katipa exercised his right to give evidence himself on his own behalf.

Summary of Defence evidence

Katipa Keimit gave evidence on his own behalf. His evidence is to the following effect. He is from Louwilak village, Middle Bush, Tanna. He was a francophone class 6 leaver. He came down from Port Vila to Tanna before January 2016 to take part in the elections campaigns. When he arrived he saw the complainant was in his village. He said when he saw her he asked her for friendship. He asked her for boy-girl friend relationship. As his girlfriend, they have sex. He said they have sex 6 times. Before sex, they met and planned for sex. He said the complainant is his girlfriend. He described they told stories, talked and had sex together. He said he paid for her loan in the shops. He gave her money, paid her skirt and helped her on her schooling.

On 11 April 2016, after gardening, he went to the Nakamal in the evening. At about 7pm o'clock he returned from the Nakamal. On his way on the road he met the complainant. He said when he saw the (RM) complainant, what he had in his mind was to ask her about what he heard in the village that the complainant had an affair with his junior brother Samson Katipa. He said he wanted to ask her whether or not it was true. He said he asked her and she admitted it was true. He said at the time he had a knife and a piece of wood with him. He described how he approached her. When he wanted to talk to her, the complainant did not do anything. Then he said he pushed her head to a place where they can fix his concerns. He said when the



complainant tried to go on the other side of the road, he blocked her so that they settle what his thinking were. He said they went to a place near Itaita pre-school. They sat on a fallen tree. He said he put the knife and the piece of wood and they talked. He said he questioned the complainant as to why she did this to her. He said the complainant admitted to him that he had an affair with his junior brother Samson. He said the complainant told him that she did it because when he decided to go to Tanna Coffee he did not ask her. He said he told the complainant that he gave her money and did good things to her and he was not happy of what she did with his junior brother. He said the complainant cried and told him to stop doing the same thing again. Then he said he forgave her. He told her that he did not want they started again their relationship and she will go behind him again. He said the complainant told him she will stop *"passing on his back."*

Then he said he asked her for sex. They kissed each other and he asked her for sex. He said he asked her for sex and he said she agreed. He said she removed her trousers. Then he clarified she removed her panty. He removed his trousers. He said she laid on the grass and he had sex with her for about 2-3 minutes. He said they stopped. He did not wear his trousers. She did not wear her panty. He said the complainant told him of the concerns that if they will ask of her whereabouts, he said he told her to tell them that she was with him. He said he had sex again with the complainant. He said they both enjoyed the sex. After sex they returned to the road and walked home. He estimated the time between 8.30PM – 9.00PM o'clock. The place where they had sex was 10 meters away from the road. He said the next time he met the complainant was in the meeting at 7.00am o'clock. The meeting was called by chief Iarapia. He said at the meeting, the chief asked the complainant and the complainant said she was with Accused Katipa. The chief asked him and he said he was with the complainant. He said after the meeting, they told him they will come to make a complaint to the police against him.

He was cross-examined. He said he is married to a woman since 8 years. They do not have children. In 2016, he came back on Tanna to help with the campaigns. He met the complainant at that time. He said he asked the complainant for friendship on March 2016. He was asked and he agreed that he has relationship with another complainant (M) before March 2016. He was confronted with the evidence of the complainant (RM) that she did not have relationship with him. He said the complaint



is his girlfriend. As to the relationship of the complainant and his junior brother he heard this in the house after he returned from Tanna Coffee. He accepted he felt bad when he heard this. He accepted he did not go to the complainant's house and raised his concerns. He accepted he felt bad because of this. He felt bad because he spent money on her.

It was put to him that when he tried to talk to the complainant in the evening of 11 April 2016 at 7.00PM, the complainant did not want to talk to him. She wanted to go home. He accepted that. He accepted also that he blocked the complainant on the road not to go home. He accepted that he pulled the t-shirt of the complainant. He accepted that he pushed the head of the complainant with the piece of wood so that she followed him. He also accepted the suggestion that instead of talking to the complainant on the road, he pushed her head and pulled her to the bush. When it was put to her that his thinking is to have sex with her. He denied that.

It was put to him that the complainant said that he pulled her to go to the bush. He accepted – he was asked:

“Q. You hollem 1 wood mo stickem head blo hem (complainant).”

“A. Yes. Mi stickim head blo hem.”

“Q. Why you no save stanap lo road blo stretem issue blo smol brata blo you.”

“A. I gat ol man oli walkbaot lo road.”

“Q. The complainant italem se lo naet ia ino gat any man lo road. Why you pullum hem lo bush?”

“A. Mi harem nogud. Mi talem blo mitufala go stretem issue ia.

It was put to him and he denied that he pulled and pushed the complainant in the bush for sex.

It was put to him that the news or rumours about the complainant having an affair with his small brother is made up. He denied and said he heard that in the house. He denied the complainant was afraid of him that night. He denied he gave money to the complainant to obtain sexual favour. He was asked and he confirmed the evidence of the complainant that she told him that she will report him. He confirmed that he told the complainant to report him. He denied that when he pulled the



complainant to the bush and when he pushed the complainant's head with the stick wood, she was afraid of him.

In 2016, he said he had sex with the complainant 6 times. It was put to him and he accepted that since you got sex with the complainant in his thinking, he thought that when he wanted to have sex with the complainant he can have sex with her anytime he wants.

He was asked and he said the complainant also enjoyed the sex.

He confirmed that the chief called a meeting in the morning. Full members of the community attended the meeting. He also accepted that the complainant and his family lodged the complaint against him. He said he thought the complainant (RM) in this case only will lodge a complaint he did not think that the other girl also will lodge another complaint against him.

DISCUSSION ON EVIDENCE: ASSESSMENT AND CREDIBILITY

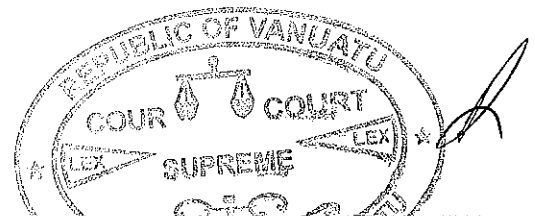
I have assessed and considered the evidence and I make the following findings:-

The complainant and Defendant agreed that before 11 April 2016, they both had sexual intercourse. The complainant said she agreed to have sex with Defendant Katipa two (2) times before 11 April 2016 but she denied she had sex with Defendant Katipa 6 times as alleged by him.

On 11 April 2016 at about 7.00 pm o'clock in the evening, the complainant on her way home after charging a mobile phone in another village, met Defendant Katipa on the road. He was coming back from the Nakamal. It was not a planned meeting.

The complainant's evidence was that the Defendant asked her for sex on the road. She said he forced her for sex from the road to when they were in the bush area near Itaita Pre-School. Defendant Katipa held a knife and a stick (a piece of wood).

When he asked her for sex, she refused. He started to force her from the road for sex. She told him she was going to report him because he forced her for sex. Defendant Katipa told her: "*Istret nomo you go report mi*". He confirmed saying so in



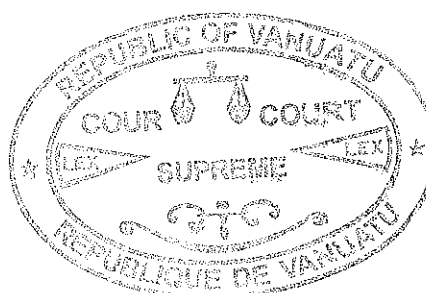
his cross-examination. On the road the complainant refused to have sex with Defendant Katipa on 11 April 2016. She tried to go home. Defendant Katipa blocked her on the road. When she went on the left side of the road, he blocked her. When she went on the right side he blocked her. Defendant Katipa confirmed this evidence in his cross-examination.

Defendant Katipa used the stick (piece of wood) to push the head of the complainant to a bush. He pulled her t-shirt to ensure she went to the bush. Defendant confirmed this in his evidence and cross-examination. In evidence in chief, he admitted that he pulled her t-shirt and tore her bra (although it was not shown in exhibit). The complainant confirmed that when he pulled her to the bush, Defendant Katipa broke her red bra.

The complainant said there was no man walking on the road at that time. She said she was afraid of the Defendant because he had a knife. She said because he had a knife, she said she did not say anything.

Once in the bush near Itaita Pre-School, the complainant was standing. Defendant Katipa asked her for sex. She refused. Defendant Katipa wanted to remove the complainant's cloths. The complainant refused Defendant Katipa to remove her cloths. She removed her panty herself. Defendant Katipa removed his trousers. He pushed the complainant on the ground and penetrated the complainant's vagina with his penis. The complainant felt painful in her vagina. She closed her eyes when Defendant Katipa had sex with her. She felt painful, closed her eyes but made no noise as she was afraid of the Defendant. Defendant Katipa put his knife and stick beside him on the ground when they were in the bush and he had sex with the complainant.

Defendant Katipa has sex again with the complainant on that night of 11 April 2016. Again she felt painful, closed her eyes but made no noise. She was afraid of the Defendant. She told Defendant Katipa of her concerns if they returned home and they asked of her whereabouts, he told her to say that she was with him. She returned home after 9.00 pm o'clock and she went directly to sleep. She said it was too late for her to report the Defendant.



The next morning she reported the matter to the chief of the village, Chief Iarapia. Chief Iarapia called a meeting attended by all members of the community at 7.00 o'clock am the next morning.

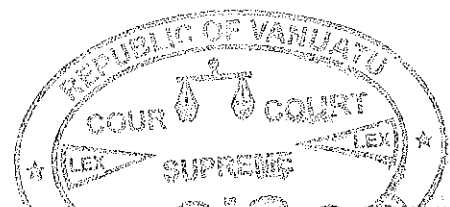
She told the chief that she met Defendant Katipa on the road on 11 April 2016 at night. Defendant Katipa forced her to have sexual intercourse with her. The chief decided to report the matter to the police.

On 13 April 2016, chief Iarapia, the complainant and her father came to the police station at Isangel, Tanna, and lodged a complaint against Defendant Katipa. She made a statement to the police. The chief also made a statement to the police.

Police officer, Corporal Napuati John Roy was responsible for the investigation. He prepared a statement of the complainant and a statement of chief Iarapia. He said on 13 April 2016, chief Iarapia came to the police station at Isangel, Tanna, and lodged two (2) separate complaints. One complaint was in respect to the current case and the other complaint was in respect to the another complainant (Marki). Chief Iarapia said he remembered of the statement he made in respect to the complainant (Marki) because she is from his village. He did not know and did not remember about the complaint and the statement he made about the complaint in this case. I find it was an unfortunate oversight on behalf of the chief. The following said chief Iarapia made a statement in this case: the complainant, Defendant Katipa and police officer Napuati John Roy. I believe their evidence to this effect.

Defendant Katipa's evidence was that he blocked the complainant not to go home, he pulled the complainant and broke her bra, he pushed the complainant's head with the stick (piece wood) to settle the rumour he heard about the complaint having an affair with Katipa's junior brother. He felt bad and wanted to resolve that first.

I reject that version of fact from the Defendant. I believe the complainant's version of events. She insisted from the start that Defendant Katipa asked her for sex when he met her on the road on the night of 11 April 2016 until he forced her to go to the bush and pushed her on the grass and had sex with her. On the road when he forced her for sex, she told him she will report him. She did this the very next morning. The defence tried to say that the complainant had changed her story. I believe the



complainant on this point. The defence never challenged the evidence of the complainant on this aspect of evidence.

As to corroboration aspect of this type of case, I think it is discretionary for a Judge to warn himself of the danger of convicting an accused person on uncorroborated material evidence. In appropriate case, the Judge will warn himself as a matter of practice.

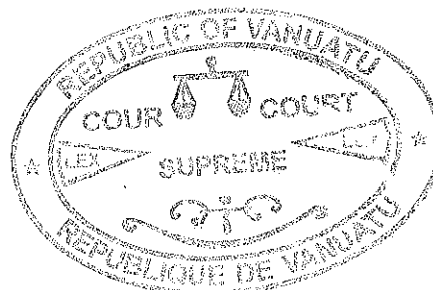
In the present case, I think the complainant could speak the truth and she speaks the truth when she said she did not consent for Defendant Katipa to have sexual intercourse with her on 11 April 2016. The evidence confirmed this. Before 11 April 2016, she admitted she agreed to have sex with Defendant Katipa 2 times but on 11 April 2016, she refused to have sex with him and he forced her to have sex with him as she testified in her evidence. Her consent was obtained by force.

I do not believe the Defendant's evidence that on 11 April 2016, the complainant consented to have sex with him. I warn myself of the danger of convicting Defendant Katipa on uncorroborated evidence of the complainant alone. Consent means the complainant said yes, she willingly, agreed to have sex with the Defendant on that time. The evidence from the complainant were to the contrary and I believe her on her accounts of what took place on 11 April 2016.

I am satisfied beyond reasonable doubt that the complainant did not consent to have sex with Defendant Katipa on 11 April 2016 at 7.00PM o'clock.

There is also evidence and Defendant Katipa admitted that since he had already sexual intercourse with the complainant, in his mind he could have sex with the complainant anytime he wanted to have sex with the complainant. That was what he did in his actions on 11 April 2016 amounting to obtaining the consent of the complainant by force.

It is rational to infer that at any time he wanted to have sex with her, he could have sex with her whether the complainant gave consent or not. That was his state of mind and believe.



I am satisfied beyond reasonable doubt that Defendant Katipa did not have a reasonable belief that the complainant had consented to have sex with him on 11 April 2016 at 7.00PM o'clock in the night.

The evidence was to this effect on the first incident of sex.

On the second incident of sex between Defendant Katipa and the complainant, it is noted that what Defendant Katipa was charged with was the first incident of sex. Defendant Katipa was not charged with the second incident of sex on 11 April 2016. If there were a separate count or charge, I should hold that the status of the complainant after the first sexual intercourse with Defendant Katipa would be that she would be submissive but not consenting. I take it that the second incident of sex on 11 April 2016 was not the subject of the charge against Defendant Katipa. It was not material. The findings were made in respect to the first incident of sexual intercourse on 11 April 2016.

I find Defendant Katipa guilty on the charge of sexual intercourse without consent, contrary to ss. 90 and 91 of Penal Code Act and I convict him accordingly.

DATED at Isangel, Tanna, this 10th day of February 2017

BY THE COURT



**Vincent LUNABEK
Chief Justice**

