

PUBLIC PROSECUTOR

- v -

MALAO JEAJEA

Coram: V. LunabeK - CJ

Counsel: Mr Damien Boe for Public Prosecutor
Mrs Jane Tari for Defendant

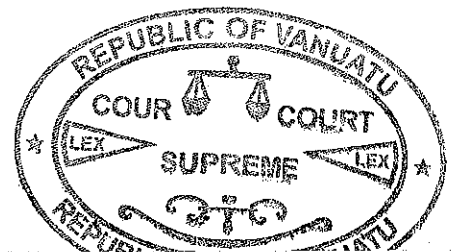
Date of Trial: 27 – 29 June 2017

Date of Verdict: 7 August 2017

REASONS FOR VERDICT

1. The Defendant, Malao Jeajea, is charged with one count of Sexual Intercourse without consent, contrary to ss.90 and 91 of Penal Code and one alternative count of unlawful sexual intercourse, contrary to s.97 (2) of Penal Code.
2. He pleaded not guilty to these 2 counts as charged against him.
3. He was tried on these counts from 27 - 29 June 2017 at Luganville, Santo.
4. This is a criminal trial. The prosecution is required to prove each and all essential elements of the offences in counts 1 and 2 beyond reasonable doubt before the Court can convict the Defendant on the principal count or on the alternative count.
5. The burden is on the prosecution from the start to the end of the trial. It does not shift on the accused.
6. The prosecution has to prove following elements of these offences beyond reasonable doubt:

In count 1: Offence of Sexual Intercourse without consent, contrary to ss.90 and 91.



1. Defendant had sex with the complainant at Malo Island on September 2016.
2. Complainant did not consent to have sexual intercourse with the Defendant on September 2016 at Malo Island as alleged.
3. Defendant did not have any reasonable believe that the complainant consented to the sexual intercourse as alleged.

In alternative in count 2: Unlawful Sexual Intercourse, contrary to s.97 (2)
Penal Code:

1. Defendant had sexual intercourse with the complainant on the month of September 2016 at Malo Island.
 2. At the time of the sexual intercourse, the complainant was under the age of 15 years old.
7. At the beginning of the trial, a challenge arises as to the admissibility of the cautioned statement of the defendant when the police officers obtained the defendant's admission of the offences as alleged on 8 November 2016. I decided to deal with this challenge together with the trial and I will make a ruling on it when I will consider the evidence at the end of the evidence and trial (although a voir dire before the substantive trial seems to be the usual way). Both Counsel accept it as the way forward in this case.

The Prosecution case.

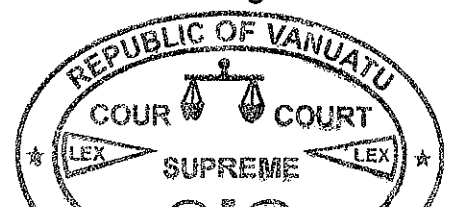
8. The thrust of the Prosecution case is this. It is the prosecution case that sometimes in September 2016, the defendant had sexual intercourse with the complainant girl without her consent. It is said the sexual intercourse took place in a coprah shed. The complainant girl and her auntie Sylvie went to the coprah shed to prepare some Natangura leaves for the Defendant. Sylvie needed bamboos. While she was away cutting bamboos for the Natangura leaves, Defendant Jeajea came, held on the complainant, fastened her mouth and her two hands with a white calico, pulled her in the coprah shed, and pushed her on the ground. He removed the complainant's cloths and removed his own and had sexual intercourse with her. After sex, he removed the white calico from the hands and mouth of the complainant and run away. The



complainant saw blood in her vagina. As a result of sexual intercourse, her vagina was swollen up. She was admitted to Northern hospital at Luganville, Santo for 2 weeks from 19 September to 30 September 2016.

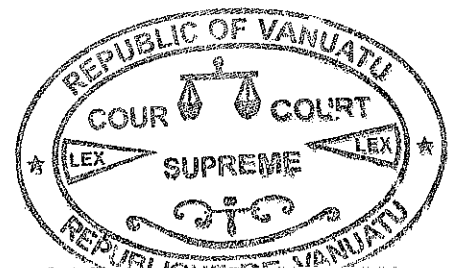
The evidence for the prosecution.

9. The prosecution called seven witnesses. Police officer Solwie Peter is the first prosecution witness. He is stationed at Luganville police station and works at the criminal investigation department over 9 years. He is a crime scene officer and also an arresting officer. He arrested Defendant Jeajea on 8 November 2016 Nanuku village on Malo Island. He explained the process he and others followed to arrest the Defendant. He said he explained the allegations to the Defendant, cautioned him and explained his rights to him. He escorted the Defendant to Luganville, Santo after the arrest. He detained him in cell No.6. He was not cross-examined.
10. Police constable Reshama Malsege is the second prosecution witness. She was an investigating Officer for 4 years. She investigated cases of sexual offences. She was the cautioning officer and she conducted the interview of the Defendant. She was in the interview with Sergeant Jameson (her supervisor). She explained how she cautioned the Defendant at the police station. She explained his rights to him.
11. The Defendant was not clear of his rights; she went back and explained his rights again to him. She said she told the accused that everything that he said must be the truth. If he did not want to say anything it is alright. But anything he said will be used in Court. She said that what she explained to the accused was in the cautioned statement of the accused dated 8 November 2016. The cautioned statement was showed to her. She identified it with the signature of the accused. She said the Defendant made admissions that he had sexual intercourse with the complainant as alleged.
12. She said he agreed and signed the cautioned statement. She said there was no force at that time. She said she was a female officer, she explained to the defendant who is a male of his rights. She said she talked to him she did not threatened him. She did not give any money to induce him in admitting the

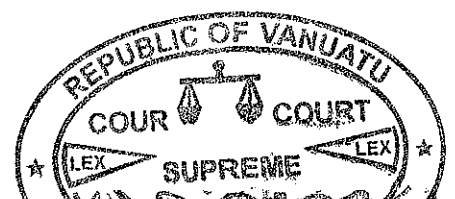


offence. After she took his cautioned statement, the defendant was put into cell # 6 and she applied for his remand.

13. She saw the defendant again when she conducted an interview of the Defendant when he was at the correctional centre in Luganville. She conducted the interview with Sergeant Jameson, she said at the time of interview the defendant denied that he had sexual intercourse with the complainant. She said she told him he has the right to say anything. She will only write down what he said. She identified and recognised the records of interview she conducted.
14. She explained how she conducted the interview of the defendant she said she explained the allegation to the accused. She cautioned him; she asked him if he agreed she asked him further questions. The Accused agreed. She asked him further questions on 23 November 2016. She asked him questions related to the stories of the complainant; she said the Defendant said the allegations made by the complainant against him were not true. She did not force her to deny the allegations. The record of interview (ROI) is tendered and marked (Exhibit P1).
15. Constable Reshama was cross examined. She was questioned on the time she took to take the cautioned statement of the Defendant. She agreed it was about 24 minutes. During the 24 minutes she wrote 10 lines words in the statement. That was the cautioned statement of the Defendant. She said she made a statement of how the cautioned statement of the accused was made and the accused' confessions of the offences as alleged. She denied when the cautioned statement was made, Sergeant Jameson was standing. She denied when she questioned the accused if he had sexual intercourse with the complainant the accused first said no. She denied that the Defendant tried to tell them of his versions of facts that the allegations were not true but Sergeant Jameson stopped the accused to talk.
16. She admitted that Sergeant Jameson played recorded voice of the complainant to the Defendant during the cautioned statement of the Defendant.

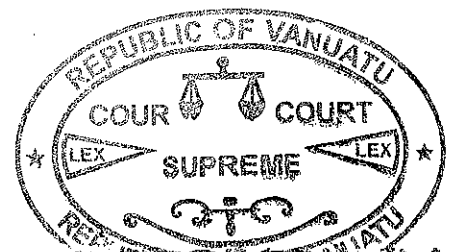


17. She admitted also that Sergeant Jameson told the Defendant that the defendant lied but what the complainant said was true.
18. She denied they told the defendant he laid on 3 different occasions.
19. She denied at the time of taking the cautioned statement of the accused they did not give time or not allow him to put his versions of facts. She admitted that at the time of cautioned statement, the defendant did not have a lawyer.
20. She denied she did not set out the process they followed in the cautioned statement of 8 November 2016. She denied the defendant was crying at the cautioned statement. She denied the defendant felt helpless because when he tried to tell them of his side of facts, they did not listen at the defendant.
21. She denied Sergeant Jameson sat down next to the defendant and stirred at him. She denied Sergeant Jameson slapped the defendant. She denied she did not read back the cautioned statement to the defendant. She denied that the defendant did not know that he signed his confessions in the cautioned statement.
22. She was re-examined. She said Sergeant Jameson did not slap or did not threaten the defendant. The defendant was not crying at the cautioned statement. She said she made a statement with the effect that she stated to the defendant of his rights.
23. The cautioned statement of the accused of 8 November 2016 was conditionally admitted and marked as (IFM - P2) on the admissibility challenge submissions.
24. Sergeant Jameson Stephen is the third prosecutions witness. He is a police officer for 23 years. He was in charge of the morality section of the police investigation unit for 7 years. He supervises that Unit. Three Officers work with him in that Unit.
25. In this case he accompanied the arresting officers at Malo when they arrested the defendant. He witnessed the cautioned statement of the accused. He was



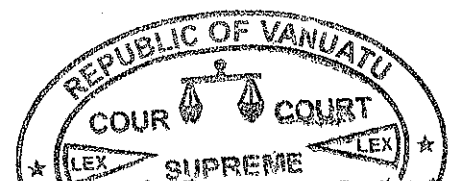
also present in the record of interview of the accused. He said the allegations were mentioned to the defendant during his cautioned statement and the caution was about the defendant's rights which were mentioned to him. He denied that at the time of the caution of the defendant there were no force or threats used. He denied that at the cautioned statement of the defendant he slapped or wanted to slap the defendant. He said after the cautioned statement, the officer read back the statement to the accused. He denied he talked strongly to the defendant at that time. He said this case was not his case.

26. He said he was there and heard when officer Reshama questioned the accused of the allegations. He said the defendant admitted the offence. At the record of interview he was present. The interview was conducted at the correctional centre. Officer Reshama conducted the interview. There was no force nor threats or inducement. The accused exercised his rights. The accused did not cry during his cautioning statement.
27. He was cross-examined. It was put to him that during the taking of the cautioned statement of the accused, he had a small tape recorder; he recorded what the complainant said. He denied he had one.
28. It was put to him that he did use a phone and played a recorder of what the complainant said when the defendant was cautioned and the defendant heard what the complainant said. He also denied that. It was put to him that the defendant tried to tell them of his version of fact 3 times. He denied. It was put to him the defendant said he did not have sexual intercourse with the complainant as alleged. This witness said he admitted. He said the defendant admitted he had sexual intercourse with the complainant. At the time, he said he sat down in the room. He denied he hit the table when the defendant tried to tell them of his side of the facts that he did not have sexual intercourse with the Defendant. The second time the defendant tried to say he did not have sex with the complainant, he denied that he told the defendant it was not possible.
29. The third time the defendant tried to say he did not have sexual intercourse with the complainant, he denied that he played the phone record in which what



the complainant said was recorded. He denied that he told the defendant that he could not lie and he must answer.

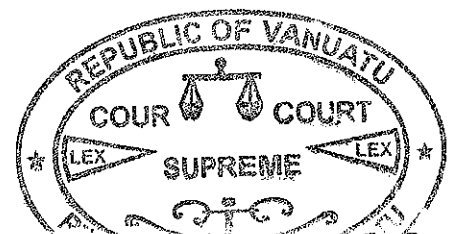
30. He was asked whether the defendant felt helpless because he could not say that he did not have sex with the complainant because they could not hear him. He explained it was the first time this defendant came inside the police station. He told him to feel comfortable before they started. It was said at the time of reading the cautioned statement, they did not ask him if he needed a lawyer. He said the cautioned statement was read out to the accused. He said they told him of his right to have a lawyer. He admitted that when the accused made admission in his cautioned statement, he did not have a lawyer. It was put to him and he agreed the defendant came from a local setting. He was not comfortable when he came inside the police station.
31. He was re-examined. He denied he had a tape recorder at the caution statement of the defendant. He denied also he hit the table as it was not his attitude.
32. The next prosecution witness was the complainant. She gave her name. She is 14 years. In 2016, she was 13 years old. She gave the name of her village (Tawifield), her mother and father including her two brothers and two sisters. Her parents live at Shark Bay. She lives on the island of Malo with her Bubu (Grandmother) Forbane. Her uncles and aunties also live with her in the village. Sylvie is the wife of her uncle Philimon. She was a class 6 school leaver. She was in class 6 in 2016.
33. In September 2016, she attended class 6. She was at home during weekends. On a weekend in September, her auntie Sylvie asked her to follow her (Sylvie) to fetch Natangura leaves at a coprah shed in the bush.
34. When they arrived at the Coprah shed, her auntie told her to wait for her at the coprah shed. Her auntie went and cut some bamboos to help fetching the natangura leaves.
35. She was waiting for her auntie at the coprah shed. Then she was surprised that Malao came behind her. He held her tied. He fastened her mouth and her



two hands with a white calico (10cm wide and 15cm length as assessed after her description). He took off her clothes. She wore a black t-shirt and blue sport wear. He put his "bol" inside her private part. He was just standing up when he took off of his clothes. He wore a red trousers and a black shirt.

He opened her legs and pushed his "bol" into her private part. He was on top of her when he put his "bol" inside her private part for some time. She said he was 10 centimetres from her when he removed his clothes. She said she saw his private part and described the defendant's private part by showing her four fingers. She said after the sex, Malao removed the calico (tissue) from her mouth and hands and he then run away.

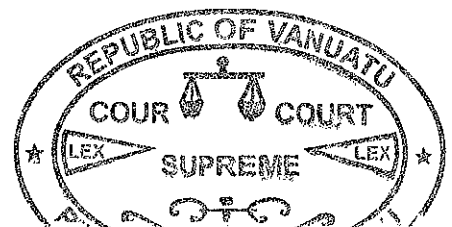
36. She said the sex occurred in the morning only of that day. It happened at the coprah shed. The coprah shed was built with wooden material. The roof is made of Natangura leaves.
37. When Malao run away, she sat down and cried. Her auntie arrived. She said her auntie told her to get up they will go home. They arrived at the house at lunch time. She went and slept because her private part was painful. She did not notice anything on her private part at the time.
38. The next day, her Bubu saw that she had difficulty to walk properly she asked her: "you stap wokbaot nogud from wanem?". She said she was so frightened. She told her Bubu that she felt on a nakatambol root tree. She said she said that to her Bubu because she was afraid that if she said what really happened to her, her uncles will assault her. Her Bubu checked her private part. At that time her private part was swollen up. She said her private part was swollen up because Malao pushed his "bol" inside her private part. Her Bubu tried to get a truck to transport her to the clinic/dispensary. It was dark. They got a transport the next morning. She said the truck was John's. The truck came to Tauwified village. The colour of the truck was white camion. The owner of the truck is from Nanuku village. Her Bubu and uncle Edmond carried her and put her into the truck. They went to the Avunatary dispensary. Her Bubu was with her in the truck. It was in the morning at the dispensary; they checked her and sent her to the hospital at Luganville. A boat took her from Malo to Santo. Her Bubu and the two nurses followed her on the boat. An ambulance came and



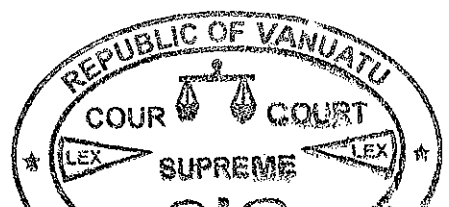
took her to Luganville Hospital. Her Bubu was with her in the ambulance. The two nurses left her at the ambulance and went back on the boat to Malo.

39. She went into the ambulance in the afternoon to the hospital. At the hospital, the doctor checked her. They pushed her on a wheel chair. She said the doctor who examined her was a fat lady.
40. She said when the doctor examined her, the doctor asked her if a man had spoiled her. She said she told the doctor that she felt on a Nakatambol root because she was afraid. The doctor examined her private part. The doctor asked her again "you wan man i spoilem you?" she said she had fallen on a Nakatambol root. She said she said that because if she said what really happened to her, she was afraid that her uncle will assault her.
41. She was in the hospital for two weeks. Then her Bubu asked her to return with her back to Tawified village on Malo. She refused. She said she will go and stay with her mother at Shark Bay.
42. She was asked why she refused to follow her Bubu to Malo she answered: "Mamy blong mi italem se bae mi no follem Bubu blong mi igo back long Malo." She went then to Shark Bay for one week. Then she said Stelin and Melanie came to Shark Bay too.
43. In an afternoon toward the evening, she was with her mother and Steline and Melanie in her mother's kitchen. Steline asked her: "you ino gat wan man ispoilem you?"
44. She then told them that "Malao noa hemi spoilem mi". She explained that Malao pushed his "bol" inside her private part. After she told them of this, she cried because she felt it was shameful and they all looked at her. Her mother told her to stop crying.
45. The next day her mother took her to the police station. At the police station, she saw a woman police officer who assisted her to lodge her complaints against defendant Malao Jeajea.

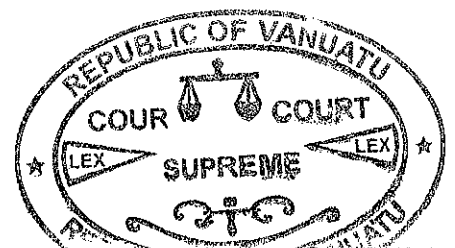
46. After she lodged her report, her Bubu asked her to return with her in Tawifield village on Malo Island.
47. She was asked she confirmed that after the defendant had sex with her and after he run away, she saw blood in her private part.
48. She said her auntie took some time to cut the bamboos. On her return, her auntie saw she was crying. She did not ask her why she was crying. She did not tell her auntie of what the defendant did to her because she was afraid.
49. The complainant was cross-examined. She said when she arrived at the Avunatari dispensary, she did not tell the nurses that Defendant Malao had sexual intercourse with her.
50. She accepted she did not tell them that Malao pushed his "bol" into her private part. She accepted she did not tell them that Defendant Malao had fastened her mouth and hands. She accepted she did not say that Malao pushed her on the ground where the coprah shed was and had sex with her. She accepted that she only said that she felt on a Nakatambol root. She accepted that her Bubu told the nurse that she (the Bubu) did dig yams while she (complainant) was playing "le lou" with two others and she climbed a tree and felt and hurt her body on the root of the tree. She accepted that she never told her auntie Sylvie that Malao had sexual intercourse with her. She accepted she did not tell her Bubu that Malao had sex with her. She accepted also that she never told the doctor that a man called Malao had sexual intercourse with her.
51. It was put to her she denied that the story she said she felt on the root of nakatambol tree is the true version of what happened to her. She said no.
52. It was put to her she accepted she said she felt on the nakatambol root. In her statement in court she said Malao had sex with her. She accepted she was admitted in the hospital from 19 September to 30 September 2016. She accepted she was with her Bubu in the hospital. She accepted she never said Malao had sexual intercourse with her.



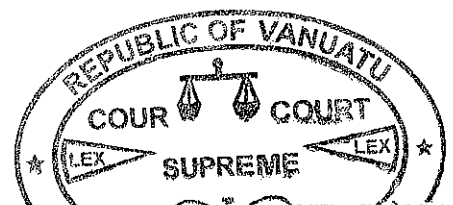
53. She accepted the doctor asked her if a man had sex with her she said no. She accepted the doctor asked her twice and she said no to the doctor.
54. It was put to her that the first version of event when she said she felt on the Nakatambol root was the true version of what happened to her. She denied by saying no.
55. It was suggested to her that when she came out from the hospital and went to stay with her parents at Shark Bay a different version came up. She said yes.
56. It was suggested to her and she accepted that Steline asked her several times "something wrong wetem you?" She accepted that Steline forced her to tell her a story. It is suggested and she accepted that because Steline forced her so much she mentioned the name of a person who had sex with her.
57. It was suggest to her that Steline was the one who made her to say what she told the court today and it was true. She accepted that suggestion by saying yes.
58. It was suggested and she denied Malao ever come to Tawifield to see her Bubu after she had returned to Malo with her Bubu.
59. It was suggested to her that she said Steline forced her until she mentioned the name of Malao. She denied and she said she did not say that.
60. It was suggested to her that Malao will give evidence and will say that he did not have sexual intercourse with her. She said Malo had sexual intercourse with her on the coprah shed.
61. It was suggested that Malao will say he did not fasten her mouth and hands. She said Malao had fastened her mouth and her hands.
62. It was suggested he will say he did not push his private part inside her private part. She said he pushed his private part inside her private part.
63. It was suggested that Malao will say that on that day he was attending the Sanma Day. She said he lied. He did come up to the bush.



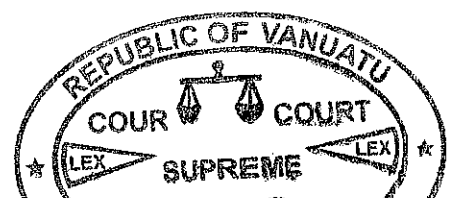
64. It was suggested to her the truck was for Philimon she said it was John's.
65. She was then re-examined. She confirmed that on that day Malao came to the bush. It was one morning. she and her auntie went to the bush she said: "Malao i ron i come mo fasten mouth mo hand blo mi."
66. She said she did not tell that Malao had sex with her because if she said that Malao had sex with her her uncles will assault her.
67. She confirmed that at Avunatory Dispensary she did not say that Malao had sex with her.
68. She confirmed that the doctor asked her twice but she did not tell her that Malao had sex with her. She was afraid of telling the nurses or the doctor because she was afraid she will be assaulted.
69. She said Steline asked her at Shark Bay and she decided to tell them what happened. She said she was afraid of telling what happened to her when she was on Malo because she was afraid she will be assaulted.
70. She was informed that the defendant will come and testify in Court so why she said he had sexual intercourse with her. She answered: "From se hemi igat sex wetem mi lo bed coprah blo hem. Hemi i fashem mouth mo hands blo mi."
71. Sylvie Abraham was the next witness. She is married to Philimon of Malo. She lives with her Husband on Malo Island. They have 4 children. On September 2016, her uncle Malao told her to fetch his Natangura leaves in the bush at his coprah shed. She went with the complainant to the coprah shed. There were no longer any bamboos left. She told the complainant and her little daughter to stay and she would go and cut some bamboos. She went and cut the bamboos. On her return to the coprah shed, she saw the complainant was bent down, tears of her eyes were falling down. She was crying. She asked her she did not respond. She asked her the second time, she did not respond. She asked her the third time, she did not respond. She said they all returned home.



72. When they arrived at their house, her husband told her to go back to the garden. She went back to the garden with her husband. When they returned from the garden, they met the complainant's Bubu who asked for the complainant. She told her she did not know where she was. She then added she did not know that the complainant was sleeping. The complainant heard that her Bubu asked for her she run outside to her Bubu. Then her Bubu went to the kitchen while the complainant went back to the main house (sleeping house). After she came back from the garden she went to the kitchen to do her cooking, the complainant came out from the sleeping house and came to her.
73. She said when the complainant came, she held on "long bone blong ass blong hem mo stap rappem olsem." (She described how the complainant did this). She said she asked the complainant what was wrong. The complainant told her "auntie mi harem se nowia hospital"; she asked her what was wrong with her. The complainant told her she needed to go to the hospital. The complainant's grandfather told them to give her some medicine. Then her Bubu wanted to assault her. She saw the complainant she felt sorry for her. The complainant told her to follow her in the sleeping house. When they went into the sleeping house, the complainant was wearing jeans trousers. She told her to help her removing her trousers because it was hot. She helped her removed her jeans trousers. The complainant told her to take the oil and to apply on her private part. She applied the oil on her private part. She said she saw the private part of the complainant was blackened and "i hang igo daon." The complainant's Bubu said they will call big mother (Jenny) to come and see the complainant. Jenny came and saw the complainant. Then Jenny took a leave and spat on the complainant's private part to ease the swollen effect. The complainant was crying and they took her to the hospital. She said the complainant did not tell her of what was the cause of the injury to her private part. She asked her but the complainant did not tell her.
74. Sylvie was cross-examined. She confirmed that when she went to the coprah shed, she went with the complainant and also her little daughter. She confirmed when she went to cut the bamboos, she left the complainant and her little daughter at the coprah shed. The place she went to cut the bamboos

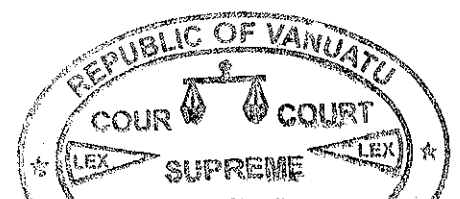


- was close to the coprah shed. She described the distance to be between 7-8 meters. She said she went for a short time and a shed came back. The short time might be 5 minutes. When she returned after she cut the bamboos, the complainant and her daughter were there. She asked the complainant three times what was wrong with her.
75. It was suggested to her that the complainant said she never asked her what was wrong. She said she asked her.
76. When they walked back to the house, the complainant walked normally. The house was a long way to the coprah shed. It was suggested and she accepted that. When they walked home she did not see that the complainant had any difficulty walking.
77. When they arrived at the house, the complainant went sleeping. When her Bubu asked for her she ran outside to her.
78. It was suggested to her and she accepted that when she went with her husband to the garden, the complainant and her Bubu went to cut the firewood.
79. When they came back home, the complainant held the bone of her buttock that it was painful. At that time the complainant was wearing jeans trousers.
80. It was suggested and she accepted that at that time, the version of event was that the complainant had climbed a tree and felt on a nakatambol root. She said that version was the one said by the complainant and her Bubu.
81. Sylvie was re-examined. She confirmed that the complainant and her Bubu cut firewood when she came back from the garden with her husband.
82. Steline Rocky was the next witness. She lives at Pepsi, Santo with her mother. She finished school at class 6. On the month of October 2016, she was at Shark Bay with the complainant, Melanie and the mother of the complainant. She saw the complainant walking difficultly by opening her leg. She asked the complainant if a man had spoiled her. She asked her twice.

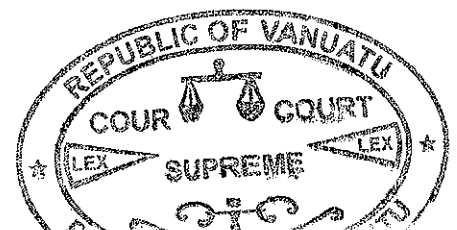


She said the complainant cried and told them that Malao had sexual intercourse with her.

83. Steline was cross-examined. It was put to her that she forced the complainant to answer the questions. She denied she forced the complainant when she asked her questions. She had just asked her of what happened to her. She repeated she did not force her. It was put to her that she was the one who put the idea that the complainant had sex with Malao Jeajea. She denied by saying no. She denied that the version of event that Malao Jeajea had sex with the complainant is her thinking. She denied this and said no.
84. She was re-examined. She confirmed that it was the complainant that said that Malao had sexual intercourse with her.
85. Melanie Tamata was the second last prosecution witness. She is a secondary student. She is a year 12 student. She confirmed they were in the kitchen when Steline asked the complainant of what happened to her and the complainant said Malao had sex with her. She was not cross-examined.
86. Doctor Wilma Luan was the last prosecution witness. She graduated with Bachelor of Medicine- Surgery at the University of Papua New Guinea. She is specialized with pregnant women and children. She works at Children ward at the Northern Hospital. She worked on 19 September 2016. She checked the complainant on 23 September 2016 at surgical ward. The complainant was in a wheel chair and could not walk. They cannot put her on top of a bed. It was so painful for her. She only examined her in the wheel chair. When she examined her, her legs were opened. The complainant cannot close her legs.
87. She examined her private part. There was a clog in her leg as a result of injury the blood vessel went underneath the skin. She could not do anything as it was so painful. She asked for the personal staff to apply ice on it to reduce the swelling. She asked the complainant a few times "i no gat 1 man i makem you?" The complainant denied at the time. But she said to her experience, any injury to private part of a child is sexual assault until proven otherwise. When the complainant went to bed, she could not see her anymore but the Surgeon looked after her. On 30 September 2016, she was discharged.



88. She confirmed her medical report. It contained her findings. On 30 September 2016, the complainant was not cooperating.
89. She examined the complainant she said the injury sustained could not be as a result of the complainant falling down of the tree as the swelling should not be like that. On 31 October 2016, what she saw was when the complainant's body was relaxed and not tied, she could see inside the vagina. An object penetrated the vagina and there was a tear. She explained that the body of the children are soft and fragile. If an object entered the vagina, the vagina must be broken. On her examination one thing went beyond. She could not say what but something went inside the vagina. That was what she wrote in the medical document.
90. Doctor Wilma Luan was cross-examined. It was suggested that by taking oil and rapped on her private part and if they were careless, might cause severe injury. She said if it was at the time it would not be to that degree. It was suggested to her that the rapping of oil or the use of herbs on the private part of the complainant may cause the vagina swollen. She said she could not agree because the degree of the injury could not correlate with the suggestions.
91. It was suggested that it was possible that if the complainant felt down on a distance and a sharp object entered into the vagina and cause injury. She answered if the object is a sharp object, it might. She examined the complainant two times. The first time when she was in the ward, she denied that she was sexually assaulted. The second time she was present with a police report, she denied when she made the report on 31 October 2016. The medical report is exhibited (P3). That was the evidence of the prosecution.
92. At the end of the prosecution, the court ruled that a case was made out against the defendant. The defendant was then required to put forward his defence. Section 88 of the CPC [Cap 136] was read and explained to the defendant and he understood them before the defence case began.

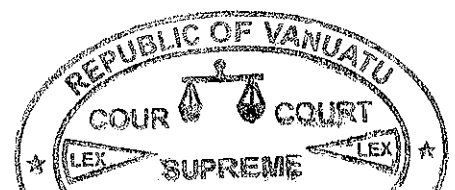


The Defence case

93. The defendant elected to give himself evidence on his own behalf. The case of the defence is that the defendant is charged with serious charges. The defendant Malao Jeajea denies the allegations made against him. The defendant will give evidence and will attest to the fact that in September 2016, he never had sexual intercourse with the complainant at the coprah shed as alleged. The defence will call a second witness – the nurse Stephen Vire who stationed at Avunatary, Malo. He will give account to the first visit of the complainant at the clinic.

The evidence for the defence

94. Malao Jeajea gave evidence to the following effect. He is from Nanuku village on Malo Island. He is 43 years old. He is married and has 3 children only one of his children still attends school. He is a member of Presbyterian Church. His high level of education is class 6.
95. On September 2016 he was on Malo. He denied that on September 2016 he had sexual intercourse with the complainant. He said the allegation that he had sex with the complainant was not true. He explained that he said it was not true because on that day all of them attended Sanma Day Celebration. They played Volley-Ball, football and other sport activities.
96. He denied he went to the bush at the coprah shed. He denied he fastened the mouth and the hands of the complainant.
97. He denied he opened her legs and pushed his private part into the complainant's private part. He said the coprah shed is for his father not his.
98. He said he had heard the allegations that he had sex with the complainant at a church meeting at Nanuk village. He said he heard from a man first who told him. He said he laughed as he thought it was a joke. Another man told him of the same allegations again. He said he felt bad about it. He went to Tawifield village to find out more. He walked 1 or 2 hours to go to Tawifiled villlage and to find out of these allegations. When he arrived at Tawifield he saw Sylvie

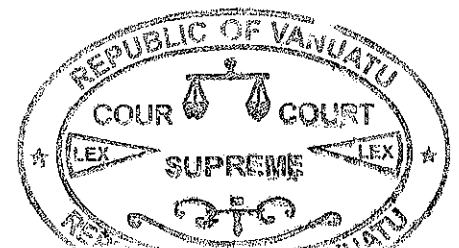


and asked for Forbane. Sylvie told him she did not know where she was. He said he saw the complainant and her Bubu. He said he asked the complainant to call her Bubu to come to him. He said Forbane told him that she also heard the allegations but she and the complainant and two other children (bubus) went and cut firewood. The complainant and two others played. They chased the complainant. The complainant climbed a Nakatambol tree and fell down by sliding off her body on the root of the nakatambol tree.

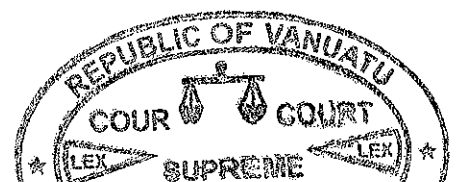
Then he told Forbane to call the complainant. She sent her two grandchildren to call the complainant who was at her big uncle's house. When the complainant arrived, he asked her. He said the complainant told him because Steline never stopped asking her whether or not a man had spoiled her so she said she mentioned his name (Malao). He said he told them he will report them to the chief.

99. He described how police arrested him. He was arrested in the night when he was sleeping. Police took him in the mission and they told him of the allegations. He said he wanted to tell them of his side versions of facts. They told him he will talk once at the police office in Santo. They took the boat to Luganville. There were different police officers who arrested different people also at the same time. They drove them to police station at Luganville. He went inside the police office and the woman CID asked him to make a statement. He said he made his statement to the middle he did not finish. They stopped him. He said he told them of his version of facts and he said police officers did not believe him as they told him what he said was not true.

100. He said they told him that he raped. But he said he told them it was not true. When he continued his side version of what he said happened, they stopped him again. He said they stopped him twice. Then they took a phone and played what the complainant said and they told him to stop lying. When he said it was not true, they wanted to slap him. That caused him to cry and the tears of his eyes were coming out of his eyes. He said the woman officer played the phone. Jameson hit the table and wanted to slap him. After he cried they told him he must only admit. This was what the complainant said. He tried to tell them of his side version of the facts, they talked at him and he told them: "ok istret , youfala i putum olsem tingting blo youfala."



101. After that he said he told the two police officers put what you wanted. The female police officer wrote down something on the paper and passed it on him to sign. He said when he started to talk at the police office, the female police officer did not write. He said the female police officer did not read the statement back to him. She just wrote it and pushed it on him to sign. He said he did not know what he was signing at the time. They took him to police cell # 6.
102. The same police officers came back to see him 2 or 3 weeks after to take his statement at the correctional centre. At the correctional centre, they were quiet and he said he told them of his complete side version of the allegations. He said the two officers told him why you did not tell them of what he told them at the correctional centre. He responded that they made it too strong for him to give his side story. He denied that the women police officer just explained his right to him. He said police officers argued and confronted him.
103. He made two statements. The first statement contained his cautioned admission of the allegations; and his second statement he denied he had sexual intercourse with the complainant as alleged. He said the second statement, he made at the correctional centre was the true version of his position and situation.
104. Defendant Malao Jeajea was cross-examined. He said the celebration for Sanma Day lasted for 1 week. In September 2016, he confirmed he was on Malo Island. He said he did not see the complainant falling down from a tree. But he said that was what the complainant and her Bubu said. He was asked and he said he heard they said he had sex with the complainant, he was not angry but he was following the story to find out if it was true. He accepted Sylvie is his uncle. He denied the complainant is a small girl. He accepted when he came to the police station, he made a statement. He made another statement at the correctional centre. He denied he admitted he had sex with the complainant at the police office. He accepted that the story he told the police officers at the correctional centre was different from the story in his cautioned statement taken at the police station. He accepted that he made two different statements with two different versions. But he maintained that in his first statement, police officers forced him to admit the allegations. It was



pointed out to him that the police officer who took his cautioned statement was a female police officer who took his cautioned statement, he was a mature male. But he maintained his evidence as to how they dealt with him. It was put to him and he denied he went to the coprah shed; he denied he blocked the mouth of the complainant; he denied he fastened the mouth and hands of the complainant with a white calico; he denied he was wearing a black t-Shirt at that time; he denied the size of his penis is like the complainant's four fingers; he denied he had caused bleeding in the complainant's vagina. He denied that he had raped her. He was then asked:

"Q. You hearem Bubu blo hem italem seh hemi foldaon lo nakatambol?"

A. Bubu blo hem nao istap storian olbaot lo mifala lo Malo se ifoldaon lo nakatambol."

105. It was put to him and he said it was not true that he raped her and it was not true that he had spoiled her vagina.
106. Stephen Vire is the second and last Defence witness. He is the nurse stationed at Avunatari Health Centre. He is from Ambae Island. He worked for 7 years at Avunatari. He practiced as a nurse for 25 years. He testified that on 19 September 2016, between 12.00PM – 1.30PM in the afternoon, the complainant was transported by a truck to the clinic. The truck stopped outside the clinic. He went and looked on the complainant girl. He asked of the history of what was wrong to the girl. He asked the complainant's Grandmother and she said the complainant's private part was swollen up. He said he asked the grandmother of the complainant about the cause of the injury. He said the grandmother told him that they went and cut firewood. The complainant played with others. The complainant climbed a tree and fell down and slid off her body on nakatabol root.
107. He was cross-examined. He was asked he confirmed the complainant's Bubu told him of what caused the injury on the complainant's body. He accepted he did not examine the complainant.
108. This is the end of the evidence of the Defence and the end of the Defence case.



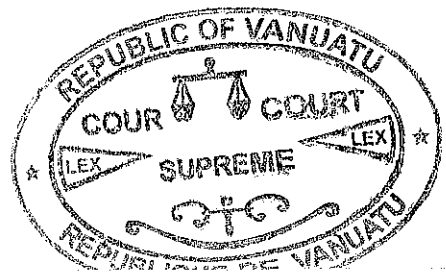
Discussion on evidence

The challenge on admissibility of the caution statement of the defendant dated 8 November 1016

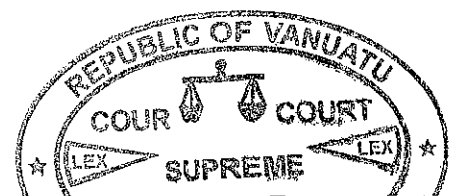
109. I deal first with the admissibility of the caution statement of the Defendant through the evidence of Police Officer Constable Reshama Malsege. At the end of the Prosecution case, the caution statement was conditionally admitted. Upon further consideration at the end of the trial, I think it must be rejected for the following reasons:
110. Based on the evidence, I am satisfied it is obtained by some type of inducement through the playing of the recorded voice of the complainant to what she said the defendant did to her to the defendant at the time of the taking of his statement under caution. This was coupled with added pressure on the defendant to admit the offence. There was evidence that one of the police officers told the defendant to stop telling lies because what the complainant said was true. This is not the role of the police to assess the truthfulness of the statement obtained when collecting evidence in criminal investigations. That is the ultimate function of the court. I am satisfied the Defendant wanted to tell his version of what happened. He was not allowed or was not listened to. The caution statement of the defendant containing his admission of the offences was not voluntarily obtained. It is therefore rejected as inadmissible.

Findings and credibility

111. I heard and considered the evidence in this case as I have summarised them. The following facts are found:-
112. On or about the end of September 2016, the complainant with her auntie Sylvie and Sylvie's little daughter went to the bush to fasten Natangura leaves for the Defendant at a coprah shed. The defendant told Sylvie to fasten natangura leaves for him.at that coprah shed.

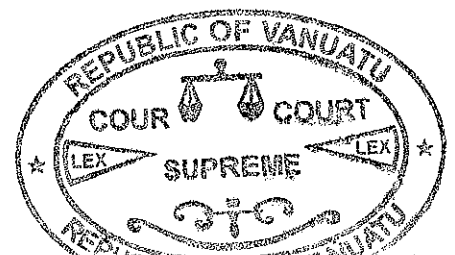


113. As there were no more bamboos, Sylvie decided to go and cut bamboos to help fasten the natangura leaves. The complainant and Sylvie's little daughter stayed at the coprah shed.
114. When she returned to the coprah shed she saw the complainant was bending her head and she was crying. The tears of her eyes were fallen down from her eyes. She asked her of what happened to her, the complainant said nothing. Sylvie told the complainant and her little daughter to go home. They all went back home. The complainant went to sleep.
115. The complainant said while Sylvie went to cut the bamboos, Defendant Malao came and held her. He fastened her mouth and her two hands with a white calico. He took her in the coprah shed and pushed her on the ground. He removed her clothes. She was wearing a black t-shirt and sport wear. The defendant removed his cloths. He was wearing a red trousers and a black T-shirt. It was a morning day. She saw the private part of the defendant like her four fingers. He opened her legs. He pushed his private part inside her private part. He had sexual intercourse with her for some time. After the sex he removed the white calico from her mouth and hands and run away.
116. The complainant's vagina was swollen. She was admitted to Luganville hospital for 2 weeks from 19 to 30 September 2016.
117. After she was released from hospital, she refused to go back to Malo with her grandmother. She decided to go to her mother at Shark Bay, Santo. She went to stay with her mother for a week at Shark Bay. It was during that week that she told Steline of what really happened to her which was that Malao Jeajea had sexual intercourse with her at the coprah shed in the bush. She told Steline of what happened to her in the presence of her mother and Melanie. There was no force applied by Steline to force the complainant to tell them of what was really happening to her. It was easier for the complainant to reveal what was really happening to her when she was at Shark Bay. It was difficult even impossible for the complainant to say what really happened to her when she was on Malo. The complainant gave herself the reason she could not tell anyone on Malo including her auntie Sylvie, her grandmother and the nurse of what happened to her. The reason was she was afraid that her uncle will

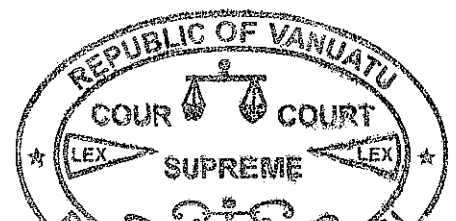


assault her. She was so frightened that she gave a different explanation that she climbed a tree and fell on a nakatabol roots which caused injury to her vagina. But she said it was not true because she said defendant Malao Jeajea on the day of alleged sexual assault, came to the bush at the coprah shed, held her and blocked her mouth. He fastened her mouth and hand with a white calico. He took her in the coprah shed; removed her cloths; pushed her on the ground; removed his cloths; opened her legs and inserted his private part inside her private part. He made this to her for some time. When he finished, he removed the white Calico from her mouth and hands and run away. She saw blood in her vagina after the sexual intercourse.

118. I find that the complainant, as a child of 13 - 14 years of age, is an impressive and powerful witness. She is a truthful witness. She gave very detailed accounts of what the defendant had done to her, how he did these things to her. She had clear memory of the details. She maintained her evidence throughout her cross examination, her evidence was not shaken.
119. The complainant 's evidence is corroborated by the evidence of Sylvie Abraham when Sylvie testified that when she returned to the coprah shed, she found that the complainant was bending her head and the tears were coming out of her eyes. She was crying. That was the main reason for them to return home. The complainant went to sleep. In the late afternoon, the complainant asked Sylvie to put oil on her vagina in the sleeping house. She saw the complainant's vagina was swollen, blackened and she described it as: "hemi hang".
120. The evidence of Dr Wilma Luan corroborated the evidence of the complainant in that the doctor said even though the complainant had fallen from a tree and had slid off her body to a root the injury on her vagina did not correlate to this type of injury. What the doctor saw was the vagina was opened from inside. There was a tear in the vagina. An object entered into the complainant's vagina causing injury. There was a clog resulting from the tear in the Vagina. This was consistent with the evidence of the complainant that the defendant had forced sexual intercourse with her as alleged.

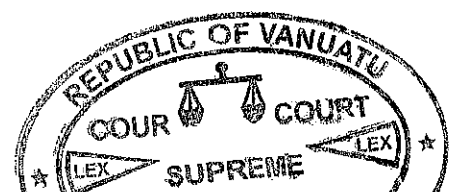


121. The defence challenged the medical report of the doctor as inconclusive as it was made 3 weeks after the complainant was released. I rejected the challenge. The medical report was made on the basis of the doctor's examinations of the complainant and her findings after examinations of the complainant.
122. The evidence of the complainant was supported by that of Steline when the complainant told her that the defendant had sexual intercourse with her who caused the injury to her vagina. The complainant told Steline of what happened to her in the presence of Melanie and her mother. She cried after she told them that defendant Malau Jeajea had sex with her which caused the injury on her vagina.
123. The complainant gave evidence that she did not climb a tree and fall down on a nakatabol root. Her evidence is to the effect that she said that because it was very difficult for her to tell the truth of the sexual intercourse the defendant did on her because she was afraid her uncle will assault her. That was her motive to say that but it was not true. I accept her explanation.
124. There are inconsistencies between the evidence of the complainant and some aspect of the evidence of Sylvie. They may be relevant for the assessment of credibility but I consider they are all of minor degrees as they do not relate to the essential elements of the offences. Most of these inconsistencies can be explained. The complainant's clothes – she wore a black t shirt and sport wear in the morning at the time of sexual assault; after the sex she returned home and went sleeping. Toward the end of afternoon close to the evening she wore jeans trousers. It is rational that after she was sexually abused she would have changed herself with clean clothes. As to the notion of time and distance, there may be that Sylvie has little understanding or appreciation of the notion of time and distance as she did not go to school and she even did not know the name of her church when she was asked. One must always bear in mind of the notion of relativity in respect to time and distance and in particular local people in local environment and setting. There was mention of the third person who was the little daughter of Sylvie who stayed back with the complainant when the sex was said to have occurred at the coprah shed, she has never



been identified by the Prosecution. However, it was not related to the essential elements of the offences.

125. Doctor Wilma agreed in cross-examination that it might be possible that an injury on the vagina may be a result of the complainant fallen from a tree on a sharp object. That was a cross examination hypothetical question but not a fact.
126. The defendant was the one who told Sylvie to fasten some natangura leaves for him at the coprah shed in the bush on the day where the offence occurred. It was a day on the week of Sanma Province celebrations. The defendant's evidence that all were at the celebrations including him and took part in the different sport activities was not sustained as he had instead told Sylvie to do the work for him on a day of that week. He must have known that Sylvie was at the coprah shed on that day. As Sylvie was his uncle doing his work on that day, it was likely that he went at the coprah shed to check the work. It is rational to draw this inference here. The complainant saw him at the coprah shed on that day when he had sexual intercourse with the complainant as she testified in her evidence.
127. I heard the evidence of the defendant and I reject his evidence that he did not go to the bush on the day of the incident. The complainant said he was in the bush at the coprah shed. She described with precise details what he did to her on that day. I reject his evidence that he did not have sexual intercourse with the complainant in September 2016. I find he is not a trustworthy witness. I do not believe him and I reject all his evidence as truthful.
128. I also reject the evidence of the nurse Steven Vire. He said he heard from the grandmother that the complainant had fallen from a nakatabol tree and slid off her body on the root of nakatabol. I also reject his evidence to the effect this was the cause of the injury. He did not examine the complainant. That piece of evidence was evidence of the fact that there was a conversation between him and the grandmother but it was evidence to the truthfulness of what was the cause of the injury on the body of the complainant.
129. I am, therefore, satisfied beyond reasonable doubt that the prosecution has proved each and all essential elements of the offence of sexual intercourse



without consent, contrary to s. 90 and 91 of the Penal Code as charged against Defendant Malao Jeajea in count 1 of the information.

130. I find defendant Malao Jeajea guilty of the offence of sexual intercourse without consent in count 1 of the information. There is no need to consider the alternative charge in count 2. The defendant is, accordingly, discharged on the alternative count 2 of the information.


The verdict of the Court

131. Guilty on count 1.

132. Discharged on Count 2.

Dated at Luganville this 7th day of August 2017.

By the Court


Vincent Lunabek
Chief Justice

