

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

Criminal
Case No. 19/1752 SC/CRML

BETWEEN: Public Prosecutor

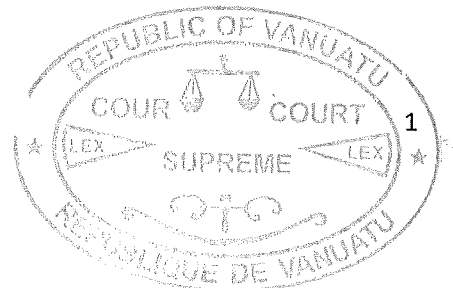
AND: Arnold Solomon
Defendant

Date of trial: 16-18 October 2019
Date of judgment: 24 October 2019
By: Justice Viran Molisa Trief
Counsel: Public Prosecutor – Mr Ken Massing & Ms Georgina Kanegai
Defendant – Mr Nigel Morrison

JUDGMENT

A. Introduction

1. Mr Solomon is charged with:
 - a. Sexual intercourse without consent contrary to ss 90 and 91 of the *Penal Code Act* [CAP. 135] ('Count 1'); and
 - b. Intentional assault causing damage of a temporary nature contrary to s. 107(b) of the *Penal Code Act* ('Count 2').
2. The Particulars of the Offence for Count 1 state that, "Arnold Solomon, you are charged [that] on 23 January 2015 you had sexual intercourse with [named complainant] at your house without her consent when you inserted your penis into her vagina."
3. The Particulars of the Offence for Count 2 state that, "Arnold Solomon, you are charged [that] on 23 January 2015, you commit intentional assault on the body of [named complainant] when you assaulted her chest with a knife and caused damage on her body of temporary nature."



4. The complainant was named in the Particulars of the Offence for both Counts. For the purposes of this judgment, I will call her "Ms T" in order to protect her identity.
5. Mr Solomon has denied the charges and pleaded Not Guilty.
6. The prosecution bears the burden of proving the charges against Mr Solomon beyond reasonable doubt. This means that the prosecution must produce evidence that establishes each and every element of the offences charged to the satisfaction of this Court beyond reasonable doubt. The accused need not prove his innocence.
7. As Lunabek CJ said in *Public Prosecutor v Urinmal* [2013] VUSC 101; Criminal Case 01-13 (1 June 2013) at p. 7:

Proof beyond reasonable doubt does not mean proof based on absolute certainty. It requires that a judge must be satisfied on the whole of the evidence at the end of the trial that, as a conscientious and responsible judge of fact, the prosecution has proved each and all essential elements of the offences in the information.

8. Before the prosecution case commenced, I read to Mr Solomon the statement of the presumption of innocence in s. 81 of the *Criminal Procedure Code* [CAP. 136]. He indicated that he understood it.

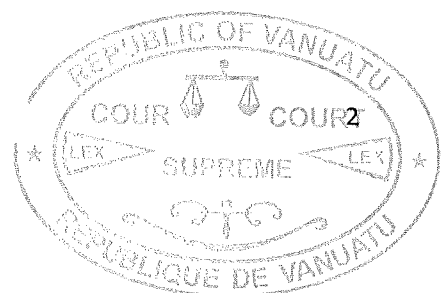
B. Relevant law

Count 1

9. Section 89A of the *Penal Code Act* defines sexual intercourse as follows:

*For the purposes of this Act, **sexual intercourse** means any of the following activities, between any male upon a female, any male upon a male, any female upon a female or any female upon a male:*

- (a) *the penetration, to any extent, of the vagina or anus of a person by any part of the body of another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorized by law; or*
- (b) *the penetration, to any extent, of the vagina or anus of a person by an object, being penetration carried out by another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorized by law; or*
- (c) *the introduction of any part of the penis of a person into the mouth of another person; or*
- (d) *the licking, sucking or kissing, to any extent, of the vulva, vagina, penis or anus of a person; or*
- (e) *the continuation of sexual intercourse as defined in paragraph (a), (b), (c) or (d); or*



- (f) *the causing, or permitting of a person to perform any of the activities defined in paragraph (a), (b), (c) or (d) upon the body of the person who caused or permitted the activity.*

10. Section 90 provides:

Any person who has sexual intercourse with another person –

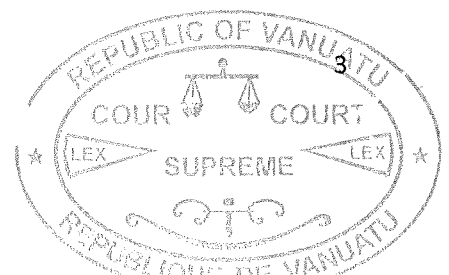
- (a) *without that person's consent; or*
- (b) *with that person's consent if the consent is obtained –*
- (i) *by force; or*
- (ii) *by means of threats of intimidation of any kind; or*
- (iii) *by fear of bodily harm; or*
- (iv) *by means of false representation as to the nature of the act; or*
- (v) *in the case of a married person, by impersonating that person's husband or wife; or*
- (vi) *by the effects of alcohol or drugs; or*
- (vii) *because of the physical or mental incapacity of that person;*

commits the offence of sexual intercourse without consent.

11. Section 91 prohibits the offence of sexual intercourse without consent and provides that it is punishable by imprisonment for life.

12. In *McEwen v Public Prosecutor* [2011] VUCA 32, the Court of Appeal in dealing with an appeal against conviction on a single charge of sexual intercourse without consent said:

13. *There are three essential elements of any count of rape. First, that there was intercourse (which is very widely defined) and there is no question that each of the activities which occurred constitute sexual intercourse in law.*
14. *Secondly, there was no consent by the complainant. In this case, the judge found as a fact that the complainant did not consent because she was mistaken as to the identity of the man she was involving herself with.*
15. *It is an interesting concept that a woman can actively, willingly and enthusiastically involve herself in sexual activity, but if she believes a different person is involved it can be said to be without consent. The law recognises that that can occur and we see no reason to differ from the judge's assessment that what occurred was not consensual because she was mistaken as to the identity of her lover.*
16. *Where we part company with the trial judge is on the fundamental plank that the charge is against this man and the third element requires proof beyond reasonable doubt that he had a guilty mind.*



17. *Although the law in Vanuatu does not statutorily identify this third element, as is the case in some jurisdictions, it is a fundamental matter. It is of profound importance that the prosecution proves beyond reasonable doubt that the man did not believe on reasonable grounds that the complainant was consenting at the time that the intercourse occurred.*

...

20. *It was essential that the State proves that Mr McEwen did not believe on reasonable grounds that the complainant was consenting as and when the sexual activity was occurring.*

13. In the present case, the essential elements that the prosecution must prove beyond reasonable doubt are:

- a. That sexual intercourse took place on 23 January 2015 between the defendant Mr Solomon and complainant Ms T;
- b. That Ms T did not consent; and
- c. That Mr Solomon did not believe on reasonable grounds that the complainant Ms T was consenting at the time that the intercourse occurred.

Count 2

14. Section 107 of the *Penal Code Act* provides:

No person shall commit intentional assault on the body of another person.

- Penalty:
- (a) *if no physical damage is caused, imprisonment for 1 year;*
 - (b) *if damage of a temporary nature is caused, imprisonment for 5 years;*
 - (c) *if damage of a permanent nature is caused, imprisonment for 10 years;*
 - (d) *if the damage caused results in death, although the offender did not intend to cause such death, imprisonment for 14 years.*

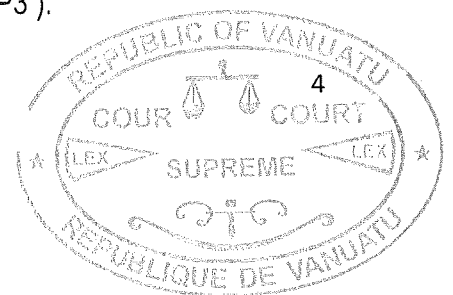
15. In the present case, the essential elements that the prosecution must prove beyond reasonable doubt are:

- a. That the defendant Mr Solomon assaulted the body of the complainant Ms T;
- b. That Mr Solomon intended to assault the body of the complainant; and
- c. That the assault caused damage of a temporary nature.

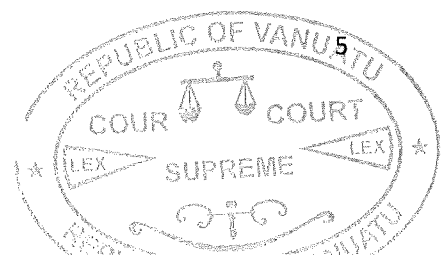
C. The Evidence

Count 1

16. The prosecution called 3 witnesses namely Ms T, Dr Tony Harry and Mrs Flora Tambe. Defence consented to the evidence of the fourth witness Mrs Leikana Hake being read into evidence ("Exhibit P2"). Prosecution tendered without objection the record of Mr Solomon's police interview on 26 January 2015 ("Exhibit P3").



17. It is undisputed that sexual intercourse took place between Ms T and Mr Solomon on 23 January 2015. This was Ms T, Dr Harry and Mr Solomon's evidence and defence accepted that as a fact.
18. The sole issue is that of **consent**. The complainant says that she did not consent whereas the defendant says that the sexual intercourse was consensual. The Court is required to be satisfied beyond reasonable doubt as to the absence of consent which necessarily entails a consideration of all of the evidence including the testimony of the defendant before arriving at a conclusion on this question.
19. Ms T gave evidence that she and Mr Solomon were both students at Epauto Secondary School in 2013 and 2014. On 23 January 2015, she was in town and after agreeing via text messages, took a bus to Mr Solomon's house at Switi area, Port Vila. When she arrived, there were two family members at home with Mr Solomon. He made them go and do something so that they would not see Ms T enter the house. Ms T and Mr Solomon had previously had sex at Mr Solomon's house and after that, she saw signs of pregnancy. She had told Mr Solomon and he said he could get a medicine to in effect terminate the pregnancy. At his house, she drank a sour lemon drink and medicine that he gave her. After this, Mr Solomon's dad came home to eat his lunch. She remained in Mr Solomon's bedroom, that he had told her to stay quiet there, not to make noise, while he went out to see his dad. Mr Solomon and his dad ate lunch then watched TV. Eventually Mr Solomon's dad and the two family members left for afternoon exercise; Mr Solomon declined to go with them.
20. After this, Mr Solomon came to see her in the bedroom then went back to the lounge and turned the music up so loud the house vibrated. On return to the room, Mr Solomon asked her to have sex with him. She replied that she didn't feel like having sex. They both went to the bathroom after that. On return to the bedroom, he again asked her for sex. She told him that she still did not feel like having sex with him. He then held her hands tightly, pushed her onto the bed, removed her skirt and panty, then pushed his penis into her vagina. She says he wasn't inside her long because she was struggling to get away from him.
21. In cross examination, Mr Morrison pointed Ms T to her statement to police on 23 January 2015 in which she had said that Mr Solomon was behind her and pushed his penis into her from behind. Ms T said that she couldn't remember the details of her statement as it was made quite a while ago. She agreed with Mr Morrison that her words to the police were true. That is, when she and Mr Solomon had sex on 23 January 2015, that he did so from behind her. She agreed too that her memory of what happened was not clear because of the time that had passed.
22. Ms T's evidence was that after that, Mr Solomon sat behind her. Then suddenly from behind her, he put his forearm to her neck as if he wanted to strangle her while he held her hands tight with his other hand. She bit his hand and then he let her go. She then rolled to the edge of the bed and tried to regain her breath. He sat next to her, rubbing



her back and saying he was sorry, he didn't mean to do that. At that point, she couldn't see but he must have reached down the side of his bed, pulled out a small knife and speared her with it on the right side of her chest near her breast. This required surgery at the hospital that has left her with two scars and hospitalization for nearly a month.

23. She pulled the knife out of her chest and her blood shot out. It was then that she realised it was a knife and ran out of the bedroom. As she swung through the lounge she didn't see but Mr Solomon stoned her with something. She ran out of the house and only at the gate did she realise she was not wearing any clothing on the lower part of her body. She pulled her shirt lower down to cover herself and looked for someone to help her. She ran to a nearby yard and hung onto the woman she found there. That woman helped her by holding on to her, supporting her to a mat, made her lie down, covered her with a skirt and have a drink of water. After that they got her onto a truck and took her to the hospital.

24. Ms T gave evidence too that during her relationship with Mr Solomon, she had heard news of him with other girls. She had taken a holiday job at Au Bon Marche and when he texted her she would not reply. That's when she met Graham, who she mentioned in her police statement, and had a sexual relationship with Graham too. She said Mr Solomon did not know of her relationship with Graham.

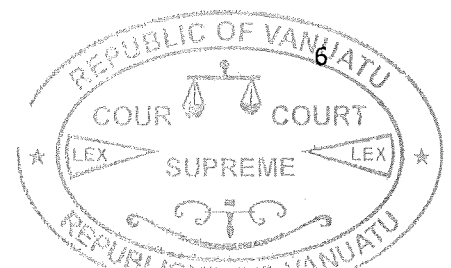
25. When Ms T was examined at the hospital, her answer to Dr Harry about whether or not she was currently pregnant was, "No". She confirmed in cross examination that this was not a truthful answer. That she was pregnant at the time and did give birth from this pregnancy. She remains unsure who the father of the child is.

26. Dr Harry's evidence was that he medically examined Ms T at 8.30pm on 23 January 2015 as it was alleged that she had been sexually assaulted. His evidence was that her hymen was red and tender to touch. I did not find Dr Harry's evidence conclusive that Ms T's presentation was caused by sexual assault. He said the cause was a penis had been inserted without any lubrication, causing redness of the hymen. However, he also said this could be caused by just rubbing using fingers or an object. In cross examination, he agreed this could also present without there having been sexual assault.

27. Dr Harry's medical report and that of Dr Ricky Mera, both dated 23 January 2015 were tendered without objection ("Exhibit P1"). Under cross examination, Dr Harry confirmed that the information set out in the report was supplied by Ms T herself. As stated above, her answer to the question whether or not she was currently pregnant was, "No".

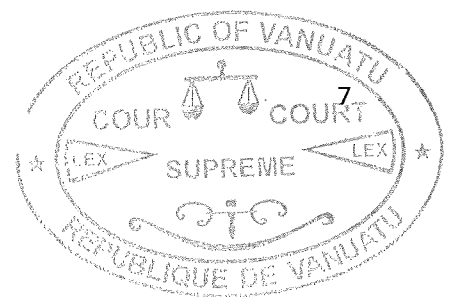
28. Dr Harry confirmed that Ms T's injury would cause a permanent scar but that the injury would heal, which it has.

29. Ms Tambe's evidence was that Ms T ran into the yard that she was in at Switi area. By that point, Ms T was weak from the loss of blood from her wound. She helped Ms T by holding on to her, supporting her to a mat, and covering her body with a calico. She said Ms T told her that Arnold speared her with the knife. She removed the knife from Ms T

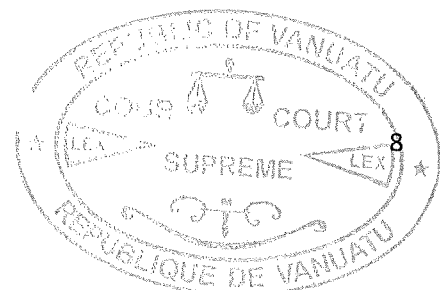


and gave it to the truck driver who took Ms T to the hospital to go and show it to the doctor. Mrs Tambe's mum Ms Hake helped too by getting Ms T a drink of water and giving the skirt that they helped her to put on.

30. I shall now consider the defence that Mr Solomon put forward. Having understood his rights under s. 88 of the *Criminal Procedure Code*, he elected to give evidence on oath. There is in fact little conflict or dispute as to what occurred between Mr Solomon and Ms T prior to 23 January 2015. Both gave evidence that they were students at Epauto Secondary School. They had begun going out with each other in late 2014 and had previously had sexual intercourse at Mr Solomon's house. This resulted by January 2015 in their fearing that Ms T was pregnant and they were then looking for ways to get rid of the baby.
31. This was distressing, as Mr Solomon in particular spoke about in his evidence. He said that when she told him, he was shocked as all the time he used a condom. He was confused too and trying to wrap his head around it, so he didn't text her back for a few weeks. Once they contacted each other again, they were trying to think of ways to get rid of the baby. Ms T told him of a leaf ('lif' in Bislama) to drink with lemon. He said that leaf grew along the road towards their school. He prepared the leaf with lemon and they met after school at church and he gave it to her. She drank it that day and then asked him if he had some more, to prepare it and let her know.
32. This culminated in their agreeing to meet at Mr Solomon's house on 23 January 2015. When she got there, Mr Solomon again gave Ms T the leaf with lemon and a tablet to drink to terminate the pregnancy. He confirmed that he and Ms T kept their relationship secret. He just didn't want anyone to see her come into his house. At this point in time, they weren't talking much. He was still shocked that she was pregnant and still confused about the situation they were in. While she took the drink, he realised that she was not that talkative that day. He tried talking but she was not responding. He said he didn't take much notice that day, that maybe she was stressed out with the pregnancy and all.
33. Mr Solomon's evidence was that his dad came home earlier than usual, around 12.30pm. When his dad arrived, he joined him in the living room so as not to act suspiciously. They ate lunch and then Mr Solomon fell asleep on the couch. He woke and then his dad and nephew and cousin left the house for exercise at Korman. He told them he wasn't feeling well and would stay back. They left at 3.45pm. He then had the house to himself and put on music, as he normally did every afternoon.
34. Mr Solomon gave evidence that after he put on the music, he returned to his bedroom and Ms T was on his bed. They started kissing and cuddling then had sex. They had sex with him from behind. They had sex for a few minutes and then he went to the kitchen and she came out to go to the toilet. Mr Solomon said he asked her before having sex. That she was OK with it and they had sex. He said that after she said that, she removed her skirt and underwear, folded them and put them on the ironing table next to his bed. He went to the other room and put on a condom then they had sex.



35. In cross examination, Mr Solomon denied that Ms T refused to have sex with him. He said that she agreed to have sex with him at the time. He denied forcing her to have sex, saying he didn't force her to do anything. He said that he didn't force her to lie down; she was already lying down. That he didn't push her down. He denied removing himself from her because she struggled and screamed. He also denied that at the time he held her strongly with his arm and forced her not to breathe. He denied that she bit him in order to force him to release her, and that he had sat next to her on the bed and said sorry to her.
36. In stating that she did not consent to the sexual intercourse, Ms T initially said that Mr Solomon held her hands tightly, pushed her onto the bed, removed her skirt and underwear then forced his penis into her from in front of her. However, when reminded in cross examination of what she had told the police, she agreed that her words to the police were true. That is, that when they had sex on 23 January 2015 that Mr Solomon did so from behind her. She also agreed with Mr Morrison that her memory of events was not good. She lied to the doctor too in telling him she was not pregnant. This contradicted what had happened that day which was that she went to Mr Solomon's house to drink a lemon drink and take medicine aimed solely at terminating a pregnancy that both she and Mr Solomon feared that they had on their hands. The inconsistencies in Ms T's evidence and her acknowledgement that her memory of events was not good lessen, in my view, her credibility as a witness.
37. Ms T's evidence was also that before 23 January 2015, she had commenced a sexual relationship with another man, Graham. She did so because she had heard that Mr Solomon had other girlfriends. She did not tell Mr Solomon about this relationship.
38. Defence raised that she didn't take the first opportunity that she had to tell someone that she had been sexually assaulted. If she had, that would have been evidence of her state of mind. Considering that she may have consented to the sexual intercourse but then tragically ended up with a knife in her chest, I can understand her not telling the women who came to her aid at Switi area that she had been raped. In any event, there is no corroborating evidence that she did not consent.
39. I remind myself of the danger in a sexual assault case of convicting the accused on the evidence of the complainant alone. Moreover, of doing so where there is some evidence from the complainant that the Court is uncertain about.
40. The inconsistencies in Ms T's evidence cast doubt in my mind that she was a truthful witness. However, my overall impression is that despite the inconsistencies, Ms T conveyed through her evidence that she did not consent to sexual intercourse with Mr Solomon on 23 January 2015.
41. Having carefully considered the evidence adduced before this Court, I find that the essential elements that the prosecution has proved in respect of Count 1 are that:



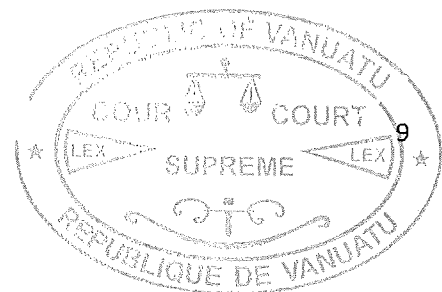
- a. On 23 January 2015, the defendant Mr Solomon had sexual intercourse with the complainant Ms T and that this involved the penetration of the vagina of the complainant by the penis of the defendant; and
- b. Secondly, that the complainant Ms T did not consent.

42. As the Court of Appeal stated in *Siply v Public Prosecutor* CRAC 07 of 2015 (15 April 2016) at para. 31:

*It is of course possible that a complainant does not consent to intercourse but the defendant nevertheless has, **or cannot be proved not to have had**, a reasonable belief that she was consenting. That this is an element of the charge of sexual intercourse without consent in Vanuatu despite it not being expressly mentioned in the legislation is confirmed by the judgment of this court in McEwen v Public Prosecutor [2011] VUCA 32.*

My emphasis in bold

43. That third element of the offence as per the Court of Appeal's decision in *McEwen v Public Prosecutor* is, "...it is a fundamental matter. It is of profound importance that the prosecution proves beyond reasonable doubt that the man did not believe on reasonable grounds that the complainant was consenting at the time that the intercourse occurred."
44. The Prosecution must prove beyond reasonable doubt that at the time that the intercourse occurred, Mr Solomon did **not** have an honest and reasonable belief that Ms T was consenting.
45. The continuum of events on 23 January 2015 arose from a traumatic situation in which two secondary school students were facing the prospect that the girl was pregnant as a result of their sexual relationship. Both Mr Solomon and Ms T were teenagers, students in the same year group at school. He was 16 years old and she was 17 years old. They had previously had sexual intercourse in Mr Solomon's bedroom at his house. They kept the relationship hidden from Mr Solomon's family. By 23 January 2015, Ms T was pregnant and they were both concerned to get rid of the pregnancy. On 23 January 2015, Ms T was familiar with the house having gone at least once to the toilet. She had opportunity to leave the house if she wanted to but did not. In fact, she remained in Mr Solomon's bedroom throughout the time that his dad was home. She did not leave even after the dad and the other two occupants of the house had left for their afternoon exercise.
46. Mr Solomon's evidence was that when he returned to the bedroom, she was lying on his bed. She was quiet and unresponsive to his questions but in his evidence, they kissed and cuddled and then had sexual intercourse on the bed with him from behind. He denied forcing her to lie down on the bed. He said she was already lying there. His evidence was she removed her skirt and panty, folded them and placed them on the ironing table next to his bed, as she had done on the previous occasion that they had had sex in his bedroom. In my view, all these factors together contributed to Mr Solomon's reasonable belief that at the time that sexual intercourse occurred that Ms T consented.



47. I find that Mr Solomon has proved his belief in consent on the balance of probabilities – s. 10, *Penal Code Act*.

48. I remind myself as to who carries the burden of proving the charge. This being a criminal trial, the prosecution bears the burden of proving the essential elements of the charge against Mr Solomon beyond reasonable doubt. Further, prosecution bears the burden to disprove beyond reasonable doubt consent which has been sufficiently raised by the defence as an issue – s. 9, *Penal Code Act*. The accused need not prove his innocence.

49. From the evidence adduced, I am inclined to accept Mr Solomon's evidence. Further, my assessment of the reasonableness of Mr Solomon's belief has raised doubt in my mind on this fundamental matter. It goes without saying that he is entitled to the benefit of that doubt.

50. Accordingly, I am not satisfied that the prosecution has proved beyond reasonable doubt that at the time that the intercourse occurred, Mr Solomon did **not** have an honest and reasonable belief that Ms T was consenting. Therefore I find Mr Solomon not guilty of Count 1 and he is hereby acquitted and discharged accordingly.

Count 2

51. On the charge of intentional assault, it is undisputed that:

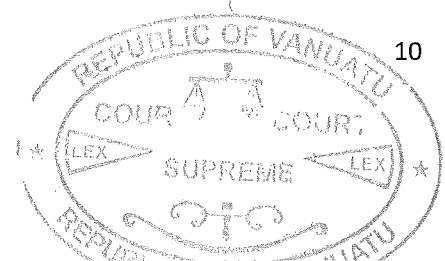
- a. On 23 January 2015, a kitchen fruit or vegetable knife from Mr Solomon's house entered the chest of Ms T; and
- b. Caused damage of a temporary nature.

52. The sole issue is **intent**. The question is: Did Mr Solomon **intend** to assault Ms T's chest with a knife?

53. The only two persons present when the knife entered Ms T's chest were Ms T herself and Mr Solomon.

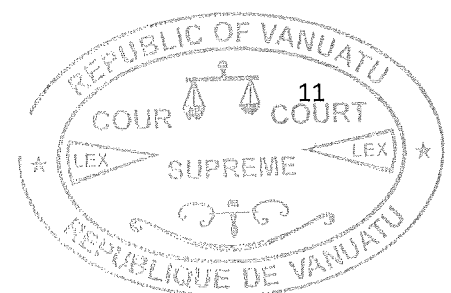
54. As set out above, Ms T's evidence was that after sexual intercourse occurred, Mr Solomon sat behind her. Then suddenly from behind her, he put his forearm to her neck as if he wanted to strangle her while he used his other hand to hold her hands tight. She said he only let her go when she bit his hand. She then rolled to the edge of the bed and tried to regain her breath. He sat next to her, rubbing her back and saying he was sorry, he didn't mean to do that. But the next thing that happened was that he pulled out a small knife and speared her with it on the right side of her chest near her breast. She said she couldn't see but that he must have reached down the side of his bed and pulled out the knife.

55. Mr Solomon's evidence was that after they had sex, he came out to the kitchen and she to go to the toilet. He went to the fridge and grabbed an apple. Given that she had not



had any lunch, he thought she might snack then leave for home. On return to the bedroom she was already there, sitting on the bed. He said that he came in and sat in front of her with the knife and apple. They were both cross legged on the bed, facing each other. He asked her a few questions but she just kept staring at him. He asked if she was OK but she was silent. He said he was just about to split the apple when she grabbed the front of his neck. She said to him, I could kill you now and no one would ever know. He thought that she was bluffing but then she started squeezing harder.

56. He said he was choking and without realising he wanted to push her off but he forgot that he had a knife in his hand. And the knife became stuck in her chest. By the time he realised what had happened, it was too late. She pulled the knife out but she was crying and screaming. She took a swing at him and hit a bit of his left hand. She was crying and screaming. She bit him, he was trying to get her off but she bit harder. They tussled but he was scared too because she was holding the knife. He pushed her off and then she ran out of the room. Her leg caught on the ironing board and she almost tripped but then she ran out.
57. Mr Solomon continued in his evidence that as she ran out, he was lost. He realised that something bad had happened. He went through the gate that separates his house from the neighbour's house and walked to where Vanuatu Helicopters is. Not long after that his dad called him and asked how he was and where he was. His dad came and picked him up. They went straight to the police station. He went in and they put him in the cell. He stayed overnight and then came out on Sunday morning. On Monday, he went to the hospital and got a medical report for his neck which T had squeezed. In re-examination, he said that he obtained a medical report because he had fingernail bruises on his neck and his neck was swollen.
58. That medical report is dated 26 January 2015. Prosecution consented to the report being tendered ("Exhibit D1"). The findings set out in the report are of muscular inflammation around the neck and muscular pain as a result of physical assault.
59. Mr Solomon stated that he hadn't seen Ms T since the events of 23 January 2015 until the first day of the trial in this matter.
60. In response to what Ms T had said that he took the knife from the side of the bed and struck her with it, he said that that was false. It would be strange for a knife to be there.
61. In cross examination, Mr Solomon confirmed that the incident on 23 January 2015 was an accident. When challenged that he did nothing to help her since she was the one who sustained injuries and blood loss, he said I tried to calm her down but she was crying and screaming and panicking. He said that they were both panicking. He agreed he did not follow her but let her run outside naked. He denied throwing something at her. As to him not calling an ambulance for help, he said again, I was panicking. That he didn't know what to do. Mr Solomon denied taking out the knife from the side of the bed and stabbing



her in the chest. In reply to the question, "So you hit her with the knife?" he said, "Yes, by accident."

62. In cross examination, Ms Kanegai put to Mr Solomon that despite obtaining a medical report, he has never filed a police complaint because Ms T did not assault him or squeeze his neck as alleged. Mr Solomon's reply was that he kept it as part of evidence for going to Court. In answer to the question that if he alleged that the complainant assaulted him, he would have gone to the police to lodge a complaint on the same date, he said, "If I hadn't accidentally stabbed her, I would."
63. The accounts given by each of them as to how the knife ended up in Ms T's chest are completely divergent. That raises the need for the Court to be particularly concerned as to who carries the burden of proving the charge. It is not simply a question as to who the court might consider to be the more credible between the complainant and the accused.
64. I have set out above that the inconsistencies in Ms T's evidence and her acknowledgement that her memory of events was not good lessened, in my view, her credibility as a witness. In all the circumstances, I am inclined to accept Mr Solomon's evidence that he hit her with the knife by accident. Mr Solomon was consistent in his recall when cross examined. He did not waiver from what he recalled happened that day.
65. As Mr Morrison stated in his closing submissions for the defence, this was the worst day of Mr Solomon's life. It was a tragic situation of two teenage school students who had had a stressful couple of months fearing pregnancy. They were trying to get rid of the baby. It is understandable that irrational and out of character behaviour may ensue between them. In the highly distressing situation that they found themselves in, in my view, the more plausible account is that after sexual intercourse occurred in Mr Solomon's bedroom, the two ended up in a tussle and the knife accidentally entered Ms T's chest.
66. Accordingly, I find that the prosecution has failed to prove beyond a reasonable doubt that the defendant Mr Solomon intended to assault Ms T's chest with a knife during the unfortunate events of 23 January 2015. I therefore find Mr Solomon not guilty of Count 2 and he is hereby acquitted and discharged accordingly.

**DATED at Port Vila this 24th day of October 2019
BY THE COURT**

..... V.M. Trief
V.M. Trief
Judge

