

PUBLIC PROSECUTOR- VS- MICHEAL SUAKI

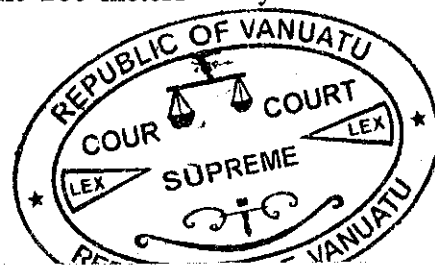
Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Betina Ngwele for Public Prosecutor*
Linda Bakokoto for Defendant

Date of Trial : *23rd October, 2017*

DECISION

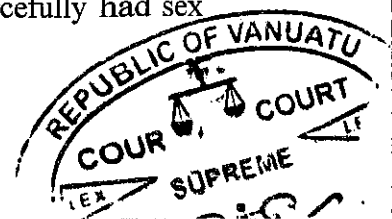
1. The defendant pleaded not-guilty to one count of sexual intercourse without consent on 18th April 2017. His trial could not take place in May as fixed until today when it was mistakenly understood it was for plea.
2. The prosecution called evidence from 2 witnesses namely the complainant Judy Patick and her husband John Bruce. The Prosecutor and defence counsel agreed that the statement of the investigating officer Ray Ansen and the statement of the defendant be tendered into evidence without cross-examination.
3. The defendant agreed sexual intercourse had taken place however denied there was lack of consent.
4. The general duty of proof rests on the prosecution to prove beyond reasonable doubt that during sexual intercourse the complainant did not consent to sex on 6th April 2016.
5. Relevantly the prosecution evidence is summarised as follows:-
 - a) Judy Patick- In the morning of 6th April 2016 the defendant went to their house and asked her and her sister-in law to accompany him to his kava garden to clean it. They followed him to the garden. Her husband John Bruce stayed at home to look after their two small children. The defendant then sent her sister-in-law away to fetch water from a creek some 200 meters away.



While the girl was away the defendant then demanded her to have sex with him. She refused at first because they both were married and also because they were closely related. The defendant calls her husband "Dad". She said the defendant forced her to have sex and that he removed her clothes and forcefully had sex with her quickly. A short time later Mary Therese returned with water. She said she was afraid of the bush knife of the defendant that he had at the time.

In examination in chief and in cross, she changed her story and said sex did not happen in the garden but in the bushes half-way to the garden. She did not tell Mary about.

- b) John Bruce- He confirmed on 6th April 2016 the defendant came to their house and requested that Judy and Mary follow him to his garden to clean his kava plants. And that he trusted the defendant as his "Son" that nothing would happen. That Judy never told him anything about the defendant having sex with her. It was only on another occasion that he saw the defendant touch his wife's buttock with his finger and saw him made a gesture for sexual intercourse with his hand towards his wife that he became suspicious something was going on. Then he called up the defendant who came to him and he took a knife and assaulted the defendant's arm with it.
6. With that evidence the prosecution closed its case. Defence Counsel did not make a no-case submissions. The Court on its own motion pursuant to sections 135 and 164 of the Criminal Procedure Code Act [CAP. 136] decided there was no prima facie case established to require the defendant to make or put up a defence.
7. The primary question for the Court to ask itself at the conclusion of the prosecution case is whether as a matter of law there is any evidence on which the accused could be convicted? In this complaint the complainant alleged she was forced to have sex against her will or consent but there was no evidence of any torn clothes or bruises on her body. There was no evidence of her crying after the incident so that Mary Therese could see and confirm. The complainant never told Mary or her husband about it. She did give evidence of another time when she alleged the defendant forcefully had sex



with her in front of her son. But she was inconsistent on whether it was before or after 6th April 2016.

8. The Court comes to the conclusion that it would be unsafe to convict the defendant on such evidence. Accordingly the trial has to be stopped at this point.
9. I therefore dismiss the case and acquit the defendant of the charge of sexual intercourse without consent.

DATED at Lakatoro this 23rd day of October, 2017

BY THE COURT

OLIVER A. SAKSAK

Judge

