



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

Criminal
Case No. 19/436 SC/CRML

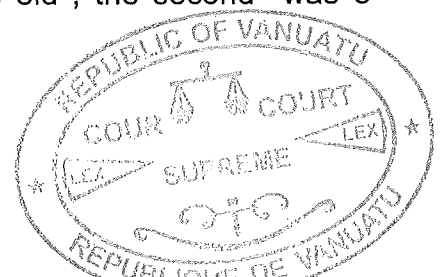
PUBLIC PROSECUTOR VS REMO KALRAN AVOCK

Date of Trial: 16th April 2019
Date of Verdict : 18th April 2019
Before: Justice Dudley Aru
In Attendance: Mr Ken Massing for Public Prosecutor
Mr Junior Garae for the Defendant

REASONS FOR VERDICT

Introduction

1. On the 18 April 2019, following the conclusion of a trial in this matter, I found Mr Kalran guilty on one count of sexual intercourse without consent . His bail conditions were revoked and he is now remanded in custody pending sentence . Counsels were informed that written reasons for the verdict would be given . These are my reasons for the guilty verdict .
2. At the time of the offending , Mr Kalran was residing with his father at Monix Hill. Around the same time ,the complainant was with her three children also at the Monix Hill area planting food crops in their garden not far from where Mr Kalran was . The complainant's husband had been remanded in custody at that time and she had little means to support her family . As a result she turned to gardening. Her oldest child was 6 years old , the second was 3



years old and the youngest was 1 year old . All three children were with their mother at Monix Hill at the time of the incident .

Charges

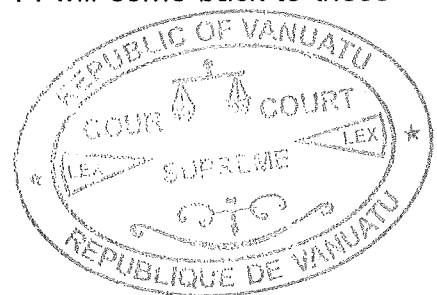
3. Mr Kalran was charged with one count of sexual intercourse without consent contrary to section 90 and 91 of the Penal Code [CAP 135]. The maximum penalty for such offending is life imprisonment .

Law

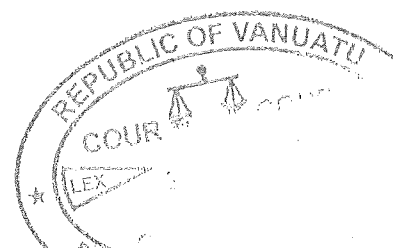
4. Mr Kalran is not required to prove his innocence . The prosecution bears the onus to prove his guilt beyond reasonable doubt .If there is any doubt in my mind about the prosecution case then I must acquit Mr Kalran . Agreed facts were filed by Counsel before the trial begun . It was agreed that Mr Kalran did have sexual intercourse with the complainant on the evening of 16 November 2018 at Monix Hill .At that time the complainant's husband was remanded in custody at the correctional centre in Luganville .
5. The only issue in dispute is consent . The prosecution must prove that sexual intercourse occurred without the complainant's consent . Second , it must prove that Mr Kalran did not have a reasonable believe that the complainant was consenting to sexual intercourse .

Analysis of the evidence

6. As part of the agreed facts filed , the parties agreed a number of documents which were tendered as agreed exhibits and which were not disputed .These include the complainants Medical Report , Mr Kalran's Record of Interview (ROI) and a photograph of Mr Kalran's underwear . I will come back to these documents later on .



7. The evidence given by the complainant in chief and when cross examined is that the defendant initially came to her place during the day and asked for tobacco . She told him she had none . He then asked for sex . She said nothing and he left . Later in the evening he returned to her place . By then all her children were asleep and she heard Mr Kalran calling her . When she came outside , she saw Mr Kalran . He also had a knife with him . He then asked her for sex . He asked her 4 times but each time her reply was an emphatic No . Upon being told the fourth time that her answer was No , Mr Kalran then held her neck and pulled her towards him and pulled her hair and head and told her to suck his penis . He kept on pushing her head towards his penis but the complainant refused . After a while as he held her hands , he forcibly removed her pants and touched her vagina .He removed his pants as well and in the struggle to remove herself she fell to the ground .She wanted to get a condom to protect herself and Mr Kalran followed her into the house . When they came outside he held her and had sex with her.
8. After sex the complainant took Mr Kalran's knife and wanted to harm him. She did nothing as she thought of her children whose father was already in custody. Mr Kalran wore his trousers and ran back to his house .
9. The next day being a Sunday she took her children back to Luganville and went to her sister's place .Her sister , Dorian Naliupis also gave evidence .Her evidence is that of a recent complaint.
10. Ms Naliupis said that she was surprised to see them back so early as she had brought them some food earlier . When she saw the complainant , her sister was weak with swollen eyes as if she had been crying for some time and her neck was not normal as the complainant kept leaning to one side. When Ms Naliupis enquired, the complainant told her what Mr Kalran did to her . The



next day , Monday she looked after the three children whilst the complainant went to the Police station to file her complaint .

11. Mr Kalran in his evidence admitted that he asked the complainant 4 times for sex but she said No . His evidence is that although she said No , she smiled at him and he took that to be a yes .

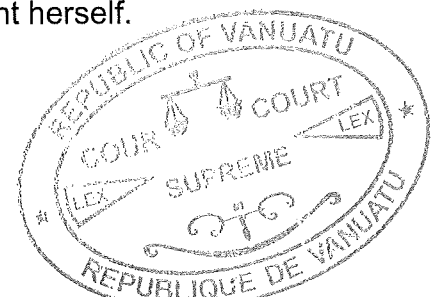
12. That is simply wrong and is misguided. Mr Kalran knew that the answer to his request for sex was a clear No and he was told 4 times.

13. In his ROI Mr Kalran confirmed to the Police that he forced the complainant to suck his penis and to have sex with him and she struggled to remove herself from him . At the end of his statement to the Police, Mr Kalran said sorry for what he did. He said it would not happen again and asked for forgiveness. The fact that after the sex Mr Kalran left his under wear behind only goes to show that he was in a hurry to get away and avoid being seen for what he did to the complainant .

Findings

14. The findings I make are that on the 16 November 2018 Mr Kalran had sexual intercourse with the complainant. He forced the complainant to have sex with him without her consent. He grabbed her with his hands then held her neck and hair and forced her to suck his penis but she refused .He then forcefully removed her pants and touched her vagina before removing his own pants and had sex with her .

15. In the process the complainant struggled and cried to remove herself from. After the sex Mr Kalran hurriedly left and forgot his underwear. The very next day the complainant told her sister of the incident. Because it was a Sunday, she went to the Police on Monday to report the incident herself.



Verdict

16. For these reasons I found the defendant guilty as charged.

Date at Port Vila this 24th day of April 2019

BY THE COURT

D. ARU

Judge

